

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF FLORIDA,
4343 W. Flagler Street, Suite 400
Miami, FL 33134, and

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON,
1331 F Street NW, Suite 900
Washington, DC 20004,

Plaintiffs,

v.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT,
500 12th Street SW
Washington, DC 20536,

TAE D. JOHNSON, in his official
capacity as Acting Director of U.S.
Immigration and Customs Enforcement,
500 12th Street SW
Washington, DC 20536,

NATIONAL ARCHIVES AND RECORDS
ADMINISTRATION,
700 Pennsylvania Avenue NW
Washington, DC 20408, and

DAVID S. FERRIERO, in his official
capacity as Archivist of the United States,
700 Pennsylvania Avenue NW
Washington, DC 20408,

Defendants.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs American Civil Liberties Union Foundation of Florida (“ACLU of Florida”) and Citizens for Responsibility and Ethics in Washington (“CREW”) bring this action for declaratory and injunctive relief against Defendants U.S. Immigration and Customs Enforcement

(“ICE”), Tae D. Johnson, in his official capacity as Acting Director of ICE, the National Archives and Records Administration (“NARA”), and David S. Ferriero, in his official capacity as Archivist of the United States (the “Archivist”), under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701, *et seq.*, the Federal Records Act (“FRA”), 44 U.S.C. §§ 3301, *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, alleging as follows:¹

INTRODUCTION

1. This action challenges the failure of ICE and NARA to fulfill their nondiscretionary duties under the FRA to initiate an enforcement action through the Attorney General of the United States to prevent the unlawful destruction of federal records and to recover records unlawfully destroyed by an ICE detention contractor. Plaintiffs further challenge ICE’s FRA guidelines and directives for its detention contractors as arbitrary, capricious, and contrary to law.

2. The federal records at issue are surveillance video files from Glades County Detention Center (“Glades”), a county jail in Moore Haven, Florida, that detains immigrants pursuant to a contract with ICE. Both ICE and NARA recognize that surveillance video from ICE contract detention facilities are federal records governed by the FRA. And NARA regulations make clear that destroying federal records subject to retention obligations—whether arising from federal contracts, agency preservation directives, pending public records requests, or litigation holds—constitutes an “unlawful destruction” of records that carries potential criminal penalties for culpable officials. *See* 36 C.F.R. § 1230.12.

¹ In this Complaint, references to “ICE” encompass both ICE and the Acting Director of ICE, and references to “NARA” encompass both NARA and the Archivist of the United States.

3. Nonetheless, Glades personnel have openly and repeatedly confirmed that the facility does not consider itself bound by the FRA and does not preserve its surveillance video in compliance with federal requirements. The facility instead deletes surveillance video every 90 days, claiming longer retention would be too expensive. This is despite an ICE contractual provision requiring Glades to retain federal records for at least three years, a January 2021 ICE directive instructing all Enforcement and Removal Operations (“ERO”) detention facilities to retain all video surveillance data “until further notice,” and pending public records requests and a records preservation notice from the ACLU of Florida concerning Glades surveillance video from 2020 and 2021.

4. ICE has known of Glades’s defiance of its records preservation duties since at least February 2021. Yet it has taken no remedial action against the facility, in clear violation of its own FRA obligations.

5. The video being illegally deleted may contain key evidence needed to vindicate the rights of immigrants who were detained at Glades—a facility with conditions so inhumane that 17 members of Congress recently urged the Department of Homeland Security (“DHS”) to “expeditiously” terminate its contract with and “close this facility.” Video documenting the conditions at immigration detention facilities such as Glades must be preserved in compliance with federal requirements and, indeed, may be “necessary to protect the legal . . . rights . . . of persons directly affected by” the “activities” of ICE and its contractors. 44 U.S.C. § 3101.

6. This is not an isolated incident, but rather is emblematic of broader deficiencies in ICE’s recordkeeping guidelines and directives for the more than 200 detention facilities the agency oversees nationwide. By failing to adopt and implement legally-compliant FRA policies

for its detention contractors, ICE is in violation of its duties to “safeguard records created, processed, or in the possession of a contractor or a non-Federal entity” and to “ensure that contractors performing Federal government agency functions create and maintain records that document these activities” in compliance with federal law. 36 C.F.R. § 1222.32.

7. On January 24, 2022, Plaintiffs submitted an administrative complaint requesting (1) that ICE and NARA comply with their nondiscretionary duties to initiate an enforcement action through the Attorney General to recover surveillance video unlawfully deleted by Glades and to ensure proper retention of the video going forward; and (2) that ICE issue records management guidance to all ERO detention facilities to ensure the facilities’ compliance with the FRA, its implementing regulations, and NARA directives. Plaintiffs requested a response by March 10, 2022. To date, Defendants have failed to take the requested actions.

8. Accordingly, Plaintiffs respectfully request that the Court (1) order ICE and NARA to immediately initiate an enforcement action through the Attorney General to halt Glades’s FRA violations and seek the recovery of any federal records unlawfully destroyed, and (2) hold unlawful and set aside ICE’s FRA guidelines and directives for its detention contractors as arbitrary, capricious, and contrary to law.

JURISDICTION AND VENUE

9. This action arises under the APA, 5 U.S.C. §§ 701, *et seq.*, the FRA, 44 U.S.C. §§ 3301, *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.* Because this action arises under federal law, this Court has jurisdiction under 28 U.S.C. § 1331.

10. Venue lies in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

11. Plaintiff ACLU of Florida is a nonprofit, nonpartisan organization organized under section 501(c)(3) of the Internal Revenue Code committed to protecting, defending, strengthening, and promoting the constitutional rights and liberties of all people in Florida. As part of its immigrants' rights work, the ACLU of Florida routinely seeks records from ICE contract detention facilities through Freedom of Information Act ("FOIA") requests, state public records requests, and civil discovery. The ACLU of Florida uses these records in various ways, including to seek legal relief on behalf of detained immigrants and to inform the public about the conditions in ICE detention facilities.

12. As detailed further below, on November 18, 2021, the ACLU of Florida submitted a FOIA request to Defendant ICE and a state public records request to the Glades County Sheriff's Office seeking certain video surveillance footage from Glades. *See* Ex. A (Pls.' Admin. Compl.), attached thereto as Exs. 3 & 4. The ACLU of Florida also submitted a preservation hold letter to the Glades County Sheriff's Office on November 16, 2021, requesting that Glades preserve certain evidence, including video surveillance footage. Ex. B. The ACLU of Florida has not received the requested video surveillance footage and, as detailed below, has obtained evidence that Glades deletes its surveillance footage every 90 days. The ACLU of Florida is seeking this video because it could contain important evidence to substantiate complaints about the abusive conditions of confinement for ICE detainees at Glades, including complaints by the ACLU of Florida's clients. Glades's unlawful destruction of these records directly impedes the ACLU of Florida's ability to investigate and pursue relief for individuals

who have suffered harm while in ICE detention at Glades, and impedes the ACLU of Florida's informational rights under FOIA and Florida's public records law.

13. Plaintiff CREW is a nonprofit, nonpartisan organization organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials and agencies and to ensuring integrity in government. CREW seeks to empower citizens to have an influential voice in government decisionmaking through the dissemination of information about public officials and their actions. To further its mission of promoting government transparency and accountability, CREW routinely files FOIA requests with ICE and other agencies; disseminates the documents it receives through FOIA requests on its website, www.citizensforethics.org, and social media; and uses the documents in preparing reports, complaints, litigation, blog posts, and other publications widely disseminated to the public. Given its status as a frequent FOIA requester of ICE records, CREW has a strong operational interest in ICE's compliance with its recordkeeping obligations under the FRA. The unlawful destruction of federal records relevant to CREW's work impedes its ability to fulfill its mission and its informational rights under FOIA.

14. Defendant ICE is an agency within the meaning of the APA, 5 U.S.C. § 551(1), and the FRA, 44 U.S.C. § 2901(14). ICE operates under the supervision and direction of the ICE Director.

15. Defendant Tae D. Johnson is the Acting Director of ICE and is sued in his official capacity only.

16. Defendant NARA is an agency within the meaning of the APA, 5 U.S.C. § 551(1), and the FRA, 44 U.S.C. § 2901(14). NARA operates under the supervision and direction of the Archivist of the United States.

17. Defendant David S. Ferriero is the Archivist of the United States and is sued in his official capacity only.

LEGAL FRAMEWORK

I. The Federal Records Act

18. The FRA is a collection of statutes governing the creation, management, and disposal of federal records. *See* 44 U.S.C. §§ 2101, *et seq.*; §§ 2901, *et seq.*; §§ 3101, *et seq.*; and §§ 3301, *et seq.* It ensures the “[a]ccurate and complete documentation of the policies and transactions of the Federal Government.” 44 U.S.C. § 2902(1).

19. The FRA requires federal agencies to “make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency’s activities.” 44 U.S.C. § 3101.

20. The FRA further requires agencies to “establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.” 44 U.S.C. § 3102. The agency’s records management program “shall provide for,” among other things, “effective controls over the creation and over the maintenance and use of records in the conduct of current business.” *Id.* § 3102(1).

21. NARA regulations require agencies to ensure appropriate preservation of federal records in the possession of contractors and other non-federal entities. “Agency officials responsible for administering contracts must safeguard records created, processed, or in the possession of a contractor or a non-Federal entity by,” among other things, ensuring that (1) “contractors performing Federal government agency functions create and maintain records that document these activities,” and (2) “[a]ll records created for Government use and delivered to, or under the legal control of, the Government [are] . . . managed in accordance with Federal law,” including the FRA and its implementing regulations. 36 C.F.R. §§ 1222.32(a); *see also id.* § 1222.32(b) (“All data created for Government use and delivered to, or falling under the legal control of, the Government are Federal records subject to” the FRA and other statutes and “must be managed and scheduled for disposition only as provided in” NARA regulations).

22. NARA has issued standardized language designed “to be included as an agency-specific term and condition in Federal contracts for a variety of services and products” in order to provide “clear legal obligations describing how the contract employees must handle Federal records.” NARA, *Records Management Language for Contracts*, <https://perma.cc/3Z6W-SLY4>.

23. Federal records cannot be destroyed without NARA’s approval. *See* 44 U.S.C. § 3314; *Pub. Citizen v. Carlin*, 184 F.3d 900, 902 (D.C. Cir. 1999). NARA can do so by approving either a schedule governing the disposition of specified agency records, *see* 44 U.S.C. §§ 3303a(a), or a general records schedule listing types of records held by multiple agencies, *id.* 3303a(d).

24. “To prevent the unlawful destruction or removal of records, the FRA creates a ‘system of administrative enforcement.’” *Am. Oversight v. U.S. Dep’t of Vet. Affs.*, 498 F. Supp.

3d 145, 148 (D.D.C. 2020) (quoting *Armstrong v. Bush*, 924 F.2d 282, 284 (D.C. Cir. 1991)). If an agency head becomes aware of “any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency,” the agency head “shall notify the Archivist” and “with the assistance of the Archivist shall initiate action through the Attorney General for the recovery” of those records. 44 U.S.C. § 3106(a); see 36 C.F.R. § 1230.14 (detailing how agencies “must report promptly any unlawful or accidental removal, defacing, alteration, or destruction of records in the custody of that agency to NARA”).

25. If the agency head “does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action . . . or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.” 44 U.S.C. § 3106(b).

26. The FRA’s enforcement scheme reflects Congress’s judgment that “marshalling the law enforcement authority of the United States [is] a key weapon in assuring record preservation and recovery.” *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 956 (D.C. Cir. 2016).

27. Under NARA regulations, “[u]nlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record (other than court-ordered disposal under § 1226.14(d) of this subchapter); and disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.” 36 C.F.R. § 1230.3(b). “The penalties for the unlawful or accidental removal, defacing, alteration, or

destruction of Federal records or the attempt to do so, include a fine, imprisonment, or both.” *Id.* § 1230.12 (citing 18 U.S.C. §§ 641, 2071).

II. The Administrative Procedure Act

28. The APA provides that a “person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702.

29. The term “agency action” includes “the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13).

30. A court reviewing a claim under 5 U.S.C. § 702 “shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.” 5 U.S.C. § 706. The reviewing court shall “compel agency action unlawfully withheld or unreasonably delayed” and “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Id.* §§ 706(1), (2)(A).

31. In the FRA context, the APA authorizes judicial review of claims alleging violations of an agency’s nondiscretionary duty to initiate an enforcement action through the Attorney General, *Judicial Watch*, 844 F.3d at 954, and claims challenging an agency’s recordkeeping guidelines and directives as arbitrary, capricious, or contrary to law, *Armstrong*, 924 F.2d at 297.

FACTUAL BACKGROUND

I. Glades's Violent and Inhumane Treatment of Immigrants Detained in ICE Custody

32. Glades has detained immigrants pursuant to an intergovernmental service agreement ("IGSA") with ICE since May 2007. *See* ICE IGSA with Glades County, Florida, <https://perma.cc/3SZP-P8Z7>.

33. According to "advocacy, legal, and medical organizations across the country," Glades has "exhibited some of the most egregious cases of the systemic inhumanity that plagues the migrant detention system." Letter from Congresswoman Debbie Wasserman Schultz and Seven Members of Congress to Secretary of Homeland Security Alejandro Mayorkas, July 22, 2021, <https://perma.cc/A336-PVH8>. And conditions there have only worsened since the onset of the COVID-19 pandemic, as documented in numerous civil rights complaints filed by immigrant rights organizations with DHS's Office of Civil Rights and Civil Liberties ("CRCL") and Office of Inspector General ("OIG").

34. For example, a February 2021 complaint described testimony from 25 individuals currently or formerly detained at Glades detailing patterns of medical abuse; lack of soap, hygiene products, sanitation, and personal protective equipment; transfers between facilities without appropriate quarantine or medical screening; failures to follow court orders to release individuals at high risk for severe illness or death; retaliation for peaceful protest and public reporting; use of toxic chemical spray in enclosed spaces; and hospitalizations and death related to COVID-19. Letter from Nine Organizations to OIG and CRCL, Feb. 22, 2021, <https://perma.cc/RS5Q-DLQ9>. Additional CRCL complaints filed since February indicate these conditions have not improved.

35. An August 2021 complaint recounted pervasive abuse and mistreatment of immigrant women detained at Glades, who reported being sprayed with a toxic chemical that poses a risk of infertility and exacerbates the spread of COVID-19, sexual voyeurism by male guards, unannounced entries in violation of Prison Rape Elimination Act abuse prevention policies, sexually abusive behavior by medical staff, and other circumstances “creating a hostile and unsafe environment for women detained” at the facility. Letter from 23 Organizations to OIG and CRCL, Aug. 26, 2021, <https://perma.cc/S9XS-L9AA>.

36. An October 2021 complaint detailed a pattern of racialized violence against Black immigrants detained at Glades, many of whom described being beaten, pepper sprayed, and placed in solitary confinement. Letter from 10 Organizations to OIG and CRCL, Oct. 25, 2021, <https://perma.cc/YY3R-G8GU>. The complaint noted “none of these cases ha[ve] been resolved” to date and, “in some cases, efforts to resolve them have resulted in retaliation for those detained.” *Id.*

37. Citing these ongoing “reports of alleged medical neglect, excessive use of force, and other violations of human dignity,” eight members of Congress called on DHS in July 2021 to terminate ICE’s IGSA with Glades and close the facility. Wasserman Schultz Letter, July 22, 2021.

38. In February 2022, 17 members of Congress wrote “again to request that [DHS] move expeditiously to close” Glades. Letter from Congresswoman Debbie Wasserman Schultz and 16 Members of Congress to Secretary of Homeland Security Alejandro Mayorkas, Feb. 1, 2022, <https://bit.ly/3qGpoho>. The letter noted “[r]eports of abuse of both local residents detained and those transferred in from across the country have unfortunately escalated” since the July

2021 congressional letter. *Id.* Because the “situation is not improving,” the members urged DHS to “immediately terminate its contract with Glades County and close this facility.” *Id.*

39. On March 25, 2022, ICE announced it would limit its use of Glades, citing “persistent and ongoing concerns related to the provision of detainee medical care.” Press Release, *ICE to close Etowah Detention Center*, ICE, Mar. 25, 2022, <https://perma.cc/Z5SL-V57Y>. The agency stated it “will not extend the guaranteed minimum beds provision of” ICE’s agreement with Glades and that “[a]ny future use of the facility will be dependent on fully addressing any conditions that do not meet detention standards.” *Id.*

40. Although ICE is not currently detaining immigrants at Glades, it has not terminated its contract with the facility and has left open the possibility of detaining immigrants there in the future. *See* Syra Ortiz-Blanes and Michael Wilner, *Feds will limit use of Glades migrant detention center in Florida after complaints*, Miami Herald, Mar. 25, 2022, <https://www.miamiherald.com/news/local/immigration/article259766725.html>.

II. Glades’s Deletion of Facility Surveillance Video

41. In the spring of 2021, Glades released documents in response to a public records request—which were later shared with Plaintiffs—revealing that the facility was deleting surveillance video every 90 days despite federal contractual requirements and directives to retain the video for longer periods. *See* Ex. A (Pls.’ Admin. Compl.), attached thereto as Ex. 2 (Feb. 1, 2021 Email Thread with ICE and Glades Officials).

42. The documents include an email thread that begins with a January 29, 2021 memo from ERO’s Acting Assistant Director for Field Operations to all ERO Field Office Directors and Deputy Field Office Directors, with the subject “Reminder: Detention Facility Data

Request.” *Id.* The memo noted NARA had requested ICE “detention facility video surveillance data” as part of an “ICE retention policy working group.” *Id.* It continued: “In furtherance of NARA’s request and the working group’s mission, [the Assistant Director for] Field Operations directs the [Areas of Responsibility] to notify all ERO detention facilities[] that no later than Tuesday, February 2, 2021, they are to retain all video surveillance data, as described in the December 2, 2020 Detention Facility Data Request broadcast[,] until further notice.” *Id.*

43. On February 1, 2021, the Deputy Field Office Director for ERO’s Miami Field Office forwarded ERO’s January 29, 2021 preservation directive to several ICE officials, stating: “Please see Tasking below requiring us to notify all ERO detention facilities, that no later than Tuesday, February 2, 2021, they are to retain all video surveillance data in accordance with the National Archives and Records Administration.” *Id.* The email included excerpts from ICE detention facility contracts mandating facilities’ compliance with federal records management statutes, regulations, and guidelines from NARA, and requiring preservation of all records “related to contract performance . . . for three years.” *Id.*

44. An ICE contracting officer from ERO’s Miami Field Office forwarded the email thread to two Glades officials, stating “Per the Field Office Director and ICE HQ I’m notifying you of the below directive regarding video retention data as per [NARA]. We need to know as soon as possible if your facility will have any issues in meeting this requirement.” *Id.* Glades Detention Operations Commander Chad Schipansky responded to the ICE official as follows:

Just following up with you in reference to our conversation. We currently do not have anything set up that would retain that much information for that long of a period of time. Our capabilities are currently at 90 days retention of video records. In speaking with our IT person that would require an enormous amount of added hard drives at an astronomical cost. Some quick calculations would put the cost estimate at around 500 K.

Id.

45. On November 16, 2021, the ACLU of Florida sent Glades a Notice of Investigation and Request to Preserve Evidence. Ex. B. The letter notified Glades of an “ongoing investigation of complaints” at the facility regarding medical neglect, failure to provide medication, and the unwarranted use of force, and requested that Glades retain certain “video footage” and other records from January 1, 2021 to the present. *Id.*

46. On November 18, 2021, the ACLU of Florida submitted a public records request to the Glades County Sheriff’s Office and a FOIA request to ICE, seeking Glades’s surveillance video footage from specified date ranges in 2020 and 2021. Ex. A (Pls.’ Admin. Compl.), attached thereto as Ex. 3 (Nov. 18, 2021 ACLU of Florida Public Records Request to Glades), and Ex. 4 (Nov. 18, 2021 ACLU of Florida FOIA Request to ICE).

47. On December 3, 2021, counsel from the ACLU of Florida appeared at Glades for a legal visit and had a discussion with Commander Schipansky. During that conversation, Schipansky stated unequivocally that Glades only maintains surveillance video for 90 days. He did not describe any efforts to preserve the video for longer periods in accordance with the contractual requirement to preserve records relating to contract performance for three years, ICE’s January 29, 2021 preservation directive, or the ACLU of Florida’s pending FOIA, public records, and records preservation requests.

48. Despite being aware of Glades’s actions since at least February 2021, ERO’s Miami Field Office did not report the matter to NARA or has otherwise taken no action to stop the facility from prematurely deleting surveillance video.

III. ICE's Deficient FRA Guidelines and Directives for its Detention Contractors

49. The practices at Glades are emblematic of ICE's broader failure to implement federal record retention requirements at the more than 200 detention facilities it oversees across the country.

50. When ICE was created in 2003, "it inherited an immigration detention system that held about 20,000 people per day." ACLU Research Report, *Justice-Free Zones*, at 4, Apr. 30, 2020, <https://perma.cc/7CU8-JA9Y>. That system has since expanded dramatically into a "sprawling network of more than 200 detention centers nationwide," most of which are operated by "private prison corporations and, in some cases, by local jails" such as Glades. *Id.*

51. Because ICE's detention contractors are performing federal functions at a massive scale, there is a strong need for rigorous oversight by ICE to ensure its contractors are acting in accordance with federal law and ICE detention standards. To enable that oversight and to protect the legal rights of immigrants detained in ICE custody, strict adherence to federal recordkeeping requirements is paramount.

52. ICE, however, does not provide uniform records management guidelines or directives to its detention contractors to ensure compliance with the FRA, its implementing regulations, and NARA directives. ICE IGSA's and detention contracts frequently lack NARA's recommended records management language for federal contracts or any comparable language. *See, e.g.*, ICE IGSA with Alamance County, North Carolina, and contract amendments, <https://perma.cc/YY9H-F72Q>; ICE IGSA with Adams County, Mississippi, and contract amendments, <https://perma.cc/5RRL-EN3T>.

53. ICE's deficient FRA guidelines and directives have had real consequences, at

Glades and beyond. For instance, a recent OIG report auditing the use of solitary confinement (or “segregation”) at ICE detention facilities found that dozens of detention case files “were destroyed before NARA’s minimum retention requirements” due to ICE’s deficient policies. DHS OIG, *ICE Needs to Improve its Oversight of Segregation Use in Detention Facilities*, OIG-22-01, at 7, Oct. 13, 2021, <https://perma.cc/GU7P-FR4H>. Since the OIG’s findings were based on a mere “statistical sample” of detention case files, *id.* at 7, 9, 14, they likely reflect only a small fraction of FRA violations occurring at ICE detention facilities.

54. The OIG made clear these were not isolated instances of non-compliance, but reflect broader deficiencies in agency policy. The OIG explained that ICE’s Performance-Based National Detention Standards states that field offices need only maintain detention files for 18 months and “does not reference” applicable NARA retention requirements for longer preservation. *Id.* at 9. This deficiency has, in turn, “caused confusion” over the governing retention requirements for federal records possessed by ICE contractors. *Id.* The OIG stressed that without “clear record retention guidance” from ICE, facilities may continue to “destroy detention files before NARA’s retention period ends” and thus “prevent ICE, as well as external oversight organizations, from investigating” potential abuse in ICE detention. *Id.*

55. ICE concurred with the OIG’s recommendations, but did not commit to any immediate corrective action to provide legally-compliant records management guidance to ERO detention facilities. *Id.* at 17-18.

IV. Plaintiffs’ Administrative Complaint and Subsequent Developments

56. On January 24, 2022, Plaintiffs submitted an administrative complaint to ICE and NARA seeking “prompt remedial action” regarding Glades’s ongoing deletion of surveillance

video. *See* Ex. A. Among other things, Plaintiffs requested that (1) ICE and NARA comply with their nondiscretionary duties to initiate an enforcement action through the Attorney General to recover surveillance video unlawfully deleted by Glades and to ensure proper retention of the video going forward; and (2) ICE issue records management guidance to all ERO detention facilities to ensure the facilities' compliance with the FRA, its implementing regulations, and NARA directives. *Id.* at 8. Plaintiffs requested a response from ICE by March 10, 2022 to confirm that these steps were taken. *Id.*

57. Following Plaintiffs' administrative complaint, Glades personnel twice confirmed that the facility continues to delete surveillance video every 90 days in violation of federal record retention requirements.

58. First, on January 27, 2022, a National Public Radio affiliate in southwest Florida reported that it contacted the Glades County Sheriff's Office seeking a comment on Plaintiffs' administrative complaint. *See* Cary Barbor, *Glades Detention Center accused of destroying video evidence*, WPCU, Jan. 27, 2022, <https://perma.cc/F7P7-XLLV>. When confronted with Plaintiffs' allegations, a Glades officer reportedly stated, "We keep our video to the State of Florida's standards . . . We are not mandated to keep it to federal government standards." *Id.* The officer incorrectly claimed that Glades is not subject to federal retention requirements even though it is an ICE contractor. *Id.*

59. Second, on February 17, 2022, Commander Schipansky from Glades emailed the ACLU of Florida several "questions for clarification" regarding its November 18, 2021 public records request for facility surveillance video. *See* Ex. C. In response to an item of the request

seeking confirmation that Glades is preserving surveillance video footage in compliance with federal requirements, Commander Schipansky wrote that “Video retention is at 90 days.” *Id.*

60. On February 17, 2022, NARA sent ICE a letter regarding Plaintiffs’ administrative complaint and opened an “unauthorized disposition” case for the matter. *See* Ex. D; NARA, *Unauthorized Disposition of Federal Records*, ICE, Case No. UD-2022-0019, <https://perma.cc/8PHN-XB69>. NARA’s letter revealed that in July 2020, “NARA directed ICE to cease destruction of all video surveillance records pending approval of a records disposition schedule for these records.” Ex. D. This request was prompted by a prior unauthorized disposition case, UD-2020-0009. *Id.* In that case, an ICE detention center in New Mexico deleted surveillance footage of the final moments of Roxsana Hernandez, a transgender Honduran woman who died in ICE custody in May 2018. *See* Letter from NARA to ICE re UD-2020-00019, Nov. 22, 2019, <https://perma.cc/XS55-4LZ6>; Hannah Knowles, *ICE detention center may have allowed video to be deleted after detainee’s death, lawyers say*, Wash. Post, Oct. 25, 2019, <https://perma.cc/VAM3-4H3E>.

61. It took ICE *six months* to relay NARA’s July 2020 preservation directive to ERO detention facilities, with the agency finally doing so in January 2021. Ex. D. In September 2021, NARA approved a “records disposition schedule” authorizing the disposal of “non-evidentiary video surveillance records,” pursuant to which certain ICE facility surveillance video may be lawfully destroyed. *Id.* However, according to its February 17, 2022 letter, NARA is “concerned about any non-evidentiary video surveillance records” from ICE detention facilities “that may have been destroyed during the period between July 2020 and September 2021.” *Id.* ACLU of

Florida's public records request to Glades seeks surveillance video footage from this period. *See* Ex. A, attached thereto as Ex. 3.

62. NARA's February 17, 2022 letter requested that ICE provide a report within 30 calendar days addressing Plaintiffs' allegations, including a description of any unlawful destruction of records, safeguards established to prevent further loss of documentation, and details of any actions taken to salvage, retrieve, or reconstruct the records. Ex. D. There is no indication that ICE has issued this report, nor have Defendants provided any report to Plaintiffs.

63. On information and belief, neither ICE nor NARA have initiated an enforcement action through the Attorney General to address Glades's unlawful deletion of surveillance video. Nor has ICE issued records management guidance to ERO detention facilities to ensure the facilities' compliance with the FRA, its implementing regulations, and NARA directives.

PLAINTIFFS' CLAIMS FOR RELIEF

COUNT I

Defendants' Failure to Initiate an FRA Enforcement Action through the Attorney General (Administrative Procedure Act, 5 U.S.C. §§ 706(1), 706(2)(A))

64. Plaintiffs re-allege and incorporate by reference all preceding paragraphs.

65. The FRA imposes on ICE a nondiscretionary duty to initiate an enforcement action through the Attorney General when the agency "knows or has reason to believe" of any unlawful destruction of federal records within the agency's legal ownership, custody, or control. 44 U.S.C. § 3106(a).

66. The FRA imposes on NARA a nondiscretionary duty to (1) request that the Attorney General initiate an enforcement action when a federal agency fails to initiate such an action "within a reasonable period of time after being notified" of any unlawful destruction of

federal records within the agency's legal ownership, custody, or control; and (2) notify Congress of the request. 44 U.S.C. § 3106(b).

67. Glades has deleted, and continues to delete, surveillance video every 90 days in violation of the FRA, NARA regulations and directives, and ICE directives and contractual requirements.

68. The surveillance video Glades has unlawfully deleted, and continues to unlawfully delete, are federal records within ICE's legal ownership, custody, or control.

69. ICE has been aware of Glades's unlawful deletion of surveillance video since at least February 2021.

70. By complaint dated January 24, 2022, Plaintiffs reported Glades's unlawful deletion of surveillance video to ICE and NARA and requested that the agencies promptly initiate an enforcement action through the Attorney General pursuant to their nondiscretionary duties under the FRA.

71. On information and belief, neither ICE nor NARA have initiated an enforcement action through the Attorney General in compliance with their nondiscretionary duties.

72. The failure of ICE and NARA to initiate an enforcement action through the Attorney General is "agency action unlawfully withheld or unreasonably delayed," 5 U.S.C. § 706(1), and is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," *id.* § 706(2)(A).

COUNT II
Defendant ICE's Deficient Recordkeeping Guidelines and Directives for its Detention Contractors
(Administrative Procedure Act, 5 U.S.C. §§ 701(2)(A), 701(1))

73. Plaintiffs re-allege and incorporate by reference all preceding paragraphs.

74. The FRA requires agencies to “establish and maintain an active, continuing program for the economical and efficient management of the records of the agency,” 44 U.S.C. § 3102, which must provide “effective controls over the creation and over the maintenance and use of records in the conduct of current business,” *id.* § 3102(1).

75. NARA regulations require agencies to “safeguard records created, processed, or in the possession of a contractor or a non-Federal entity by,” among other things, ensuring that (1) “contractors performing Federal government agency functions create and maintain records that document these activities,” and (2) “[a]ll records created for Government use and delivered to, or under the legal control of, the Government [are] . . . managed in accordance with Federal law,” including the FRA and its implementing regulations. 36 C.F.R. § 1222.32(a).

76. In evaluating the adequacy of an agency’s recordkeeping guidelines and directives, courts examine “the total ‘guidance’ given to [agency] staff [and contractors] regarding their recordkeeping responsibilities,” including both formal policies and any “informal, supplementary guidance.” *Armstrong*, 924 F.2d at 297.

77. ICE’s recordkeeping guidelines and directives for its detention contractors fail to inform contractors of their records preservation obligations under the FRA, its implementing regulations, and NARA directives.

78. By failing to provide such guidance, ICE is in violation of its nondiscretionary duty to “safeguard records created, processed, or in the possession of a contractor or a non-Federal entity.” 36 C.F.R. § 1222.32(a).

79. The deficiencies in ICE’s recordkeeping guidelines and directives for its detention contractors render the guidelines and directives “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

80. ICE’s failure to adopt and implement FRA-compliant recordkeeping guidelines and directives is “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that surveillance video from Glades from any period in which the facility was detaining immigrants on behalf of ICE are federal records subject to the FRA and its implementing regulations;
2. Declare that Glades’s deletion of surveillance video without NARA authorization constitutes an unlawful destruction of federal records in violation of the FRA and its implementing regulations;
3. Declare that Defendants are in violation of their nondiscretionary duties under the FRA to initiate an enforcement action through the Attorney General to address Glades’s unlawful destruction of federal records;
4. Order Defendants to initiate an enforcement action through the Attorney General to address Glades’s unlawful destruction of federal records;
5. Declare that ICE’s recordkeeping guidelines and directives for its detention contractors are arbitrary, capricious, and contrary to law insofar as they are non-compliant with the FRA and its implementing regulations.

6. Vacate ICE's recordkeeping guidelines and directives for its detention contractors insofar as they are non-compliant with the FRA and its implementing regulations;
7. Declare that ICE has failed to adopt recordkeeping guidelines and directives for its detention contractors that comply with the FRA and its implementing regulations;
8. Order ICE to adopt recordkeeping guidelines and directives for its detention contractors that comply with the FRA and its implementing regulations;
9. Order ICE to preserve surveillance video from Glades while this litigation is pending;
10. Award Plaintiffs their costs and reasonable attorneys' fees in this action; and
11. Grant any other relief the Court deems appropriate.

Date: April 25, 2022

Respectfully submitted,

/s/ Nikhel S. Sus
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**pro hac vice application forthcoming*

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Exhibit A



AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION

Florida

American Civil Liberties Union Foundation of Florida
4343 W. Flagler Street, Suite 400, Miami, FL 33134



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

January 24, 2022

Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street SW
Washington, DC 20536

David S. Ferriero
Archivist of the United States
700 Pennsylvania Avenue NW
Washington, DC 20408

Re: Request for Prompt Remedial Action Regarding Ongoing Deletion of Surveillance Video at ICE Detention Facility

Dear Mr. Johnson and Mr. Ferriero:

The American Civil Liberties Union of Florida (“ACLU of Florida”) and Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully request that you promptly take action to address the ongoing deletion of surveillance video in violation of the Federal Records Act (“FRA”) at Glades County Detention Center (“Glades”), a county jail in Moore Haven, Florida, that detains immigrants under a contract with U.S. Immigration and Customs Enforcement (“ICE”).

Both ICE and the National Archives and Records Administration (“NARA”) recognize that surveillance video from ICE detention facilities such as Glades are federal records governed by the FRA. And under NARA regulations, destroying federal records subject to retention obligations arising from federal contracts, agency preservation directives, or pending public records requests constitutes an “[u]nlawful . . . destruction” of records, which carries potential criminal penalties for culpable officials.¹ Here, we have obtained evidence that Glades is deleting

¹ 36 C.F.R. § 1230.3(b).

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facility surveillance video every 90 days due to alleged resource limitations, despite an ICE contractual requirement to retain the video for three years, a January 2021 ICE directive instructing all Enforcement and Removal Operations (“ERO”) detention facilities “to retain **all** video surveillance data . . . until further notice,” and pending public records requests seeking surveillance video from 2020 and 2021. This evidence includes statements by Glades personnel during a December 2021 discussion with the ACLU of Florida and a February 2021 email to ICE officials obtained through a public records request.² ICE apparently has failed to report these deletions to NARA as required by law.

The video being deleted may contain key evidence needed to vindicate the rights of immigrants detained at Glades—a facility with conditions so inhumane that eight members of Congress recently called on the Biden administration to “expeditiously . . . terminate [ICE’s] contract with Glades County and close this facility.”³ As long as Glades continues to detain immigrants on behalf of the federal government at taxpayers’ expense, video documenting the conditions there must be preserved in accordance with federal requirements and, indeed, may be “necessary to protect the legal . . . rights . . . of persons directly affected by” the “activities” of ICE and its contractors.⁴

This episode is also emblematic of ICE’s broader failure to implement federal record retention requirements at the more than 200 detention facilities it oversees nationwide. A recent report by the Department of Homeland Security (“DHS”) Office of Inspector General (“OIG”) confirmed this is an agencywide problem that may “prevent ICE, as well as external oversight organizations, from investigating” cases of “abuse” at ERO detention facilities.⁵ Yet there is no indication ICE has taken immediate action to address the issue, despite its obligations to “safeguard records created, processed, or in the possession of a contractor or a non-Federal entity” and to “ensure that contractors performing Federal government agency functions create and maintain records that document these activities” in compliance with federal law.⁶

Accordingly, we respectfully request that ICE and, as necessary, NARA take the following actions by March 10, 2022: (1) require Glades to preserve all surveillance video data in compliance with federal law and retention requirements; (2) submit a report to NARA fully describing the circumstances surrounding Glades’s deletion of surveillance video, per the requirements set forth in 36 C.F.R. § 1230.14; (3) submit a request for the Attorney General to initiate an enforcement action against Glades to recover any improperly deleted surveillance video and ensure appropriate retention of surveillance video going forward; (4) commence remedial action regarding any breach of Glades’s contractual obligations to ICE, including but not limited to termination of ICE’s intergovernmental service agreement (“IGSA”) with Glades; (5) issue records management guidance to all ICE ERO detention facilities to ensure the

² See Exhibits 1, 2.

³ Letter from Congresswomen Debbie Wasserman Schultz and Seven Members of Congress to Secretary of Homeland Security Alejandro Mayorkas, July 22, 2021, <https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/60f9b4f9ada0083784a9c028/1626977529997/Glades+County+Detention+Letter+Signed.pdf>

⁴ 44 U.S.C. § 3101.

⁵ DHS OIG, *ICE Needs to Improve its Oversight of Segregation Use in Detention Facilities*, OIG-22-01, at 9, Oct. 13, 2021, <https://www.oig.dhs.gov/sites/default/files/assets/2021-10/OIG-22-01-Oct21.pdf>.

⁶ 36 C.F.R. §§ 1222.32(a), (a)(1).

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facilities' compliance with the FRA, its implementing regulations, and NARA guidance; and (6) issue guidance to all ICE ERO field offices regarding ICE's obligation to report any unauthorized destruction of federal records to NARA pursuant to 36 C.F.R. § 1230.14.

I. Background

A. Glades's Violent and Inhumane Treatment of Detained Immigrants

According to “[a]dvocacy, legal, and medical organizations across the country,” Glades “has exhibited some of the most egregious cases of the systemic inhumanity that plagues the migrant detention system.”⁷ And conditions there have only worsened since the onset of the COVID-19 pandemic, as documented in numerous civil rights complaints filed by immigrant rights organizations with DHS's Office of Civil Rights and Civil Liberties (“CRCL”) and the OIG. For example:

- A February 2021 complaint described testimony from 25 individuals currently or formerly detained at Glades detailing patterns of medical abuse; lack of soap, hygiene products, sanitation, and PPE; transfers between facilities without appropriate quarantine or medical screening; failures to follow court orders to release high-risk individuals; retaliation for peaceful protest and public reporting; use of toxic chemical spray in enclosed spaces; and hospitalizations and death related to COVID-19.⁸ Additional CRCL complaints filed since February indicate these “conditions at Glades have not substantially improved.”⁹
- An August 2021 complaint recounted pervasive abuse and mistreatment of immigrant women detained at Glades, who reported being sprayed with a toxic chemical that poses a risk of infertility and exacerbates the spread of COVID-19, sexual voyeurism by male guards, unannounced entries in violation of Prison Rape Elimination Act abuse prevention policies, sexually abusive behavior by medical staff, and other circumstances “creating a hostile and unsafe environment for women detained” at the facility.¹⁰
- An October 2021 complaint detailed a pattern of racialized violence against Black immigrants detained at Glades, many of whom described being beaten, pepper sprayed, and placed in solitary confinement.¹¹ The complaint noted “none of these cases have been resolved” to date and, “in some cases, efforts to resolve them have resulted in retaliation for those detained.”¹²

⁷ Wasserman Schultz Letter, July 22, 2021.

⁸ Letter from Nine Organizations to OIG and CRCL, Feb. 22, 2021, https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/6030470b9157b8648f066a43/1613776655453/FFI_CRCL_Glades.pdf.

⁹ Wasserman Schultz Letter, July 22, 2021.

¹⁰ Letter from 23 Organizations to OIG and CRCL, Aug. 26, 2021, https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/6127a66552e8b52e7b718445/1629988453454/CRCL_Conditions+for+Women+at+Glades_8.26.2021-final.pdf.

¹¹ Letter from 10 Organizations to OIG and CRCL, Oct. 25, 2021, https://aijustice.org/wp-content/uploads/2021/10/crcl-complaint_glades-county-detention-center_10252021_redacted.pdf.

¹² *Id.*

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Citing these ongoing “reports of alleged medical neglect, excessive use of force, and other violations of human dignity,” eight members of Congress recently called on Secretary Mayorkas to terminate ICE’s IGSA with Glades and close the facility.¹³ At present, Glades’s IGSA remains in effect and ICE continues to detain immigrants there.

B. Glades’s Ongoing Deletion of Surveillance Video

In the spring of 2021, Immigrant Action Alliance obtained documents through a public records request—which it later shared with a group of organizations, including the ACLU of Florida—indicating that Glades was deleting surveillance video every 90 days despite federal contractual requirements and directives to retain the video for longer periods.¹⁴

The documents include an email thread that begins with a January 29, 2021 memo from ERO’s Acting Assistant Director for Field Operations to all ERO Field Office Directors and Deputy Field Office Directors, with the subject “Reminder: Detention Facility Data Request.”¹⁵ The memo noted NARA had requested ICE “detention facility video surveillance data” as part of an “ICE retention policy working group.”¹⁶ It continued: “In furtherance of NARA’s request and the working group’s mission, AD Field Operations directs the AORs to notify all ERO detention facilities[] that no later than Tuesday, February 2, 2021, they are to retain **all** video surveillance data, as described in the December 2, 2020 Detention Facility Data Request broadcast[,] until further notice.”¹⁷

On February 1, 2021, the Deputy Field Office Director for ERO’s Miami Field Office forwarded ERO’s January 29, 2021 preservation directive to several ICE officials, stating: “Please see Tasking below requiring us to notify all ERO detention facilities, that no later than Tuesday, February 2, 2021, they are to retain **all** video surveillance data in accordance with the National Archives and Records Administration.”¹⁸ The email included excerpts from ICE detention facility contracts mandating facilities’ compliance with federal records management statutes, regulations, and guidelines from NARA, and requiring preservation of all records “related to contract performance . . . for three years.”¹⁹

A contracting officer from ERO’s Miami Field Office forwarded the email thread to two Glades officials, stating “Per the Field Office Director and ICE HQ I’m notifying you of the below directive regarding video retention data as per [NARA]. We need to know as soon as possible if your facility will have any issues in meeting this requirement.”²⁰ Glades Detention Operations Commander Chad Schipansky responded as follows:

¹³ Wasserman Schultz Letter, July 22, 2021.

¹⁴ See Exhibit 1, Exhibit 2.

¹⁵ Exhibit 2.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

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Just following up with you in reference to our conversation. We currently do not have anything set up that would retain that much information for that long of a period of time. Our capabilities are currently at 90 days retention of video records. In speaking with our IT person that would require an enormous amount of added hard drives at an astronomical cost. Some quick calculations would put the cost estimate at around 500 K.²¹

On November 18, 2021, the ACLU of Florida submitted a public records request to the Glades County Sheriff's Office and a Freedom of Information Act ("FOIA") request to ICE, seeking Glades's surveillance video footage from specified date ranges in 2020 and 2021.²² To date, neither Glades nor ICE have released the requested video footage or otherwise made determinations on these requests.²³

On December 3, 2021, counsel from the ACLU of Florida appeared at Glades for a legal visit and had a discussion with Commander Schipansky in the lobby while awaiting a meeting with certain detained individuals.²⁴ Commander Schipansky stated unequivocally that Glades only maintains surveillance video for 90 days.²⁵ He did not describe any efforts to preserve the video for longer periods in accordance with the contractual requirement to preserve records relating to contract performance for three years, ICE's January 29, 2021 preservation directive, or the ACLU of Florida's pending public records and FOIA requests.²⁶

Despite being aware of this issue since at least February 2021, there is no indication that ERO's Miami Field Office has reported the matter to NARA or otherwise taken action to stop Glades from prematurely deleting surveillance video.²⁷

C. ICE's Broader Failure to Implement Federal Record Retention Requirements at ERO Detention Facilities

The experience at Glades is emblematic of ICE's broader failure to implement federal record retention requirements at the more than 200 detention facilities it oversees nationwide. A recent OIG report found that "ICE did not ensure detention facilities always complied with [f]ederal records retention requirements" and, consequently, dozens of detention case files that the OIG sought to review during its investigation "were destroyed before NARA's minimum retention requirements."²⁸ Since the OIG's findings were based on a mere "statistical sample" of detention case files, they likely reflect only a small fraction of ICE facilities' recordkeeping failures.²⁹

²¹ *Id.*

²² Exhibits 3, 4.

²³ Exhibit 1.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ For instance, the matter does not appear in NARA's list of "unauthorized disposition" cases for ICE. *See* NARA, Unauthorized Disposition of Federal Records, ICE, <https://www.archives.gov/records-mgmt/resources/unauthorizeddispositionoffederalrecords#Homeland%20Security>.

²⁸ DHS OIG, *ICE Needs to Improve its Oversight of Segregation Use in Detention Facilities*, OIG-22-01, Oct. 13, 2021, <https://www.oig.dhs.gov/sites/default/files/assets/2021-10/OIG-22-01-Oct21.pdf>.

²⁹ *Id.* at 7, 9, 14.

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The OIG stressed that without “clear record retention guidance” from ICE, facilities may continue to “destroy detention files before NARA’s retention period ends” and thus impede internal and external investigations of abuse at ICE facilities.³⁰ ICE concurred with the OIG’s recommendations, but only committed to revising its records management policies and contract requirements “by August 31, 2022.”³¹

II. The Federal Records Act

The FRA requires federal agencies to “make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency’s activities.”³² “To prevent the unlawful destruction or removal of records, the FRA creates a ‘system of administrative enforcement.’”³³ If an agency head becomes aware of “any actual, impending, or threatened unlawful removal, defacing, alteration, corruption, deletion, erasure, or other destruction of records in the custody of the agency,” the agency head “shall notify the Archivist” and “with the assistance of the Archivist shall initiate action through the Attorney General for the recovery” of those records.³⁴ If the agency head “does not initiate an action for such recovery or other redress within a reasonable period of time after being notified of any such unlawful action . . . or is participating in, or believed to be participating in any such unlawful action, the Archivist shall request the Attorney General to initiate such an action, and shall notify the Congress when such a request has been made.”³⁵

Under NARA regulations, “[u]nlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record (other than court-ordered disposal under § 1226.14(d) of this subchapter); and disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.”³⁶ “The penalties for the unlawful or accidental removal, defacing, alteration, or destruction of Federal records or the attempt to do so, include a fine, imprisonment, or both.”³⁷

NARA regulations also require agencies to ensure appropriate preservation of federal records in the possession of contractors and other non-federal entities.³⁸ “Agency officials responsible for administering contracts must safeguard records created, processed, or in the possession of a contractor or a non-Federal entity by,” among other things, ensuring that (1)

³⁰ *Id.* at 9.

³¹ *Id.* at 12, 17-18.

³² 44 U.S.C. § 3101.

³³ *Am. Oversight v. U.S. Dep’t of Vet. Affs.*, 498 F. Supp. 3d 145, 148 (D.D.C. 2020) (quoting *Armstrong v. Bush*, 924 F.2d 282, 284 (D.C. Cir. 1991)).

³⁴ 44 U.S.C. § 3106(a); *see also* 36 C.F.R. § 1230.14 (detailing agencies’ obligations to report the unlawful destruction of federal records to NARA).

³⁵ *Id.* § 3106(b).

³⁶ 36 C.F.R. § 1230.3(b).

³⁷ *Id.* § 1230.12 (citing 18 U.S.C. §§ 641, 2071).

³⁸ *See* 36 C.F.R. § 1222.32 (“How do agencies manage records created or received by contractors?”).

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“contractors performing Federal government agency functions create and maintain records that document these activities,” and (2) “[a]ll records created for Government use and delivered to, or under the legal control of, the Government [are] . . . managed in accordance with Federal law,” including the FRA and its implementing regulations.³⁹ NARA has issued standardized language designed “to be included as an agency-specific term and condition in Federal contracts for a variety of services and products” in order to provide “clear legal obligations describing how the contract employees must handle Federal records.”⁴⁰

III. Request for Prompt Remedial Action

The above facts indicate ICE is presently in violation of its FRA obligations. As noted, emails show that ICE has been aware since at least February 2021—nearly a year ago—that Glades deletes surveillance video every 90 days and allegedly lacks capacity to store the video for longer periods, and Glades personnel confirmed as much to the ACLU of Florida in December 2021. By deleting the video on this timetable, Glades appears to be violating preservation obligations arising from (1) an ICE contractual requirement to retain records “related to contract performance . . . for three years,” (2) ICE’s January 29, 2021 directive “to retain **all** video surveillance data . . . until further notice,” and (3) the ACLU of Florida’s pending public records and FOIA requests.

Destroying federal records subject to such preservation directives and record requests plainly constitutes an “[u]nlawful . . . destruction” of records under NARA regulations.⁴¹ Yet there is no indication that ICE has reported the matter to NARA as required by law, or otherwise pursued remedial action against Glades.⁴² Insofar as ICE has failed to take such action, it is in violation of its mandatory duties under the FRA. And, in the face of ICE’s inaction, the FRA requires the Archivist alone to initiate an enforcement action through the Attorney General.⁴³

Beyond the need for corrective action at Glades, this case underscores the need for prompt guidance to *all* ICE detention facilities concerning federal contractors’ duties to safeguard and preserve federal records in accordance with the FRA, its implementing regulations, and NARA guidance.⁴⁴ Although ICE concurred with the OIG’s recent recommendations to fix deficiencies in the agency’s recordkeeping practices, it only committed to revising its records management policies and detention facility contracts by *August 31, 2022*, several months from now. In the interim, a considerable volume of federal records at ICE detention facilities across the country could be irretrievably destroyed in violation of the FRA.

³⁹ *Id.* §§ 1222.32(a)(1), (a)(2); *see also id.* § 1222.32(b) (“All data created for Government use and delivered to, or falling under the legal control of, the Government are Federal records subject to” the FRA and other statutes).

⁴⁰ NARA, Records Management Language for Contracts, <https://www.archives.gov/records-mgmt/policy/records-mgmt-language>.

⁴¹ 36 C.F.R. § 1230.3(b).

⁴² *See* 44 U.S.C. § 3106; 36 C.F.R. § 1230.14.

⁴³ *See Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 956 (D.C. Cir. 2016) (noting that the FRA “‘requires the agency head and Archivist to take enforcement action’ through the Attorney General whenever they became aware of records being unlawfully removed or destroyed,” and the statute’s “mandatory enforcement provisions ‘leave no discretion [for the agency] to determine which cases to pursue’”) (quoting *Armstrong*, 924 F.2d at 295).

⁴⁴ *See* 36 C.F.R. § 1222.32; NARA, Records Management Language for Contracts, <https://www.archives.gov/records-mgmt/policy/records-mgmt-language>.

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Immediate action is necessary to avoid this outcome, even if in the form of interim guidance pending completion of ICE's agreed-upon corrective action. This case further demonstrates the need to notify all ICE ERO field offices of the agency's obligation to report any unauthorized destruction of federal records to NARA.⁴⁵

Accordingly, we respectfully request that ICE and, as necessary, NARA take the following actions by no later than March 10, 2022:

1. Require Glades to preserve all surveillance video data in compliance with federal law and retention requirements;
2. Submit a report to NARA fully describing the circumstances surrounding Glades's deletion of surveillance video, per the requirements set forth in 36 C.F.R. § 1230.14;
3. Request that the Attorney General initiate an enforcement action against Glades to recover any improperly deleted surveillance video and ensure appropriate retention of surveillance video going forward;
4. Commence remedial action regarding any breach of Glades's contractual obligations to ICE, including but not limited to termination of ICE's IGSA with Glades;
5. Issue records management guidance to all ICE ERO detention facilities to ensure the facilities' compliance with the FRA, its implementing regulations, and NARA guidance; and
6. Issue guidance to all ICE ERO field offices regarding ICE's obligation to report any unauthorized destruction of federal records to NARA pursuant to 36 C.F.R. § 1230.14.

We respectfully request a response to this letter by March 10, 2022, confirming whether you have taken these steps. Because of the ongoing risk that Glades will continue to improperly delete surveillance video, we will be forced to pursue legal action and injunctive relief absent timely assurances that adequate preservation measures have been implemented.⁴⁶

Please direct any communications about this matter to Nikhel Sus at nsus@citizensforethics.org.

⁴⁵ See 36 C.F.R. § 1230.14.

⁴⁶ See *CREW v. DHS*, 527 F. Supp. 2d 101, 112 n.15 (D.D.C. 2007) (courts in FRA actions may "temporarily[] order an agency to preserve records until the Archivist is able to ensure that federal records are not destroyed"); accord *Armstrong v. Executive Office of President*, 810 F. Supp. 335, 349 (D.D.C.1993), *aff'd*, 1 F.3d 1274, 1288 n.12 (D.C. Cir. 1993); *Armstrong v. Bush*, 807 F. Supp. 816, 820-23 (D.D.C. 1992); *Green v. NARA*, 992 F. Supp. 811, 816 (E.D. Va. 1998).

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Sincerely,

Nikhel S. Sus
Senior Counsel
Citizens for Responsibility and Ethics in
Washington

Katherine H. Blankenship
Deputy Legal Director
ACLU of Florida

CC: Alejandro Mayorkas
Secretary, Department of Homeland Security

Daniel Tucker
Chief Records Officer, ICE

Laurence Brewer
Chief Records Officer, NARA

Gary Stern
General Counsel, NARA

Joseph Cuffari
Inspector General, Department of Homeland Security

Attachments:

Exhibit 1 – January 19, 2022 Declaration of Katherine H. Blankenship

Exhibit 2 – February 1, 2021 Email Thread with ICE and Glades Officials

Exhibit 3 – November 18, 2021 ACLU of Florida Public Records Request to Glades

Exhibit 4 – November 18, 2021 ACLU of Florida FOIA Request to ICE

Exhibit 1

DECLARATION OF KATHERINE H. BLANKENSHIP

I, Katherine H. Blankenship, declare as follows:

1. I currently serve as the Deputy Legal Director of the American Civil Liberties Union of Florida (“ACLU of Florida”). I joined the ACLU of Florida as a staff attorney in May 2021 and became Deputy Legal Director in January 2022.

2. I submit this declaration in support of the complaint (the “Complaint”) submitted to U.S. Immigration and Customs Enforcement (“ICE”) and the National Archives and Records Administration (“NARA”) by the ACLU of Florida and Citizens for Responsibility and Ethics in Washington regarding the unlawful deletion of surveillance video at Glades County Detention Center (“Glades”).

3. In the spring of 2021, Immigrant Action Alliance obtained documents from Glades through a public records request indicating that the facility was deleting surveillance video every 90 days, despite federal contractual requirements and directives to preserve the video for longer periods. Immigrant Action Alliance later provided the documents to a group of organizations, including the ACLU of Florida. The documents are attached to the Complaint as **Exhibit 2**.

4. On November 18, 2021, the ACLU of Florida submitted a public records request to the Glades County Sheriff’s Office and a Freedom of Information Act (“FOIA”) request to ICE, seeking Glades’s surveillance video footage from specified date ranges in 2020 and 2021. Those requests are attached to the Complaint as **Exhibits 3 and 4**. To date, neither Glades nor ICE have released the requested video footage or otherwise made determinations on these requests.

5. On December 3, 2021, I appeared at Glades for a legal visit with several detained individuals. During my visit, I spoke with Glades Detention Operations Commander Chad Schipansky in the lobby of Glades County Detention Center. Commander Schipansky stated unequivocally that Glades only maintains surveillance video for 90 days. He did not describe any efforts to preserve the video for longer periods in accordance with any contractual requirements, preservation directives from ICE or NARA, or the ACLU of Florida's pending public records and FOIA requests.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 19, 2022.



Katherine H. Blankenship

Exhibit 2

From: [Chad Schipansky](#)
To: [Cuellar, Camilo](#); [Duane Pottorff](#)
Cc: [Davidson, Jason A](#); [Liana Castano](#)
Subject: RE: Reminder: Detention Facility Data Request [FOD]
Date: Monday, February 1, 2021 1:13:53 PM
Attachments: [image001.png](#)
[image002.png](#)

Camilo,

Just following up with you in reference to our conversation. We currently do not have anything set up that would retain that much information for that long of a period of time. Our capabilities are currently at 90 days retention of video records. In speaking with our IT person that would require and enormous amount of added hard drives at an astronomical cost. Some quick calculations would put the cost estimate at around 500 K.

If there is anything else I can help you with please contact me.

C. Schipansky
Detention Operations Commander
Glades County Sheriff's Office
P.O Box 39
Moore Haven Florida 33471
Office: (863) 946 -1600 X2206
Cell: (863) 885-4717
Fax: (863) 946- 0845

"In pursuing perfection you attain excellence"

From: Cuellar, Camilo <Camilo.Cuellar@ice.dhs.gov>
Sent: Monday, February 1, 2021 11:36 AM
To: Chad Schipansky <cschipansky@gladessheriff.org>; Duane Pottorff <DPottorff@gladessheriff.org>
Cc: Davidson, Jason A <Jason.A.Davidson@ice.dhs.gov>; Liana Castano <Liana.J.Castano@ice.dhs.gov>
Subject: FW: Reminder: Detention Facility Data Request [FOD]
Importance: High

Good Gentlemen,

Per the Field Office Director and ICE HQ I'm notifying you of the below directive regarding video retention data as per National Archives and Records Administration (NARA). We need to know as soon as possible if your facility will have any issues in meeting this requirement.

Very respectfully,

Camilo Cuellar

*Contracting Officer Representative
Miami Field Office
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
786-295-7617*

From: Castano, Liana J <Liana.J.Castano@ice.dhs.gov>
Sent: Monday, February 1, 2021 11:00 AM
To: Davidson, Jason A <Jason.A.Davidson@ice.dhs.gov>; Cuellar, Camilo <Camilo.Cuellar@ice.dhs.gov>
Cc: Sattler, Kevin R <Kevin.R.Sattler@ice.dhs.gov>; Swartz, Paul J <Paul.J.Swartz@ice.dhs.gov>
Subject: FW: Reminder: Detention Facility Data Request [FOD]
Importance: High

Please see below. Send out the notification to AGS and Glades.

Notify DFOD Martin once completed.

B. Records

All records related to contract performance shall be retained in a retrievable format for three years

From: Martin, Jim <Jim.Martin@ice.dhs.gov>
Sent: Monday, February 1, 2021 10:25 AM
To: Castano, Liana J <Liana.J.Castano@ice.dhs.gov>; Lopez-Vega, Juan A <Juan.A.Lopez-Vega@ice.dhs.gov>; Mikelson, Joel <Joel.Mikelson@ice.dhs.gov>; Smith, Cardell C <Cardell.C.Smith@ice.dhs.gov>; Decker, Thomas B <Thomas.B.Decker@ice.dhs.gov>
Cc: Ripa, Garrett J <Garrett.J.Ripa@ice.dhs.gov>; Meade, Michael W <Michael.W.Meade@ice.dhs.gov>
Subject: FW: Reminder: Detention Facility Data Request [FOD]

All,

Please see Tasking below requiring us to notify all ERO detention facilities, that no later than Tuesday, February 2, 2021, they are to retain **all** video surveillance data in accordance with the National Archives and Records Administration.

If any of your facilities have issues in compliance, please let me know as soon as possible.

Please let me know when notification is made (NLT tomorrow 2/2/2021).

C. Records Management

The Service Provider shall comply with all statutes, regulations, and guidelines from the National Archives and Records Administration. Records and information management functions are required and mandated by the following laws and regulations: Chapters 21, 29, 31, and 33 of Title 44, United States Code; 36 CFR 12; 41 CFR 201 subchapters A and B; OMB Circular A-130; and DOJ Order 271 O.8A, *Removal and Maintenance of Documents*. Criminal penalties for unlawfully destroying, damaging, removing, or improperly handling or releasing federal records are addressed in Chapters 37 and 101 of Title 18, United States Code.

CDF PWS language:

B. Records

All records related to contract performance shall be retained in a retrievable format for three years. Except as otherwise expressly provided in this PWS, the Contractor shall, upon completion or termination of the resulting contract, transmit to the Government any records related to performance of the contract, in a format acceptable to the CO and COR.

The Contractor shall comply with all statutes, regulations, and guidelines from the National Archives and Records Administration. Records and information management functions are required and mandated by the following laws and regulations: Chapters 21, 29, 31, and 33 of Title 44, United States Code; 36 CFR 12; 41 CFR 201 subchapters A and B; OMB Circular A-130; and DOJ Order 2710.8A, *Removal and Maintenance of Documents*. Criminal penalties for unlawfully destroying, damaging, removing, or improperly handling or releasing federal records are addressed in Chapters 37 and 101 of Title 18, United States Code.

Jim Martin

Deputy Field Office Director

Miami Field Office

Enforcement and Removal Operations

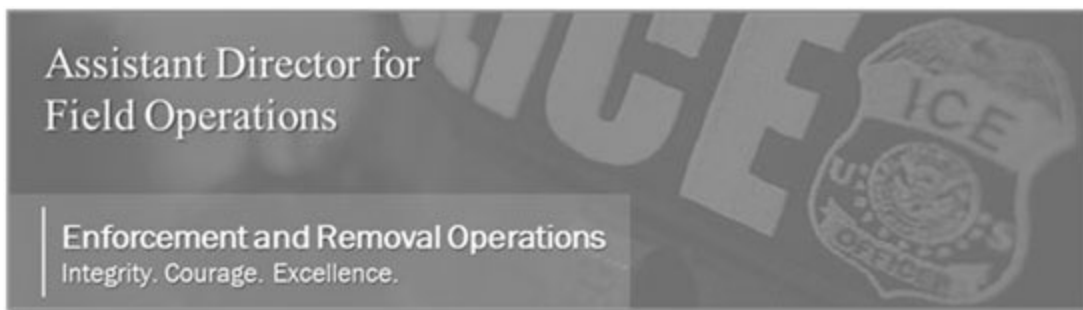
U.S. Immigration and Customs Enforcement

d: 954-236-4900

From: ERO Assistant Directors <EROAssistantDirectors@ice.dhs.gov>

Sent: Friday, January 29, 2021 11:02 AM

Subject: Reminder: Detention Facility Data Request [FOD]



To: Field Office Directors and Deputy Field Office Directors

Subject: Reminder: Detention Facility Data Request

In a broadcast message sent on December 2, 2020 [Detention Facility Data Request](#), AD for Field Operations asked all AORs to provide detention facility video surveillance data in accordance with a request by the National Archives and Records Administration (NARA). The purpose of this request was to provide information to an ICE retention policy working group.

In furtherance of NARA's request and the working group's mission, AD Field Operations directs the AORs to notify all ERO detention facilities, that no later than Tuesday, February 2, 2021, they are to retain **all** video surveillance data, as described in the December 2, 2020 [Detention Facility Data Request](#) broadcast until further notice.

Please contact Deputy Assistant Director Jesse Williams Jess.J.WilliamsII@ice.dhs.gov with any questions.

Robert Guadian

Acting Assistant Director
Field Operations

Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement

This message expires one year from the date it was sent, pursuant to ERO [policy](#).



may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this communication should be furnished to the media, either in written or verbal form.

Exhibit 3

November 18, 2021

(via email at dhardin@gladessheriff.org and
cschipansky@gladessheriff.org and U.S. Postal Service)

Sheriff David Hardin
Commander Chad Schipansky
Detention Operations
Glades County Sheriff's Office
P.O. Box 39
Moore Haven, FL 33471

Re: Public Records Request

To Whom it May Concern,

Pursuant to the Florida Public Records Law, Chapter 119, Florida Statutes, the American Civil Liberties Union of Florida, Inc., (ACLU of FL) hereby requests records concerning the Glades County Detention Center ("Glades"). This request is limited to detainees held at Glades pursuant to the facility's Intergovernmental Services Agreement with U.S. Immigration and Customs Enforcement. Please note that you have an obligation not only to produce but to preserve all requested public records. We welcome the opportunity to answer any questions you might have about this request in order to better facilitate the production of public records.

PUBLIC RECORDS REQUESTED

We request that you produce the following information and copies of the following materials created from January 1, 2021 through the present unless a different date range is specified in the requests below:

- (1) All logs of internal complaints or grievances submitted by detained individuals at Glades.
- (2) All surveillance video footage captured at Glades from the following dates:
 - a. April 9-10, 2020;
 - b. April 28, 2020;
 - c. May 29, 2020;
 - d. June 4, 2020;
 - e. June 11-12, 2020;
 - f. July 30-31, 2021;
 - g. August 1-5, 2021;
 - h. August 11, 2021;
 - i. September 15-17, 2021;
 - j. September 20-22, 2021;
 - k. September 26, 2021;



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Florida

4343 W. Flagler Street
Suite 400
Miami, Florida 33134
www.aclufi.org
(786) 363-1871

Katie Blankenship
Staff Attorney

- l. October 6, 2021;
- m. November 9-12, 2021.

(3) Confirmation that Glades County Sheriff's Office ("GCSO") is preserving all records, including video footage, pursuant to the directives of the National Archives and Records Administration (NARA), and specifically that "[a]ll records related to contract performance shall be retained in a retrievable format for three years." If GCSO is not adhering to this directive, please provide information as to the length of time you are currently preserving all records, including video footage.



- (4) Any and all correspondence, including emails, notes, circulars, and memoranda, and documents, including hard copy and digital documents, in regard to any internal complaints or grievances submitted by detained individuals at Glades, including but not limited to GCSO's own investigation of such complaints or grievances, as well as findings related thereto. Should any of these records pertain to complaints of misconduct of a GCSO employee or contractor, please provide all records concerning such complaints and investigation of same for any investigations that are completed or have ceased to be active.
- (5) All logbooks, policies, and correspondence, including emails, notes, circulars, and memoranda regarding the use of solitary confinement from September 1, 2021 to present.
- (6) All logbooks, policies, and correspondence, including emails, notes, circulars, and memoranda regarding the use of force or restraints from September 1, 2021 to present.
- (7) All logbooks; records; correspondence, including emails, notes, circulars, and memoranda; and documents, including digital and hard copy documents, regarding any suicide attempts or attempts to self-harm by a detainee from September 1, 2021 to present.
- (8) Policies and procedures manuals for Glades medical care and medical staff and/or contractors, including but not limited to all policies concerning the provision of prescription medication, initial medical screenings, and responses to medical requests.

- (9) All agreements, contracts, and amendments thereto for any and all medical staff, contractors, and personnel hired by or contracting with Glades County Sheriff's Office, Glades County Detention Center, or U.S. Immigration and Customs Enforcement.

INFORMATION ABOUT THE REQUEST

Acknowledgement: *As required by law, please acknowledge that you have received this public records request and provide an estimated timeframe in which you believe that you will be able to provide the requested information. See § 119.07(1)(c), Fla. Stat. ("A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith.")*.



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Florida

Costs: The ACLU of Florida is a non-profit tax-exempt organization dedicated to the protection of civil liberties and constitutional rights of all people. The ACLU serves an important public education function, regularly disseminating information of interest to the public through newsletters, news briefings, right-to-know brochures, and other public education materials. The disclosure of the requested information will "promote public awareness and knowledge of governmental actions in order to ensure that governmental officials and agencies remain accountable to the people." *Forsberg v. Housing Authority of the City of Miami Beach*, 455 So.2d 373, 378 (Fla. 1984). **Therefore, we request that you produce the requested records free of charge.** However, if you are unable to do so, the ACLU will reimburse you for the reasonable costs associated with fulfilling this request, if your office has a policy of requiring the payment of a copying charge for such records. The fees and costs you may charge are governed by Section 119.07(4), Fla. Stat. If you challenge our entitlement to a waiver of fees and anticipate that the total costs associated with fulfilling this request will exceed \$100, please contact me promptly with an estimate of the likely cost before any charges are incurred.

Justify Exemptions: If you are unable or refuse to provide part or all of the requested public information, please explain in writing and with particularity the reasons for not providing the requested public information in its entirety, as required by Section 119.07(1)(f), Fla. Stat. If any exemption that you assert applies to only a portion of the records (as opposed to the entire record), please redact the portion you claim is exempt, provide copies of the remainder of the record or records, and detail your reasons for the modification as required by Section 119.07(1)(d-e), Fla. Stat.

Entire Records: We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures and/or exhibits. To the extent that a response to this request would require you to provide multiple copies

of identical material, the request is limited so that only one copy of the identical material is requested.

Record Format: If any of the requested records are maintained in a common-format electronic-medium, please provide these records in such native electronic medium and not in paper form. *See* § 119.083(5), Fla. Stat. (“An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium”). For purposes of this request, common electronic formats include (1) American Standard Code for Information Interchange (“ASCII”), (2) files formatted in one of the Microsoft Office Suite, Corel Suite, OpenOffice Suite, or IBM’s Lotus Suite applications (.doc, .xls, .ppt, .mdb, .wpd, etc.), (3) a text file (.txt), (4) hypertext markup language (.html) or similar web page language, or (5) common media file formats, including mp3, mp4, wma, wav. These common formats are the preferred electronic mediums for production. However, if any of the requested records are only maintained or only can be produced as electronic images, for example a portable document format (.pdf), (n.b., it is possible to print documents into a PDF format either by using Acrobat Professional or a free PDF driver like cutePDF.com), then as an alternative, we request an electronic-image format, preferably PDF. *See* § 119.01(2), Fla. Stat.



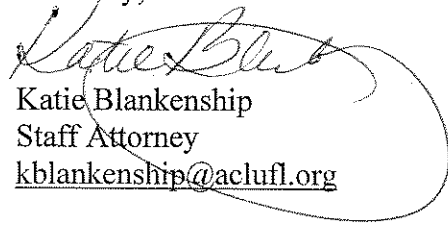
Preservation: Section 119.07(1)(h-i), Fla. Stat., prohibits the destruction of any of the requested records, including any which you may claim are exempt, for a period after the date on which you receive this written request. If we institute a civil action to enforce the Florida Public Records Law with respect to the requested records, you may not dispose of the records except by court order after notice to all affected parties.

Please furnish all responsive records to:

Katie Blankenship
kblankenship@aclufl.org
4343 W. Flagler Street, Suite 400
Miami, FL 33134

If you have any questions regarding the processing of this request, please contact Katie Blankenship at kblankenship@aclufl.org.

Sincerely,



Katie Blankenship
Staff Attorney
kblankenship@aclufl.org

Exhibit 4



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Florida

American Civil Liberties Union Foundation of Florida

4343 W. Flagler Street, Suite 400, Miami, FL 33134

November 18, 2021

(VIA Electronic Mail at ice-foia@dhs.gov and U.S. Postal Service)

U.S. Immigration and Customs Enforcement

Freedom of Information Act Office

500 12th Street, S.W., Stop 5009

Washington, D.C. 20536-5009

**RE: Freedom of Information Act Request Regarding Glades County Detention Center,
Moore Haven, Florida**

Dear ICE FOIA Unit,

This is a request under the Freedom of Information ACT (FOIA), 5 USC § 552 on behalf of the American Civil Liberties Union Foundation of Florida (ACLU of Florida) for information regarding the Glades County Detention Center and the U.S. Immigration and Customs Enforcement's Intergovernmental Services Agreement (IGSA) with Glades County in the operation of the Glades County Detention Center (Glades). We ask that you please direct this request to all appropriate offices and departments within the agency, including but not limited to the Miami Field Office. This request is limited to January 1, 2021 to present unless other date ranges are specified in the requests below.

A. Purpose of Request

The purpose of this request is to obtain information for the public about:

1. The preservation of records at Glades County Detention Center pursuant to the directives of the National Archives and Records Administration (NARA); and
2. The detention conditions and medical and mental health care at Glades.

B. Documents Requested

1. Please confirm that all records, including video footage, at Glades regarding the detention of individuals subject to or falling under the IGSA are currently preserved pursuant to the directives of NARA and specifically that "[a]ll records related to contract performance shall be retained in a retrievable format for three years." If Glades is not adhering to this directive, please provide information as to the length of time records are currently preserved, including video footage.
2. All surveillance video footage captured at Glades on the following dates:
 - a. April 9-10, 2020;

- b. April 28, 2020;
 - c. May 29, 2020;
 - d. June 4, 2020;
 - e. June 11-12, 2020;
 - f. July 30-31, 2021;
 - g. August 1-5, 2021;
 - h. August 11, 2021;
 - i. September 15-17, 2021;
 - j. September 20-22, 2021;
 - k. September 26, 2021;
 - l. October 6, 2021;
 - m. November 9-12, 2021.
3. Copies of all logs of internal complaints or grievances submitted by detained individuals at Glades through the 5663 hotline or any other hotline or means of submitting internal complaints or grievances.
 4. All agreements, contracts, and amendments thereto for any and all medical staff, contractors, and personnel hired by or contracting with Glades County Sheriff's Office, Glades County Detention Center, or U.S. Immigration and Customs Enforcement to provide medical and mental health care and services to detained individuals at Glades from January 1, 2020 to present.

C. The Requesters

The ACLU of Florida is the Florida affiliate of the national American Civil Liberties Union. Its mission is to advance the cause of civil liberties in Florida, with emphasis on the rights of free speech, free press, free assembly, freedom of religion, due process of law and to take all legitimate action in the furtherance of such purposes without political partisanship.

D. Fee Waiver

The requester is entitled to a waiver of all costs because disclosure of the records sought "is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The records sought here will significantly contribute to public understanding of immigration detention at Glades County Detention Center. Moreover, as a nonprofit, nonpartisan organization, the ACLU of Florida is well situated to disseminate the information gained from this request to the general public and routinely engages in such public education through obtaining information about government activity (including through FOIA requests), analyzing that information, and widely publishing and disseminating that information to the press and to the public in a variety of ways. The records disclosed as a result of this FOIA request will be analyzed, published, and disseminated on the www.aclufl.org website, which reaches a wide, diverse audience and is visited by thousands of visitors each month.

E. Expedited Processing

Expedited processing of this request is necessary both because there is a "compelling need" for the information, 5 U.S.C. § 552(a)(6)(E)(i)(I), and because there is "[a]n urgency to inform the public about an actual or alleged federal government activity" and, as described above, the request is "made by a person primarily engaged in disseminating information." 6 C.F.R. § 5.5.

The public has a pressing interest in obtaining information about the conditions at Glades due to a large number of complaints and publications detailing detrimental and abusive conditions at Glades. *See* 6 C.F.R. § 5.5 ("The existence of numerous articles published on a given subject can be helpful to establishing the requirement that there be an 'urgency to inform' the public on the topic."). Information responsive to this

request will shed light on the questions concerning conditions at Glades, which is a matter of significant public concern.

F. Certification

The Requester certifies that the above information is true and correct to the best of the Requester's knowledge. *See* 6 C.F.R. sec 5.5(d)(3).

If this request is denied in whole or in part, we ask that you justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

We look forward to your response to our request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Should our request for expedited processing be denied, we expect to receive your response to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

If any records are available in electronic form, please furnish them in electronic form.

Please furnish all responsive records to:

Katie Blankenship
kblankenship@aclufl.org
4343 W. Flagler Street, Suite 400
Miami, FL 33134

If you have any questions regarding the processing of this request, please contact Katie Blankenship at kblankenship@aclufl.org.

Sincerely,

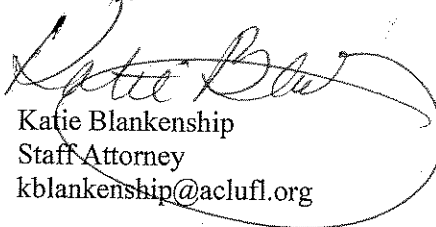

Katie Blankenship
Staff Attorney
kblankenship@aclufl.org

Exhibit B

November 16, 2021

(via email at cschipansky@gladessheriff.org and U.S. Postal Service)

Commander Chad Schipansky
Detention Operations Commander
Glades County Sheriff's Office
P.O Box 39
Moore Haven, Florida 33471

RE: Notice of Investigation and Request to Preserve Evidence



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Florida

4343 W. Flagler Street
Suite 400
Miami, Florida 33134
www.aclufl.org
(786) 363-1871

Katie Blankenship
Staff Attorney

Dear Commander Schipansky:

I write to inform you of an ongoing investigation of complaints regarding medical neglect and failure to provide medication and the unwarranted use of force at Glades County Detention Center ("Glades"). In furtherance of this ongoing investigation, I request that you preserve all correspondence, documents, and records, including but not limited to email and/or all electronically stored information, internal correspondence and memoranda, disciplinary records, and medical records captured from January 1, 2021 to present pertaining to the individuals identified below. In addition, we request you preserve all video footage captured at Glades, including but not limited to on site surveillance cameras and officer body cameras, from January 1, 2021 to present and that such video footage should not be limited only to the individuals listed below.

For any of the below individuals that remain at Glades County Detention Center, I further request that you continue to preserve all correspondence, documents, and things, including but not limited to video footage, email and all electronically stored information, internal correspondence and memoranda, disciplinary records, and medical records of and/or concerning these individuals for the remainder of their detainment at Glades County Detention Center.

This request applies to the following individuals:

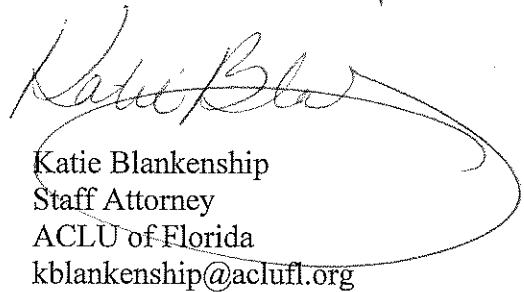
- Luis Diaz Almanzar, A# 058 293 120
- Trymayne Butler; A# 216 683 844
- Francis Yolismar Vargas Gomez; A# 201 490 166
- Nealon Hypolite, A# 034 340 162
- Rohan Jordan; A# 046 244 081
- Petrona Lopez; A# 029 393 387
- George Monsour; A# 046 824 667
- Abraham Sano; A# 098 527 368
- Marcus Saunders; A# 087 437 453
- Nasio Terrence; A# 060 123 124
- Michael Wallace, A# 037 333 176

I write to further request that you preserve all correspondence, documents, and records, including but not limited to video footage, email and/or electronically stored information, internal correspondence and memoranda, disciplinary records, and medical records concerning any and all events at Glades County Detention Center from September 15 - September 17, 2021, including but not limited to the events surrounding any use of force or solitary confinement on or about September 16, 2021.

Please advise if you need any further information to preserve the requested information.



Sincerely,

A handwritten signature in black ink, which appears to read "Katie Blankenship". The signature is written in a cursive style and is enclosed within a large, hand-drawn oval shape.

Katie Blankenship
Staff Attorney
ACLU of Florida
kblankenship@acluffl.org

CC: (via email)

Garrett Ripa, Field Office Director
Joel T. Mikelson, Assistant Field Office Director
Miami Field Office
Immigration and Customs Enforcement
U.S. Department of Homeland Security
865 SW 78th Avenue, Suite 101
Plantation, FL 33324
Garrett.J.Ripa@ice.dhs.gov
Joel.Mikelson@ice.dhs.gov

(via email)
Sheriff David Hardin
Glades County Sheriff's Office
P.O. Box 39
Moore Haven, FL 33471
dhardin@gladessheriff.org

Exhibit C

From: Chad Schipansky <cschipansky@gladessheriff.org>

Sent: Thursday, February 17, 2022 3:32 PM

To: Katie Blankenship <KBlankenship@acluf.org>; David Hardin <dhardin@gladessheriff.org>; John Gadson <jgadson@gladessheriff.org>; Duane Pottorff <DPottorff@gladessheriff.org>; Sheri Manguiera <sheri.manguiera@armorhealthcare.com>

Subject: RE: Public Records Request

In reviewing your Public Records Request I am submitting the following questions for clarification.

- (1) Multiple jurisdictions are housed here, do you want a specific one or all
- (2) Overbroad, There are numerous cameras throughout the facility. Please specify what areas of the facility, or a specific incident.
- (3) With respect to documents we are in compliance and do hold records for 3 years. Video retention is at 90 days. UOF documents, video captured and retained on those UOF is held indefinitely.
- (5) Clarification on the word "Logbooks." Do you want a copy of the electronic log from the SMU, which I have complied and is 1100 + pages, or is this something different than I am thinking.

Questions 7 and 8, I have attached Glades policies, however have forwarded a request to our medical provider for any additional policies. Our IT department has been instructed to gather all email traffic in reference to your other queries and has completed that task. Using the key words I identified from your request as you can see in the screen shot produced over 29000 hits. Please advise how you would like to proceed as it relates to that tasking. Pending that I will forward you the other items requested as I receive them.

Respectfully,

From: Katie Blankenship <KBlankenship@acluf.org>
Sent: Wednesday, February 16, 2022 1:39 PM
To: David Hardin <dhardin@gladessheriff.org>; John Gadson <jgadson@gladessheriff.org>; Chad Schipansky <cschipansky@gladessheriff.org>; Duane Pottorff <DPottorff@gladessheriff.org>
Subject: Public Records Request

Dear all:

I'm writing to follow up on our Public Records Request ("PRR's") of November 18, 2021, attached hereto for reference. We have yet to receive a response to these PRR's, and I write today to request an update as to when we can expect a response and production of responsive documents.

Thank you for your prompt attention to this matter. I look forward to hearing from you.

Best,

Katie Blankenship | Deputy Legal Director

Pronouns: she, her, ella

American Civil Liberties Union of Florida

4343 West Flagler Street, Suite 400, Miami, FL 33134

Office 786.363.1871 | Cell 615.796.9027 | kblankenship@acluf.org | www.acluf.org



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Private and Confidential:

The sender intends to communicate the contents of this transmission only to the person to whom it is addressed. This transmission may contain information that is privileged, confidential or otherwise exempt from disclosure under applicable law. If you have received this transmission in error, please notify us immediately and promptly destroy the original transmission. Please notify the sender of this error by replying to e-mail. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Confidentiality Notice: This communication is for use by the intended recipient and contains information that may be privileged, confidential or copyrighted under applicable law. If you are not the intended recipient, you are hereby formally notified that any use, copying or distribution of this communication, in whole or in part, is strictly prohibited. Please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy. This communication does not constitute consent to the use of sender's contact information for direct marketing purposes or for transfers of data to third parties.

Exhibit D



Office of the Chief
Records Officer for the
U.S. Government

Sent Via Email. No Hard Copy to Follow.

February 17, 2022

Mr. Daniel Tucker
Department of Homeland Security
U.S. Immigration and Customs Enforcement
Office of Asset Management
500 12th St SW
Washington, DC 20536

Dear Mr. Tucker,

The National Archives and Records Administration (NARA) has become aware of an allegation of unauthorized disposition from the American Civil Liberties Union (ACLU) and the Citizens for Responsibility & Ethics in Washington (CREW) of video surveillance records in the Glades County Detention Center (hereafter referred to as “Glades”), a county jail in Moore Haven, Florida, that detains immigrants under a contract with the U.S. Immigration and Customs Enforcement (ICE) agency (attached).

On July 14, 2020, as a result of NARA unauthorized disposition case UD-2020-0009, NARA directed ICE to cease destruction of all video surveillance records pending approval of a records disposition schedule for these records. In January 2021, ICE communicated this direction to all detention facilities. A records disposition schedule was approved for non-evidentiary video surveillance records in September 2021. We are concerned about any non-evidentiary video surveillance records that may have been destroyed during the period between July 2020 and September 2021.

The ACLU/CREW allegation included email documentation of a January 2021 ICE directive instructing all Enforcement and Removal Operations (ERO) detention facilities to “retain all video surveillance data...until further notice” and a response from the Glades facility that states that Glades is deleting surveillance video every 90 days, stating, “our capabilities are currently at 90 days retention of video records.” At that time, Glades was instructed by ICE to keep video surveillance records “until further notice.”

In accordance with 36 CFR 1230.16(b), NARA requests that ICE respond within 30 calendar days to the allegations outlined in the letter NARA received from the ACLU and CREW. As described in 36 CFR 1230.14(a), if ICE determines that records were destroyed without proper disposition authority, the report must include a description of the exact circumstances surrounding the deletion of these records prior to the approval of DAA-0567-2021-0001 on September 23, 2021; a statement of the safeguards established to prevent further loss of documentation; and details of the actions taken to salvage, retrieve, or reconstruct the records.

Additionally, NARA is requesting a review of records management procedures in all ICE detention facilities for documenting the process used to identify and preserve evidentiary video surveillance records as required by the agency-specific records schedule (DAA-0567-2021-0001), approved by NARA September 23, 2021. Please provide NARA with an interim report within 30 days, and as part of this interim report, a targeted timeline for completion of the records management review.

We will keep this case and UD-2020-0009 open until the review is complete and the additional requirements that we requested in our correspondence dated July 13, 2020 are met. These include resolution of the CREW lawsuit that led to the opening of UD-2020-0009 and an implementation plan to ensure that the requirements of the new records retention schedule are incorporated into records management procedures into all facilities.

I appreciate your attention to this important matter. If you have any questions or wish to discuss further, please contact me at laurence.brewer@nara.gov.

Sincerely,



LAURENCE BREWER
Chief Records Officer
for the U.S. Government

Cc. Eric Hysen, Chief Information Officer, Senior Agency Official for Records Management
Michelle Thomas, Department Records Officer, Department of Homeland Security

Enclosures (3)