COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS **SUPERIOR COURT**

AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS, INC.,

Plaintiff,

v.

PLYMOUTH COUNTY SHERIFF'S DEPARTMENT,

Defendant.

C.A. No. 2684CV00477

PLAINTIFF'S APPENDIX

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS **SUPERIOR COURT**

AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS, INC.,

Plaintiff,

v.

PLYMOUTH COUNTY SHERIFF'S DEPARTMENT,

Defendant.

C.A. No. 2684CV00477

DELCARATION OF MACKENZIE R. SAUNDERS IN SUPPORT OF PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

I, Mackenzie R. Saunders, declare:

1. I am an attorney with the American Civil Liberties Union of Massachusetts, counsel of record for the Plaintiff American Civil Liberties Union of Massachusetts, Inc. ("ACLUM") in this action. I have personal knowledge of the facts herein and I could testify competently to these facts. I offer this declaration in support of ACLUM's Cross-Motion for Summary Judgement.

2. Attached as Exhibit 1 is a true and correct copy of the operative intergovernmental service agreement ("IGSA") between Plymouth County Correctional Facility ("PCCF"), U.S. Department of Homeland Security ("DHS"), and U.S. Immigration and Customs Enforcement ("ICE"), effective from September 29, 2024 to September 29, 2029, as obtained from a prior public records request submitted by ACLUM to Plymouth County Sheriff's Department ("PCSD") on January 31, 2025.

3. Attached as Exhibit 2 is a true and correct copy of the two-page document (PDF) entitled "MOUD CQI" produced by PCSD on December 26, 2025, in response to Requests 2 and 3 of ACLUM's public records request submitted to PCSD on December 11, 2026 (the "Request").

4. In PCSD's correspondence to date, it has not provided any further documents responsive to the Request, outside of the documents in Exhibit 2.

5. In PCSD's correspondence to date, it has not provided any log or identification of the records responsive to the Request in its possession that it chose to withhold.

6. On ICE's public website, https://www.ice.gov/detain/detainee-death-reporting, ICE publishes "Detainee Death Reports" about immigration detainee deaths that occur in ICE custody each fiscal year. The Detainee Death Reports presently reflect that ICE reported 33 deaths of immigration detainees in ICE custody in 2025.

7. On ICE's public website, https://www.ice.gov/newsroom, ICE publishes "Detainee Death Notifications" about immigration detainee deaths that occur in ICE custody, within two business days of a detainee's death. The Detainee Death Notifications presently reflect that ICE has reported 18 deaths of immigration detainees in ICE custody between January 1, 2026, and May 21, 2026.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on May 21, 2026, in Boston, Massachusetts.

/s/ Mackenzie R. Saunders
Mackenzie R. Saunders

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of May, 2026, the foregoing document was filed with the Suffolk Superior Court and will be served via email on counsel for Defendant at:

Jessica Kenny
Plymouth County Sheriff's Department
jkenny@pcsdma.org

/s/ Mackenzie Saunders
Mackenzie Saunders

Exhibit 1

70CDCR24DIG000025
INTERGOVERNMENTAL SERVICE AGREEMENT
BETWEEN THE
UNITED STATES DEPARTMENT OF HOMELAND SECURITY
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
AND
PLYMOUTH COUNTY CORRECTIONAL FACILITY

This Intergovernmental Service Agreement (**"agreement"**) is entered into between United States Department of Homeland Security (**"DHS"**), Immigration and Customs Enforcement (**"ICE"**), and **Plymouth County Correctional Facility (**"**service provider**"**)** for the detention and care of detainees (also referred to as "**noncitizens**" and "**detained noncitizens**"). The term "parties" is used in this agreement to refer jointly to ICE and the service provider.

AGREEMENT SUMMARY:

The service provider shall provide detention services for detainees at the following facility:

Plymouth County Correctional Facility
26 Long Pond Road
Plymouth, MA 02360

The service provider shall house detainees and perform related detention services, at a minimum, in accordance with 2019 National Detention Standards for Non-Dedicated Facilities. The standards are available at https://www.ice.gov/detain/detention-management/2019.

The Department shall provide ICE with 250 adult male beds at the Plymouth County Correctional Facility, when it has such capacity.

The agreement will remain in effect for a period not to exceed 60 months unless extended by bilateral modification or terminated in writing by either party in accordance with the terms of Article 13 of this agreement. The period of performance for this agreement is September 30, 2024 through September 29, 2029.

Authorized Negotiator: The following individual is appointed as the service provider's authorized negotiator with full authority to bind the service provider regarding this agreement. The authorized negotiator must be an employee of the service provider (prime).

Name: Julie A. O'Sullivan

Title: Director of Finance

Email Address: josullivan@pcsdma.org

Phone: 508-732-1854

Approved as to Form
Director of Legal Services
Dated: 9/25/24

Documents

The following documents constitute the complete agreement and are hereby incorporated directly or by reference:

- A. Standard Form 1449 70CDCR23DIG000004
- B. Intergovernmental Service Agreement (IGSA) 70CDCR23DIG000004 (This document)

Attachments

- Attachment 1 – Title 29, Part 4 Labor Standards for Federal Service Contracts
- Attachment 2 – Wage Determination Number: **2015-4047** Dated **07/22/2024**
- Attachment 3 – Quality Assurance Surveillance Plan and Performance Requirements Summary (NDS 2019)
    - Attachment 3A –Contract Deficiency Report (CDR) Template
- Attachment 4 – Quality Control Plan - See Policy 112 Procedure 112, Policy 740 Procedure 740, Policy 750 Procedure 750 attached.
- Attachment 5 – Prison Rape Elimination Act (PREA) Regulations
- Attachment 6 – Detention-Transportation Invoice Supporting Documentation Template
- Attachment 7 – Employment Screening Requirements
- Attachment 8 – ICE Privacy, Records Management, and Safeguarding of Sensitive Information
- Attachment 9 – Physical Plant Requirements
- Attachment 10 – Transportation Requirements
    - Attachment 10A – Route List
- Attachment 11 – Virtual Attorney Visitation
- Attachment 12 - Transgender Requirements
- Attachment 13 – Staffing Plan - Staffing Analysis December 2022 attached.

IN WITNESS WHEREOF, the undersigned, duly authorized officers, have subscribed their names on behalf of the Plymouth County Correctional Facility and the Department of Homeland Security, U.S. Immigration and Customs Enforcement.

ACCEPTED:

U.S. Immigration and Customs Enforcement

John Kurtz
Contracting Officer (CO)

Signature: [redacted]

Date: _____

ACCEPTED:

Plymouth County Correctional Facility

(Name) Joseph D. McDonald, Jr.
(Title) Plymouth County Sheriff

Signature: _____

Date: ~~9-8-23~~ 9/25/24

Intergovernmental Service Agreement

Table of Contents

REQUIRED WORK PERFORMANCE

Article 1. Purpose

A. Purpose: The purpose of this IGSA is to establish an agreement between ICE and the service provider for the provision of the necessary physical structure, equipment, facilities, personnel, and services to provide a program of care in a secure environment under the authority of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1103(a)(11)(A).

All persons in the custody of ICE are detained noncitizens. This term recognizes that ICE detained noncitizens are not charged with criminal violations and are only held in custody to ensure their presence throughout the administrative hearing process and to assure their presence for removal from the US pursuant to a lawful final order by the Immigration Court, the Board of Immigration Appeals, or other Federal judicial bodies.

B. Responsibilities: This agreement sets forth the responsibilities of ICE and the service provider. The service provider shall provide all personnel, management, equipment, supplies, and services necessary for performance of all aspects of the agreement and ensure that the safekeeping, housing, subsistence, medical, and other program services provided to ICE detainees housed in the facility are consistent with ICE's civil detention authority, IGSA requirements, ICE standards incorporated and referenced in this agreement, and all applicable state and local laws. The service provider must perform satisfactorily as described in the QASP to receive payment from ICE at the rate prescribed below.

C. Rates: This is a fixed rate agreement, not a cost reimbursable agreement, with respect to the bed day rate. ICE will be responsible for reviewing and approving the costs associated with this agreement, and any subsequent modifications, in accordance with all applicable federal procurement laws, regulations and standards in determining the bed day rate.

Bed Day Rate	$	215.00	per detainee
* On-Call Guard at Regular Rate	$	44.90	per hour
* On-Call Guard at Overtime Rate	$	67.35	per hour
Detainee Work Program Reimbursement	$		1.00 per day
**Transportation Mileage rate to be in accordance with GSA rates at the time of occurrence/ Transportation Mileage Rate	$		per mile
Non-Union Transportation Regular Rate			
Non-Union Transportation Overtime Rate			

**** See Article 4, **See Attachment 10 and 10A***
****** Subject to CBA rate increase***

The "Bed Day" is defined as general costs associated with one person per day. The

service provider shall bill for the date of arrival but not the date of departure.

The service provider shall not charge for costs that are not directly related to the housing and detention of noncitizens. Such unallowable costs include but are not limited to:

1) Salaries of elected officials
2) Salaries of employees not directly engaged in the housing and detention of detainees
3) Indirect costs in which a percentage of all local government costs are pro-rated and applied to individual departments unless, those cost are allocated under an approved Cost Allocation Plan
4) Detainee services which are not provided to, or cannot be used by, Federal detainees
5) Operating costs of facilities not utilized by Federal detainees
6) Interest on borrowing (however represented), bond discounts, costs of financing/refinancing, except as prescribed by OMB Circular A-87
7) Legal or professional fees (specifically legal expenses for prosecution of claims against the Federal Government, legal expenses of individual detainees or inmates)

D. ICE will not be responsible for paying any costs if ICE is unable to use the facility and such occurrence arises out of causes beyond the control and without the fault or negligence of ICE. Such causes may include but are not limited to: acts of God or the public enemy, fires, flood, court orders, extraordinary severe weather and failure to perform in accordance with ICE standards incorporated into this agreement.

Article 2. ICE Detention Standards and Other Applicable Standards

A. The standards applicable to this agreement are referenced on page 1. DHS and ICE inspectors will conduct periodic inspections of the facility to assure compliance with ICE standards.

B. Should a change in the standards identified herein result in a documentable financial impact to the service provider, the service provider must notify the Contracting Officer (CO) within 5 days of receipt of the change and request to negotiate a change in the bed day or other rates.

C. The Department is fully-accredited by the American Correctional Association (ACA) and shall comply with the standards for Adult Local Detention Facilities (ADLF). The Department's MOUD operation complies with the NCCHC standards, and the Department meets 2019 National Detention Standards which incorporate NCCHC standards. The Department does not otherwise have business arrangement with NCCHC to assess operations, but is willing to explore the feasibility of such review.

D. The service provider shall also comply with the requirements of Subpart A and Subpart C of the U.S. Department of Homeland Security Regulation titled "*Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities*," title 6 Code of Federal Regulation (C.F.R.) part 115 (DHS PREA)/79 Fed. Reg. 13100 (Mar. 7, 2014), and Attachment 5 to this agreement. If any requirements of the DHS PREA standards conflict with the terms of the NDS 2019, the DHS PREA standards shall prevail.

E. Order of Precedence: In instances where other standards conflict with ICE policy or Standards, ICE policy and standards take precedence. If the service provider believes there is an apparent conflict in standards, the service provider shall immediately seek clarification and a determination by the CO.

Article 3. Covered Services

a. Access: The facility shall be located within appropriate proximity and access to emergency services (medical, fire protection, law enforcement, etc.).

If applicable, the service provider shall ensure that adequate administrative space in accordance with the physical plant requirements is provided for ICE. The physical plant requirements are included in the attachments of this agreement.

b. Basic Needs: The service provider shall provide ICE detained noncitizens with safekeeping, housing, subsistence, medical and other services in accordance with this agreement. In providing these services, the service provider shall ensure compliance with all applicable laws, regulations, fire and safety codes, policies, and procedures. The types and levels of services shall be consistent with ICE detention standards and polices. All service providers are required to comply with Enforcement and Removal Operations (ERO) COVID-19 Pandemic Response Requirements (PRR). Current ERO COVID-19 requirements can be found on ICE's public facing website, www.ICE.gov.

c. Staffing: The number, type and distribution of staff as described in the IGSA-staffing plan shall be maintained throughout the term of the IGSA. Written requests to change the number, type and/or distribution of staff described in the staffing plan must be submitted to the CO and the Contracting Officer's Representative (COR), for approval prior to implementation and incorporation into this IGSA. Staffing levels shall not fall below a monthly average of 85% for custody staff, 80% for health services staff, and 85% for all other departments of the approved staffing plan. The approved staffing levels for detention officers shall not fall below a monthly average of 85%. Staffing levels for all departments other than custody and health services will be calculated in the aggregate. If the service provider does not provide health services, the health services staffing level does not apply.

Each month, the service provider shall submit to the COR the current average monthly

vacancy rate and indicate any individual positions that have been vacant more than 120 days. Failure to fill any individual position within 120 days of the vacancy may result in a deduction from the monthly invoice.

Article 4. On-Call Guard Services

A. The service provider agrees to provide on-call guard services, at a separately agreed hourly rate, on demand by the COR and shall include, but not limited to, escorting and guarding detainees to medical or doctor's appointments, hearings, ICE interviews, and any other remote location requested by the COR. Qualified detention officer personnel employed by the service provider under its policies, procedures, and practices will perform such services. The service provider agrees to augment such practices as may be requested by CO or COR to enhance specific requirements for security, detainee monitoring, visitation, and contraband control. Visitation is prohibited unless authorized in advance by the COR.

B. The service provider shall provide two officers for each such remote locations, unless additional officers are required, per the direction of the COR or designated ICE officer. Except in cases of an emergency, one of the two above referenced officers shall be of the same sex as the detainees being assigned to the remote location The service provider shall not pull officers off of posted positions in order to fill on-call guard services. All post positions shall be filled and shall not be left vacant in order to meet on demand needs.

Article 5. Receiving and Discharging Noncitizens

A. Required Activity: The service provider shall receive and discharge noncitizens only to/ from properly identified ICE/ERO personnel or other properly identified Federal law enforcement officials with written authorization from ICE/ERO. Presentation of U.S. Government identification will constitute "proper identification."

B. The service provider shall furnish receiving and discharging services twenty-four (24) hours per day, seven (7) days per week. ICE will furnish the service provider with reasonable notice of receiving and discharging detained noncitizens. The service provider shall ensure positive identification and recording of detainees and ICE officers. The service provider shall not permit medical or emergency discharges from the hospital except through coordination with ICE/ERO.

C. Emergency Situations: ICE detainees shall not be released from the facility into the custody of other Federal, state, or local officials for any reason, except for medical or emergency situations, without express authorization of ICE.

D. Restricted Release of Detainees: The service provider shall not release ICE detainees from its physical custody to any persons other than those described in Paragraph A of this Article, for any reason, except for either medical, other emergency situations (such as a hurricane evacuation or activation or an emergency plan), or in response to a federal writ of habeas corpus. If an ICE detainee is sought for Federal, state, or local proceedings, only ICE/ERO may authorize release of the detainee for such purposes. The service

provider shall contact the COR or designated ICE official immediately regarding any such requests.

E. Service Provider Right of Refusal. The service provider retains the right to refuse acceptance of any noncitizen if such refusal is supported by a valid justification and agreed to by the COR. Examples of such justification are any individual exhibiting violent or disruptive behavior, or any noncitizen found to have a medical condition that requires medical care beyond the scope of the service provider. In the case of a noncitizen already in custody, the service provider shall notify ICE and request transfer of the noncitizen from the facility. The service provider shall allow ICE reasonable time to make alternative arrangements for the noncitizen.

F. Juveniles. If the service provider determines that ICE has delivered a person for custody who is under the age of eighteen (18), the service provider shall not house that person with adults and shall immediately notify the ICE COR or designated ICE official. ICE will relocate the juvenile within seventy-two (72) hours.

G. Emergency Evacuation: In the event of an emergency requiring evacuation of the facility, the service provider shall evacuate ICE noncitizens in the same manner, and with the same safeguards, as it employs for persons detained under the service provider's authority. The service provider shall notify the ICE COR or designated ICE official within two (2) hours of evacuation.

Article 6. Medical Services

A. The service provider shall not charge any ICE detainee a fee or co-payment for medical services or treatment, including medications and durable medical equipment provided at the facility. The service provider shall ensure that ICE detainees receive no lower level of on-site medical care and services than those it provides to local inmates, and as required by the ICE standards incorporated into this agreement as well as all Centers for Disease Prevention and Control (CDC) guidance and recommendations regarding infectious disease prevention and control. All medical-related costs will be included in the bed day rate for this agreement.

B. The service provider ensures quality health care delivery and accountability in compliance with detention standards through a continuous quality improvement (CQI) system that includes risk management, patient safety, and health services delivery quality assurance programs. The CQI system identifies, addresses, and monitors health care delivery for undesired outcomes and trends, including but not limited to those due to near miss occurrences, adverse events, sentinel events, and systemic processes or outcomes. Concerns identified from the CQI system risk assessment are addressed through corrective action plans.

C. The service provider is required to report all incidents, in accordance with ICE Health Service Corps (IHSC) incident reporting criteria, to the IHSC Field Medical Coordinator (FMC) immediately. Detainee deaths at the facility are subject to an IHSC directed

mortality review, concurrent or subsequent root cause analysis for the purpose of identifying actual and potential process failures and errors.

D. The service provider shall notify ICE/ERO and the IHSC FMC of detainees with serious medical conditions within 48 hours of identification of the case. Examples of cases include, but are not limited to: uncontrolled hypertension; uncontrolled diabetes; unable respiratory disease or any detainee requiring oxygen treatment; history of congestive heart failure complaining of shortness of breath; transgender; pregnancy; multiple unstable chronic conditions; liver failure; renal failure; infectious and communicable diseases (i.e., HIV/AIDS, viral hepatitis, varicella, measles, mumps, COVID-19); infectious disease outbreaks; acute mental health conditions (one or more psychiatric symptoms – disorganization, active hallucinations or delusions, sever depressive symptoms, suicidal ideation, marked anxiety or impulsivity); history of more than two psychiatric hospitalizations in the past 3 months and still presenting moderate to severe symptoms; presently taking psychiatric medications and still presenting active moderate to symptoms; continues to display self-harm to self or others in spite of treatment and/or hospitalization; serious limitations in mental functions due to mental disability or severe medical conditions impairing mental function.

E. Prescription medications that must be filled at a retail pharmacy location, are available through and paid for by the IHSC pharmacy benefits program. The FMC in conjunction with the IHSC Managed Care Coordinators will be the service provider's point of contact for the IHSC pharmacy benefits program. The service provider is required to follow IHSC processes regarding filling of prescriptions through the pharmacy benefits program including processes for non-formulary medications requiring prior authorization and overrides for travel medications. Vaccines are also provided through the IHSC pharmacy benefits program as per the Non-IHSC Staffed Facility Medication Formulary. Durable medical equipment (DME) identified as medically necessary by a medical provider shall be covered by IHSC Medical Payment Authorization Request (MedPAR) or through coordination with the FMC when/if the facility is unable to provide the DME though existing stock supplies covered in the bed day rate.

F. The service provider is required to follow all MedPAR guidance and requirements available https://medpar.ice.gov. If the MedPAR is cancelled, the service provider is required to notify the FMC. The service provider is required to provide the approved authorization to all off-site medical providers (i.e., emergency medical services, hospital, diagnostic or laboratory service provider, independent medical providers who provided care while at the hospital or in the community) to assist with the medical claims processes to ensure payment to the off-site provider for the services rendered. Payment is made directly to the off-site provider by the Veteran's Affairs Financial Services Center (VAFSC) on behalf of IHSC. VAFSC contact information is below. The VAFSC, ICE and IHSC cannot reimburse the service provider for services rendered by these providers.

IHSC VA Financial Services Center
PO Box 149345
Austin, TX 78714-9345

Phone: (800) 479-0523
Fax: (512) 460-5538

G. In the event of a medical emergency, the service provider shall proceed immediately to provide necessary emergency medical treatment, including initial on-site stabilization and off-site transport, if needed. The service provider shall notify ICE and the IHSC FMC immediately regarding the nature of the transferred detainee illness or injury and the type of treatment provided. The cost of all emergency medical services provided off-site will be the responsibility of IHSC. The IHSC FMC assigned to this facility will be the point of contact for obtaining the approval for the emergent off-site care. Utilizing the IHSC MedPAR system, the request for approval for the emergent care must be submitted no more than 72 hours from receipt of the care.

H. Utilizing the IHSC MedPAR, the service provider will request prior approval for all non-emergent off-site medical care and requests for durable medical equipment (DME). The primary POC for obtaining pre-approval will be the IHSC FMC assigned to this location.

I. The service provider is required to maintain agreements with community providers including hospitals and specialty providers to provide healthcare to ICE detainees. The service provider is required to provide a listing of those providers and to notify the IHSC FMC of new community providers in order for IHSC to begin the new provider recruitment process.

J. The service provider shall retain, at a minimum, medical staffing levels as approved by IHSC and incorporated into this IGSA in accordance with Article 3 above. The service provider shall ensure that all health care providers utilized for ICE detainees hold current licenses, certifications, and/or registrations within the State, County and/or City where they treat the ICE detained population.

K. If the service provider determines that an ICE detainee has a medical condition which renders that person unacceptable for detention under this agreement, (for example, serious contagious disease, condition needing life support, uncontrollable violence, or serious mental health condition), the service provider shall notify ICE. Upon such notification, the service provider shall allow ICE reasonable time to make the proper arrangements for further disposition of that individual.

L. The service provider shall release any and all medical information in person, electronically or virtually for ICE detainees to IHSC representatives upon request, including but not limited to: IHSC FMC, IHSC Managed Care Coordinators, Behavioral Health Unit Staff, IHSC Pharmacy Staff, or other IHSC staff as requested.

M. The service provider shall submit a MedPAR to IHSC for payment for off-site medical care (e.g., offsite lab testing, eyeglasses, prosthetics, hospitalizations, emergency visits). The service provider shall enter payment authorization requests electronically as outlined in the MedPAR User Guide.

N. The service provider shall allow IHSC FMCs, Managed Care Coordinators, Referral Coordinators and other IHSC personnel or any DHS or ICE personnel reasonable access to its facility, medical records and electronic health record (EHR) system records of ICE detainees for the purpose of liaison activities with the local IGSA Health Authority and associated service provider departments in accordance with Health Insurance Portability and Accountability Act (HIPAA) privacy exception at 45 C.F.R. §§ 164.512 (k)(5)(i) which allows disclosure without consent to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual if the correctional institution or such law enforcement official represents that such protected health information is necessary for:

a. The provision of health care to such individuals;
b. The health and safety of such individual or other inmates;
c. The health and safety of the officers or employees of or others at the correctional institution;
d. The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
e. Law enforcement on the premises of the correctional institution;
f. The administration and maintenance of the safety, security, and good order of the correctional institution; and
g. Conducting a quality improvement / quality of care review consistent with an established quality improvement (medical quality management) program and interfacing with the IHSC quality improvement program consistent with federal, state, and local laws.

O. The service provider shall provide ICE detainee medical records to ICE, whether created by the service provider or its medical subcontractor, upon request from the COR or CO within 7 business days of the request. The service provider shall respond in a timely manner to ICE requests for reporting, documentation and other data required to respond to pending and current litigation, Congressional inquiries, other Federal, state or local entity request for information.

Article 7. Inspections and Audits

A. Facility Inspections and Oversight: The service provider shall allow DHS, ICE, DHS Office of the Inspector General, DHS Office of Civil Rights and Civil Liberties, the Government Accountability Office, Members of Congress or any entity or organization approved by ICE (including third-party service providers), to conduct inspections of the facility to ensure an acceptable level of services and acceptable conditions of detention. No notice to the service provider is required prior to an inspection. For ICE-directed inspections or audit, ICE will share findings of the inspection with the agreement's authorized signatory.

B. ICE will not house detainees in any facility that has received two consecutive overall ratings of less than acceptable. Upon notice that the second overall rating is less than

acceptable, ICE will relocate all detainees from the facility within seven calendar days. If detainees are relocated because of two overall ratings of less than acceptable, any applicable Facility Operating Charge will be removed by unilateral modification by the Government and the Government will have no further obligation to pay for unused beds.

C. Possible Termination: Following an inspection, if the service provider, after being afforded reasonable time to comply, fails to remedy deficient service identified through a DHS or ICE inspection, ICE may terminate this agreement without regard to any other provisions in this agreement.

D. Share Findings: The service provider shall provide ICE copies of facility inspections, reviews, examinations, and surveys performed by state, local, or accreditation sources.

Article 8. Records Management Obligations

A. Applicability: This Article applies to all service providers whose employees create, work with, or otherwise handle Federal records, as defined in Section B, regardless of the medium in which the record exists.

B. Definitions

"Federal record" as defined in 44 U.S.C. § 3301, includes all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the US Government or because of the informational value of data in them.

The term Federal record:

1. includes DHS or ICE records.
2. does not include personal materials.
3. applies to records created, received, or maintained by a service provider pursuant to their ICE agreement.
4. may include deliverables and documentation associated with deliverables.

C. Requirements

1. The service provider shall comply with all applicable records management laws and regulations, as well as National Archives and Records Administration (NARA) records policies, including but not limited to the Federal Records Act (44 U.S.C. chs. 21, 29, 31, 33), NARA regulations at 36 CFR Chapter XII Subchapter B, and those policies associated with the safeguarding of records covered by the Privacy Act of 1974 (5 U.S.C. 552a). These policies include the preservation of all records, regardless of form or characteristics, mode of transmission, or state of completion.

2. In accordance with 36 CFR 1222.32, all data created for Government use and delivered to, or falling under the legal control of, the Government are Federal records

subject to the provisions of 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended, and the Privacy Act of 1974 (5 U.S.C. 552a), as amended and must be managed and scheduled for disposition only as permitted by statute or regulation.

3. In accordance with 36 CFR 1222.32, service provider shall maintain all records created for Government use or created in the course of performing the agreement and/or delivered to, or under the legal control of the Government and must be managed in accordance with Federal law. Electronic records and associated metadata must be accompanied by sufficient technical documentation to permit understanding and use of the records and data.

4. ICE and its service providers are responsible for preventing the alienation or unauthorized destruction of records, including all forms of mutilation. Records may not be removed from the legal custody of ICE or destroyed except for in accordance with the provisions of the agency records schedules and with the written concurrence of the Head of the Contracting Activity (HCA). Willful and unlawful destruction, damage or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. 2701. In the event of any unlawful or accidental removal, defacing, alteration, or destruction of records, the service provider must report to ICE. The agency must report promptly to NARA in accordance with 36 CFR 1230.

5. The service provider shall immediately notify the appropriate CO upon discovery of any inadvertent or unauthorized disclosures of information, data, documentary materials, records or equipment. Disclosure of non-public information is limited to authorized personnel with a need-to-know as described in the IGSA. The service provider shall ensure that the appropriate personnel, administrative, technical, and physical safeguards are established to ensure the security and confidentiality of this information, data, documentary material, records and/or equipment is properly protected. The service provider shall not remove material from Government facilities or systems, or facilities or systems operated or maintained on the Government's behalf, without the express written permission of the HCA. When information, data, documentary material, records and/or equipment is no longer required, it shall be returned to ICE control, or the service provider must hold it until otherwise directed. Items returned to the Government shall be hand carried, mailed, emailed, or securely electronically transmitted to the CO or address prescribed in the IGSA. Destruction of records is EXPRESSLY PROHIBITED unless in accordance with Paragraph (4).

6. The service provider is required to obtain the CO's approval prior to engaging in any contractual relationship (sub-contractor) in support of this agreement requiring the disclosure of information, documentary material and/or records generated under, or relating to, contracts. The service provider (and any sub-contractor) is required to abide by Government and ICE guidance for protecting sensitive, proprietary information, classified, and controlled unclassified information.

7. The service provider shall only use Government IT equipment for purposes specifically tied to or authorized by the agreement and in accordance with ICE policy.

8. The service provider shall not create or maintain any records containing any non-public ICE information that are not specifically tied to or authorized by the agreement.

9. The service provider shall not retain, use, sell, or disseminate copies of any deliverable that contains information covered by the Privacy Act of 1974 or that which is generally protected from public disclosure by an exemption to the FOIA.

10. Training. All service provider employees assigned to this agreement who create, work with, or otherwise handle records are required to take ICE-provided records management training. The service provider is responsible for confirming training has been completed according to agency policies, including initial training and any annual or refresher training.

D. Flow down of requirements to subcontractors

1. The service provider shall incorporate the substance of this Article, its terms and requirements including this paragraph, in all subcontracts under this IGSA, and require written subcontractor acknowledgment of same.

2. Violation by a subcontractor of any provision set forth in this Article will be attributed to the service provider.

E. ICE Access to Detainee and Facility Records: The service provider shall, upon request, grant ICE access to any record in its possession, regardless of whether the service provider created the record, concerning any ICE detainees. This right of access includes, but is not limited to, incident reports, records relating to suicide attempts, and behavioral assessments and other records relating to the detainee while in the service provider's custody; provided, however that access to medical and mental health record information be provided in accordance with Article 6. Retention of records requirements can be found in Attachment 8.

Article 9. Incident Reporting

A. The COR shall be immediately notified in the event of all serious incidents. The COR will provide any additional contact information for outside-working-hours to the service provider at the time of award.

B. Serious incidents include, but are not limited to: activation of disturbance control team(s); disturbances (including gang activities, group demonstrations, food boycotts, work strikes, work-place violence, civil disturbances/protests); staff use of force including use of lethal and less-lethal force (includes inmates in restraints more than eight hours); assaults on staff/inmates resulting in injuries requiring medical attention (does not include routine medical evaluation after the incident); fights resulting in injuries requiring medical attention; fires; full or partial lock down of the facility; escape; weapons discharge; suicide attempts; deaths; declared or non-

declared hunger strikes; adverse incidents that attract unusual interest or significant publicity; adverse weather (e.g., hurricanes, floods, ice/snow storms, heat waves, tornadoes); fence damage; power outages; bomb threats; detainee admitted to a community hospital; witness security cases taken outside the facility; significant environmental problems that impact the facility operations; transportation accidents (i.e. airlift, bus) resulting in injuries, death or property damage; and sexual assaults.

C. The service provider agrees to cooperate with any Federal investigation concerning incidents and treatment involving ICE detainees to the full extent of its authorities, including providing access to any relevant databases, CCTV recordings, personnel, and documents.

D. The detainee and the public are the ultimate recipients of the services identified in this agreement. Any complaints made known to the COR will be logged and forwarded to the service provider for remedy. Upon notification, the service provider shall be given a pre-specified number of hours after verbal notification from the COR to address the issue. The service provider shall submit documentation to the COR regarding the actions taken to remedy the situation. If the complaint is found to be invalid, the service provider shall document its findings and notify the COR

Article 10. Noncitizen Communication Services (NCS)

A. Video phones, portable electronics or other enhanced telecommunications features provided by the NCS contractor to ICE noncitizens, based upon concurrence between ICE and the service provider, may be utilized at this facility, and their distribution will be coordinated with the service provider. These features may not in any way compromise the safety and security of the inmates/prisoners/noncitizens, staff or the facility. Any new or enhanced telecommunications features will be integrated within the NCS service and shall NOT be a separate system or software from the NCS service. Such capabilities may include: video visitation; web access for law library; email; kites; commissary ordering; educational tools; news; sports; and video games. Pricing for detainee use of these technologies will be set by the NCS provider.

B. It is ICE's preference that all facilities housing ICE noncitizens use the ICE NCS however, the service provider may have an existing contract with a telecommunications company to provide telephone service. Notwithstanding any existing contract, the service provider shall require their telecommunications company to provide connectivity to the ICE NCS contractor for ICE noncitizen pro bono telephone calls. The service provider (and the telecommunications company) shall make all arrangements with the NCS contractor independently from this agreement.

If the service provider has an existing contract with a telecommunications company, ICE requires that ICE noncitizens have direct access to the NCS contractor for collect and prepaid calls. The NCS contractor shall receive all revenues collected by sale of prepaid debit services to ICE noncitizens. The NCS contractor shall be responsible for the costs incurred to provide the pro bono services, and the maintenance and operation of the

system, including a standard compensation to the telecommunications company. The service provider shall not be entitled to any commissions, fees, or revenues generated by the use of the NCS.

C. The service provider shall inspect telephones for serviceability, in accordance with ICE standards, policies and procedures. The service provider shall notify the COR or ICE designee of any inoperable telephones.

ICE NCS Contractor Information:

Talton Communications
910 Ravenwood Dr.
Selma, AL 36701

Robin Howell
Customer Relations Manager
(214) 293-1793
robin@talton.com

Mike Oslund
Operations Manager
334-412-4506
mike@talton.com

Article 11. Government Use of Wireless Communication Devices

A. All personnel that have been issued a Federal Government owned wireless communication device, including but not limited to, cellular telephones, pagers or wireless Internet devices, are authorized to possess and use those items in all areas of the facility in which ICE detainees are present.

Article 12. ICE Furnished Property

A. ICE Property Furnished to the Service Provider: ICE may furnish Federal property and equipment to the service provider. Accountable property remains titled to ICE and shall be returned to the custody of ICE upon termination of the agreement and as requested. The suspension of use of bed space is grounds for the recall and return of any or all ICE furnished property.

B. Service Provider Responsibility: The service provider shall not remove ICE property from the facility without the prior written approval of the COR. The service provider shall report any loss or destruction of any ICE property immediately to ICE and may be responsible for replacement costs.

Article 13. Termination

A. The period of performance for this agreement is referenced on page 1 of the Agreement Summary. This agreement becomes effective upon the date of final signature by the ICE CO, which shall occur after the authorized signatory of the service provider.

B. Except for as described in Article 7, Inspections & Audits, Paragraph C, , either party

terminate this agreement by providing written notice of intention to terminate the agreement, at least 60-days in advance of the effective date of l termination, or the parties may agree to a shorter period under the procedures prescribed in Article 16, Modifications and Disputes. If this agreement is terminated by either party under this Article, ICE will be under no financial obligation for any costs after the date of termination. The service provider will only be paid for services provided to ICE up to and including the day of termination.

ADMINISTRATION

Article 14. Administrative

C. Contracting Officer's Representative: The COR will be designated by the CO. When the COR duties are reassigned, an administrative modification will be issued to reflect the changes. This designation does not include authority to sign contractual documents or to otherwise commit to, or issue changes, which could affect the price, quantity, or performance of this agreement.

Should the service provider believe it has received direction that is not within the scope of the agreement; the service provider shall not proceed with any portion that is not within the scope of the agreement without first contacting the CO. The service provider shall continue performance of efforts that are deemed within the scope.

D. Commencement of Services: ICE is under no obligation to utilize the beds identified herein until the need for detention services has been identified, funding has been identified and made available, and the facility meets ICE requirements and follows the applicable ICE standards delineated in this agreement. ICE may perform numerous assessments to ensure compliance prior to housing detainees in the facility.

Should there be a need for a ramp-up plan, the effective start date of the plan is the effective date of the award or modification authorizing the ramp up plan.

E. Funding: The obligation of ICE to make payments to the service provider is contingent upon the availability of federal funds. ICE will neither present detainees to the service provider nor direct performance of any other services until ICE has appropriate funding. Task orders will be placed under this agreement when specific requirements have been identified and funding obligated. Performance under this agreement is not authorized until the CO issues a task order in writing. Task orders issued against this IGSA have a period of performance that extend up to one year after the end of the IGSA period of performance. The effective date of the services will be negotiated and specified in this agreement. The service provider shall be prepared to accept detainees immediately upon issuance of task order in accordance with the agreed upon ramp-up plan. In the event of a federal lapse of funding, please consult with the CO for the agreement.

F. Subcontractors: The service provider shall obtain the CO's approval before subcontracting the detention and care of detainees to another entity. The CO has the right to deny, withhold, or withdraw approval of the proposed subcontractor. Upon approval

by the CO, the service provider shall ensure that any subcontract includes all provisions of this agreement. ICE only has privity of contract with the service provider therefore, all payments will be made to the service provider. If the facility, or any future facility, is operated by an entity other than the service provider, ICE will treat the entity as a subcontractor of the service provider. ICE will not accept invoices from, or make payments to, a subcontractor. Subcontractors that perform under this agreement are subject to the terms and conditions of this IGSA.

G. Consistent with Law: This agreement is permitted under applicable statutes, regulations, policies, and judicial mandates. Any provision of this agreement contrary to applicable statutes, regulation, policies, or judicial mandates is null and void and shall not necessarily affect the balance of the agreement.

Article 15. Adjusting the Facility Operation Charge/Bed Day Rate

A. ICE will reimburse the service provider at the fixed bed day rate shown in Article 1, Paragraph C. Except as provided in Article 20, Labor Standards and Wage Determination, the service provider may request a rate adjustment no less than thirty-six (36) months after the effective date of the agreement or subsequent rate increase unless required by law. After 36 months, the service provider may request a rate adjustment by submitting a new Detention Services Cost Statement (DSCS) with a summary of the rate adjustment, break-out of the requested increase amount, and back-up documentation necessary to support the request. The parties agree to base the cost portion of the rate adjustment on the principles of allowability and allocability as set forth in OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, Federal procurement law, regulations, and standards in arriving at the bed day rate. If ICE does not receive an official request for a bed day rate adjustment that is supported by the information provided, the fixed bed day rate as stated in this agreement will be in place indefinitely.

B. ICE reserves the right to audit the actual and/or prospective costs upon which the rate adjustment request is based. All rate adjustments are prospective, there are no retroactive adjustment(s).

Article 16. Modifications and Disputes

A. Modifications: Actions, other than those designated in this agreement, will not bind or incur liability on behalf of either party. Either party may request a modification to this agreement by submitting a written request to the other party. A modification will become a part of this agreement only after the CO has approved the modification in writing.

B. Change Orders:

1. The CO may at any time, by written order, and without notice to the service provider, make changes within the general scope of this agreement in any one or more of the following:

(a) Description of services to be performed and,
(b) Place of performance of the services.

2. Should any such change cause an increase or decrease in the cost of the services under the agreement, the service provider may request and the CO may approve an equitable adjustment and will modify the agreement accordingly.

3. The service provider must assert its right to an adjustment under this article within 30 calendar days from the date of receipt of the written order including a proposal addressing the cost impacts and detailed supporting data.

4. If the service provider's proposal includes costs that are determined unreasonable and/or unsupportable, as determined by the CO, the CO will disallow those costs when determining a revised rate, if any.

5. Failure to agree to any adjustment will be a dispute under the Disputes section of this Article. However, nothing in this Article excuses the service provider from proceeding with the agreement as changed.

C. Disputes: The CO and the authorized signatory of the service provider will settle disputes, questions, and concerns arising from this agreement. Settlement of disputes will be memorialized in a written modification between the ICE CO and authorized signatory of the service provider. In the event a dispute is not able to be resolved between the service provider and the ICE CO, the ICE CO will make the final decision. If the service provider does not agree with the final decision, the matter may be appealed to the ICE HCA for resolution. The ICE HCA may employ all methods available to resolve the dispute including alternative dispute resolution techniques. The service provider shall proceed diligently with performance of this agreement pending final resolution of any dispute.

Article 17. Enrollment, Invoicing, and Payment

A. Enrollment in Electronic Funds Transfer: The service provider shall provide ICE with the information needed to make payments by electronic funds transfer (EFT). The service provider shall identify their financial institution and related information on Standard Form 3881, Automated Clearing House (ACH) Vendor Miscellaneous Payment Enrollment Form https://www.gsa.gov/forms-library/ach-vendormiscellaneous-payment-enrollment The service provider shall submit a completed SF 3881 to ICE payment office prior to submitting its initial request for payment under this agreement. If the EFT data changes, the service provider shall be responsible for providing updated information to the ICE payment office.

B. SAM Registration: The service provider shall maintain an active registration in System for Award Management (SAM) at the time of award and throughout the life of this agreement. The service provider shall be registered to receive "All Awards" in their SAM registration. The SAM website can be found at www.sam.gov.

C. Consolidated Invoicing: The service provider shall submit a monthly itemized invoice within the first ten (10) working days of the month following the calendar month when it provided the services. Invoice instructions can be found on the SF 1449.

D. On-call Guard Hours: The itemized monthly invoice for on-call guard services shall state the number of hours being billed, the duration of the billing (times and dates) and the mission/trip number. Such services shall be denoted as a separate item on submitted invoices. ICE agrees to reimburse the service provider for actual on-call guard services provided during the invoiced period.

D. Payment: ICE will transfer funds electronically through either an Automated Clearing House subject to the banking laws of the US, or the Federal Reserve Wire Transfer System. The Prompt Payment Act applies to this agreement. The Prompt Payment Act requires ICE to make payments under this agreement the thirtieth (30^{th}) calendar day after the Burlington Finance Office receives a proper invoice. Either the date on the Government's check, or the date it executes an electronic transfer of funds, constitutes the payment date. The Prompt Payment Act requires ICE to pay interest on overdue payments to the service provider. ICE will determine any interest due in accordance with the Prompt Payment Act provided the service provider maintains an active registration in the SAM and all information is accurate.

E. Robotics Process Automation Requirement: The Detention Facility Robotics Process Automation (RPA) process requires that data supporting detention bed space, ground transportation costs and any other additional costs covered by the current agreement will be recorded utilizing the Detention-Transportation Invoice Supporting Documentation Template (Attachment 6). This data template shall be completed in its entirety in the established format once all data supporting the monthly operations is available. Once completed, the Detention-Transportation Template must be submitted to both the COR and the ERO RPA Team Mailbox (erorpa@ice.dhs.gov). Please also note that the requirement for submission of the Detention-Transportation Template is prior to and in addition to the invoice submission requirement already included in this agreement. Any required updates/adjustments will be identified and sent to the service provider within 48 hours of submission to the mailbox. The Detention-Transportation Template updates may be requested by the COR and will require timely resubmission to the COR and the ERO RPA Team Mailbox. For ground transportation services, the G-391 portion of the Detention-Transportation Template must be completed and validated by the service provider on a monthly basis so that there are no errors for each of the trips in the G-391 upload template. Errors are indicated by rows, columns, and cells that are highlighted when the vendor checks the validation using the tool. If the COR identifies errors that have not been corrected, they will resend the report within 48 hours to the vendor to fix and resubmit within 5 business days. All reports must align with invoice amounts and dollar values.

The Government reserves the right to update the detention facility invoice process, templates or other related documents, in order to fix issues, expand capabilities, and improve performance of the reconciliation process

Article 18. Hold Harmless Provisions

Unless specifically addressed by the terms of this agreement, the parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees to the extent authorized under the applicable law.

A. Service Provider Held Harmless: ICE liability for any injury, damage or loss to persons or property caused by the negligent or tortuous conduct of its own officers, employees, and other persons provided coverage pursuant to Federal law is governed by the Federal Tort Claims Act, 28 USC 2691 *et seq.*(FTCA). Compensation for work related injuries for ICE's officers, employees and covered persons is governed by the Federal Employees Compensation Act (FECA). The service provider shall promptly notify ICE of any claims or lawsuits filed against any ICE employees of which service provider is notified.

B. Federal Government Held Harmless: Service provider liability for any injury, damage or loss to persons or property arising out of the performance of this agreement and caused by the negligence of its own officers, employees, agents and representatives is governed by the applicable State and/or local law. ICE will promptly notify the service provider of any claims filed against any of service provider's employees of which ICE is notified. The Federal Government will be held harmless for any injury, damage or loss to persons or property caused by a service provider employee arising in the performance of this agreement.

C. Defense of Suit: In the event an ICE detained noncitizen files suit against the service provider contesting the legality of the noncitizen's detention by ICE under this agreement and/or immigration/citizenship status, or a noncitizen files suit as a result of an administrative error or omission of the Federal Government, ICE will request that the United States Department of Justice (DOJ), as appropriate, move either to have the service provider dismissed from such suit; to have ICE substituted as the proper party defendant; or to have the case removed to a court of proper jurisdiction. Regardless of the decision on any such motion, ICE will request that DOJ be responsible for the defense of any suit on these grounds. Nothing in this agreement limits the discretion of DOJ on any litigation matters.

D. ICE Recovery Right: The service provider shall do nothing to prejudice ICE's right to recover against third parties for any loss, destruction of, or damage to U.S. Government property. Upon request from the CO, the service provider shall furnish to ICE all reasonable assistance and cooperation, including assistance in the prosecution of suit and execution of the instruments of assignment in favor of ICE in obtaining recovery.

Article 19. Financial Records

A. Retention of Records: All financial records, supporting documents, statistical records, and other records pertinent to contracts or subordinate agreements under this agreement shall be retained by the service provider in accordance with the NARA records schedule for purposes of federal examinations and audit. The retention period begins at the end of

the first year of completion of service under the agreement. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the retention period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular NARA record retention period, whichever is later. Retention of records requirements can be found in Attachment 8.

B. Access to Records: ICE and the Comptroller General of the United States, or any of their authorized representatives, have the right of access to any pertinent books, documents, papers or other records of the service provider or its subcontractors, which are pertinent to the award, to make audits, examinations, excerpts, and transcripts. The rights of access must not be limited to the required retention period but shall last as long as the records are retained.

C. Delinquent Debt Collection: ICE will hold the service provider accountable for any overpayment, or any breach of this agreement that results in a debt owed to the Federal Government. ICE will apply interest, penalties, and administrative costs to a delinquent debt owed to the Federal government by the service provider pursuant to the Debt Collection Improvement Act of 1982, as amended.

Article 20. Labor Standards and Wage Determination

A. The Service Contract Act, 41 U.S.C. 351 et seq., Title 29, Part 4 Labor Standards for Federal Service Contracts, is hereby incorporated as Attachment 1. These standards and provisions are included in every contract and IGSA entered by the United States or the District of Columbia, in excess of $2,500, or in an indefinite amount, the principal purpose of which is to furnish services through the use of service employees.

B. Pursuant to 41 USCA §6703, the Department will pay wages in accordance with the rates provided for in the collective bargain agreements between the Department and the Association of County Employees, National Correctional Employees Local 104, and National Correctional Employee Local attached to this proposal. For employees not covered by the collective bargaining agreements, the Department will pay wages not less than those established in the attached wage determination (Attachment 2).

B. The service provider shall notify the CO of any increase claimed within 30 calendar days after receiving a new wage determination unless this notification period is extended in writing by the CO.

Article 21. Notification and Public Disclosures

A. Information obtained or developed because of this IGSA is under the control of ICE and is subject to public disclosure only pursuant to the provisions of applicable federal laws (such as the FOIA), regulations, and Executive Orders or as ordered by a Court. The Service provider is prohibited from disclosing any information relating to detainees pursuant to 8 C.F.R § 236.6. If the service provider receives a request for such information through, for example relevant State sunshine laws or another mechanism, the service provider shall promptly notify the ICE FOIA Officer and inform the requester to

submit a FOIA request directly to the ICE FOIA Office. To the extent the service provider intends to release the IGSA or any information relating to, or exchanged under, this IGSA, the service provider agrees to coordinate with the ICE FOIA Officer prior to such release. The service provider may, at its discretion, communicate the substance of this IGSA when requested. ICE understands that this IGSA will become a public document when presented to the service provider's governing body for approval.

B. The CO and ICE FOIA Officer shall be notified in writing of all litigation pertaining to this IGSA and provided copies of any pleadings filed or said litigation within five working days of the filing. The service provider shall cooperate with government legal staff and/or the United States Attorney regarding any requests pertaining to Federal or service provider litigation.

C. The service provider shall notify the ICE Office of Congressional Relations when a member of the United States Congress requests information, or the CO and the ICE Office of Congressional Relations when he/she makes a request to visit the facility. The service provider shall coordinate all public information related issues pertaining to ICE detainees with ICE. The service provider shall promptly make public announcements stating the facts of unusual or newsworthy incidents to local media. Examples of such events include, but are not limited to deaths, escapes from custody, and facility emergencies. All press statements and releases shall be cleared, in advance, with the ICE Office of Public Affairs.

D. With respect to public announcements and press statements, the service provider shall ensure employees agree to use appropriate disclaimers clearly stating the employees' opinions do not necessarily reflect the position of the United States government in any public presentations they make or articles they write that relate to any aspect of performance or the facility operations.

E. Facility Access: The Facility's perimeter will ensure that detainees remain within, and that public access is denied without proper authorization. Visitation and/or tours of the facility shall be conducted as directed by ICE.

F. For the safety and privacy of the detainees, no videotaping is permitted by visitors or others (including the service provider) without prior approval from ICE, except for CCTV cameras operated by the service provider or the Government for security purposes. No video or audio recording devices will be allowed within the secure perimeter, except in accordance with court order or Federal law. Uses of force are excluded from this provision in accordance with the applicable ICE standards.

Article 22. Privacy

A. The service provider agrees to comply with the Privacy Act of 1974 ("the Act") and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the agreement specifically identifies (i) the systems of records; and (ii) the design, development, or operation work that the service provider is to perform. The service

provider shall also include the Privacy Act into all subcontracts when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

B. In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the agreement is for the operation of a system of records on individuals to accomplish an agency function, the service provider is considered to be an employee of the Agency.

1. "Operation of a system of records," as used in this article, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

2. "Record," as used in this article, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

3. "System of records on individuals," as used in this article, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Article 23. Attestation of Pricing Data

A. Requirements for Attested Pricing Data and Data Other Than Attested Pricing Data

(a) *Exceptions from attested pricing data.*

(1) In lieu of submitting attested pricing data, service providers may submit a written request for exception by submitting the information described in the following subparagraphs. The CO may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document.

(ii) *Commercial item exception.* For a commercial item exception, the service provider shall submit, at minimum, information on prices at which the same item or similar items

have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include –

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The service provider grants the CO or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the service provider's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for attested pricing data.* If the service provider is not granted an exception from the requirement to submit attested pricing data, the following applies:

(1) The service provider shall prepare and submit attested pricing data, and data other than attested pricing data, and supporting attachments.

(2) As soon as practicable after agreement on price, but before IGSA award, the service provider shall submit an Attestation of Current Pricing Data, the format of which is at the end of this article.

B. Requirements for Attested Pricing Data and Data Other Than Attested Pricing Data – Modifications

(a) *Exceptions from attested pricing data.*

(1) In lieu of submitting attested pricing data for modifications under this IGSA, for price adjustments expected to exceed $750,000 on the date of the agreement on price or the date of the award, whichever is later, the service provider may submit a written request for exception by submitting the information described in the following subparagraphs. The CO may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable –

(i) *Identification of the law or regulation establishing the price offered.* If the price is

controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document.

(2) The service provider grants the CO or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this Article, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the service provider's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for attested pricing data.* If the service provider is not granted an exception from the requirement to submit attested pricing data, the following applies:

(1) The service provider shall submit attested pricing data, data other than attested pricing data, and supporting attachments.

(2) As soon as practicable after agreement on price, but before award, the service provider shall submit an Attestation of Current Pricing Data. The form is included at the end of this Article.

C. Subcontractor Attested Pricing Data

(a) Before awarding any subcontract expected to exceed $750,000 on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed $750,000, the service provider shall require the subcontractor to submit attested pricing data (actually or by specific identification in writing), to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price, unless (1) the prices are based upon adequate price competition, or (2) if a waiver has been granted.

(b) The service provider shall require the subcontractor to attest in substantially the form at the end of this article that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this Article were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds $750,000, when entered into, the service provider shall insert either -

(1) The substance of this Article, including this paragraph (c), if paragraph (a) of this Article requires submission of attested pricing data for the subcontract; or

(2) The substance of the Section below entitled "Subcontractor Attested Pricing Data - Modifications."

D. Subcontractor Attested Pricing Data – Modifications

(a) The requirements of paragraphs (b) and (c) of this Section shall –

(1) Become operative only for any modification to this IGSA involving a pricing adjustment expected to exceed $700,000; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed $750,000, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed $750,000, the service provider shall require the subcontractor to submit attested pricing data (actually or by specific identification in writing), to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price, unless (1) prices of the modification are based upon adequate price competition, or (2) if a waiver has been granted.

(c) The service provider shall require the subcontractor to certify in substantially the form at the end of this article that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this Article were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The service provider shall insert the substance of this article, including this paragraph (d), in each subcontract that exceeds $750,000 on the date of agreement on price or the date of award, whichever is later.

E. Price Reduction for Defective Attested Pricing Data

(a) If any price, including profit or fee, negotiated in connection with this IGSA, or any cost reimbursable under this IGSA, was increased by any significant amount because –

(1) The service provider or a subcontractor furnished attested pricing data that were not complete, accurate, and current as attested in its Attestation of Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the service provider attested pricing data that were not complete, accurate, and current as attested in the service provider's Attested of Current Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the IGSA shall be modified to reflect the reduction.

(b) Any reduction in the IGSA price under paragraph (a) of this Article due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the service provider, if there was no subcontract, was less

than the prospective subcontract cost estimate submitted by the service provider; provided, that the actual subcontract price was not itself affected by defective attested pricing data.

(c)

(1) If the CO determines under paragraph (a) of this Article that a price or cost reduction should be made, the service provider agrees not to raise the following matters as a defense:

(i) The service provider or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the IGSA would not have been modified even if accurate, complete, and current attested pricing data had been submitted.

(ii) The CO should have known that the attested pricing data in issue were defective even though the service provider or subcontractor took no affirmative action to bring the character of the data to the attention of the CO.

(iii) The IGSA was based on an agreement about the total cost of the IGSA and there was no agreement about the cost of each item procured under the IGSA.

(iv) The service provider or subcontractor did not submit a Attestation of Current Pricing Data.

(2)

(i) Except as prohibited by subdivision (c)(2)(ii) of this Article, an offset in an amount determined appropriate by the CO based upon the facts shall be allowed against the amount of a IGSA price reduction if –

(A) The service provider certifies to the CO that, to the best of the service provider's knowledge and belief, the service provider is entitled to the offset in the amount requested; and

(B) The service provider proves that the attested pricing data were available before the "as of" date specified on its Attestation of Current Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if –

(A) The understated data were known by the service provider to be understated before the "as of" date specified on its Attestation of Current Pricing Data; or

(B) The Government proves that the facts demonstrate that the IGSA price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Attestation of Current Pricing Data.

(d) If any reduction in the IGSA price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the service

provider shall be liable to and shall pay the United States at the time such overpayment is repaid –

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the service provider to the date the Government is repaid by the service provider at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the service provider or subcontractor knowingly submitted attested pricing data that were incomplete, inaccurate, or noncurrent.

F. Price Reduction for Defective Attested Pricing Data - Modifications

(a) Section F shall become operative only for any modification to this IGSA involving a pricing adjustment expected to exceed $720,000, except that this section does not apply to any modification (1) where prices of the modification are based upon adequate price competition, or (2) when a waiver has been granted.

(b) If any price, including profit or fee, negotiated in connection with any modification under this Article, or any cost reimbursable under this IGSA, was increased by any significant amount because

(1) the service provider or a subcontractor furnished attested pricing data that not complete, accurate, and current as attested in its Attestation of Current Pricing Data,

(2) a subcontractor or prospective subcontractor furnished the service provider attested data that were not complete, accurate, and current as attested in the service provider's Attestation of Current Pricing Data, or

(3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the IGSA shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this Article becomes operative under paragraph (a) of this Article.

(c) Any reduction in the IGSA price under paragraph (b) of this Article due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the service provider, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the service provider; provided, that the actual subcontract price was not itself affected by defective attested pricing data.

(d)

(1) If the CO determines under paragraph (b) of this Article that a price or cost reduction should be made, the service provider agrees not to raise the following matters as a defense:

(i) The service provider or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the IGSA would not have been modified even if accurate, complete, and current attested pricing data had been submitted.

(ii) The CO should have known that the attested pricing data in issue were defective even though the service provider or subcontractor took no affirmative action to bring the character of the data to the attention of the CO.

(iii) The IGSA was based on an agreement about the total cost of the IGSA and there was no agreement about the cost of each item procured under the IGSA.

(iv) The service provider or subcontractor did not submit a Attestation of Current Pricing Data.

(2)

(i) Except as prohibited by subdivision (d)(2)(ii) of this Article, an offset in an amount determined appropriate by the CO based upon the facts shall be allowed against the amount of a IGSA price reduction if -

(A) The service provider certifies to the CO that, to the best of the service provider's knowledge and belief, the service provider is entitled to the offset in the amount requested; and

(B) The service provider proves that the attested pricing data were available before the "as of" date specified on its Attestation of Current Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if -

(A) The understated data were known by the service provider to be understated before the "as of" date specified on its Attestation of Current Pricing Data; or

(B) The Government proves that the facts demonstrate that the IGSA price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Attestation of Current Pricing Data.

(e) If any reduction in the IGSA price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the service provider shall be liable to and shall pay the United States at the time such overpayment is repaid the following:

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the service provider to the date the Government is repaid by the service provider at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
(2) A penalty equal to the amount of the overpayment, if the service provider or

subcontractor knowingly submitted attested pricing data that were incomplete, inaccurate, or noncurrent.

Prior to the award of any modification exceeding $750,000.00, the service provider shall submit a signed copy of the following statement to the CO:

*Note: The initial attestation is found in the RFP letter to the vendor.

Attestation of Current Pricing Data for Modifications (if applicable)

This is to attest that, to the best of my knowledge and belief, the pricing data submitted, either actually or by specific identification in writing, to the CO or to the CO's representative in support of ____* are accurate, complete, and current as of ____**. This attestation includes the pricing data supporting requests for equitable adjustments between the service provider and the Government that are part of the proposal.

Service Provider _____

Signature _____

Name _____

Title _____

Date of execution*** _____

* Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (*e.g.*, RFP No.).

** Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

*** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded, and the contract price was agreed to.

Article 24. Combating Trafficking in Persons

(a) *Definitions*. As used in the below article—

"Agent" means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

"Coercion" means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

"Commercial sex act" means any sex act on account of which anything of value is given to or received by any person.

"Commercially available off-the-shelf (COTS) item" means –

(1) Any item of supply (including construction material) that is-

(i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract, agreement, or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

"Employee" means an employee of the service provider directly engaged in the performance of work under the agreement who has other than a minimal impact or involvement in performance.

"Forced Labor" means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

"Involuntary servitude" includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

Recruitment fees means fees of any type, including charges, costs, assessments, or other financial obligations, which are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for-

(i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing employees or potential employees;

(ii) Advertising

(iii) Obtaining permanent or temporary labor certification, including any associated fees;

(iv) Processing applications and petitions;

(v) Acquiring visas, including any associated fees;

(vi) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;

(vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(viii) An employer's recruiters, agents or attorneys, or other notary or legal fees;

(ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;

(x) Government-mandated fees, such as border crossing fees, levies, or worker welfare funds;

(xi) Transportation and subsistence costs-

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xii) Security deposits, bonds, and insurance; and

(xiii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is-

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to-

(A) Agents;
(B) Labor brokers;
(C) Recruiters;
(D) Staffing firms (including private employment and placement firms);
(E) Subsidiaries/affiliates of the employer;
(F) Any agent or employee of such entities; and
(G) Subcontractors at all tiers.

"Severe forms of trafficking in persons" means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

"Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

Subcontract means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract, agreement, or a subcontract.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a service provider or another subcontractor.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) *Policy.* The United States Government has adopted a zero-tolerance policy regarding trafficking in persons. The service provider and service provider employees shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the agreement;

(2) Procure commercial sex acts during the period of performance of the agreement; or

(3) Use forced labor in the performance of the agreement.

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5) (i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language understood by the employee or potential employee, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee or potential employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees or potential employees recruitment fees;

(7) (i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment-

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract, agreement, or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract, agreement, or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that-

(ii) The requirements of paragraphs (b)(7)(i) of this Article shall not apply to an employee who is-

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this Article are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The service provider shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or

witness activity. For example, the service provider shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this Article apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law, contract, or agreement, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) *Service Provider Requirements.* The service provider shall—

(1) Notify its employees of—

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this Article; and (ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the agreement, reduction in benefits, or termination of employment; and
(2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this Article.

(d) *Notification.* The service provider shall inform the CO immediately of—

(1) (i)Any credible information it receives from any source (including host country law enforcement) that alleges a service provider employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this Article (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that Article is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the service provider has credible evidence of fraud); and (ii)Any actions taken against service provider employees, subcontractors, or subcontractor employees pursuant to this Article.

(2) If the allegation may be associated with more than one contract, the service provider shall inform the CO for the contract with the highest dollar value.

(e) *Remedies.* In addition to other remedies available to the Government, the service provider's failure to comply with the requirements of paragraphs (c), (d), or (f) of this Article may result in—

(1) Requiring the service provider to remove a service provider employee or employees from the performance of the agreement;
(2) Requiring the service provider to terminate a subcontract;
(3) Suspension of contract payments until the service provider has taken appropriate remedial action;
(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined service provider non-compliance;
(5) Declining to exercise available options under the agreement;
(6) Termination of the agreement for default or cause, in accordance with the termination Article of this contract; or
(7) Suspension or debarment.

(f) *Mitigating Factor.*

When determining remedies, the CO may consider the following:

(1) Mitigating factors. The service provider had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, which may include reparation to victims for such violations.

(2) Aggravating factors. The service provider failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the CO to do so.

(g) *Full cooperation.* (1) The service provider shall, at a minimum-

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any service provider rights arising in law, the FAR, or the terms of the agreement. It does not-

(i) Require the service provider to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the service provider, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the service provider from-

(A) Conducting an internal investigation; or
(B) Defending a proceeding or dispute arising under the agreement or related to a potential or disclosed violation.

(h) *Compliance plan.* (1) This paragraph (h) applies to any portion of the agreement that-

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds $550,000.

(2) The service provider shall maintain a compliance plan during the performance of the agreement that is appropriate-

(i) To the size and complexity of the agreement; and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) Minimum requirements. The compliance plan must include, at a minimum, the following.

(i) An awareness program to inform service provider employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this Article, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at http://www.state.gov/j/tip/.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employees or potential employees and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the service provider or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this Article) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) Posting. (i) The service provider shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the service provider's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the service provider shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The service provider shall provide the compliance plan to the CO upon request.

(5) Certification. Annually after receiving an award, the service provider shall submit a certification to the CO that-

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this Article and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either-

(A) To the best of the service provider's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this Article have been found, the service provider or subcontractor has taken the appropriate remedial and referral actions.

(i) *Subcontracts.* (1) The service provider shall include the substance of this article, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this Article apply only to any portion of the subcontract that-

(i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(ii) Has an estimated value that exceeds $550,000.

(2) If any subcontractor is required by this Article to submit a certification, the service provider shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this Article.

QUALITY CONTROL

Article 25. Quality Control

A. The service provider is responsible for management and quality control actions necessary to meet the quality standards set forth in the agreement. The service provider shall provide a Quality Control Plan (QCP) that meets the requirements specified in the Performance Requirements Summary (PRS), (included in Attachment 3) to the CO for concurrence prior to award of the IGSA (or as directed by the CO). The CO will notify the service provider of concurrence or required modifications to the plan before the agreement start date. If a modification to the plan is required, the service provider shall make appropriate modifications and obtain concurrence of the revised plan by the CO before the IGSA start date.

B. The service provider shall provide a QCP that addresses critical operational performance standards for the services required under this IGSA. The QCP shall ensure that services will be maintained at a uniform and acceptable level. At a minimum, the service provider shall periodically review and update the QCP policies and procedures at least on an annual basis. The service provider shall audit the facility's operations monthly for compliance with the QCP. The service provider shall notify the Government 48 hours in advance of the audit to ensure the COR is available to participate. The service provider's QCP shall identify deficiencies, appropriate corrective action(s), and timely implementation plans to the COR.

C. If the service provider proposes changes in the QCP after IGSA award, the service provider shall submit them to the COR for review. If the COR concurs with the changes, the COR shall submit the changes to the CO. The CO may modify the contract to include these changes.

Article 26. Quality Assurance Surveillance Plan (QASP)

A. The Government's QASP is based on the premise that the service provider, and not the Government, is responsible for management and quality control actions to meet the terms of the agreement. The QASP procedures recognize that unforeseen problems do occur. Good management and use of an adequate QCP will allow the facility to operate within acceptable quality levels. See Attachment 3 for the Government's QASP.

B. All services rendered under this agreement are subject to inspection both during the service provider's operations and after completion of the tasks.

C. When the service provider is advised of any unsatisfactory condition(s), the service provider shall submit a written report to the COR addressing corrective/preventive actions taken. The QASP is not a substitute for quality control by the service provider.

D. The COR may check the service provider's performance and document any noncompliance; only the CO may take formal action against the service provider for unsatisfactory performance.

E. The Government may apply various inspection and extrapolation techniques (i.e., 100 % surveillance, random sampling, planned sampling, unscheduled inspections) to determine the quality of services, the appropriate reductions, and the total payment due.

F. The QASP sets forth the procedures and guidelines that ICE will use to inspect the technical performance of the service provider. It presents the financial values and mechanisms for applying adjustments to the service provider's invoices as dictated by work performance measured to the desired level of accomplishment.

1. The purpose of the QASP is to:

   a. Define the roles and responsibilities of participating Government officials.
   b. Define the types of work to be performed.
   c. Describe the evaluation methods that will be employed by the Government in assessing the service provider's performance.
   d. Describe the process of performance documentation.

2. Roles and Responsibilities of Participating Government Officials

   a. The COR(s) will be responsible for monitoring, assessing, recording, and reporting on the technical performance of the service provider on a day-to-day basis. The COR(s) will have primary responsibility for documenting their inspection and evaluation of the service provider's work performance.

   b. The CO or designee has overall responsibility for evaluating the service provider's performance in areas of contract compliance, contract administration, and cost and property control. The CO shall review the COR's evaluation of the service provider's performance and invoices. If applicable, deductions or withholdings will be assessed in accordance with the evaluation of the service provider's performance, e.g., monetary adjustments for inadequate performance.

G. The rights of the Government and remedies described in this section are in addition to all other rights and remedies set forth in this agreement. Any reductions in the service provider's invoice shall reflect the contract's reduced value resulting from the Service Provider's failure to perform required services. The service provider shall not be relieved of full performance of the services hereunder and may be terminated based upon

inadequate performance of services, even if a reduction was previously taken for any inadequate performance.

Article 27. Prohibition on a ByteDance Covered Application

(a) *Definitions.* As used in this clause—

Covered application means the social networking service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited.
Information technology, as defined in 40 U.S.C. 11101(6)—

(1) Means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use—

(i) Of that equipment; or
(ii) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(2) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

(3) Does not include any equipment acquired by a Federal contractor incidental to a Federal contract.

(b) *Prohibition.* Section 102 of Division R of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328), the No TikTok on Government Devices Act, and its implementing guidance under Office of Management and Budget (OMB) Memorandum M-23-13, dated February 27, 2023, "No TikTok on Government Devices" Implementation Guidance, collectively prohibit the presence or use of a covered application on executive agency information technology, including certain equipment used by Federal contractors. The Contractor is prohibited from having or using a covered application on any information technology owned or managed by the Government, or on any information technology used or provided by the Contractor under this contract, including equipment provided by the Contractor's employees; however, this prohibition does not apply if the Contracting Officer provides written notification to the Contractor that an exception has been granted in accordance with OMB Memorandum M-23-13.

(c) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for the acquisition of commercial products or commercial services.

Exhibit 2

CPS CORRECTIONAL HEALTHCARE

CQI Study: Bridget Volk MOUD Director

Presented by: Bridget Volk

Date: 07/25/2025

Study Topic: Bridge prescriptions

Purpose of Study: Audit previous buprenorphine releases to track if patients are continuing w/ suboxone treatment, follow-up after study from May, 2025.

Threshold: 80%

Method: Following up on last study, ran MassPAT for patients releasing on buprenorphine to see if patients continued with MOUD tx upon release (5/28/25 – 7/25/25)

Data: 15 patients total – 12 filled a prescription for suboxone post-release

Results: 80% continued MOUD tx after leading PCCF.

Analysis: Data meets threshold for desired follow-up. Only 3 patients were lost to follow-up.

Conclusion/Follow-up Recommendation: Utilize clinical follow-up phone call to inquire about lack of continuation of MOUD (if a follow-up phone number was provided upon intake).
Continue to offer and monitor patients access for a bridge prescription.
Continue to use MassPAT tool informing providers if a patients may be experiencing an interruption in service. Utilize this tool to continue to monitor patients post-release outcomes.

CPS CORRECTIONAL HEALTHCARE

CQI Study: Bridget Volk MOUD Director

Presented by: Bridget Volk

Date: 07/25/2025

Study Topic: Clinical chart audit – 04/21/2025 – 07/25/2025

Purpose of Study: To maintain compliance with BSAS/DPH guidelines.

Threshold: 100%

Method: Audited charts for patients of patients admitted between last study and present day (04/21/2025 – 07/25/2025): MAT 12 & 13, biopsych, treatment plans, MDT note, discharge summary, and discharge note (and according signatures).

Data: 60 charts audited

- MOUD intake forms (1-10)
  - 60/60
- MAT 12 & 13 forms
  - 11/60 charts missing MD signature. Tasks created for active patients, list compiled for provider to sign during next day on-site.
- Biopsychosocial:
  - 16/55 need MD signature. Tasks created for active patients, list compiled for provider to sign during next day on-site.
  - 10/55 need clinical supervisor signature. Tasks created for active patients, list of patients needing clinical supervisor signature given to CS to complete on 7/25.
- MDT notes
  - 60/60 patients have MDT chart note.
- Discharge summaries completed for 27 patients who have been released
  - 11/27 need clinical follow-up but are not yet out of compliance (clinicians have 30 days to complete post-release)

Results: Actions taken to amend MOUD clinical charts. Signatures tasked where appropriate and a list of additional signatures/tasks needed was compiled. Charts to be in 100% compliance.

Analysis: Continue to monitor patients who release prior to signature task being completed in CorEMR. Clinical Supervisor has been completing monthly chart audits and ensuring clinical follow-up is complete.

Conclusion/Follow-up Recommendation: Program Director/Clinical Supervisor to continue to monitor signatures for patients who release prior to signature tasks being completed. Continue training for new clinical staff via monthly clinical supervision.
Continually monitor clinical charts through CQI process.

Exhibit A

ACLU
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Massachusetts

Mackenzie Saunders
Legal Fellow
(617) 482-3170 ext. 317
msaunders@aclum.org

December 11, 2025

Via Electronic Mail

Jessica Kenny
General Counsel
Plymouth County Sheriff's Department
24 Long Pond Road
Plymouth, MA 02360
jkenny@pcsdma.org

Re: Public Records Request

Dear Attorney Kenny:

This is a request for public records under G.L. c. 66, § 10, made on behalf of the American Civil Liberties Union of Massachusetts, Inc. ("ACLUM").

The following terms are defined for purposes of this request:

- "PCCF" shall refer to the Plymouth County Correctional Facility;
- "ICE" shall refer to U.S. Immigration and Customs Enforcement;
- "DHS" shall refer to the U.S. Department of Homeland Security;
- "IGSA" shall refer to the intergovernmental service agreement between PCCF, ICE, and DHS signed on or around September 25, 2024, and identified by the designation 70CDCR2DIG000025;
- "CQI system" shall refer to the continuous quality improvement system as described in IGSA Art. 6(B);
- "Medical care" shall refer to all activities for providing medical and dental care, including all "medical services or treatment" as described in IGSA Art.6;
- "Immigration Detainee" shall refer to civil immigration detainees housed at PCCF;

- "IHSC" shall refer to the ICE Health Services Corps, Field Management Coordinators, Managed Care Coordinators, and Referral Coordinators as described in IGSA Art. 6;

- "MedPAR" shall refer to the IHSC Medical Payment Authorization Request as described in IGSA Art. 6(E).

ACLUM hereby requests the following records created on or after June 1, 2025, unless otherwise specified. ACLUM requests that these records be produced in an anonymized format, with all Immigration Detainee names, dates of birth, A numbers, and other personally identifying information redacted.

1. The current operative agreement between DHS, ICE, and PCCF for civil immigration detention, if different than the IGSA as described above;

2. All amendments, modifications, and other written changes to the IGSA from October 2024 to the present;

3. All records of the CQI system, including of:

    a. Risk management, patient safety, and health services delivery quality assurance programs as described in IGSA Art. 6(B);

    b. Corrective action plans as described in IGSA Art. 6(B);

4. All incident reports as described in IGSA Art. 6(C);

5. All notifications of Immigration Detainee serious medical conditions as described in IGSA Article 6(D);

6. All notifications of Immigration Detainee medical emergencies as described in IGSA Art. 6(G);

7. All requests for approval of emergent medical care for Immigration Detainees, including through the MedPAR system, as described in IGSA Art. 6(G);

8. All requests for approval of non-emergency medical care for Immigration Detainees, including through the MedPAR system, as described in IGSA Art. 6(H);

9. All notifications of an Immigration Detainee with a medical condition which renders that person unacceptable for detention as described in IGSA Art. 6(K);

10. All payment authorization requests for off-site medical care for Immigration Detainees, including through the MedPAR system, as described in IGSA Art. 6(M);

11. All itemized invoices submitted by PCCF to ICE as described in IGSA Article 17(C);

12. All written reports addressing corrective/preventative actions taken concerning any unsatisfactory condition pertaining to Immigration Detainees, as described in IGSA Art. 26(C).

To the extent you contend that any of the requested records are not public records, or are otherwise exempt from disclosure, please take steps to ensure that such records are preserved, and not modified, deleted, or destroyed pending ACLUM's review of your contention and the resolution of any resulting dispute.

We ask that that you waive any fees and copying costs, including pursuant to 950 C.M.R. 32.07. ACLUM is a not-for-profit, non-partisan organization dedicated to the principles of liberty and equality. As the Massachusetts affiliate of the national ACLU, a not-for-profit, non-partisan organization, ACLUM distributes information both within and outside of Massachusetts. Gathering and disseminating current information to the public is a critical and substantial component of ACLUM's mission and work. ACLUM publishes reports and other written materials that are disseminated to the public at no cost. ACLUM also disseminates information through its website[1] and social media sites such as Facebook, Instagram, and X. Accordingly, disclosure of the above-referenced records serves the public interest, and not the commercial interest of ACLUM.

Thank you for your attention to this matter. Please do not hesitate to contact me should you require additional information to fulfill this request.

Sincerely,

/s/ Mackenzie Saunders

Mackenzie Saunders
msaunders@aclum.org

[1] www.aclum.org

Exhibit B

The Commonwealth of Massachusetts
County of Plymouth
Sheriff's Department
Plymouth County Correctional Facility

24 Long Pond Road
Plymouth, MA 02360
Telephone: (508) 830-6200
Fax: (508) 830-6201
www.pcsdma.org

Joseph D. McDonald, Jr.
Sheriff

Gerald C. Pudolsky
Special Sheriff

December 26, 2025

Mackenzie Saunders
ACLU of Massachusetts
One Center Plaza, Ste 850
Boston, Ma 02108

RE: Public Records Request

Dear Ms. Saunders:

I am in receipt of your page public records request dated December 11, 2025. In response to your request, the Department states the following:

1. The Department does not possess records responsive to this request. The IGSA described in the request is still the operative IGSA.
2. All amendments , modifications or changes to the existing contract can be found at: https://www.ice.gov/foia/library
3. The Department has attached some records responsive to this request. The Department is additionally withholding documents responsive to this request that contain names or other identifying information regarding detainees. These records are exempt from disclosure pursuant to G.L. c. 7, § 26(a)[1], more specifically, G.L. c. 6 167[2] and 8 C.F.R. § 236.6[3]. Under the plain language of the federal regulation, the documents themselves are not a public record. The Supervisor of Records has recently held that a Sheriff's Department is prohibited from releasing documents under this

[1] (a) specifically or by necessary implication exempted from disclosure by statute.
[2] "records and data in any communicable form compiled by a criminal justice agency which concern an identifiable individual and relate to ... incarceration ... ."
[3] a federal regulation promulgated by the Department of Homeland Security (OHS), which provides in pertinent part as follows:
"No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the Service (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002."

federal regulation. See. SPR25/1221 (May 16, 2025). Your request also seeks medical records that contain the identifying information of patients seeking treatment. G.L. Ch. 111 § 70E provides that every patient or resident of a medical facility shall have the right to confidentiality of all records and communications. Additionally, Exemption (c) of the Massachusetts Public Records Law applies to medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy; G.L. c. 4 §7 cl. Twenty-sixth (b). See Boston Globe Media Partners, LLC v. Dep't of Pub. Health, 482 Mass. 427, 442 (2019) (Medical information absolutely exempt from the public records law.)

4. Records responsive to this request are being withheld for the same reasons stated in request #3.
5. Records responsive to this request are being withheld for the same reasons stated in request #3.
6. Records responsive to this request are being withheld for the same reasons stated in request #3.
7. Records responsive to this request are being withheld for the same reasons stated in request #3.
8. Records responsive to this request are being withheld for the same reasons stated in request #3.
9. Records responsive to this request are being withheld for the same reasons stated in request #3.
10. Records responsive to this request are being withheld for the same reasons stated in request #3.
11. Records responsive to this request are being withheld for the same reasons stated in request #3.
12. The Department does not possess records responsive to this request.

To the extent that some of this response is a denial of your request, under G.L. c. 66, you have the right of appeal to the supervisor of records under subsection (a) of section 10A and the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under subsection (c) of section 10A.

Sincerely,

/s/ Jessica L. Kenny

Jessica L. Kenny
General Counsel
Plymouth County Sheriff's Department
24 Long Pond Road
Plymouth, Ma 02360
direct: 508-732-1867
jkenny@pcsdma.org

Exhibit C

ACLU
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Massachusetts

Mackenzie Saunders
Legal Fellow
(617) 482-3170 ext. 317
msaunders@aclum.org

February 5, 2026

Via Electronic Mail

Jessica Kenny
General Counsel
Plymouth County Sheriff's Department
24 Long Pond Road
Plymouth, MA 02360
jkenny@pcsdma.org

Re: Public Records Request dated December 11, 2025

Dear Attorney Kenny:

I write to address the deficiencies in the response by the Plymouth County Sheriff's Department (the "Department") to the Public Records Request submitted on December 11, 2025 on behalf of the American Civil Liberties Union of Massachusetts, Inc. ("ACLUM").

Pursuant to G.L. c. 66, § 10 (the "public records law"), ACLUM sought the disclosure of documents pertaining to services provided to immigration detainees held at Plymouth County Correctional Facility ("PCCF"). *See* Ex. A (Public Records Request). ACLUM requested 12 categories of documents, including records from PCCF's quality assurance program system, payment authorization requests for off-site medical care, and itemized invoices sent to Immigration and Customs Enforcement ("ICE"). *See id.*, Lines 3, 10, and 11. ACLUM explicitly requested all records to be "produced in an anonymized format, with all Immigration Detainee names, dates of birth, A numbers, and other personally identifying information redacted." Ex. A.

Two weeks later, the Department sent a written response, providing a website link and two documents, and otherwise withholding all other documents in its possession. *See* Ex. B (Response Letter). Despite withholding almost all requested records, the Department did not provide a log of the documents it withheld. Nor did the Department make an attempt to prove, with specificity, why the exemptions apply. *See Worcester Tel. & Gazette Corp. v. Chief of Police of Worcester*, 436 Mass. 378, 383 (2002) (custodian carries the burden to prove applicability of relevant exemptions).

In Line 3 of the response letter, the Department cited four exemptions to the public records law. For the next eight lines, the Department stated: "Records responsive to this request are being withheld for the same reasons stated in request #3." Ex. B. Despite the varied nature of the documents requested—*compare* Ex. A, Line 6 (requesting notifications of detainee medical emergencies) *with* Ex. A, Line 11 (requesting itemized invoices submitted to ICE)—the Department gave the same copy-and-paste justification for all withheld documents.

The four exemptions the Department cited in Lines 3–11 were: G.L. c. 6, § 167 ("C.O.R.I."); 8 C.F.R. § 236.6 (the "Regulation"); G.L. c. 111, § 70E (patient confidentiality); and G.L. c. 4, § 7 cl. 26(c) ("Exemption C"). Given the Department's failure to describe the withheld documents, it is unclear how or why any of these exemptions apply: let alone how or why they apply equally to nine of the twelve categories of requested records. *See Rahim v. Dist. Attorney for Suffolk Dist.*, 486 Mass. 544, 553 (2020) (applicability of each exemption is demonstrated through "an itemized and indexed document log [with] detailed justifications for its claims of exemption").

Going off the limited information provided, none of the cited exemptions apply here. ACLUM reserves all rights to modify this response upon receiving further information.

G.L. c. 6, § 167 – C.O.R.I.

The Department purports that all responsive documents "that contain names or other identifying information regarding detainees" are exempt from public disclosure, pursuant to the C.O.R.I. exemption. Ex. B. However, C.O.R.I. does not apply to the records requested.

First, ACLUM did not request any documents containing names or personally identifiable information regarding detainees. ACLUM explicitly requested the records to be anonymized and redacted to remove such information. *See* Ex. A. The Department's logic here seems to be that redacting personally identifiable information is not enough to overcome the C.O.R.I. exemption to public disclosure. This interpretation is illogical and contrary to precedent. *See Worcester Tel.*, 436 Mass. at 383 (when "only a portion of a public record may fall within an exemption to disclosure," such as personally identifying information, "the nonexempt segregable portion of the record is subject to public access") (cleaned up).

Second, the C.O.R.I. statute provides: "Criminal offender record information [subject to exemption under C.O.R.I.] shall not include evaluative information, statistical and analytical reports and files in which individuals are not directly or indirectly identifiable." Several of ACLUM's requested documents fall within this definition. For example, the records sought in Line 3(a), "Records from the Continuous Quality Improvement System of [r]isk management, patient safety, and health services delivery quality assurance programs," are considered evaluative information, as well as analytical reports. Ex. A.

8 C.F.R. § 236.6 – DHS Regulation

The Department asserts that the requested documents are exempt from disclosure under G.L. c. 7, § 26(a) ("Exemption A") because they are "specifically or by necessary implication exempted from disclosure by statute." Ex. B. The Department points to a regulation from the Department of Homeland Security ("DHS") which provides that no entity "that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the Service (whether by contract or otherwise) . . . shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee." *Id.* For several reasons, the Regulation does not exempt the requested records from disclosure.[1]

First, the Department seems to contend that because PCCF has an Intergovernmental Service Agreement ("IGSA") with DHS and ICE, the Department has no legal obligation to disclose the requested records. *See* Ex. C (IGSA). But the Department cannot contract its way out of the public records law. *Rahim*, 486 Mass. at 548 ("The public records law does not vest agencies with the authority to determine the statute's scope by making interagency agreements."). The mere existence of an IGSA does not remove the requested records from the scope of the public records law.

Second, Exemption A applies to records that are "specifically or by necessary implication exempted from disclosure by statute." Ex. B. The Regulation is not a "statute." It is, indeed, a regulation, as the Department notes several times in its response letter. *See Am. Civ. Liberties Union of Michigan v. Calhoun Cnty. Sheriff's Office*, 509 Mich. 1, 4 (2022) (8 C.F.R. 236.6 is not applicable to state FOIA law that exempts records or information "exempted from disclosure *by statute*," because "a regulation is not a statute") (emphasis added). If Exemption A applied to regulations, it would say so. Many Massachusetts General Laws explicitly use the terms "federal statute *and* regulations" for purposes of exemptions.[2] Exemption A does not.[3]

Third, even if the Regulation applied here, it certainly would not apply to all records requested. The Regulation states that it covers records with "the name of, or other information relating to" an individual detainee. Ex. B. ACLUM did not request the name or personally identifiable information of any detainee. Additionally, many

[1] The Department cited a decision from the Supervisor of Records, SPR25/1221 (May 16, 2025), and asserted that the Supervisor "recently held that a Sheriff's Department is prohibited from releasing documents under this federal regulation." Ex. B. ACLUM disagrees with the decision made in SPR25/1221. In any event, it applies to an entirely different category of records than those at issue here. SPR25/1221 is explicitly limited to records of, and responses to, I-247A "immigration detainer" forms.

[2] *See, i.e.*, G.L. c. 10, § 150A (state statutes on unfair labor practices do not apply to employees subject to "any unfair labor practice governed exclusively by . . . federal statute *or* regulations") (emphasis added); G.L. c. 16, § 142D (variances for fuels or omissions activities shall follow timelines set out in state statute, unless timeline conflicts with "express language of a federal statute *or* regulation") (emphasis added).

[3] *See Am. Civ. Liberties Union of Michigan*, 509 Mich. at 13–14 ("Had the Legislature wanted to exempt" records or information "exempted from disclosure either by statute or by regulation, it could have easily done so simply by including two additional words: *or regulation*.") (cleaned up).

records sought by ACLUM are not related to individual detainees. *See* Ex. A, Lines 3 (quality assurance program records) and 11 (invoices to ICE). The Department's interpretation of the Regulation is troubling, and goes far beyond the purpose of protecting the privacy of detainees. Under the Department's reasoning, the Regulation could functionally obscure *all* records from the public about immigration detainees in entities that contract with DHS. This is not, and cannot be, the correct interpretation of the Regulation.

G.L. c. 4, § 7 cl. 26(c) – Privacy

The Department also withheld documents under Exemption C, asserting that Exemption C applies to "medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy." Ex. B. However, many of the documents requested are not medical files; they are general documents and reports. *See* Ex. A, Lines 3, 7, 8, 10, and 11.

Even if some of the records are considered medical files, Exemption C does not *categorically exempt* medical files from disclosure. *See N.O. v. Callahan*, 110 F.R.D. 637, 645 (D. Mass. 1986) ("Not every bit of information which might be found in a [] medical file is necessarily personal so as to fall within the statutory protection.") (citing *Globe Newspaper Co. v. Boston Retirement Bd.*, 388 Mass. 427, 435 (1983)). As evidenced by the Department's failure to provide a log of the documents it withheld, the Department has not demonstrated how or why the referenced "medical files" implicate the privacy interests that Exemption C protects. *See Rahim*, 486 Mass. at 554 n.16 ("[I]t is unclear whether and how the privacy interests of a "specifically named individual" are implicated when the description of the records merely as "medical" remains abstract and general.").

Further, anonymizing and redacting all personally identifiable information about detainees, as ACLUM requested, would protect detainees from any invasion of personal privacy through public disclosure. *See Champa v. Weston Pub. Sch.*, 473 Mass. 86, 97–98 (2015) ("[O]nce the appropriate redactions of personally identifiable information are made, the [records] will no longer fit within the scope of exemption (c) and must be disclosed.").

G.L. c. 111, § 70E – Patient Confidentiality

The Department also cites G.L. c. 111, § 70E as justification for withholding requested documents, stating that the Public Records Request "seeks medical records that contain the identifying information of patients seeking treatment," and "G.L. Ch. 111 § 70E provides that every patient or resident of a medical facility shall have the right to confidentiality of all records and communications." Ex. B. However, as explained above, many of the documents requested are not medical records or communications; they are general documents and reports. *See* Ex. A, Lines 3, 4, 7, 8, 10, and 11. Further, anonymizing and redacting all personally identifiable information about detainees from the records will ensure protection of patient confidentiality. Thus, the requested records are not exempt from disclosure.

Conclusion

For the above reasons, the documents withheld by the Department are not subject to any exemption to the public records law, and the Department has failed to meet its burden to prove otherwise. As such, the Department is obligated to fulfill ACLUM's Public Records Request.

Please produce the requested documents promptly, and in all events no later than February 12, 2026. We once again ask for the records to be provided in an anonymized format, with all personally identifying information about the detainees redacted. Thank you for your attention to this matter.

Sincerely,

/s/ Mackenzie Saunders

Mackenzie Saunders
msaunders@aclum.org

Exhibit D

Kenny, Jessica

From: Kenny, Jessica
Sent: Tuesday, February 17, 2026 8:51 AM
To: 'Mackenzie Saunders'
Subject: RE: [EXTERNAL EMAIL]Re: [EXTERNAL EMAIL]Public Records Request from ACLU of Massachusetts
Attachments: PR ICE supervisors decision.pdf

Ms. Saunders,
I have attached a copy of the decision from the Supervisor of records that the Department cited in its December 26th response. As the Regulation and this decision make clear, the records that you seek, records that contain identifying information relating to detainees, are prohibited from being released by the Department. The documents themselves are not public records and subjecting them to redactions, as you suggest, is not an option for the Department. (See pg. 4 of SPR25/1221). Additionally, the records you seek contain detailed medical information regarding the subjects of the records, including diagnosis, reasons for treatment, medical coding, test results and other detailed medical conditions. Therefore, even if the Department was not subject to the Regulation, the privacy and patient confidentially exceptions to the public records laws do apply. For these reasons the Department maintains its decision and justification for withholding certain requested records as articulated in its December 26, 2025 response. As I noted in that letter, you have the right to appeal this determination. Additionally, you may file a F.O.I.A. request to the Department of Homeland Security.

Jessica L. Kenny
General Counsel
Plymouth County Sheriff's Department
24 Long Pond Road
Plymouth, Ma 02360
ph. 508-732-1867
fax. 508-830-6234
jkenny@pcsdma.org

From: Mackenzie Saunders <MSaunders@aclum.org>
Sent: Thursday, February 5, 2026 12:06 PM
To: Kenny, Jessica <jkenny@pcsdma.org>
Subject: [EXTERNAL EMAIL]Re: [EXTERNAL EMAIL]Public Records Request from ACLU of Massachusetts

Attorney Kenny,

Attached is a letter on behalf of the American Civil Liberties Union of Massachusetts, in response to the letter sent by Plymouth County Sheriff's Department about ACLUM's public records request.

Sincerely,

Mackenzie Saunders

Mackenzie Saunders (she/her)
Equal Justice Works Fellow
American Civil Liberties Union of Massachusetts
(617) 482-3170 ext. 317 | msaunders@aclum.org

ACLU Massachusetts

From: Kenny, Jessica <jkenny@pcsdma.org>
Sent: Friday, December 26, 2025 9:06 AM
To: Mackenzie Saunders <MSaunders@aclum.org>
Cc: Eonas, Isabel <ieonas@pcsdma.org>; Sarris, Susan <ssarris@pcsdma.org>
Subject: RE: [EXTERNAL EMAIL]Public Records Request from ACLU of Massachuetts

Please find the attached letter and records responsive to your public records request.

Jessica L. Kenny
General Counsel
Plymouth County Sheriff's Department
24 Long Pond Road
Plymouth, Ma 02360
ph. 508-732-1867
fax. 508-830-6234
jkenny@pcsdma.org

From: Mackenzie Saunders <MSaunders@aclum.org>
Sent: Thursday, December 11, 2025 1:10 PM
To: Kenny, Jessica <jkenny@pcsdma.org>
Subject: [EXTERNAL EMAIL]Public Records Request from ACLU of Massachuetts

Dear Attorney Kenny,

Attached is a public records request made under G.L. c. 66, § 10, on behalf of the American Civil Liberties Union of Massachusetts. Should you have any questions, please don't hesitate to reach out to me.

Sincerely,
Mackenzie Saunders

Mackenzie Saunders (she/her)
Equal Justice Works Fellow
American Civil Liberties Union of Massachusetts
(617) 482-3170 ext. 317 | msaunders@aclum.org

ACLU Massachusetts

This email and its attachments are intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential, proprietary, or exempt from disclosure under applicable law. If you are not the intended recipient or the person responsible for delivering the message to the intended recipient, you are strictly prohibited from disclosing, distributing, copying, or in any way using this message. If you have received this communication in error, please immediately notify the sender and delete this communication, any attachments, and all copies from your system and records.

Disclaimer
The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by Mimecast, a leader in email security and cyber resilience. Mimecast integrates email defenses with brand protection, security awareness training, web security, compliance and other essential capabilities. Mimecast helps protect large and small organizations from malicious activity, human error and technology failure; and to lead the movement toward building a more resilient world. To find out more, visit our website.

Exhibit E

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

May 16, 2025
SPR25/1221

Michael C. Arnold
Public Records Access Officer
Bristol County's Sheriff's Office
400 Faunce Corner Road
Dartmouth, MA 02747

Dear Mr. Arnold:

I have received the petition of Anastasia Lennon, of *The New Bedford Light*, appealing the response of the Bristol County's Sheriff's Office (Office) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On April 30, 2025, Eleonora Bianchi, also of *The New Bedford Light*, requested the following:

> [1] All Immigration Detainer–Notice of Action forms (ICE Form I-247A or earlier I-247 variants) received by the Bristol County Sheriff's Office between January 1, 2025, and April 30, 2025…
>
> [2] BCSO's response to the ICE detainer notice of action forms…

The Office responded on May 1, 2025. Unsatisfied with the Office's response, Ms. Lennon petitioned this office, and this appeal, SPR25/1221, was opened as a result. Subsequent to the opening of this appeal, the Office provided a further response to Ms. Lennon and this office on May 5, 2025.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in

order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response, a written good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

The Office's May 1st and May 5th Responses

In its May 1, 2025 response, the Office states that it is withholding responsive records pursuant to 8 C.F.R. § 236.6, as it operates through Exemption (a) of the Public Records Law. See G. L. c. 4, § 7(26)(a). In its May 5, 2025 response, the Office specifies that it is withholding "eleven (11) such detainers from Immigration and Customs Enforcement (ICE), a division of the Department of Homeland Security (DHS) during the time period requested." The Office reiterates its claim that the records must be withheld pursuant to 8 C.F.R. § 236.6, and also claims that the records may be withheld as CORI, as those regulations and statute operate through Exemption (a) of the Public Records Law. See G. L. c. 4, § 7(26)(a).

Exemption (a)

Exemption (a), known as the statutory exemption, permits the withholding of records that are:

> specifically or by necessary implication exempted from disclosure by statute
>
> G. L. c. 4, § 7(26)(a).

A governmental entity may use the statutory exemption as a basis for withholding requested materials where the language of the exempting statute relied upon expressly or necessarily implies that the public's right to inspect records under the Public Records Law is restricted. See Att'y Gen. v. Collector of Lynn, 377 Mass. 151, 154 (1979); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 545-46 (1977).

This exemption creates two categories of exempt records. The first category includes records that are specifically exempt from disclosure by statute. Such statutes expressly state that such a record either "shall not be a public record," "shall be kept confidential" or "shall not be subject to the disclosure provision of the Public Records Law."

The second category under the exemption includes records deemed exempt under statute by necessary implication. Such statutes expressly limit the dissemination of particular records to a defined group of individuals or entities. A statute is not a basis for exemption if it merely lists individuals or entities to whom the records are to be provided; the statute must expressly limit

access to the listed individuals or entities.

8 C.F.R. 236.6

In its May 1st response, the Office argues that "the names and information relating to immigration detainees information is exempt from disclosure under G.L. c. 7, § 26(a), which exempts records that are 'specifically or by necessary implication exempted from disclosure by statute.' The statute covered by this exemption is 8 C.F.R. § 236.6."

The Office cites 8 C.F.R. § 236.6, a federal regulation promulgated by the Department of Homeland Security (DHS), which provides in pertinent part as follows:

> No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the Service (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.
>
> 8 C.F.R. § 236.6.

In its May 5th response, the Office argues the following under 8 C.F.R. 236.6:

> [T]he documents themselves fall under an exception to the Public Records law, specifically that they are records which are "specifically or by necessary implication exempted from disclosure by statute," G. L. c. 4, § 7(26)(a).
>
> [T]he documents themselves are not public records pursuant to 8 CFR 236.6, a regulation promulgated by DHS pursuant to 5 U.S.C. 301, 552, 552a; 6 U.S.C. 112(a)(2), 112(a)(3), 112(b)(l), 112(e), 202, 251, 279, 291; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1232, 1324a, 1357, 1362, 1611; 18 U.S.C. 4002, 4013(c)(4); and 8 CFR part 2.
>
> . . .
>
> Under 8 CFR 236.6, the BCSO constitutes a state or local government entity that has an official relationship with persons or entities who house, maintain, provide services to, or otherwise hold detainees on behalf of ICE. While the BCSO no longer has a contract with ICE, the BCSO still maintains an official relationship

> with ICE to the extent allowed by the laws of the United States and the Commonwealth of Massachusetts. At ICE's request, the BCSO routinely provides ICE lists of individuals in custody. ICE, in turn, sends the BCSO I-247A "immigration detainers" of the type requested when ICE becomes aware, either from our lists or otherwise, that an individual subject to a detainer is in BCSO custody. The BCSO does not and cannot extend a subject's detention past their Commonwealth-ordered release date based on these detainers [*see* Commonwealth v. Lunn, 477 Mass. 517 (2017)]. The BCSO does, however, "lodge" ICE detainers in order to notify ICE in a timely manner when individuals subject to a detainer are due to be released. Further, the BCSO then cooperates within the limits of Lunn when ICE seeks to have a detainee transferred directly from BCSO custody to ICE custody at the end of their Commonwealth-ordered detention.
>
> The BCSO, therefore, is an entity subject to 8 CFR 236.6 that by virtue of its official relationship with ICE obtains information relating to ICE detainees who are in BCSO custody, including their names and other information. Per 8 CFR 236.6, "Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records." (emphasis added). While the BCSO is sympathetic to the petitioners' request that they be provided the documents with redactions, when a document under 8 CFR 236.6 contains information subject to its terms, the document itself is not a public record under the plain language of the regulation. The language of the regulation clearly appreciates the difference between the documents themselves and the information contained therein. DHS could easily have promulgated the regulation in such a manner to only exempt the information from public disclosure, but instead it exempts the document itself. The determination by DHS that the document itself is not a public record could not be clearer.

Based on the information provided in the Office's May 5th response, the Office has explained that it has an official relationship with persons or entities who house, maintain, provide services to or otherwise hold detainees on behalf of DHS. Additionally, the Office has explained that the responsive records contain the name of or other information relating to detainees. Consequently, the Office has demonstrated that the responsive records are the type of record contemplated under 8 C.F.R. § 236.6. Accordingly, where the Office has demonstrated that it is prohibited from releasing the immigration detainers under federal regulation, I find that the Office has met its burden to withhold the responsive records pursuant to 8 C.F.R. § 236.6, as it operates through Exemption (a) of the Massachusetts Public Records Law. See G. L. c. 4, § 7(26)(a).

Criminal Offender Record Information (CORI)

The current definition of CORI is as follows:

"Criminal offender record information," records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, previous hearings conducted pursuant to section 58A of chapter 276 where the defendant was detained prior to trial or released with conditions under subsection (2) of section 58A of chapter 276, sentencing, incarceration, rehabilitation, or release. Such information shall be restricted to information recorded in criminal proceedings that are not dismissed before arraignment. Criminal offender record information shall not include evaluative information, statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. Criminal offender record information shall be limited to information concerning persons who have attained the age of 18 and shall not include any information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of 18; provided, however, that if a person under the age of 18 was adjudicated as an adult in superior court or adjudicated as an adult after transfer of a case from a juvenile session to another trial court department, information relating to such criminal offense shall be criminal offender record information. Criminal offender record information shall not include information concerning any offenses which are not punishable by incarceration.

G. L. c. 6, § 167.

In its May 5th response, under CORI, the Department argues the following:

[P]ortions of the records constitute Criminal Offender Record Information (CORI) as defined in M.G.L. c. 6, § 167. Should you agree that the documents are not public records per the plain language of 8 CFR 236.6, this point is immaterial. Should [the Supervisor] consider ordering the BCSO to produce redacted documents, however, the combined redactions to satisfy both 8 CFR 236.6 and M.G.L. c. 6, § 167 would be so extensive as to effectively reduce our response to disclosing the number of detainers received, which we are already willing to do.

. . .

Regarding CORI, because the BCSO no longer has a contract with ICE, it lacks the authority to detain individuals subject to an I-247A detainer. The offenders at our Facilities are adults 18 years of age or older who are detained under criminal process issued by the courts of the Commonwealth of Massachusetts. This includes individuals held on bail, dangerousness, a probation detention, or serving a sentence. As a result, most of the information on form I-247A is also CORI protected. This is especially true of the information specifically requested by the petitioners at the bottom of page 1, including inmate #, estimated release date, date of last charge/conviction, and last offense charged/conviction.

> Redacting and providing the I-247A form would therefore not only violate federal law, it would result in a document so heavily redacted so as to reduce the disclosure to little more than the number of detainers the BCSO has received in the time period requested. For these reasons, the BCSO respectfully requests that you deny the appeal, and rule that the BCSO has satisfied the request by disclosing the number ofI-247A or equivalent detainers received during the requested period.

In this case, where the Office has met its burden to withhold the responsive records pursuant to 8 C.F.R. § 236.6, as it operates through Exemption (a) of the Public Records Law, I find it is unnecessary to address the Office's claims for withholding the records under CORI.

Conclusion

Accordingly, I will consider this administrative appeal closed. If Ms. Lennon is not satisfied with the resolution of this administrative appeal, please be advised that this office shares jurisdiction with the Superior Court of the Commonwealth. See G. L. c. 66, §§ 10(b)(ix), 10A(c) (pursuing administrative appeal does not limit availability of judicial remedies).

Sincerely,

Manza Arthur
Supervisor of Records

cc: Eleonora Bianchi
Anastasia Lennon

Exhibit F

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

November 21, 2025
SPR25/3280

Daniel Sheridan, Esq.
Assistant Superintendent
Berkshire County Sherriff's Office
467 Cheshire Road
Pittsfield, MA 01201

Dear Attorney Sheridan:

I have received the petition of Joshua Dankoff, of *Citizens for Juvenile Justice*, appealing the response of the Berkshire County Sherriff's Office (Office) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On August 12, 2025, Mr. Dankoff requested the following:

> [1] All records related to the Sheriff Office's policies regarding communication and information sharing between office employees and federal agents/agencies, including, but not limited to, the U.S. Department of Homeland Security (DHS), and the U.S. Immigration and Customs Enforcement (ICE). This request covers any policies that are currently in effect or that have been in effect at any point on or after January 20, 2025.
>
> [2] The three most recent communications (e.g., emails, text messages, call logs or transcripts, or otherwise) between an office employee and a federal DHS or ICE employee. In addition, I request all records related to these communications, including, but not limited to, any records indicating that the office was made aware of the communications, discussions of their content or implications, evaluations them for compliance with office policies, identification or acknowledgement of any potential policy violations, and any internal responses, disciplinary actions, or follow-up measures resulting from these communications.
>
> [3] All communications between office employees and DHS or ICE surrounding any incident, if any, from January 20, 2025, to the day this request is responded to, in which an individual involved in HOC custody was taken into ICE custody. For each incident, the records request includes, but is not limited to, emails, phone

call records (including logs showing incoming/outgoing calls and, if available, call summaries or transcripts), text messages (including those sent or received on personal or departmental devices), and any internal notes, memos, or documentation referencing communication with DHS or ICE.

The Office responded on September 2, 2025. Unsatisfied with the Office's response, Mr. Dankoff petitioned this office and this appeal, SPR25/3280, was opened as a result.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response, a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

The Office's September 2nd Response

In its September 2, 2025 response, the Office provided records responsive to Item 1 of the request, and cited 8 C.F.R 236.6 as it operates through Exemption (a), as well as Exemption (c) of the Public Records Law, to withhold records responsive to Items 2 and 3.

Current Appeal

In his appeal petition, Mr. Dankoff objected to the Office withholding records under Exemption (a). Mr. Dankoff does not appear to object to the Office withholding records under Exemption (c).

Exemption (a)

Exemption (a), known as the statutory exemption, permits the withholding of records that are:

specifically or by necessary implication exempted from disclosure by statute

G. L. c. 4, §7 (26)(a).

A governmental entity may use the statutory exemption as a basis for withholding requested materials where the language of the exempting statute relied upon expressly or necessarily implies that the public's right to inspect records under the Public Records Law is restricted. See Att'y Gen. v. Collector of Lynn, 377 Mass. 151, 54 (1979); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 545-46 (1977).

This exemption creates two categories of exempt records. The first category includes records that are specifically exempt from disclosure by statute. Such statutes expressly state that such a record either "shall not be a public record," "shall be kept confidential" or "shall not be subject to the disclosure provision of the Public Records Law."

The second category under the exemption includes records deemed exempt under statute by necessary implication. Such statutes expressly limit the dissemination of particular records to a defined group of individuals or entities. A statute is not a basis for exemption if it merely lists individuals or entities to whom the records are to be provided; the statute must expressly limit access to the listed individuals or entities.

8 C.F.R. 236.6

In its September 2, 2025 response, the Office cited 8. C.F.R. § 236.6, a federal regulation promulgated by the Department of Homeland Security (DHS), which provides in pertinent part

> No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the Service (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.
>
> 8 C.F.R. § 236.6.

Items 2 and 3

Under Exemption (a), the Office stated:

> The documents you have requested under [Items 2 and 3] fall within the provision of 8 CFR § 236.6 and therefore are expressly exempted from disclosure. The documents themselves are not public records pursuant to 8 CFR § 236.6, a regulation promulgated by the Department of Homeland Security (DHS) pursuant to federal law, 5 USC 301, 552, 552a; 6 USC 112(a)(2), 112(a)(3), 112(b)(1), 112(e), 202, 251, 279, 291; 8 USC 1103, 1182, 1224, 1226, 1227, 1231, 1232, 1324a, 1357, 1362, 1611; 18 USC 4002, 4013(c)(4); and 8 CFR part 2.
>
> Under the regulations cited above (8 CFR 236.6), the Berkshire County Sheriff's Office (BCSO) constitutes a state or local government entity that has an official relationship with persons or entities who house, maintain, provide services to, or otherwise hold detainees on behalf of ICE. The BCSO maintains an official relationship with ICE and DHS to the extent that BCSO provides information to said ICE/DHS officials pertaining to inmates in BCSO custody who have ICE detainers or ICE warrants, court dates for said individuals, and release dates for said individuals.
>
> As such, the BCSO is an entity subject to DHS regulation 8 CFR 236.6 that expressly restricts disclosure of said information to the control of the Service and makes "public disclosure" subject to "the provisions of the applicable federal laws, regulations and executive orders." "Insofar as any documents or other records contain such information, such documents shall not be public records."
>
> By virtue of the regulation the documents themselves are not public records. Redacting names or other identifiable information (release dates, court dates, court locations, etc.) from said documents would not, thereby, convert them into public records.

Based on the information provided in the Office's response, the Office has explained that it has an official relationship with persons or entities who house, maintain, provide services to or otherwise hold detainees on behalf of DHS. Additionally, the Office has explained that the responsive records contain the name of or other information relating to detainees. Consequently, the Office has demonstrated that the responsive records are the type of records contemplated under 8 C.F.R. § 236.6. Accordingly, where the Office has demonstrated that it is prohibited from releasing these documents under federal regulation, I find that the Office has met its burden to withhold the responsive records pursuant to 8 C.F.R. § 236.6, as it operates through Exemption (a) of the Massachusetts Public Records Law. See G. L. c. 4, § 7(26)(a).

Conclusion

Accordingly, I will now consider this administrative appeal closed. If Mr. Dankoff is not satisfied with the resolution of this administrative appeal, please be advised that this office shares jurisdiction with the Superior Court of the Commonwealth of Massachusetts. See G. L. c. 66, § 10A(c) (pursuing administrative appeal does not limit availability of applicable judicial remedies).

Sincerely,

Manza Arthur
Supervisor of Records

cc: Joshua Dankoff

Exhibit G

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Manza Arthur
Supervisor of Records

December 10, 2025
SPR25/3489

Megan J. McLatchey, Esq.
Associate Legal Counsel
Middlesex County Sheriff's Office
12 Gill Street, Suite 4700
Woburn, MA 01801

Dear Attorney McLatchey:

I have received the petition of Joshua Dankoff, of *Citizens for Juvenile Justice*, appealing the response of the Middlesex County Sheriff's Office (Office) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On August 12, 2025, Mr. Dankoff requested the following:

> [1] All records related to the Sheriff Office's policies regarding communication and information sharing between office employees and federal agents/agencies, including, but not limited to, the U.S. Department of Homeland Security (DHS), and the U.S. Immigration and Customs Enforcement (ICE). This request covers any policies that are currently in effect or that have been in effect at any point on or after January 20, 2025[;]
>
> [2] The three most recent communications (e.g., emails, text messages, call logs or transcripts, or otherwise) between an office employee and a federal DHS or ICE employee. In addition, I request all records related to these communications, including, but not limited to, any records indicating that the office was made aware of the communications, discussions of their content or implications, evaluations them for compliance with office policies, identification or acknowledgment of any potential policy violations, and any internal responses, disciplinary actions, or follow-up measures resulting from these communications[;]
>
> [3] All communications between office employees and DHS or ICE surrounding any incident, if any, from January 20, 2025, to the day this request is responded to, in which an individual involved in HOC custody was taken into ICE custody. For each incident, the records request includes, but is not limited to, emails, phone

call records (including logs showing incoming/outgoing calls and, if available, call summaries or transcripts), text messages (including those sent or received on personal or departmental devices), and any internal notes, memos, or documentation referencing communication with DHS or ICE.

Previous Appeal

This request was the subject of a previous appeal. See SPR25/3296 Determination of the Supervisor of Records (November 24, 2025). In my November 24th determination, I closed SPR25/3296 in light of the Office providing a supplemental response on November 24, 2025. Unsatisfied with the Office's response, Mr. Dankoff petitioned this office, and this appeal, SPR25/3489, was opened as a result.

The Public Records Law

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency or municipality of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response, a written good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

The Office's September 16th and November 24th Responses

In its September 16, 2025 response, the Office provided records responsive to Item 1 of the request in redacted form, and cited Exemption (n) of the Public Records Law for redacting the records. See G. L. c. 4, § 7(26)(n). In its September 16, and November 24, 2025 responses, the Office states that it is withholding records responsive to Items 2 and 3 pursuant to 8 C.F.R. 236.6, as it operates through Exemption (a) of the Public Records Law. See G. L. c. 4, § 7(26)(a).

In his appeal petition, Mr. Dankoff states "regarding Middlesex, I am not challenging the redactions under exemption n."

Exemption (a)

Exemption (a), known as the statutory exemption, permits the withholding of records that are:

> specifically or by necessary implication exempted from disclosure by statute
>
> G. L. c. 4, § 7(26)(a).

A governmental entity may use the statutory exemption as a basis for withholding requested materials where the language of the exempting statute relied upon expressly or necessarily implies that the public's right to inspect records under the Public Records Law is restricted. See Att'y Gen. v. Collector of Lynn, 377 Mass. 151, 154 (1979); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 545-46 (1977).

This exemption creates two categories of exempt records. The first category includes records that are specifically exempt from disclosure by statute. Such statutes expressly state that such a record either "shall not be a public record," "shall be kept confidential" or "shall not be subject to the disclosure provision of the Public Records Law."

The second category under the exemption includes records deemed exempt under statute by necessary implication. Such statutes expressly limit the dissemination of particular records to a defined group of individuals or entities. A statute is not a basis for exemption if it merely lists individuals or entities to whom the records are to be provided; the statute must expressly limit access to the listed individuals or entities.

8 C.F.R. 236.6

In its May 1st response, the Office argues that "the names and information relating to immigration detainees information is exempt from disclosure under G.L. c. 7, § 26(a), which exempts records that are 'specifically or by necessary implication exempted from disclosure by statute.' The statute covered by this exemption is 8 C.F.R. § 236.6."

The Office cites 8 C.F.R. § 236.6, a federal regulation promulgated by the Department of Homeland Security (DHS), which provides in pertinent part as follows:

> No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the Service (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any

documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

8 C.F.R. § 236.6.

In its September 16th response, the Office argues the following:

Under 8 CFR 236.6, the MSO constitutes a state government entity that houses, maintains, provides services to, or otherwise holds detainees on behalf of the U.S. Immigration and Customs Enforcement ("ICE"). While the MSO does not have a contract with ICE, the MSO still maintains a professional, law enforcement relationship with DSH and ICE to the extent allowed by the laws of the United States and the Commonwealth of Massachusetts. At ICE's request, the MSO routinely provides ICE with lists of individuals in MSO custody and those scheduled to be released from MSO custody. ICE, in turn, sends the MSO I-247A "immigration detainers" when ICE becomes aware, either from the MSO's lists or otherwise, that an individual subject to a detainer is in MSO custody. The MSO does not and cannot extend a subject's detention past their Commonwealth-ordered release date based on these detainers. See Commonwealth v. Lunn, 477 Mass. 517 (2017). The MSO does, however, log ICE detainers in order to notify ICE in a timely manner when individuals subject to a detainer are due to be released. Further, the MSO then cooperates within the limits of Lunn when ICE seeks to have an individual subject to a detainer transferred from MSO custody to ICE custody at the end of their Commonwealth-ordered detention by notifying ICE when the individual will be released from MSO custody or has a scheduled court appearance that may result in their release. The MSO, therefore, is an entity subject to 8 CFR 236.6 that, by virtue of its official relationship with ICE, obtains information relating to ICE detainees who are in MSO custody, including their names and other information. Per 8 CFR 236.6, "Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, **such documents shall not be public records.**" (emphasis added). When a document under 8 CFR 236.6 contains information subject to its terms, the document itself is not a public record under the plain language of the regulation and therefore is not subject to the Public Records Law in its entirety. The language of the regulation clearly appreciates the difference between the documents themselves and the information contained therein. DHS could easily have promulgated the regulation in such a manner to only exempt the information from public disclosure, but instead it exempts the document itself. The determination by DHS that the document itself is not a public record could not be clearer and therefore the requested records are withheld by the MSO in their entirety.

In its November 24th response, the office argues the following:

> [T]he MSO is a state or local government entity that has an official relationship with persons or entities who house, maintain, provide services to, or otherwise hold detainees on behalf of ICE, under 8 C.F.R. 236.6. The MSO maintains a law enforcement relationship with ICE and DHS to the extent that the MSO provides information to said ICE and DHS officials pertaining to inmates and detainees in MSO custody who have ICE detainers or ICE warrants, court dates for said individuals, and release dates for said individuals.
>
> The MSO further clarifies that the MSO has identified email records in response to Request 2 and Request 3; however, the MSO withholds the entirety of these email records pursuant to M.G.L. c. 4, §7(26)(a). Specifically, these records are expressly exempted from public disclosure pursuant to 8 C.F.R. §236.6, a regulation promulgated by DHS pursuant to federal law 5 USC 301, 552, 552a; 6 USC 112(a)(2), 112(a)(3), 112(b)(1), 112(e), 202, 251, 279, 291; 8 USC 1103, 1182, 1224, 1226, 1227, 1231, 1232, 1324a, 1357, 1362, 1611; 18 USC 4002, 4013(c)(4); and 8 CFR part 2.
>
> The MSO further clarifies in response to Request 2 and Request 3, that these identified email records list the names of detainees and other specific information relating to said detainees within the MSO's custody, including but not limited to the date of arrest, the date of entry into MSO's custody, the detainee's court appearance date, and release information. These records are of the kind contemplated under 8 C.F.R. §236.6, as these records, and the information contained therein, are obtained through the MSO's relationship with persons or entities who house, maintain, provide services to or otherwise house detainees on behalf of DHS. Accordingly, the MSO is an entity governed by 8 C.F.R. §236.6, which expressly limits the disclosure of these records to the authority of the Service and subjects any "public disclosure" to the requirements of "federal laws, regulations, and executive orders." "Insofar as any documents or other records contain such information, such documents shall not be public records." By virtue of 8 C.F.R. §236.6 these records themselves are not public records. The specific information governed by 8 C.F.R. §236.6 cannot be redacted from the responsive records in a manner consistent with public records laws and the requirements of 8 C.F.R. §236.6, as 8 C.F.R. §236.6 maintains that the whole of any document or record that contains such detainee information shall not be public record.

Based on the information provided in the Office's September 16th and November 24th responses, the Office has explained that it has an official relationship with persons or entities who house, maintain, provide services to or otherwise hold detainees on behalf of DHS. Additionally, the Office has explained that the responsive records contain the name of or other information relating to detainees. Consequently, the Office has demonstrated that the responsive records are the type of record contemplated under 8 C.F.R. § 236.6. Accordingly, where the Office has demonstrated that it is prohibited from releasing the responsive records under federal

regulation, I find that the Office has met its burden to withhold the records pursuant to 8 C.F.R. § 236.6, as it operates through Exemption (a) of the Massachusetts Public Records Law. See G. L. c. 4, § 7(26)(a).

Conclusion

Accordingly, I will consider this administrative appeal closed. If Mr. Dankoff is not satisfied with the resolution of this administrative appeal, please be advised that this office shares jurisdiction with the Superior Court of the Commonwealth. See G. L. c. 66, §§ 10(b)(ix), 10A(c) (pursuing administrative appeal does not limit availability of judicial remedies).

Sincerely,

Manza Arthur
Supervisor of Records

cc: Joshua Dankoff