



March 1, 2018

**VIA ELECTRONIC MAIL & ONLINE PORTAL**

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Sabrina Burroughs  
FOIA Officer  
U.S. Customs & Border Protection  
1300 Pennsylvania Avenue NY, Room 3.3D  
Washington, DC 20229  
Via FOIAonline

**Re: Freedom of Information Act Request**

Dear Ms. Barksdale-Perry, Ms. Pavlik-Keenan, and Ms. Burroughs:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Homeland Security (DHS), 6 C.F.R. Part 5, American Oversight makes the following request for records.

In April 2017, news surfaced that hardline opponents of illegal immigration were appointed to high-level advisory jobs at DHS.<sup>1</sup> Jon Freer, a former legal policy analyst for the Center for Immigration Studies (CIS) was hired as a senior adviser to Immigration and Customs Enforcement

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<sup>1</sup> Maria Santana, *Hard-line Anti-illegal Immigration Advocates Hired at 2 Federal Agencies*, CNN (Apr. 12, 2017, 12:44 AM), <https://www.cnn.com/2017/04/11/politics/trump-administration-immigration-advisers/index.html>.



(ICE) Acting Director Tom Homan.<sup>2</sup> Julie Kirchner, former Executive Director of the Federation for American Immigration Reform (FAIR) was hired as adviser to Customs and Border Protection (CBP) Acting Commissioner Kevin McAleenan.<sup>3</sup>

Since Mr. Freer and Ms. Kirchner's appointments, the number of organized raids, investigations, arrests and deportations have increased exponentially. In mid-January 2018, ICE agents raided dozens of 7-Eleven stores across the country to punish employers.<sup>4</sup> On February 27, 2018, news surfaced that ICE agents had arrested more than 150 undocumented individuals in a surprise Northern California "sweep" aimed at sanctuary cities such as Oakland and San Francisco.<sup>5</sup>

CBP has conducted similar raids in cities across the country.<sup>6</sup> Recently, on January 22, 2018, CBP agents boarded a Greyhound bus in Fort Lauderdale to conduct "routine investigation" of each passenger on the bus. CBP arrested, detained, and have started deportation proceedings against a passenger on the bus who refused to provide proof of citizenship.<sup>7</sup>

The rapid increase in ICE raids and rise in CBP arrests of civilians is alarming and requires further public scrutiny. Furthermore, the public has an interest in the extent to which hard-line immigration groups such as CIS and FAIR have influenced DHS's current policies. American Oversight seeks documents that have the potential to shed light on how outside influences are shaping internal DHS policies.

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Patricia Mazzei, *Immigration Agents Target 7-Eleven Stores in Push to Punish Employers*, N.Y. TIMES, Jan. 10, 2018, <https://www.nytimes.com/2018/01/10/us/7-eleven-raids-ice.html>; Nick Miross, *Immigration Agents Target 7-Eleven Stores in Nationwide Sweep*, MIAMI HERALD, Jan. 10, 2018, <http://www.miamiherald.com/news/local/immigration/article194038649.html>.

<sup>5</sup> Hamed Aleaziz, *ICE Confirms 150-plus Arrests in California Sweep, Slams Schaaf's Early Warning*, SF GATE (Feb. 28, 2018, 7:51 AM), <https://www.sfgate.com/bayarea/article/Reports-of-California-immigration-sweep-are-true-12714833.php>.

<sup>6</sup> Wesley Lowery, *Federal Agents Searching for Immigrant Ask Domestic Flight Passengers to Show IDs*, CHI. TRIB. (Feb. 23, 2017, 8:10 PM), <http://www.chicagotribune.com/news/nationworld/ct-federal-agents-immigration-airplane-search-20170223-story.html>; Fernanda Santos, *Border Patrol Raids Humanitarian Aid Group Camp in Arizona*, N.Y. TIMES, June 16, 2017, <https://www.nytimes.com/2017/06/16/us/border-patrol-immigration-no-more-deaths.html>; Jason McGahan, *Why Is Border Patrol Arresting People in Boyle Heights*, L.A. WEEKLY (June 30, 2017, 7:37 AM), <http://www.laweekly.com/news/customs-and-border-patrol-has-made-at-least-14-arrests-on-las-eastside-in-2017-8381216>.

<sup>7</sup> Aric Chokey, *Border Patrol Officers Get on Greyhound Bus to Ask for ID, then Arrest Woman*, SUN SENTINEL (Jan. 22, 2018, 7:25 PM), <http://www.sun-sentinel.com/local/broward/fort-lauderdale/fl-reg-greyhound-border-patrol-20180121-story.html>; Jeff Lennox & Katrina Bush, *Immigrant Raid on Greyhound Bus Ends in Passenger Deportation*, WSVN 7NEWS (Jan. 22, 2018), <https://wsvn.com/news/local/immigrant-raid-on-greyhound-bus-ends-in-passenger-deportation/>.

## Requested Records

American Oversight requests that DHS, ICE, and CBP produce the following within twenty business days:

All communications (including emails, email attachments, text messages, telephone call logs, chat and slack messages, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, or other materials) between (1) any of the following groups or individuals listed below and (2) anyone at DHS, ICE, or CBP headquarters in Washington, DC, related to federal sanctuary city policies; state-specific enforcement of federal immigration laws; immigration-related raids in any localities; or immigration detainers issued by ICE to governmental entities including local mayors' and sheriffs' offices:

- a. Center for Immigration Studies (CIS)
- b. Mark Krikorian, CIS Executive Director
- c. Federation for American Immigration Reform (FAIR)

We believe that a reasonable search for records responsive to this request should include at least the following terms as keyword search terms:

- i. Raid(s)
- ii. Detainer(s)
- iii. Sanctuary
- iv. Sanctuaries
- v. Immigration and Customs Enforcement
- vi. ICE
- vii. Customs and Border Patrol
- viii. CBP
- ix. 8 U.S.C. § 1373

However, we ask that DHS, ICE, and CBP not confine its search to at least these search terms if others may yield responsive records.

Please provide responsive records from January 20, 2017, to 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>

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.**

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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 [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>.

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>

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 DHS before it undertakes a search or incurs 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 15th 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.

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<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)).

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

## 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> There is significant public interest in how outside groups continue to influence DHS and DHS components ICE and CBP’s policies on immigration, and because unannounced ICE and CBP raids have sparked fear throughout communities across the country. These records have the potential to shed significant light on any communications between outside groups and DHS related to implementing anti-sanctuary city policies. These records further have the potential to shed light on whether outside groups play a role in identifying localities or individuals as ICE and CBP raid targets. As discussed below, American Oversight has the capacity and intention to inform a broad audience about government activities that are the subject of these records.

This request is primarily and fundamentally for non-commercial purposes.<sup>19</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 its public website and promote their availability on social media platforms, such as Facebook and Twitter.<sup>20</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>21</sup> and published an analysis of what the records reflected about DOJ’s process for ethics waivers.<sup>22</sup>

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<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); *see also* 6 C.F.R. § 5.11(k)(2)(i)–(iv).

<sup>19</sup> 6 C.F.R. § 5.11(k)(1)(ii), (3)(i)–(ii).

<sup>20</sup> American Oversight currently has approximately 11,800 page likes on Facebook, and 40,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 1, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 1, 2018).

<sup>21</sup> *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

<sup>22</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>.

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>23</sup>

Accordingly, American Oversight qualifies for a fee waiver.

### 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 Pooja Chaudhuri at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.869.5244. 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 stroke extending to the left.

Austin R. Evers  
Executive Director  
American Oversight

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<sup>23</sup> *Audit the Wall*, AMERICAN OVERSIGHT, [www.auditthewall.org](http://www.auditthewall.org).