

National Immigration Litigation Alliance v. ICE

Civil No.: 22-cv-11331

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2022-ICLI-00055	1-14	Partial	(b)(3),(b)(5), (b)(6), (b)(7)(C)	<p><b>Document Title:</b> Email communications with subject titled “INA 241(b) Arriving Alien/Country of Removal Issue”</p> <p><b>Document Description:</b> This document is email communications between the Office of the Principal Legal Advisor (OPLA) attorneys and clients, Immigration Law &amp; Practice Division (ILPD) and Enforcement &amp; Removal Operations Law Division (EROLD) relating to Arriving Non-citizens/Country of Removal Issues. Accompanying attachments include document titled “Model Notice of Alternate Country of Removal” and a “draft Form I-913.”</p> <p><b>Redacted Information per (b)(3):</b> Partial redactions were made to identifying information on page bates stamped 2022-ICLI-00055 06 pursuant to FOIA Exemption (b)(3).</p> <p><b>Reasons for Redactions:</b> FOIA Exemption (b)(3) incorporates certain nondisclosure provisions contained in federal statutes other than the FOIA. The information was withheld in this case pursuant to the Immigration and Nationality Act.</p> <p><b>Redacted Information per (b)(5):</b> Partial redactions were made pursuant to FOIA Exemptions (b)(5) to withhold deliberative information. The email communications are from OPLA attorneys to the client, ERO discussing the legal application of sections of the Immigration Nationality Act in regard to arriving non-citizens and country of removal issues.</p>

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				<p><b>Reasons for Redactions:</b> FOIA Exemption (b)(5) was applied to protect the integrity of the deliberative or decision-making processes within the agency and by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. In this instant case, the client, ERO, sought legal advice from OPLA attorneys with regard to legal implication of various sections of INA to arriving non-citizens. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information and ideas between agency personnel resulting in a chilling effect on intra- and inter-agency communications. They do not reflect final agency actions or policy; instead, they are a reflection of the issues the author has determined to be, in their judgement, worthy of discussion or consideration by colleagues or superiors and release of such would only serve to confuse the public. Releasing these briefing materials would discourage their use in the future and chill candid discussions within the agency thereby adversely impact the quality of internal policy decisions and, consequently, the development of ICE agency positions</p> <p>Finally, the attorney-client privilege is also applicable to the portions of these records. Communications from clients, here ERO to their attorneys, OPLA made for the purpose of securing legal advice or services, here the applicability of various sections of INS to arriving non-citizens and issues with removal countries. The discussions between OPLA attorneys and ERO, the client sought</p>

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				<p>legal recommendations in support of how certain recent Supreme Court decisions would have legal implications on operations of ERO. The privilege also protects communications from attorneys to their clients if the communications “rest on” confidential information obtained from the client. In the governmental context, the client may be the agency and the attorney may be an agency lawyer. This privilege applies to facts that are divulged to the attorney and encompasses the opinion given by the attorney based upon, and thus reflecting, those facts. Attorney-client communications are shielded from disclosure in order to encourage a full and frank discussion between the client and his legal advisor. The attorney-client privilege recognizes that sound legal advice or advocacy depends upon a lawyer being fully informed by his client. If these communications, as covered by the attorney-client privilege, were disclosed, this could result in a chilling effect on interactions and communications between agency employees and their legal counsel.</p> <p><b>Redacted Information per (b)(6), (b)(7)(C):</b> Names, email addresses, and/or telephone numbers of ICE and DHS employees, to include: ICE EROLD chief, deputy chief, and employees; ILPD deputy chiefs and employees; and Office of Regulatory Affairs and Policy (ORAP) employee.</p> <p>Third-party information such as names and Alien Numbers were further withheld pursuant to this FOIA Exemption.</p>

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				<p><b>Reasons for Redactions:</b> FOIA Exemptions (b)(6) and (b)(7)(C) were applied because the disclosure of the names of ICE and DHS personnel could reasonably be expected to constitute an unwarranted invasion of personal privacy by: conceivably subjecting personnel to harassment and annoyance in conducting their official duties and in their private lives; could place them in danger because targets of law enforcement investigations may begrudge personnel for an indefinite time period and seek revenge; and disclosure could minimize the ability to effectively conduct future investigations. The disclosure of this PII serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. Furthermore, the privacy interest in this PII outweighs any minimal public interest that could possibly exist in the disclosure of this information.</p> <p>The disclosure of names and Alien numbers could reasonably be expected to constitute an unwarranted invasion of individuals' personal privacy interests in: not being associated unwarrantedly with alleged criminal activity; being free from harassment, criticism, intimidation, legal consequences, economic reprisals, embarrassment, undue public attention, physical harm, and derogatory inferences and suspicion; and controlling how communications about them are communicated to others. The disclosure of this PII serves no public benefit and would not assist the public in understanding how the agency is carrying out its statutory responsibilities. Furthermore, the privacy interest in this</p>

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				<p>PII outweighs any minimal public interest that could possibly exist in the disclosure of this information.</p> <p>*Please note, ICE no longer claims the (b)(5) exemption to the first paragraph on the top of page bates stamped 2022-ICLI-00055 03 and has re-processed them for release.</p> <p>**Similarly, ICE no longer claims the (b)(5) exemption to the first paragraph on the top of page bates stamped and 2022-ICLI-00055 07 and has re-processed them for release.</p> <p>***Finally, ICE no longer claims the (b)(5) exemption to a pages bates stamped 2022-ICLI-00055 07 to 2022-ICLI-00055 14 and has re-processed them for release.</p>
2022-ICLI-00055	15-56	Partial	(b)(5)	<p><b>Document Title:</b> Credible Fear and Reasonable Fear Proposals for DOJ/DHS Joint Global Asylum Rule</p> <p><b>Document Description:</b> This document is a joint (CBP, DHS/OGC and ICE), draft rule making process for Credible Fear and Reasonable Fear Proposals.</p> <p><b>Redacted Information per (b)(5):</b> Portions of this draft document were withheld under FOIA Exemption (b)(5) to withhold deliberative, pre-decisional information. This draft rule making document contains proposed amendments to sections of INA with regards to credible fear determinations and the standard of proof in asylum related cases. Portions of the non-final draft of this document are withheld because it contains track changes and comment bubbles with suggested language and edits and the</p>

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				<p>reasons therefor, comments, questions, clarifications, and requests for additional information</p> <p><b>Reasons for Redactions:</b> FOIA Exemption (b)(5) was applied to protect the integrity of the deliberative or decision-making processes within the agency and by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. Here, this document contains is a joint collaboration between ICE and CBP, DHS component agencies to recommend amendments to certain sections of INA, such as 8 CFR 208 with regard to credible fear determinations. This document includes redlined edits and comment bubbles which discusses the reviewers of this document’s thought process in making those changes and comment bubbles. Furthermore, the recommendations by the authors/reviewers in this document are for the DHS, “the Department” to take into account the implications of proposing new amendment to the INA and its effects on adjudication of credible fear cases. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information and ideas between agency personnel resulting in a chilling effect on intra- and inter-agency communications. Moreover, the briefing materials were drafted for use as preparatory tools for executives, management, and designated agency representatives. They do not reflect final agency actions or policy; instead, they are a reflection of the issues the author has determined to be, in their judgement, worthy of discussion or consideration by colleagues or superiors</p>

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				<p>and release of such would only serve to confuse the public. Releasing these briefing materials would discourage their use in the future and chill candid discussions within the agency thereby adversely impact the quality of internal policy decisions and, consequently, the development of ICE agency positions.</p> <p>In addition, the information contained in this document were withheld pursuant to attorney-client privilege. The withheld portions were legal recommendations/proposal for ICE and CBP to DHS/OGC here, the client, to amend the credible fear sections of 8 CFR 208. These recommendations to the clients were made by the agency counsel the purpose of securing legal advice or services. The privilege also protects communications from attorneys to their clients if the communications “rest on confidential information obtained from the client.” Here, the redlined edits and comment bubbles from ICE and CBP discuss the effects of certain recommendations on the amending sections of the INA. In the governmental context, the client may be the agency and the attorney may be an agency lawyer. This privilege applies to facts that are divulged to the attorney and encompasses the opinion given by the attorney based upon, and thus reflecting, those facts. Attorney-client communications are shielded from disclosure in order to encourage a full and frank discussion between the client and his legal advisor. The attorney-client privilege recognizes that sound legal advice or advocacy depends upon a lawyer being fully informed by his client. If these communications, as covered by the attorney-client privilege, were disclosed, this could result in a</p>

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				chilling effect on interactions and communications between agency employees and their legal counsel.
2022-ICLI-00055	57-59	Partial	(b)(6), (b)(7)(C)	<p><b>Document Title:</b> Memorandum for Chief Counsel</p> <p><b>Document Description:</b> This document is the title page for a memorandum pertaining to the subject of Policy on Appeals of CAT Grants.</p> <p><b>Redacted Information:</b> Upon further consideration, ICE no longer claims Exemption (b)(6), (b)(7)(C) the name of the acting principal legal advisor on pages bates stamped 2022-ICLI-00055 57 to 2022-ICLI-00055 59 and has begun to re-process them for release.</p>
2022-ICLI-00055	61-206	Partial	(b)(5)	<p><b>Document Title:</b> United Nations Committee Against Torture Convention Against Torture Periodic Report Pursuant to Optional Procedures Submitted by The United State of America</p> <p><b>Document Description:</b> This is a draft document of the Periodic International Covenant on Civil and Political Rights (ICCPR) Report. The draft document contains comment bubbles by the Department of Homeland Security (DHS), Department of Justice (DOJ), Department of Defense (DOD), and other relevant departments and agencies of the United States Government.</p> <p><b>Redacted Information:</b> Portions of this draft were withheld under FOIA Exemption (b)(5) to withhold deliberative information. The draft contains comment bubbles with suggested language and edits</p>

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				<p>and the reasons therefor, comments, questions, clarifications, and requests for additional information.</p> <p><b>Reasons for Redactions:</b> FOIA Exemption (b)(5) was applied to protect the integrity of the deliberative or decision-making processes within the agency and by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information and ideas between agency personnel resulting in a chilling effect on intra- and inter-agency communications. Moreover, the briefing materials were drafted for use as preparatory tools for executives, management, and designated agency representatives. They do not reflect final agency actions or policy; instead, they are a reflection of the issues the author has determined to be, in their judgement, worthy of discussion or consideration by colleagues or superiors and release of such would only serve to confuse the public. Releasing these briefing materials would discourage their use in the future and chill candid discussions within the agency thereby adversely impact the quality of internal policy decisions and, consequently, the development of ICE agency positions.</p> <p>*Please note, ICE no longer claims the (b)(5) exemption to a pages bates stamped 2022-ICLI-00055 61 to 2022-ICLI-00055 64 and has re-processed them for release.</p>