



May 17, 2019

U.S. Customs & Border Protection
3000 W Military Hwy
McAllen, Texas 78503

FOIA Officer
U.S. Customs & Border Protection
1300 Pennsylvania Avenue, NW Room 3.3D
Washington, D.C. 20229
Phone: (202) 344-1610

Re: Request under Freedom of Information Act (Expedited Processing Requested)

To Whom It May Concern:

The ACLU Border Rights Center and the ACLU Foundation of Texas, Inc. (collectively, the “ACLU”)¹ submit this Freedom of Information Act (“FOIA”) request (“Request”) for records about the U.S. Customs and Border Protection’s (“CBP”) detention facilities in the Rio Grande Valley Sector. By this letter, which constitutes a request pursuant to FOIA, 5 U.S.C. § 552, *et seq.*, and the relevant implementing regulations, *see* 6 C.F.R. § 5, *et seq.*, the ACLU seeks information regarding the CBP detention facilities or detention cells in the Rio Grande Valley Sector, including but not limited to all temporary and permanent detention facilities operated by CBP or the U.S. Border Patrol (collectively, the “RGV CBP Detention Facilities”).

I. Background

According to news reports and ACLU observations and interviews, U.S. Border Patrol is detaining migrants in outdoor detention areas on the grounds of the McAllen Border Patrol Station.² Interviews conducted by ACLU attorneys suggest that starting in early May 2019

¹ The ACLU Foundation of Texas, a 501(c)(3) organization, is the state’s preeminent civil rights organization, dedicated to protecting and defending the individual rights and liberties that the Constitution and laws of the United States guarantee for everyone in Texas, regardless of immigration or refugee status. The ACLU provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about the civil rights and civil liberties implications of pending and proposed state and federal legislation, and provides analyses of pending and proposed litigation.

² *See* Adolfo Flores, “Immigrants Are Being Forced To Sleep Outside On The Ground At This Texas Facility: “Why Do They Treat Us Like This?” BuzzFeed News, May 15, 2019, available at [AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF TEXAS](#)

Border Patrol held asylum seeking families with young children outdoors for multiple nights in unsafe conditions. Interviews further suggest Border Patrol agents verbally abused and refused medical care to families and young children held in the outdoor detention facilities.³

II. Requested Records

For the purposes of this Request, “Records” are collectively defined to include, but are not limited to: text communications between phones or other electronic devices (including, but not limited to communications sent via SMS or other text, Blackberry Messenger, iMessage, WhatsApp, Signal, Gchat, Slack, or Twitter direct message); emails; images, video, and audio recorded on cell phones; voicemail messages; social-media posts; instructions; directives; guidance documents; orders; internal communications; internal rules; internal regulations; bulletins; alerts; updates; advisories; reports; legal and policy memoranda; contracts or agreements; minutes or notes of meetings and phone calls; and memoranda of understanding. The ACLU requests the release of the following information:

1. Records created on or after January 1, 2019, evidencing the following at each of the RGV CBP Detention Facilities:
 - a. The total number of aliens held at each of the RGV CBP Detention Facilities. Please specify the monthly totals from January through May of 2019.
 - b. The total *indoor* capacity. Please specify capacity from January through May of 2019 for each of the RGV CBP Detention Facilities, and the reason(s) for any changes in capacity.
 - c. The total *outdoor* capacity. Please specify capacity from January through May of 2019 for each of the RGV CBP Detention Facilities, and the reason(s) for any changes in capacity.
 - d. The total number of CBP officials and staff (including BP staff) available on a full-time basis (or full-time equivalent) to process aliens at each of the RGV CBP Detention Facilities. Please specify the monthly totals from January through May of 2019.
 - e. The total number of migrants that CBP can process on a daily basis at each of the RGV CBP Detention Facilities.

<https://www.buzzfeednews.com/article/adolfoflores/immigrants-outside-tents-texas-holding-center>.

See also Vanessa Yurkevich and Priscilla Alvarez, “Exclusive photos reveal children sleeping on the ground at Border Patrol station,” CNN, May 14, 2019, available at <https://www.cnn.com/2019/05/14/politics/border-patrol-mcallen-texas-pictures/index.html>.

See also Loren Elliot, “Migrants sleep on ground, rig awnings at Texas Border Patrol Station,” Reuters, May 15, 2019, available at <https://www.reuters.com/article/us-usa-immigration/migrants-sleep-on-ground-rig-awnings-at-texas-border-patrol-station-idUSKCN1SL2V8>.

³ ACLU of Texas and ACLU Border Rights Center, Complaint regarding Abusive Conditions in Border Patrol Detention Facilities in the Rio Grande Border Patrol Sector, May 17, 2019.

2. All CBP policies, procedures, manuals, guidelines, or instructions concerning the holding, detaining or housing of migrants by CBP staff, including BP staff, in the RGV CBP Detention Facilities.
3. All contracts relating to the provision of detention space and any other services by CBP to migrants held by CBP in the RGV CBP Detention Facilities, including any contracts with third party service providers.
4. All policies, procedures, manuals, guidelines, or instructions concerning the detention of migrants in outdoor facilities or holding pens.
5. All communications relating to the detention of migrants in outdoor detention facilities or holding pens, including but not limited to internal communications between CBP, BP, and OFO and external communications with officials of the Department of Homeland Security or the Trump Administration.
6. All documents evidencing the reasons for detaining, holding or housing migrants in outdoor detention facilities or holding pens at the RGV Holding Facilities.
7. All policies, procedures, manuals, guidelines, or instructions concerning the detention of migrants in tent facilities or holding pens at Border Patrol Stations in McAllen, TX.
8. All communications relating to the detention of migrants in tent detention facilities or holding pens at Border Patrol Stations in McAllen, TX, including but not limited to internal communications between CBP, BP, and OFO and external communications with officials of the Department of Homeland Security or the Trump Administration.
9. All documents evidencing the reasons for detaining, holding or housing migrants in tent facilities or holding pens at Border Patrol Stations in McAllen, TX.
10. All complaints or claims registered, submitted, documented, filed, or otherwise provided to CBP or BP relating to the detention, holding or housing of migrants in outdoor detention facilities or holding pens at the RGV CBP Detention Facilities, including any and all complaints or claims registered, submitted, documented or filed by migrants detained by CBP or BP.
11. All documents evidencing the *number* of complaints or claims registered, submitted, documented, filed, or otherwise provided to CBP or BP relating to the detention, holding or housing of migrants in outdoor detention facilities or holding pens at the RGV CBP Detention Facilities.
12. The names of all CBP officials or staff, including those of BP, involved in the decision-making process or instructions given to staff to detain migrants in outdoor detention facilities or holding pens at the RGV CBP Detention Facilities.

To reiterate: The ACLU seeks information regarding CBP’s detention facilities or detention cells in the Rio Grande Valley Sector, including but not limited to all temporary and permanent detention facilities or detention pens operated by CBP or BP.

Specifically, the ACLU seeks records held by CBP employees and offices within the RGV Sector and at the national office of CBP. CBP has an obligation to search all such offices that are reasonably expected to produce any relevant information. *See, e.g., Oglesby v. U.S. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990); *Marks v. U.S. Dep’t of Justice*, 578 F.2d 261, 263 (9th Cir. 1978) (agency not required to search all of its field offices because request did not ask for a search beyond the agency’s central files); *see also Am. Immigration Council v. U.S. Dep’t of Homeland Sec.*, 950 F. Supp. 2d 221, 230 (D.D.C. 2013).

We request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of our Request be conducted. Given the expedited timeline on which the relevant events and interpretations occurred, this includes the personal email accounts and work phones of all employees and former employees who may have sent or received emails or text messages regarding the subject matter of this Request, as well as all institutional, shared, group, duty, task force, and all other joint and/or multi-user email accounts and work phones which may have been utilized by each such employee or former employee. Additionally, for each relevant email account identified, all storage areas must be searched, including the inbox ‘folder’ (and all subfolders therein), sent folder, deleted folder, and all relevant archive files.

If any records responsive or potentially responsive to the Request have been destroyed, our Request includes, but is not limited to, any and all records relating or referring to the destruction of those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

As required by the relevant case law, the agency should follow any leads it discovers during the conduct of its searches and should perform additional searches when said leads indicate that records may be located in another system. Failure to follow clear leads is a violation of FOIA.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the ACLU requests that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, the ACLU requests that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and that the records be provided in separate Bates-stamped files.

III. Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552 (a)(6)(E).⁴ There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C.

⁴ *See also* 6 C.F.R. § 5.5(e)(1).

552(a)(6)(E)(v)(II).

A. *The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. §552(a)(6)(E)(v)(II).⁵ Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “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” to be “primarily engaged in disseminating information”).⁶

Part of the organizational mission of the ACLU is to “work daily...in the community to defend and preserve [] individual rights and liberty.” *About US*, ACLU Tex., <https://www.aclutx.org/en/about/about-us> (last visited Aug. 10, 2018). This part of our mission entails public education. Our organization regularly creates and disseminates works in the form of presentations, reports, articles, interviews, testimony, social media, and blog posts to educate the public about the activities of the United States government. *See generally Issues*, ACLU Tex., <https://www.aclutx.org/en/issues/> (last visited Aug. 10, 2018). The ACLU also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and civil liberties. *See generally Know Your Rights*, ACLU Tex., <https://www.aclutx.org/en/know-your-rights/> (last visited Aug. 10, 2018).

The ACLU publishes a widely-read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See Blogs*, ACLU Tex., <https://www.aclutx.org/en/News> (last visited Aug. 10, 2018). The ACLU regularly issues press releases to call attention to news and issues affecting the public. *See Press Releases*, ACLU Tex., <https://aclutx.org/en/press-releases/> (last visited Aug. 10, 2018). The ACLU creates and disseminates original editorial and education content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See aclutx*, Youtube, <https://www.youtube.com/user/aclutx/> (last visited Aug. 10, 2018). The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclutx.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU’s website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material,

⁵ *See also* 6 C.F.R. § 5.5(e)(1)(ii).

⁶ Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.

Further, the American Civil Liberties Foundation (“National ACLU”), of which the ACLU is an affiliate, regularly publishes *STAND*, a print magazine that reports on and analyzes civil liberties related events. The magazine is disseminated to over 620,000 people. The National ACLU also publishes regular updates and alerts via email to approximately 2.1 million subscribers (both National ACLU members and non-members). These updates are additionally broadcast to 1.5 million social media followers (members and non-members). The magazine as well as the email and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

The National ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,⁷ and National ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.⁸

Similarly, the National ACLU publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost, or sometimes, for a small fee. National ACLU projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.⁹

⁷ See, e.g., Press Release, American Civil Liberties Union, *U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit* (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, *Secret Documents Describe Graphic Abuse and Admit Mistakes* (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, *U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit* (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>; Press Release, American Civil Liberties Union, *Justice Department White Paper Details Rationale for Targeted Killing of Americans* (Feb. 4, 2013), <https://www.aclu.org/national-security/justice-department-white-paper-details-rationale-targeted-killing-americans>; Press Release, American Civil Liberties Union, *Documents Show FBI Monitored Bay Area Occupy Movement* (Sept. 14, 2012), <https://www.aclu.org/news/documents-show-fbi-monitored-bay-area-occupy-movement-insidebayareacom>.

⁸ See, e.g., Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, WASH. POST (Aug. 6, 2016), https://www.washingtonpost.com/world/national-security/newly-declassified-document-sheds-light-on-how-president-approves-drone-strikes/2016/08/06/f424fe50-5be0-11e6-831d-0324760ca856_story.html (quoting former ACLU deputy director Jameel Jaffer); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC (June 15, 2016), <https://abcnews.go.com/US/newly-released-cia-documents-reveal-torture-detention-program/story?id=39873389> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Device*, GUARDIAN (Mar. 17, 2016), <https://www.theguardian.com/world/2016/mar/17/us-marshals-stringray-surveillance-airborne> (quoting ACLU attorney Nate Wessler); David Welna, *Government Suspected of Wanting CIA Torture Report to Remain Secret*, NPR (Dec. 9, 2015), <https://www.npr.org/2015/12/09/459026249/cia-torture-report-may-remain-secret> (quoting ACLU project director Hina Shamsi).

⁹ See, e.g., ACLU, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; ACLU, *Details Abound in Drone ‘Playbook’ – Except for the*

The National ACLU website includes many features on information obtained through the FOIA.¹⁰ For example, the National ACLU’s “Predator Drones FOIA” webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the National ACLU’s FOIA request, press releases, analysis of FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves. Similarly, the National ACLU maintains an online “Torture Database,” a compilation of over 100,000 pages of FOIA documents relating to government policies on rendition, detention, and interrogation.¹¹

The National ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA requests—the National ACLU created an original chart that provides the legal and news media with a comprehensive summary index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition, and surveillance.¹² Similarly, the National ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act¹³; a chart of original statistics about the Defense Department’s use of National Security Letters based on its own analysis of records obtained through FOIA requests¹⁴; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.¹⁵

Ones That Really Matter Most (Aug. 8, 2016, 5:30 PM), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; ACLU, *ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015, 5:30 PM), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; ACLU, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014, 3:29 PM), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>; ACLU, *ACLU Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government’s “Suspicious Activity Report” Systems* (Oct. 29, 2013), https://www.aclu.org/sites/default/files/assets/eye_on_fbi_-_sars.pdf.

¹⁰ See, e.g., Nathan F. Wessler & Dylan Cortez, *FBI Releases Details of Zero-Day Exploit Decisionmaking Process*, ACLU (June 26, 2015, 11:00 AM), <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; Nathan F. Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights*, ACLU (Oct. 30 2015, 8:00 AM), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; *ACLU v. DOJ-FOIA Case for Records Relating to Killing of Three U.S. Citizens*, ACLU (Dec. 30, 2016), <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; *ACLU v. Dep’t of Defense*, ACLU (Aug. 18, 2015), <https://www.aclu.org/cases/aclu-v-department-defense>; *Mapping the FBI*, ACLU, <https://www.aclu.org/mappingthefbi>; *Bagram FOIA*, ACLU (Apr. 18, 2013), <https://www.aclu.org/cases/bagram-foia>; *CSRT FOIA*, ACLU, <https://www.aclu.org/national-security/csrt-foia>; *ACLU v. DOJ – Lawsuit to Enforce NSA Warrantless Surveillance FOIA Request*, ACLU, <https://www.aclu.org/safefree/nsaspying/30022res20060207.html>; *PATRIOT FOIA*, ACLU, <https://www.aclu.org/nsi-documents-released-dod?redirect=cpreirect/32088>.

¹¹ *Home*, TORTURE DATABASE, <https://www.thetorturedatabase.org>; see also *Targeted Killing FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

¹² *Index of Bush-Era OLC Memoranda Relating to Interrogation, Detention, Rendition, and/or Surveillance*, ACLU, https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf.

¹³ *Summary of FISA Amendments Act Documents Released on November 29, 2010*, ACLU, <https://www.aclu.org/files/pdfs/natsec/faafoia20101129Summary.pdf>.

¹⁴ *Statistics on NSLs Produced by Department of Defense*, ACLU, https://www.aclu.org/sites/default/files/field_documents/nsi_status.pdf

¹⁵ Nathan F. Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights*, ACLU (Oct. 30,

The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).¹⁶ Specifically, as discussed in Part I, *supra*, the requested records seek to inform the public about the CBP's current policy of turning asylum seekers back at United States ports of entry and along the border.

Given the forgoing, the ACLU has satisfied the requirements for expedited processing of this Request.

Pursuant to the applicable statutes and regulations, the ACLU expects a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii); C.F.R. § 5.5(e)(4).

If the Request is denied in whole or in part, the ACLU asks that you justify all deletions by reference to specific FOIA exemptions. The ACLU expects the release of all segregable portions of otherwise exempt material. The ACLU reserves the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

Edgar Saldivar
American Civil Liberties Union of Texas
P.O Box 8306
Houston, TX 77288-8306

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Respectfully,



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2015), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

¹⁶ *See also* 6 C.F.R. § 5.5(e)(1)(ii).