



October 31, 2017

**VIA ELECTRONIC MAIL & ONLINE PORTAL**

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Sabrina Burroughs  
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U. S. Customs & Border Protection  
1300 Pennsylvania Avenue NW, Room 3.3D  
Washington, DC 20229  
Online Request at FOIAonline

**Re: Expedited Freedom of Information Act Request**

Dear Mr. Kaplan and Ms. Burroughs:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and your agency's implementing regulations, 6 C.F.R. Part 5 and 19 C.F.R. § 103.2, American Oversight makes the following request for records.

Building a "wall" along the entire U.S.-Mexico border was a central promise of President Donald Trump's 2016 campaign.<sup>1</sup> On February 8, 2017, Mr. Trump told law enforcement officials that

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<sup>1</sup> Donald J. Trump (@realdonaldtrump), TWITTER (May 20, 2015, 4:22 PM), <https://twitter.com/realDonaldTrump/status/601120861882621955>; Donald J. Trump (@realdonaldtrump), TWITTER (Apr. 1, 2016, 5:49 PM), <https://twitter.com/realDonaldTrump/status/716019755682045952>; see also Amanda Holpuch, *Trump Re-ups Controversial Muslim Ban and Mexico Wall in First Campaign Ad*, THE GUARDIAN, Jan. 4, 2016, <https://www.theguardian.com/us-news/2016/jan/04/donald-trump-great-again-first-campaign-ad-isis-mexico-wall-muslim-ban>; Seema Mehta & Noah Bierman, *Campaign 2016 Updates: Donald Trump Continues Vow to Build Wall and Have Mexico Pay for It*, L.A. TIMES, Aug. 31, 2016, <http://www.latimes.com/nation/politics/trailguide/la-na-trailguide-updates-08312016-htmstory.html>; Donald J. Trump (@realdonaldtrump), TWITTER (Oct. 8, 2014, 5:26 PM), <https://twitter.com/realDonaldTrump/status/519962130859429888>; Bob Woodward & Robert Costa, *Trump Reveals How He Would Force Mexico to Pay for Border Wall*, WASH. POST, Apr. 5, 2016, [https://www.washingtonpost.com/politics/trump-would-look-to-block-money-transfers-to-force-mexico-to-fund-border-wall/2016/04/05/c0196314-fa7c-11e5-80e4-c381214de1a3\\_story.html?utm\\_term=.7d6d9e7aac34](https://www.washingtonpost.com/politics/trump-would-look-to-block-money-transfers-to-force-mexico-to-fund-border-wall/2016/04/05/c0196314-fa7c-11e5-80e4-c381214de1a3_story.html?utm_term=.7d6d9e7aac34).



design of the wall was already underway.<sup>2</sup> In prepared remarks for his joint address to Congress on February 28, Mr. Trump indicated that a schedule had been established for starting and completing the wall, and stated, “We will soon begin the construction of a great wall along our southern border. It will be started ahead of schedule and, when finished, it will be a very effective weapon against drugs and crime.”<sup>3</sup> Despite repeatedly pledging that he would make Mexico pay for the wall, it appears American taxpayers will be footing the bill for the construction.<sup>4</sup> Moreover, Mr. Trump has evidenced a lack of familiarity with U.S. procurement laws as well as a propensity for inside deals with his friends in the construction industry.<sup>5</sup> Mr. Trump has insisted that he will be personally involved in the wall’s “design and negotiations” to ensure it comes in under budget.<sup>6</sup>

More than nine months into this administration, there are still a number of unknowns regarding Mr. Trump’s wall—including its cost, which has been estimated anywhere from \$8 billion to \$22 billion to \$70 billion.<sup>7</sup> American Oversight submits this FOIA to keep the public informed about the project’s progress.

### Requested Records

American Oversight requests that the Department of Homeland Security (DHS) and its component U.S. Customs & Border Protection (CBP) produce the following within twenty business days and seeks expedited review of this request for the reasons identified below:

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<sup>2</sup> Julia Edwards Ainsley, *Exclusive - Trump Border ‘Wall’ to Cost \$21.6 Billion, Take 3.5 Years to Build: Internal Report*, REUTERS (Feb. 9, 2017, 10:05 PM), <http://www.reuters.com/article/us-usa-trump-immigration-wall-exclusive-idUSKBN15O2ZN>.

<sup>3</sup> *Donald Trump’s Congress Speech*, CNN.COM (Mar. 1, 2017, 12:54 AM), <http://www.cnn.com/2017/02/28/politics/donald-trump-speech-transcript-full-text/>.

<sup>4</sup> Stuart Anderson, *Now Americans, Not Mexico, Would Pay for the Wall?*, FORBES.COM (Jan. 26, 2017, 9:04 PM), <https://www.forbes.com/sites/stuartanderson/2017/01/26/now-americans-not-mexico-would-pay-for-the-wall/#177fa9126c48>; Scott Horsley, *Trump’s Suggested Import Tax Would Mean Americans Pay for That Wall*, NPR, Jan. 26, 2017, <http://www.npr.org/2017/01/26/511861462/trumps-suggested-import-tax-would-mean-americans-pay-for-that-wall>.

<sup>5</sup> Blake Schmidt & Jonathan Levin, *Miami Billionaire Perez Rejects His Friend Trump’s Wall Overture*, BLOOMBERG, Jan. 31, 2017, <https://www.bloomberg.com/news/articles/2017-01-31/miami-billionaire-perez-rejects-his-friend-trump-s-wall-overture> (“[Jorge] Perez, a billionaire who has built Trump-branded towers in South Florida, said the president e-mailed him after the inauguration with plans for the wall and asked if he’d be interested in working on it.”).

<sup>6</sup> Donald J. Trump (@realdonaldtrump), TWITTER (Feb. 11, 2017, 9:18 AM), <https://twitter.com/realdonaldtrump/status/830405706255912960>; Donald J. Trump (@realdonaldtrump), TWITTER (Feb. 11, 2017, 9:24 AM), <https://twitter.com/realdonaldtrump/status/830407172747988992>.

<sup>7</sup> Jeremy Diamond, *Trump: Border Wall Will Cost \$8 Billion*, CNN (Feb. 9, 2017, 4:27 PM), <http://www.cnn.com/2016/02/09/politics/donald-trump-border-wall-cost-8-billion/>; Ainsley, *supra* note 2; Ron Nixon, *Border Wall Cost 3 Times Estimates, Senate Democrats’ Report Says*, N.Y. TIMES, Apr. 18, 2017, <https://www.nytimes.com/2017/04/18/us/politics/senate-democrats-border-wall-cost-trump.html>.

1. Records sufficient to identify total costs spent on building, constructing, or repairing the wall, fence, or other physical barrier along the U.S.-Mexico border for each of the fiscal years from FY2008 through FY2017.

For DHS, the search for responsive records should include anywhere the responsive records could be located, including the Directorate for Management.

For CBP, the search for responsive records should include anywhere the responsive records could be located, including; the Office of the Commissioner; the Office of the Deputy Commissioner; the Office of the Executive Assistant Commissioner for Executive Enterprises; the Office of Acquisition; the Office of Facilities and Asset Management; the Office of Finance; and the U.S. Border Patrol, including the Office of the Chief.

Please provide all responsive records from January 20, 2017, through the date of the search.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If DHS uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.<sup>8</sup> **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**<sup>9</sup>

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<sup>8</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

<sup>9</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered DHS’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**<sup>10</sup> Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but DHS’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that DHS use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>11</sup> If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>12</sup> Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”<sup>13</sup> Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”<sup>14</sup>

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[personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

<sup>10</sup> Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

<sup>11</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

<sup>12</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>13</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis in original).

<sup>14</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>15</sup> Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

**You should institute a preservation hold on information responsive to this request.** American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, DHS is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and DHS can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15<sup>th</sup> Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way.<sup>16</sup> Moreover, the request is primarily and fundamentally for non-commercial purposes.<sup>17</sup>

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.”<sup>18</sup> The requested records will help American Oversight and the general public understand the progress of this mammoth government project. An infrastructure project of this size—and the contracting procedure underlying such a project—are clear government activities. As noted above, Mr. Trump has previously evidenced a lack of familiarity with U.S. procurement laws as well as a propensity for inside deals with his friends in the

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<sup>15</sup> *Mead Data Central*, 566 F.2d at 261.

<sup>16</sup> 6 C.F.R. § 5.11(k)(1)(i).

<sup>17</sup> 6 C.F.R. § 5.11(k)(1)(ii).

<sup>18</sup> 6 C.F.R. § 5.11(k)(1)(i), (2)(i)-(iv).

construction industry.<sup>19</sup> He has also insisted that he will be personally involved in the wall’s “design and negotiations” to ensure it comes in under budget.<sup>20</sup> With his promise to make Mexico pay for the wall seemingly failing, Mr. Trump offhandedly mentioned that perhaps solar panels could be installed to pay for the wall.<sup>21</sup> These statements make it all the more important for the public to understand whether and to what extent the White House is playing a role in procurement decisions by career employees at DHS and CBP.

This request is primarily and fundamentally for non-commercial purposes.<sup>22</sup> As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight’s financial interest. American Oversight’s mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on our public website and promote their availability on social media platforms, such as Facebook and Twitter.<sup>23</sup> American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney, American Oversight promptly posted the records to its website<sup>24</sup> and published an analysis of what the records reflected about DOJ’s process for ethics waivers.<sup>25</sup> Additionally, this particular FOIA request is part of a public project conducted by American Oversight called “Audit the Wall,” where the organization is gathering and analyzing information and commenting on public releases of information related to the administration’s proposed construction of a barrier along the U.S.-Mexico border.<sup>26</sup>

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<sup>19</sup> Blake Schmidt & Jonathan Levin, *Miami Billionaire Perez Rejects His Friend Trump’s Wall Overture*, BLOOMBERG, Jan. 31, 2017, <https://www.bloomberg.com/news/articles/2017-01-31/miami-billionaire-perez-rejects-his-friend-trump-s-wall-overture> (“[Jorge] Perez, a billionaire who has built Trump-branded towers in South Florida, said the president e-mailed him after the inauguration with plans for the wall and asked if he’d be interested in working on it.”).

<sup>20</sup> Donald J. Trump (@realdonaldtrump), TWITTER (Feb. 11, 2017, 9:18 AM), <https://twitter.com/realdonaldtrump/status/830405706255912960>; Donald J. Trump (@realdonaldtrump), TWITTER (Feb. 11, 2017, 9:24 AM), <https://twitter.com/realdonaldtrump/status/830407172747988992>.

<sup>21</sup> *Donald Trump Talks Up Solar Panel Plan for Mexico Wall*, BBC, June 22, 2017, <http://www.bbc.com/news/world-us-canada-40363390>.

<sup>22</sup> 6 C.F.R. § 5.11(k)(1)(ii), (3)(i)-(ii).

<sup>23</sup> American Oversight currently has approximately 11,600 page likes on Facebook, and 35,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Sept. 29, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 29, 2017).

<sup>24</sup> *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

<sup>25</sup> *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

<sup>26</sup> *Audit the Wall*, AMERICAN OVERSIGHT, [www.auditthewall.org](http://www.auditthewall.org).



Accordingly, American Oversight qualifies for a fee waiver.

### **Application for Expedited Processing**

Pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e)(1)(ii), (iv), American Oversight requests that DHS expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that there is widespread and exceptional media interest and there exist possible questions about the government's integrity that affect public confidence. News stories about the wall are published regularly,<sup>27</sup> including numerous stories about the progress of contracting efforts and CBP's recent completion of the wall

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<sup>27</sup> See, e.g., Rachel Bade, *House Republicans Propose \$10 Billion for Trump's Border Wall*, POLITICO (Sept. 27, 2017, 3:28 PM), <http://www.politico.com/story/2017/09/27/congress-funding-trump-border-wall-243221>; Sophie Tatum, *'You Don't Need It All the Way' and Other Things Trump Said About 'The Wall' on Friday*, CNN (Sept. 23, 2017, 10:40 AM), <http://www.cnn.com/2017/09/22/politics/five-things-donald-trump-wall/index.html>; Melissa del Bosque, *Trump Administration Preparing Texas Wildlife Refuge for First Border Wall Segment*, TEXAS OBSERVER (July 14, 2017, 5:46 PM), <http://www.texasobserver.org/trump-border-wall-texas-wildlife-refuge-breaking/>; Sofia Lotto Persio, *Border Wall Construction Will Cost \$1.6 Billion for Work to Start Next Year*, NEWSWEEK (June 14, 2017, 1:26 PM), <http://www.newsweek.com/mexico-border-wall-construction-needs-start-less-year-625656>; Tal Kopan, *Trump Suggests Border Wall with Solar Panels*, CNN POLITICS (June 6, 2017, 7:00 PM), <http://www.cnn.com/2017/06/06/politics/trump-solar-border-wall/index.html>; Angela Kocherga, *Along Texas-Mexico Border, Trump's Wall Faces Opposition*, GARDEN CITY TELEGRAM, May 21, 2017, [http://www.gctelegram.com/news/nation\\_world/along-texas-mexico-border-trump-s-wall-faces-opposition/article\\_428b57d4-a509-5d12-ae28-0f8e85a281ef.html](http://www.gctelegram.com/news/nation_world/along-texas-mexico-border-trump-s-wall-faces-opposition/article_428b57d4-a509-5d12-ae28-0f8e85a281ef.html); Ron Nixon, *Trump's Wall Faces a Barrier in Texas: Landowner Lawsuits*, N.Y. TIMES, May 7, 2017, <https://www.nytimes.com/2017/05/07/us/politics/trump-wall-faces-barrier-in-texas.html>; Fox & Friends, *Bids to Build President Trump's Border Wall Due Today*, FOXNEWS INSIDER (Apr. 4, 2017, 7:59 AM), <http://insider.foxnews.com/2017/04/04/mexico-border-wall-bids-due-today-president-trump-illegal-immigration-policy>; Phillip Molnar & Lyndsay Winkley, *Trump's Border Wall Will Get Its Start in San Diego County*, L.A. TIMES, Apr. 10, 2017, <http://www.latimes.com/local/lanow/la-me-san-diego-border-wall-20170410-story.html>; Ron Nixon, *Engineers Begin Preparatory Work for Border Wall Construction*, N.Y. TIMES, July 18, 2017, <https://www.nytimes.com/2017/07/18/us/politics/border-wall-construction.html>; Ron Nixon, *Border Wall Cost 3 Times Estimates, Senate Democrats' Report Says*, N.Y. TIMES, Apr. 18, 2017, <https://www.nytimes.com/2017/04/18/us/politics/senate-democrats-border-wall-cost-trump.html>; Nicki Rossoll, *Despite Trump Campaign Promise, Tillerson Had 'No Conversation' with Mexico Paying for Border Wall*, ABC NEWS (Apr. 9, 2017, 9:01 AM), <http://abcnews.go.com/Politics/trump-campaign-promise-tillerson-conversation-mexico-paying-border/story?id=46685291>; Andrew Taylor, *President Trump's Budget Chief Says Spending Bill Must Have Border Wall Funding*, TIME, Apr. 20, 2017, <http://time.com/4749678/mick-mulvaney-budget-border-wall-funding-government-shutdown/>.

prototypes.<sup>28</sup> As noted above in our fee waiver request, the requested records will help American Oversight and the general public understand the progress of this mammoth government project. An infrastructure project of this size—and the contracting procedure underlying such a project—are clear government activities. Mr. Trump has previously evidenced a lack of familiarity with U.S. procurement laws as well as a propensity for inside deals with his friends in the construction industry.<sup>29</sup> He has also insisted that he will be personally involved in the wall’s “design and negotiations” to ensure it comes in under budget.<sup>30</sup> These statements make it all the more important for the public to understand whether procurement procedures are being followed, what institutional knowledge is being considered, how environmental concerns are factored into the construction, and how concerns from the border states are being addressed or remedied. In short, a multi-billion-dollar construction project directed and financed by the federal government using tax dollars on an accelerated timeline is a quintessential example of “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.”<sup>31</sup>

Moreover, I certify to be true and correct to the best of my knowledge and belief, that there is an urgent need to inform the public about the federal government activity that is the subject of this request. The information American Oversight seeks concerns “a matter of a current exigency to

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<sup>28</sup> Ron Nixon, *Border Wall Prototypes Are Unveiled, but Trump’s Vision Still Faces Obstacles*, N.Y. TIMES, Oct. 26, 2017, <https://www.nytimes.com/2017/10/26/us/politics/border-wall-prototypes-unveiled.html>; Adam Edelman, *Trump’s Border Wall Prototypes Are Complete. Now What?*, NBC NEWS (Oct. 28, 2017, 7:56 AM), <https://www.nbcnews.com/politics/immigration/trump-s-border-wall-prototypes-are-complete-now-what-n815106>; Colin Dwyer, *Contractors Begin Building Prototypes for Trump’s Border Wall*, NPR (Sept. 26, 2017, 5:55 PM), <http://www.npr.org/sections/thetwo-way/2017/09/26/553786714/contractors-begin-building-prototypes-for-trump-s-border-wall>; Kavitha Surana, *Final Selection Process for Border Wall Kicks Off*, MYAJC, May 18, 2017, <http://www.myajc.com/news/gen-politics/final-selection-process-for-border-wall-kicks-off/a4PvdnD5gb94P7acTJjiP/>; Cristina Rendon, *Bay Area Business Hopes to Win Bid to Build Trump’s Border Wall*, KTVU (May 19, 2017, 10:59 AM), <http://www.ktvu.com/news/255644489-story>; *California Contractors Ignore Politics in Bids to Build Border Wall*, CBS LOS ANGELES (Apr. 28, 2017, 11:23 AM), <http://losangeles.cbslocal.com/2017/04/28/build-wall-trump-border/>; Stephen Dinan, *Contractors Vying to Build Donald Trump’s Border Wall Face Blowback*, WASH. TIMES, Mar. 29, 2017, <http://www.washingtontimes.com/news/2017/mar/29/contractors-vying-to-build-donald-trumps-border-wa/>.

<sup>29</sup> Blake Schmidt & Jonathan Levin, *Miami Billionaire Perez Rejects His Friend Trump’s Wall Overture*, BLOOMBERG, Jan. 31, 2017, <https://www.bloomberg.com/news/articles/2017-01-31/miami-billionaire-perez-rejects-his-friend-trump-s-wall-overture> (“[Jorge] Perez, a billionaire who has built Trump-branded towers in South Florida, said the president e-mailed him after the inauguration with plans for the wall and asked if he’d be interested in working on it.”).

<sup>30</sup> Donald J. Trump (@realdonaldtrump), TWITTER (Feb. 11, 2017, 9:18 AM), <https://twitter.com/realdonaldtrump/status/830405706255912960>; Donald J. Trump (@realdonaldtrump), TWITTER (Feb. 11, 2017, 9:24 AM), <https://twitter.com/realdonaldtrump/status/830407172747988992>.

<sup>31</sup> 6 C.F.R. § 5.5(e)(1)(iv).



the American public.”<sup>32</sup> News stories about the wall are published regularly,<sup>33</sup> including numerous stories about the progress of contracting efforts and the prototypes.<sup>34</sup> Depending on one’s source, the project is either ahead of or behind schedule.<sup>35</sup> In order to participate meaningfully in the

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<sup>32</sup> *Al-Fayed v. Cent. Intelligence Agency*, 254 F.3d 300, 310 (D.C. Cir. 2001) (quoting H.R. Rep. No. 104-795, at 26 (1996), reprinted in 1996 U.S.C.C.A.N. 3448, 3469).

<sup>33</sup> See, e.g., Bade, *supra* note 27; Tatum, *supra* note 27; Melissa del Bosque, *Trump Administration Preparing Texas Wildlife Refuge for First Border Wall Segment*, TEXAS OBSERVER (July 14, 2017, 5:46 PM), <http://www.texasobserver.org/trump-border-wall-texas-wildlife-refuge-breaking/>; Sofia Lotto Persio, *Border Wall Construction Will Cost \$1.6 Billion for Work to Start Next Year*, NEWSWEEK (June 14, 2017, 1:26 PM), <http://www.newsweek.com/mexico-border-wall-construction-needs-start-less-year-625656>; Tal Kopan, *Trump Suggests Border Wall with Solar Panels*, CNN POLITICS (June 6, 2017, 7:00 PM), <http://www.cnn.com/2017/06/06/politics/trump-solar-border-wall/index.html>; Angela Kocherga, *Along Texas-Mexico Border, Trump’s Wall Faces Opposition*, GARDEN CITY TELEGRAM, May 21, 2017, [http://www.gctelegram.com/news/nation\\_world/along-texas-mexico-border-trump-s-wall-faces-opposition/article\\_428b57d4-a509-5d12-ae28-0f8e85a281ef.html](http://www.gctelegram.com/news/nation_world/along-texas-mexico-border-trump-s-wall-faces-opposition/article_428b57d4-a509-5d12-ae28-0f8e85a281ef.html); Ron Nixon, *Trump’s Wall Faces a Barrier in Texas: Landowner Lawsuits*, N.Y. TIMES, May 7, 2017, <https://www.nytimes.com/2017/05/07/us/politics/trump-wall-faces-barrier-in-texas.html>; Fox & Friends, *Bids to Build President Trump’s Border Wall Due Today*, FOXNEWS INSIDER (Apr. 4, 2017, 7:59 AM), <http://insider.foxnews.com/2017/04/04/mexico-border-wall-bids-due-today-president-trump-illegal-immigration-policy>; Phillip Molnar & Lyndsay Winkley, *Trump’s Border Wall Will Get Its Start in San Diego County*, L.A. TIMES, Apr. 10, 2017, <http://www.latimes.com/local/lanow/la-me-san-diego-border-wall-20170410-story.html>; Ron Nixon, *Engineers Begin Preparatory Work for Border Wall Construction*, N.Y. TIMES, July 18, 2017, <https://www.nytimes.com/2017/07/18/us/politics/border-wall-construction.html>; Ron Nixon, *Border Wall Cost 3 Times Estimates, Senate Democrats’ Report Says*, N.Y. TIMES, Apr. 18, 2017, <https://www.nytimes.com/2017/04/18/us/politics/senate-democrats-border-wall-cost-trump.html>; Nicki Rossoll, *Despite Trump Campaign Promise, Tillerson Had ‘No Conversation’ with Mexico Paying for Border Wall*, ABC NEWS (Apr. 9, 2017, 9:01 AM), <http://abcnews.go.com/Politics/trump-campaign-promise-tillerson-conversation-mexico-paying-border/story?id=46685291>; Andrew Taylor, *President Trump’s Budget Chief Says Spending Bill Must Have Border Wall Funding*, TIME, Apr. 20, 2017, <http://time.com/4749678/mick-mulvaney-budget-border-wall-funding-government-shutdown/>.

<sup>34</sup> Nixon, *supra* note 28; Edelman, *supra* note 28; Dwyer, *supra* note 28; Kavitha Surana, *Final Selection Process for Border Wall Kicks Off*, MYAJC, May 18, 2017, <http://www.myajc.com/news/gen-politics/final-selection-process-for-border-wall-kicks-off/a4PvdnD5gb94P7acTjiJiP/>; Cristina Rendon, *Bay Area Business Hopes to Win Bid to Build Trump’s Border Wall*, KTVU (May 19, 2017, 10:59 AM), <http://www.ktvu.com/news/255644489-story>; *California Contractors Ignore Politics in Bids to Build Border Wall*, CBS LOS ANGELES (Apr. 28, 2017, 11:23 AM), <http://losangeles.cbslocal.com/2017/04/28/build-wall-trump-border/>; Stephen Dinan, *Contractors Vying to Build Donald Trump’s Border Wall Face Blowback*, WASH. TIMES, Mar. 29, 2017, <http://www.washingtontimes.com/news/2017/mar/29/contractors-vying-to-build-donald-trumps-border-wa/>.

<sup>35</sup> Compare Kiah Collier & T. Christian Miller, *Construction of First Border Wall Segment to Begin Sooner Than Expected Along Rio Grande*, TEXAS TRIBUNE, July 28, 2017, <https://www.texastribune.org/2017/07/28/construction-first-border-wall-segment-begin-november->

debate over the wall's budget and creation,<sup>36</sup> it is essential for the American public to understand the status of the government's research, procurement, and policy development.

I further certify that American Oversight is primarily engaged in disseminating information to the public. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,<sup>37</sup> American Oversight “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.”<sup>38</sup> American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight also makes materials it gathers available on its public website and promote their availability on social media platforms, such as Facebook and Twitter.<sup>39</sup> American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney, American Oversight promptly posted the records to its website<sup>40</sup> and published an analysis of what the records reflected about DOJ's process for ethics waivers.<sup>41</sup> Additionally, this particular FOIA request is part of a public project conducted by American Oversight called “Audit the Wall,” where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.<sup>42</sup>

Accordingly, American Oversight's request satisfies the criteria for expedition.

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[along-rio-grande/](#), with Phillip Molnar, *Trump Border Wall Misses Start Date*, SAN DIEGO UNION-TRIBUNE (June 23, 2017, 2:05 PM), <http://www.sandiegouniontribune.com/news/border-baja-california/sd-fi-border-wall-lawsuit-20170623-story.html>.

<sup>36</sup> See Tal Kopan, *First on CNN: Border Lawmaker Teams up with Silicon Valley on ‘Smart Wall,’* CNN (July 27, 2017, 6:17 AM), <http://www.cnn.com/2017/07/27/politics/smart-wall-border-will-hurd-silicon-valley/index.html>; Laura Meckler & Siobhan Hughes, *Republicans Set Terms of Debate of Bill Funding Trump's Border Wall*, WALL ST. J. (July 27, 2017, 8:02 PM), <https://www.wsj.com/articles/republicans-open-debate-on-bill-funding-trumps-border-wall-1501179291>.

<sup>37</sup> See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

<sup>38</sup> *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

<sup>39</sup> American Oversight currently has approximately 11,600 page likes on Facebook, and 35,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Sept. 29, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 29, 2017).

<sup>40</sup> *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

<sup>41</sup> *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

<sup>42</sup> *Audit the Wall*, AMERICAN OVERSIGHT, [www.auditthewall.org](http://www.auditthewall.org).

## Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with DHS on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Cerissa Cafasso at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.869.5246. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal flourish extending to the left.

Austin R. Evers  
Executive Director  
American Oversight