

VIA EMAIL ONLY

December 22, 2022

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Tae Johnson
Acting Director
U.S. Immigration and Customs Enforcement
Washington, D.C. 20536

Ted H. Kim
Director of Refugee, Asylum, and International Operations
U.S. Department of Homeland Security
U.S. Citizenship & Immigration Services
Washington, DC 20259

David Neal
Director
Executive Office for Immigration Review
Falls Church, VA 22041

Re: Urgent Request for Protections for Asylum Seekers Impacted by DHS's Unlawful and Repeated Disclosure of Confidential Information

We are organizations and legal service providers across the country representing or attempting to aid the asylum seekers whose personal identifying information and status as protection seekers under U.S. humanitarian protection laws and/or the UN Convention Against Torture was unlawfully, and in some cases repeatedly, disclosed. Such disclosure has placed these asylum seekers in danger of retaliation and additional persecution by their home governments and other bad actors in their countries of origin. While U.S. Immigration and Customs Enforcement (ICE) was proactive in removing the information upon notification, the U.S. government must take additional steps to ensure the safety of asylum seekers, to avoid refoulement to countries in which they will be persecuted or tortured in connection with the leaked information, and to fully restore these individuals' rights. As noted further below, we are requesting that the Department of Homeland Security (DHS) and Department of Justice (DOJ) take several mitigation measures to meet these objectives.

On November 28, 2022, ICE posted protected individual information of 6,252 asylum seekers in ICE custody on their public facing website.¹ The individualized information included names, countries of origin, dates of birth, A-numbers, and locations of detention in the United States. The disclosure identified all individuals as asylum seekers in expedited removal proceedings. During the breach, the information was able to be downloaded and/or captured by screen shot.

¹<https://www.ice.gov/news/releases/statement-improper-disclosure-noncitizen-personally-identifiable-information>

The disclosure violates the confidentiality protections for individuals in asylum-related proceedings in 8 C.F.R. § 208.6, which is binding on the Department of Homeland Security.²

Additionally, on December 19, 2022, the Los Angeles Times reported that officials at DHS informed Cuban government officials that some individuals in a group of 103 individuals awaiting removal to Cuba had been named in the November 28th leak.³ While 46 of those individuals were actually named in the leak, the Department's second breach of confidential information in less than one month has now placed all 103 Cuban individuals in extreme peril if they are returned to Cuba at any point in the future.

As a result of the first unlawful disclosure of asylum seekers' confidential information, ICE announced an investigation and removed the protected information from its public website.⁴ ICE has not provided any additional details about the investigation, including which office will conduct the investigation, its estimated length, or its objectives. ICE promised to take "all corrective actions necessary" to remedy the breach.⁵

Based on anecdotal reporting, the majority of impacted individuals remain in ICE custody. ICE began providing them notices at the beginning of December 2022 regarding the data breach. The notices - in English, Spanish, and Portuguese only - stated that they were being provided to allow for time to consult with a legal representative or take additional actions.⁶ For individuals with final orders of removal, which appear to be a majority of the impacted asylum seekers, ICE is staying their removal for 30 days. The notices provide an "opt-out" provision for individuals who wish to be removed.

The communication to impacted asylum seekers and explanation of related procedures has not been effective. Legal service providers from around the country are receiving numerous questions about the notice and form, reflecting a high level of confusion among those impacted. In at least one facility, ICE initially distributed only the "opt out" form, without attaching the notice of the breach. We remain concerned about individuals with limited literacy, those who speak languages other than English, Spanish, Portuguese, and individuals with limited capacity.

Additionally, ICE did not initially share the notice or form with any of the Legal Orientation Providers, hampering the abilities of service providers to counter the confusion at many detention centers. While ICE is alerting attorneys of record for those impacted by the breach, notice is by mail and is inevitably a slow process. Meanwhile, legal proceedings for those without removal orders continue to march forward.

The impact of the breach on the safety of affected individuals and their family members cannot be overstated. The following examples illustrate the risk of harm and suffering. For an individual

² <https://www.uscis.gov/sites/default/files/document/fact-sheets/Asylum-ConfidentialityFactSheet.pdf>

³ <https://www.latimes.com/world-nation/story/2022-12-19/cuba-immigrants-deported-asylum-leak>

⁴ <https://www.ice.gov/news/releases/statement-improper-disclosure-noncitizen-personally-identifiable-information>

⁵ Id.

⁶ A sample redacted notice is attached at Appendix A.

in detention facing imminent removal, the mental health consequences of the breach can be significant.

- California-based legal service providers have received numerous calls from *pro se* individuals who are worried about the implications of the data breach for their own safety and the safety of their family members in their countries of origin.⁷
- The family of a detained Latin American asylum seeker recently received text messages from an unknown number, attempting to impersonate the asylum seeker, soliciting money. The family has since blocked the number, but believe they were contacted because the asylum seeker's information was released in this data breach. In addition, the asylum seeker's spouse has been attacked by the very gang the asylum seeker fled. The data breach has made it possible for the gang to confirm the asylum seeker is in the U.S. and his spouse is vulnerable to revenge.
- One individual came to the U.S. seeking protection following a politically charged trial in which their home government issued a grave penalty. They are terrified that their home government may learn that they provided details and testimony as to the government's unjust legal proceedings against them.

Recommendations to DHS and DOJ

The Department of Homeland Security must take the following steps to protect impacted asylum seekers, especially those in detention and without counsel. Importantly, the breach is still under investigation and critical information about the disclosure will likely be forthcoming. Such information is essential to appreciate and estimate the risks of removal to an individual. Any removal before the results of a full and independent investigation are made available is premature and may lead to persecution, death, and torture.

ICE

1. Review all cases of detained impacted individuals for release from custody.
2. Extend the original 30-day stay of removal for all impacted individuals and provide individuals who may have opted out (with or without full consent) with notice that they may take advantage of the additional time.
3. Refrain from removing any impacted individuals until the results of a full investigation of the data breach are available, so that individuals can fully ascertain the implications of the breach on their claims.⁸

⁷ Letter to Los Angeles OPLA from 20 California Organizations entitled "Due Process and Privacy Rights for Detained Individuals Impacted by Immigration and Customs Enforcement (ICE) Data Breach," Dec. 20, 2022, on file and available upon request.

⁸ See e.g., *Amin v. Mukasey*, 535 F.3d 243, 255-56 (4th Cir. 2008).

4. Direct OPLA to submit written notice and, in closed hearings, make an oral statement on the record in any proceedings before the Immigration Court involving an affected individual. The written notice and oral statement should inform the Immigration Judge of the data breach and what specific information was publicly disclosed. The oral notice must be interpreted into the respondent's best language, consistent with EOIR policy.

EOIR

Asylum seekers with pending removal proceedings under section 240 of the Immigration and Nationality Act face unique challenges as a result of the unlawful disclosure of their confidential information. It impacts the narrative of their asylum claims as well as the asylum seeker's level of confidence that future information they share with the U.S. government will not likewise be disclosed publicly or to government officials within the asylum seeker's country of origin. To ensure that immigration judges can accurately and justly adjudicate the claims of asylum seekers impacted by the unlawful disclosure of their confidential information, EOIR should:

5. Instruct immigration judges to take administrative notice of the breach and provide adequate time to respondents affected by the breach to secure and consult with counsel before making a decision on the merits of any application for asylum, withholding of removal, and/or protection under the Convention Against Torture.
6. Exercise its *sua sponte* authority to rescind removal orders and reopen removal proceedings for individuals impacted by the unlawful disclosure of their confidential information.
7. Request that ICE provide a list of impacted individuals to LOP or Know Your Rights providers at each detention facility. At a minimum, notify the providers that there are impacted individuals in their facility and number of people impacted.

USCIS/RAIO

A large number of the asylum seekers impacted by the U.S. government's unlawful disclosure of their confidential information are subject to final orders of removal after an immigration judge affirmed the Asylum Office's negative credible/reasonable fear determination.

The Asylum Office shares the Department's burden of protecting these asylum seekers from removal to a country in which they will likely be persecuted or tortured. Changed circumstances caused by the U.S. government's unlawful disclosure of the asylum seekers' information necessitates the following action by USCIS/RAIO:

8. Affirmatively and unilaterally issue Notices to Appear (NTAs)⁹ to any impacted individual with a negative credible or reasonable fear determination.
9. Alternatively, USCIS/RAIO must provide all asylum seekers with new, *de novo* credible/reasonable fear interviews in light of the significant change in circumstances created by the U.S. government's unlawful disclosure of the asylum seekers' confidential information.
10. Provide instructions on the USCIS.gov website for how family members of those impacted by the data breach, who may now be at risk in-home country, may request humanitarian parole.

Conclusion

ICE's unlawful disclosure of asylum seekers' confidential information has not only violated individuals' right to privacy, particularly as outlined in federal regulations, but has the concerning impact of endangering individuals who seek protection in the United States and undermining the government's ability to accurately and justly provide protection for asylum seekers. Given the severity of the breach and its dire consequences for protection-seekers, DHS must make good on its promise to take all necessary action to ameliorate the consequences of its breach on impacted individuals. For additional information, please contact Jennifer Ibañez Whitlock (jwhitlock@aiala.org).

Sincerely,

African Communities Together

Aldea - The People's Justice Center

American Gateways

American Immigration Lawyers Association

Americans for Immigrant Justice

Asylum Seeker Advocacy Project (ASAP)

California Collaborative for Immigrant Justice

Cameroon Advocacy Network

Capital Area Immigrants' Rights (CAIR) Coalition

⁹ While the undersigned organizations believe that both ICE and USCIS could reasonably exercise their discretionary authority to re-process any noncitizen into INA 240 proceedings, we request that ICE and USCIS coordinate to determine which agency will issue the NTAs.

Catholic Charities, Diocese of San Diego
Center for Gender & Refugee Studies
Church World Service
Columbia Law School Immigrants' Rights Clinic
Communities United for Status & Protection (CUSP)
Florence Immigrant and Refugee Rights Project
Galveston-Houston Immigrant Representation Project (GHIRP)
Haitian Bridge Alliance
Immigrant Defenders Law Center
Innovation Law Lab
National Immigrant Justice Center
National Immigration Law Center
National Immigration Litigation Alliance
National Immigration Project (NIPNLG)
Northwest Immigrant Rights Project
Refugee and Immigrant Center for Education and Legal Services (RAICES)
Rocky Mountain Immigrant Advocacy Network
Seton Hall University School of Law Immigrants' Rights/International Human Rights Clinic
Southern Poverty Law Center
The Advocates for Human Rights
UndocuBlack Network

Cc: Katherine Culliton-Gonzalez
Officer for Civil Rights and Civil Liberties
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
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Kerry Doyle
Principal Legal Advisor
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Appendix A


STEWART DETENTION CENTER

We are writing to inform you of an unintentional information disclosure that occurred on November 28, 2022. On that date, a document was mistakenly posted on Immigration and Customs Enforcement's (ICE) public-facing website, ICE.gov, that included limited information on some individuals in ICE custody. Specifically, the document contained names, A-numbers, dates of birth, countries of citizenship, detention facility names, and other immigration information, including credible or reasonable fear decisions associated with each case. Unfortunately, ICE's review has determined that your information was included in the document.

After learning of this incident on the same day it occurred, ICE immediately removed the document from its website and began working to secure the information and notify everyone who was impacted. In addition to letting you know what happened, ICE is taking proactive steps to protect your privacy, including online monitoring for potential re-posting of the document and identifying parties who may have accessed it while it was briefly online. Once this review is complete, ICE will request confirmation from anyone who downloaded the document that they have destroyed it and will not further share it.

Additionally, because the disclosure violated confidentiality obligations under 8 C.F.R. § 208.6 by revealing that you sought protection in the United States, if you are currently subject to a final order of removal, ICE will delay your removal for 30 days. This delay is intended to allow you to determine what actions you wish to take, including consulting with an attorney.

While ICE recognizes that some individuals going through the immigration process already have legal representation, ICE is including a list of free or low-cost legal representatives along with this letter to help those who do not. If you already have an attorney on file with ICE, we will send them a copy of this letter.

ICE deeply regrets that this error occurred and will continue to work to protect the privacy of everyone who was impacted, as well as to prevent similar incidents from happening in the future.

If you have further questions or concerns about this incident, please contact your assigned ICE Enforcement Removal Operations case officer for assistance.



STEWART DETENTION CENTER

Le escribimos para informarle de una divulgación involuntaria de información que ocurrió el 28 de noviembre de 2022. En esa fecha, se publicó por error un documento en el sitio web público del Servicio de Inmigración y Control de Aduanas (ICE), ICE.gov, que incluía información limitada sobre algunas personas bajo custodia del ICE. En concreto, el documento contenía nombres, números A de registro de extranjero, fechas de nacimiento, países de ciudadanía, nombres de centros de detención y otras informaciones migratorias, entre ellas las decisiones relacionadas al temor fundado o razonable de cada caso. Lamentablemente, la investigación del ICE ha determinado que su información estaba incluida en el documento.

Al enterarse de este incidente el mismo día en que ocurrió, el ICE retiró inmediatamente el documento de su sitio web y comenzó a esforzarse por resguardar la información y notificar a todos los afectados. Además de informarle de lo sucedido, el ICE está tomando medidas proactivas para proteger su privacidad, incluyendo la supervisión en línea para la posible republicación del documento y la identificación de las partes que pueden haber accedido a él mientras se encontraba brevemente en línea. Una vez que se haya completado esta investigación, el ICE solicitará a cualquiera que haya descargado el documento la confirmación de que lo ha desechado y que no lo volverá a compartir.

Además, debido a que la divulgación infringió las disposiciones de confidencialidad según el apartado 8 del Código de Reglamentos Federales, artículo 208.6, al revelar que usted buscó protección en los Estados Unidos; si actualmente está sujeto a una orden final de expulsión, el ICE aplazará su expulsión por 30 días. Esta demora está destinada a permitirle determinar las medidas que desea tomar, entre ellas consultar con un abogado.

Aunque el ICE reconoce que algunas personas que están pasando por el proceso de inmigración ya tienen representación legal, el ICE incluye una lista de representantes legales gratuitos o de bajo costo junto con esta carta para ayudar a los que no la tienen. Si usted ya tiene un abogado que conste en los expedientes del ICE, le enviaremos una copia de esta carta.

El ICE lamenta profundamente que se haya producido este error y seguirá trabajando para proteger la privacidad de todas las personas afectadas, así como para evitar que se produzcan incidentes similares en el futuro.

Si tiene más preguntas o inquietudes sobre este incidente, por favor, póngase en contacto con su oficial de casos de Operaciones de Expulsión del ICE para obtener ayuda.

* Non-Profit Organization
** Referral Service
*** Private Attorney

List of Pro Bono Legal Service Providers

<http://www.justice.gov/eoir/list-pro-bono-legal-service-providers>
Stewart Immigration Court

Updated October 2022

Lumpkin, Georgia	
<p>Southern Poverty Law Center, Southeast Immigration Freedom Initiative*</p> <p>SIFI - Southern Poverty Law Center P.O. Box 158 Lumpkin, GA 31815 Tel: (229) 838-6500 (collect calls accepted) Fax: (706) 243-4932 sifi@splcenter.org www.splcenter.org</p> <p>For Folkston ICE Processing Center services: SIFI - Southern Poverty Law Center P.O. Box 368 Folkston, GA 31537 Tel: (229) 838-6500 (collect calls accepted) Fax: (912) 335-4997 sifi@splcenter.org www.splcenter.org</p> <ul style="list-style-type: none">• No office visits.• No hacemos visitas de oficina.	<p>American Bar Association Detention and LOP Information Line**</p> <p>immcenter@americanbar.org https://www.americanbar.org/groups/public_interest/immigration/</p> <ul style="list-style-type: none">• Pro se case assistance for detained respondents only• Dial 2150# from the detention center• To contact on behalf of a detained individual, email immcenter@americanbar.org.• The American Bar Association Commission on Immigration Detention and LOP Information Line is not available to provide free legal services for noncitizens scheduled for Credible Fear Interviews and/or Asylum Merits Interviews

Individuals must contact the providers on this list directly to request legal services. Although the providers on this list offer pro bono (free) legal representation; they may not have the capacity at this time to accept new cases.

ALLA Doc. No. 22122789 (Posted 12/27/22)
Disclaimer: As required by 8 C.F.R. § 1003.61, the Executive Office for Immigration Review (EOIR), Office of the Director, maintains a list of organizations and attorneys qualified under its regulations who provide pro bono or free legal services. The information posted on the list is provided to EOIR by the Providers. EOIR does not endorse any of these organizations or attorneys. Additionally, EOIR does not participate in, nor is it responsible for, the representation decisions or performance of the organizations or attorneys.

**Notice for Detained Noncitizens Impacted by the Accidental
Information Disclosure on November 28, 2022: Form to opt Out of
Delayed Removal**

Overview: U.S. Immigration and Customs Enforcement (ICE) has decided to delay removal from the United States for 30 days for noncitizens with a final order of removal who were impacted by the inadvertent information disclosure on November 28, 2022. This delay is intended to allow such noncitizens time to consult with a legal representative and/or take additional actions related to their case in light of the information disclosure.

Those who are currently detained in ICE custody will not be removed from the country during this time period. Because you have been identified as an individual whose information was inadvertently disclosed, absent action on your part, your removal will not take place for at least 30 days. However, should you NOT wish to have your removal delayed, you may ask that ICE proceed with arranging your removal by signing the form below. You may take time to review your options and may sign this letter waiving a delay in removal at any time in the next 30 days.

Instructions: The letter explaining the inadvertent disclosure must be given to the noncitizen at the same time as this form. The information on this page must be read to the noncitizen in a language that he/she understands.

Name / Nombre: _____
A #: _____
Country of Citizenship / Pais de Ciudadania: _____
Detention Facility / El Centro de Detención: _____

____ I do NOT want my removal to be delayed for 30 days, and I am requesting that ICE proceed with my removal as scheduled.

Signature:

Date:

Certificate of Service

I hereby certify that this form was served by me at _____
(Location)
on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)
notice were read to him or her in the _____ language.
(Language)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)