



August 25, 2020

Via Electronic Mail

Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655
foia@hq.dhs.gov

FOIA Officer
U.S. Customs and Border Protection
90 K Street, NE
FOIA Division
Washington, DC 20229
admin@foiaonline.gov

FREEDOM OF INFORMATION ACT (FOIA) APPEAL

Re: FOIA Request Nos. 2020-HQFO-0032; CBP-OIT-2020-020048

This letter constitutes an appeal pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552(a)(6)(A), on behalf of the American Civil Liberties Union of Texas ("ACLU").¹ The ACLU seeks information regarding reported meetings and other communications between the Department of Homeland Security ("DHS"), U.S. Customs

¹ ACLU, a 501(c)(3) organization, is dedicated to protecting and defending the individual rights and liberties guaranteed by the Constitution and laws. The ACLU monitors government conduct, provides free legal representation in civil rights and civil liberties cases, educates the public about their rights and liberties and abuses of power, and provides analyses to the public of government activities and their civil rights implications.

and Border Protection (“CBP”), We Build the Wall Inc. (“WBW”), Fisher Industries, and American Eagle Brick Company.

On December 16, 2019, ACLU submitted a FOIA Request to DHS and CBP seeking information as to “whether and how DHS is engaging with groups seeking to build border walls[.]” FOIA Request, Exhibit A, at 3.

At that time, WBW had completed one project, in Sunland Park, New Mexico, and had begun its second on the banks of the Rio Grande. Request, at 2. ACLU has long opposed border walls due to their destructive impact on human life and the environment. *See* ACLU, DEATH, DAMAGE, AND FAILURE: PAST, PRESENT, AND FUTURE IMPACTS OF WALLS ON THE U.S.-MEXICO BORDER (2018), *available at* <https://www.aclu.org/report/death-damage-and-failure>. WBW’s project in south Texas, which they dubbed the “first wall of its kind built in a floodplain,” is especially dangerous. *See* Request, at 2. Indeed, at the time of the Request the federal International Boundary and Water Commission (“IBWC”), led by Trump-appointed Commissioner Jayne Harkins, had already sued WBW and Fisher to block the construction. *Id.*

WBW’s activities were highly suspicious. While publically defying the IBWC, saying “[t]his wall is going up this week no matter what,” and despite collecting over \$25,000,000 in private donations, WBW claimed in federal court that it had nothing to do with the south Texas project, calling itself a “social media cheerlead[er]” for Fisher Industries, the private contractor leading construction. Request, at 2. For its part, Fisher Industries was awarded its first-ever border wall contract from the federal government shortly after beginning the south Texas project. ACLU’s Request emphasized that WBW’s claims and the timing of the contract “raise[d] serious concerns about how available funds are allocated and whether and how the ostensibly private wall projects relate to Fisher’s selection for the \$400 million contract.” Request, at 4.

Despite these obvious red flags, DHS and CBP (together, “the agencies”) met and communicated with WBW, including in Washington, D.C. and during CBP site visits to WBW’s private-wall project in Sunland Park, New Mexico, as detailed in the Request. According to WBW’s founder, Brian Kolfage, “WBW ha[d then] been in communication with officials at DHS for several months.” *Id.* Recently-revealed documents demonstrate that, in fact, at least one such meeting occurred. *The Border Patrol Considered Accepting a Donation from We Build the Wall*, *The Nation* (August 24, 2020), <https://www.thenation.com/article/politics/bannon-wall-border-patrol/>. Among other inquiries, WBW “asked for clarification on what a donation offer would need to look like,” and CBP provided WBW with a document called “CBP’s Barrier Donation Checklist.” *Id.* Such a “Checklist” has not been disclosed.

ACLU’s Request demonstrated a compelling need for the records requested at the time it was submitted. *See* FOIA Request, Exhibit A, at 3-4, 5-6. The recent announcement of at least four indictments of WBW leaders by the U.S. Attorney’s Office for the Southern

District of New York, including WBW Founder and President Brian Kolfage and Chairman of the Advisory Board Stephen K. Bannon, heightens the urgency of ACLU's Request.²

There can be no further delay in responding to ACLU's Request. DHS and CBP have failed to "determine" ACLU's request for over nine months, shattering FOIA's 20-day limit. Instead, they have evaded the Request at every turn. They have:

- Both granted and denied ACLU's request for expedited processing. *See* Disposition Granting Expedited Processing (December 17, 2019), Exhibit B; Disposition Denying Expedited Processing (April 29, 2020), Exhibit C.
- Twice determined that ACLU's request is not billable and therefore that they would not levy fees. *See* Fee Waiver Disposition (December 17, 2019), Exhibit D; Fee Waiver Disposition (March 12, 2020), Exhibit E.
- Four times changed the tracking number pertaining to ACLU's request. *See* Change of Tracking Number (December 17, 2019), Exhibit F; Change of Tracking Number (January 3, 2020), Exhibit G; Change of Tracking Number (February 27, 2020), Exhibit H; Change of Tracking Number (March 10, 2020), Exhibit I.
- Requested additional information regarding ACLU's request, which ACLU timely provided. *See* Request for Clarification (March 13, 2020), Exhibit J; ACLU Response (March 17, 2020), Exhibit K.
- Acknowledged receipt of, but otherwise failed to respond to, ACLU's requests for updates. Acknowledgment of Letter (March 10, 2020), Exhibit L; Acknowledgment of Letter (April 29, 2020), Exhibit M.

FOIA embodies "a general philosophy of full agency disclosure." *Dep't of Air Force v. Rose*, 425 U.S. 352, 360 (1976) (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)). It therefore seeks "to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Id.* at 361 (internal quotation marks and citation omitted). In furtherance of that purpose, FOIA requires that an agency shall:

determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination.

5 U.S.C. § 552(a)(6)(A)(i). This requires agencies to "at least inform the requester of the scope of the documents it will produce and the exemptions it will claim with respect to any withheld documents." *Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n*, 711 F.3d 180, 185 (D.C. Cir. 2013). DHS responded that CBP would process

² *See Leaders of 'We Build the Wall' Online Fundraising Campaign Charged with Defrauding Hundreds of Thousands of Donors*, U.S. Attorney's Office, Southern District of New York (August 20, 2020), <https://www.justice.gov/usao-sdny/pr/leaders-we-build-wall-online-fundraising-campaign-charged-defrauding-hundreds-thousands>.

United States DHS
United States CBP

ACLU's Request. Final Response (January 13, 2020), Exhibit N. CBP has provided no information.

The agencies have failed to satisfy this simple, mandatory requirement. ACLU demands the agencies' immediate attention to this matter, and reserves in all respects its right to immediately seek judicial review of its entitlement to the requested records. *See CREW*, 711 F.3d at 190 (requestor who has not received a timely "determination" "is deemed to have exhausted its administrative appeal remedies under Section 552(a)(6)(C)(i), and its suit may proceed.").

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Donatti".

David A. Donatti
ACLU TX
P.O. Box 8306, Houston, TX 77288
713.942.8146

A handwritten signature in blue ink, appearing to read "Shaw Drake".

Shaw Drake
ACLU Border Rights Center
P.O. Box 8306, Houston, TX 77288
713.942.8146

EXHIBIT A



December 16, 2019

Via Electronic Mail

Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655
foia@hq.dhs.gov

FOIA Officer
U.S. Customs and Border Protection
90 K Street, NE
FOIA Division
Washington, DC 20229
admin@foiaonline.gov

Re: FOIA Request

To whom it may concern:

This letter constitutes a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552. This request is submitted on behalf of the American Civil Liberties Union of Texas and the ACLU Border Rights Center ("ACLU").¹ The ACLU seeks information regarding the recently reported communications between the Department of Homeland

¹ ACLU, a 501(c)(3) organization, is dedicated to protecting and defending the individual rights and liberties guaranteed by the Constitution and laws. The ACLU monitors government conduct, provides free legal representation in civil rights and civil liberties cases, educates the public about their rights and liberties and abuses of power, and provides analyses to the public of government activities and their civil rights implications.

ACLU Foundation of Texas
P.O. Box 8306, Houston, TX 77288
713.942.8146
www.aclutx.org

Security (“DHS”), U.S. Customs and Border Protection (“CBP”), We Build the Wall Inc. (“WBW”), Fisher Industries, and American Eagle Brick Company.

I. Background

In early November 2019, WBW announced its intention to build 3.5 miles of border wall on the banks of the Rio Grande in southern Texas.² Concurrently with the announcement, the group brought heavy equipment to start work on private property near the town of Mission, Texas.³ Claiming that it would erect its wall within 20 feet of the river, WBW said the project would be “the first wall of its kind built in a floodplain.”⁴

This construction is prohibited by international law. Rivers like the Rio Grande move due to human and natural events, and the United States and Mexico have executed treaties to maintain the boundary between them if and when the Rio Grande changes course. The International Boundary and Water Commission (“IBWC”) is a federal agency designated by treaty to regulate construction on the floodplains of the Rio Grande. Its Commissioner, Jayne Harkins, was appointed by President Trump in 2018. To ensure that WBW’s construction does not cause the United States to breach its international obligations, IBWC asked WBW to suspend construction pending the submission of information.⁵ WBW threatened to defy the IBWC. Claiming support from the president’s son, DHS, and CBP, the group’s founder promised to persist: “Does it look like we were told stop? NOPE! Burning & Churning suckers.”⁶ On December 3, WBW threatened that “[t]his wall is going up this week no matter what.” The IBWC sought and was granted emergency relief restraining construction in federal court a few days later.⁷

On its website, WBW claims to have collected over \$25,000,000 in private donations, including 70% of the funds necessary toward wall construction in Hidalgo County and an unnamed “Project 3.” Notwithstanding WBW’s fundraising and countless public statements,⁸ it has sought to disclaim accountability, and in early December successfully sought dismissal from the IBWC’s lawsuit by representing in federal court that it is merely a “social media cheerlead[er]” for the construction company Fisher Industries.⁹

This representation muddies whether and how the intended wall will be financed.

² Gus Bova, “‘We Build the Wall’ Lands in South Texas, Vilifies Priest and Butterfly Refuge,” Texas Observer, Nov. 21, 2019, available at <https://www.texasobserver.org/we-build-the-wall-south-texas-vilifies-priest-butterfly-refuge/>.

³ See Kim Slowey, “Private group starts construction of another stretch of US-Mexico border wall,” Construction Dive, Nov. 20, 2019, available at <https://www.constructiondive.com/news/private-group-starts-construction-of-another-stretch-of-us-mexico-border-wa/567695/>.

⁴ We Build the Wall, Update Nov. 11, 2019, <https://webuildthewall.us/update/>.

⁵ Sandra Sanchez, “‘We Build the Wall’ issued cease and desist to stop construction in South Texas, officials confirm,” Fox 6, Nov. 19, 2019, available at <https://fox6now.com/2019/11/19/we-build-the-wall-issued-cease-and-desist-to-stop-construction-in-south-texas-officials-confirm/>.

⁶ Twitter, @BrianKolfage, Nov. 20, 2019, 7:41 AM.

⁷ “Court Grants Government’s TRO against Pro Wall Group,” The Monitor, Dec. 5, 2019, <https://www.themonitor.com/2019/12/05/citing-international-treaty-govt-sues-pro-wall-group-halt-construction/>.

⁸ E.g., We Build the Wall, Project 1: Before and After, <https://webuildthewall.us/>.

⁹ “US persuades judge to stop pro-Trump border wall group,” Fox Business, Dec. 6, 2019.

Fisher, for its part, was recently awarded its first contract to build border walls on behalf of the federal government, valued at \$400 million, and recent investigations reveal the group has spent more than \$100,000 on lobbying efforts to discuss the border wall with lawmakers since late 2017.¹⁰

Construction of a border wall generally, and erection of a massive structure on the floodplains of the Rio Grande, is destructive to border communities, neighboring landowners, and the environment.¹¹ By this FOIA request, ACLU seeks information about DHS's and CBP's communications with the ostensibly private wall builders and the contractor with which they are working.

To be clear, ACLU seeks information held by the government. The public has a right to know whether and how DHS is engaging with groups seeking to build border walls that Congress did not authorize.

Several recent reports allude to this engagement. For example, on November 20, 2019, Acting DHS Secretary Chad Wolf and El Paso Border Patrol Chief Gloria Chavez made an unpublicized visit to the site of WBW's first and only completed project, a half-mile stretch of steel bollard fencing built without required permits in Sunland Park, New Mexico.¹² A DHS spokesperson confirmed that Secretary Wolf visited the owner of the property and an engineer from Fisher.¹³ WBW proclaims on its website that it has received "MAJOR Endorsement from DHS Secretary Chad Wolf and CBP Chief," and that the unannounced visit is only one of several conversations between DHS, CBP, and WBW. According to WBW's founder, WBW has been in communication with officials at DHS for several months; including at least one meeting in Washington between members of WBW's board and Secretary Wolf before Secretary Wolf visited Sunland Park.¹⁴

In December, Fisher Industries, which was not among the companies the Army Corps of Engineers initially selected as qualified bidders on nearly \$10 billion in contracts for border barrier construction, was awarded a \$400 million border wall contract.¹⁵ Tommy

¹⁰ "Contract for stretch of Arizona border wall raises concerns of improper influence, Arizona Daily Star (Dec. 7, 2019), https://tucson.com/news/local/contract-for-stretch-of-arizona-border-wall-raises-concerns-of/article_c5083a5f-717a-57dc-88b1-108e178bec75.html.

¹¹ 2019 Update—Death, Damage, and Failure: Past, Present, and Future Impacts of Walls on the U.S.-Mexico Border, ACLU, Dec. 2, 2019, <https://www.aclutx.org/en/ddf2019>.

¹² Caitlin Dickson, "Exclusive: Acting Homeland Security chief Chad Wolf makes unannounced visit to privately funded border wall," Yahoo News, November 21, 2019, available at <https://news.yahoo.com/acting-homeland-security-chief-chad-wolf-makes-unannounced-visit-to-privately-funded-border-wall-223803492.html>; Nick Miroff, "Right-wing group continues to build private border wall. It lacks permits, but not official praise," The Washington Post, Nov. 22, 2019, available at https://www.washingtonpost.com/immigration/right-wing-group-continues-to-build-private-border-wall-it-lacks-permits-but-not-official-praise/2019/11/22/b4281676-0c71-11ea-8397-a955cd542d00_story.html.

¹³ *See id.*

¹⁴ *See id.*

¹⁵ Nick Miroff, "House committee chair calls for investigation into \$400 million border wall contract," Washington Post, Dec. 4, 2019, available at <https://www.washingtonpost.com/immigration/house-committee-chair-calls-for->

Fisher, President and CEO of Fisher Industries, has made repeat appearances on Fox News and elsewhere, enlisted Sen. Kevin Cramer (R-N.D.) to personally lobby the president, and the president has repeatedly promoted Fisher's company to the U.S. Army Corps of Engineers.¹⁶ Fisher Industries has also reportedly paid lobbyists more than \$100,000 to engage lawmakers about the border wall,¹⁷ and the *Washington Post* reports that "[p]resident Trump has repeatedly pushed for Fisher to get a wall-building contract."¹⁸

These efforts raise serious concerns about how available funds are allocated and whether and how the ostensibly private wall projects relate to Fisher's selection for the \$400 million contract.

II. Requested Records

By this Request, the ACLU seeks:

1. All records¹⁹ of communication received from or transmitted to WBW by DHS and/or CBP. This Request includes such records of communication from or transmitted to all persons representing WBW, including but not limited to founder Brian Kolfage, Stephen K. Bannon, John Daniel Moran, Jr., Dr. Robert S. Spalding III, Brig Gen, USAF (Ret), Erik Prince, Curt Schilling, Tom Tancredo, David Alexander Clarke Jr., Kris Kobach, Mary Ann Mendoza, Steve Ronnebeck, Dustin Stockton, Tiffiny Ruegner, Jennifer Lawrence, Amanda Shea, and/or any WBW advisory board members, staff, contractors, or subcontractors.
2. All records received from or transmitted to Fisher Industries and its affiliates by DHS and/or CBP related to the Sunland Park or Rio Grande Valley projects, including planning and/or coordination, execution, and financing of these projects, technical, environmental, or regulatory obligations or compliance/noncompliance therewith. Such request includes records of communication between DHS and/or CBP and all persons working with Fisher Industries, including but not limited to Fisher Sand & Gravel and American Eagle Brick Company and its affiliates.

investigation-into-400-million-border-wall-contract/2019/12/04/368e8a20-16bb-11ea-a659-7d69641c6ff7_story.html.

¹⁶ *Id.*

¹⁷ Curt Prendergast, "Contract for stretch of Arizona border wall raises concerns of improper influence," Arizona Daily Star, Dec. 7, 2019, available at https://tucson.com/news/local/contract-for-stretch-of-arizona-border-wall-raises-concerns-of/article_c5083a5f-717a-57dc-88b1-108e178bec75.html.

¹⁸ "North Dakota company that Trump touted gets \$400 million border wall contract," Washington Post, Dec. 2, 2019, https://www.washingtonpost.com/immigration/north-dakota-company-that-trump-touted-gets-400-million-border-wall-contract/2019/12/02/9c661132-1568-11ea-bf81-ebe89f477d1e_story.html.

¹⁹ The term "records" as used in this request and in request number 2 includes, but is not limited to, all communications, data, and information preserved in physical or electronic (digital) formats, including but not limited to advisories, agreements, analyses, audio, calendar invitations, appointments, or reminders, contracts, correspondence, documents, e-mails, evaluations, faxes, files, guidelines, instructions, memoranda, memoranda of understanding, minutes of meetings or calls, notes, orders, policies, procedures, protocols, regulations, reports, rules, social-media posts, studies, technical manuals, text messages (SMS or other platforms), training manuals, or video.

III. Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552 (a)(6)(E).²⁰ 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. 552(a)(6)(E)(v)(II).

Both the ACLU and the Border Rights Center are “primarily engaged in disseminating information” within the meaning of the FOIA. 5 U.S.C. § 552(a)(6)(E)(v)(II). See also 6 C.F.R. § 5.5(e)(1)(ii). 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”).²¹ We do this work alone and with our national partners and allies. The ACLU of Texas, which houses the Border Rights Center, 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.²² The ACLU of Texas 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.²³

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).²⁴ Specifically, as discussed above, the requested records seek to inform the public DHS’s potential support of privately funded groups building border walls on the Southwest border.

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).

In addition, ACLU is entitled to a waiver or reduction 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, and disclosure of the information is not primarily in the commercial interest of the requester. See 5 U.S.C. § 552(a)(4)(A)(iii). Several outlets have reported with interest on the developing construction of border walls by WBW and the group’s relationship with

²⁰ See also 6 C.F.R. § 5.5(e)(1).

²¹ 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).

²² See generally *Immigrant Rights*, ACLU Tex., <https://www.aclutx.org/en/issues/immigrants-rights>.

²³ See generally *Know Your Rights*, ACLU Tex., <https://www.aclutx.org/en/know-your-rights/>.

²⁴ See also 6 C.F.R. § 5.5(e)(1)(ii).

United States DHS
United States CBP

the current administration. *E.g., Right-wing group continues to build private border wall. It lacks permits, but not official praise*, WASH. POST, Nov. 22, 2019. DHS and CBP's demand for a border wall, and the means by which they construct one, are the source of considerable public discussion and debate. Accordingly, transparency regarding DHS and CBP's relationship with WBW and its affiliates, which includes as advisors several persons currently or formerly affiliated with the executive branch, is vital to the public interest.

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 the below signed.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees. Please provide documents in digital form wherever possible.

Thank you for your prompt attention to this matter.

Sincerely,



David A. Donatti
ACLU TX
P.O. Box 8306, Houston, TX 77288
713.942.8146



Shaw Drake
ACLU Border Rights Center
P.O. Box 8306, Houston, TX 77288
713.942.8146

EXHIBIT B

David Donatti

From: admin@foiaonline.gov
Sent: Tuesday, December 17, 2019 12:33 PM
To: David Donatti
Subject: FOIA Expedited Processing Disposition Reached for CBP-2020-020048

Your request for Expedited Processing for the FOIA request CBP-2020-020048 has been granted. Additional details for this request are as follows:

- Request Created on: 12/16/2019
- Request Description: The ACLU seeks information regarding recently reported communications between the Department of Homeland Security (“DHS”), U.S. Customs and Border Protection (“CBP”), We Build the Wall Inc. (“WBW”), Fisher Industries, and American Eagle Brick Company as regard the private groups construction of border walls in New Mexico, Texas, and elsewhere.
- Expedited Processing Original Justification: The document attached elaborates the basis for expedited processing.
- Expedited Processing Disposition Reason: N/A

EXHIBIT C

David Donatti

From: admin@foiaonline.gov
Sent: Wednesday, April 29, 2020 7:29 AM
To: David Donatti
Subject: FOIA Expedited Processing Disposition Reached for CBP-OIT-2020-041192

Your request for Expedited Processing for the FOIA request CBP-OIT-2020-041192 has been denied. Additional details for this request are as follows:

- Request Created on: 03/09/2020
- Request Description: 1. All records of communication received from or transmitted to WBW by DHS and/or CBP. This Request includes such records of communication from or transmitted to all persons representing WBW, including but not limited to founder Brian Kolfage, Stephen K. Bannon, John Daniel Moran, Jr., Dr. Robert S. Spalding III, Brig Gen, USAF (Ret), Erik Prince, Curt Schilling, Tom Tancredo, David Alexander Clarke Jr., Kris Kobach, Mary Ann Mendoza, Steve Ronnebeck, Dustin Stockton, Tiffany Ruegner, Jennifer Lawrence, Amanda Shea, and/or any WBW advisory board members, staff, contractors, or subcontractors.
2. All records received from or transmitted to Fisher Industries and its affiliates by DHS and/or CBP related to the Sunland Park or Rio Grande Valley projects, including planning and/or coordination, execution, and financing of these projects, technical, environmental, or regulatory obligations or compliance/noncompliance therewith. Such request includes records of communication between DHS and/or CBP and all persons working with Fisher Industries, including but not limited to Fisher Sand & Gravel and American Eagle Brick Company and its affiliates.
- Expedited Processing Original Justification: The ACLU requests expedited processing pursuant to 5 U.S.C. § 552 (a)(6)(E).²⁰ 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. 552(a)(6)(E)(v)(II).
- Expedited Processing Disposition Reason: Does not meet requirements per DHS Regulations.

EXHIBIT D

David Donatti

From: admin@foiaonline.gov
Sent: Tuesday, December 17, 2019 12:34 PM
To: David Donatti
Subject: FOIA Fee Waiver Disposition Reached for CBP-2020-020048

Your request for Fee Waiver for the FOIA request CBP-2020-020048 has been determined to be not applicable as the request is not billable. Additional details for this request are as follows:

- Request Created on: 12/16/2019
- Request Description: The ACLU seeks information regarding recently reported communications between the Department of Homeland Security (“DHS”), U.S. Customs and Border Protection (“CBP”), We Build the Wall Inc. (“WBW”), Fisher Industries, and American Eagle Brick Company as regard the private groups construction of border walls in New Mexico, Texas, and elsewhere.
- Fee Waiver Original Justification: The document attached elaborates the basis for fee waiver.
- Fee Waiver Disposition Reason: N/A

GZJ DKV'G''

David Donatti

From: admin@foiaonline.gov
Sent: Thursday, March 12, 2020 4:33 PM
To: David Donatti
Subject: FOIA Fee Waiver Disposition Reached for CBP-OIT-2020-041192

Your request for Fee Waiver for the FOIA request CBP-OIT-2020-041192 has been determined to be not applicable as the request is not billable. Additional details for this request are as follows:

- Request Created on: 03/09/2020
- Request Description: 1. All records¹⁹ of communication received from or transmitted to WBW by DHS and/or CBP. This Request includes such records of communication from or transmitted to all persons representing WBW, including but not limited to founder Brian Kolfage, Stephen K. Bannon, John Daniel Moran, Jr., Dr. Robert S. Spalding III, Brig Gen, USAF (Ret), Erik Prince, Curt Schilling, Tom Tancredo, David Alexander Clarke Jr., Kris Kobach, Mary Ann Mendoza, Steve Ronnebeck, Dustin Stockton, Tiffany Ruegner, Jennifer Lawrence, Amanda Shea, and/or any WBW advisory board members, staff, contractors, or subcontractors.
2. All records received from or transmitted to Fisher Industries and its affiliates by DHS and/or CBP related to the Sunland Park or Rio Grande Valley projects, including planning and/or coordination, execution, and financing of these projects, technical, environmental, or regulatory obligations or compliance/noncompliance therewith. Such request includes records of communication between DHS and/or CBP and all persons working with Fisher Industries, including but not limited to Fisher Sand & Gravel and American Eagle Brick Company and its affiliates.
- Fee Waiver Original Justification: In addition, ACLU is entitled to a waiver or reduction 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, and disclosure of the information is not primarily in the commercial interest of the requester. See 5 U.S.C. § 552(a)(4)(A)(iii). Several outlets have reported with interest on the developing construction of border walls by WBW and the group's relationship with DHS & CBP
- Fee Waiver Disposition Reason: N/A

EXHIBIT F

David Donatti

From: admin@foiaonline.gov
Sent: Tuesday, December 17, 2019 12:36 PM
To: David Donatti
Subject: FOIA Tracking Number Change for request CBP-2020-020048 (to CBP-OBP-2020-020048)

The FOIA request CBP-2020-020048 has had its Tracking Number changed to CBP-OBP-2020-020048. This is normally due to the request being transferred to another agency (for example, EPA to Dept. of Commerce) or to a sub-agency to process it. Additional details for this request are as follows:

- Old Tracking Number: CBP-2020-020048
- New Tracking Number: CBP-OBP-2020-020048
- Requester Name: David Donatti
- Date Submitted: 12/16/2019
- Long Description: The ACLU seeks information regarding recently reported communications between the Department of Homeland Security (“DHS”), U.S. Customs and Border Protection (“CBP”), We Build the Wall Inc. (“WBW”), Fisher Industries, and American Eagle Brick Company as regard the private groups construction of border walls in New Mexico, Texas, and elsewhere.

GZJ DKV'I ''

David Donatti

From: admin@foiaonline.gov
Sent: Friday, January 3, 2020 12:35 PM
To: David Donatti
Subject: FOIA Tracking Number Change for request CBP-OBP-2020-020048 (to CBP-2020-020048)

The FOIA request CBP-OBP-2020-020048 has had its Tracking Number changed to CBP-2020-020048. This is normally due to the request being transferred to another agency (for example, EPA to Dept. of Commerce) or to a sub-agency to process it. Additional details for this request are as follows:

- Old Tracking Number: CBP-OBP-2020-020048
- New Tracking Number: CBP-2020-020048
- Requester Name: David Donatti
- Date Submitted: 12/16/2019
- Long Description: The ACLU seeks information regarding recently reported communications between the Department of Homeland Security (“DHS”), U.S. Customs and Border Protection (“CBP”), We Build the Wall Inc. (“WBW”), Fisher Industries, and American Eagle Brick Company as regard the private groups construction of border walls in New Mexico, Texas, and elsewhere.

EXHIBIT H

David Donatti

From: admin@foiaonline.gov
Sent: Thursday, February 27, 2020 7:10 AM
To: David Donatti
Subject: FOIA Tracking Number Change for request CBP-2020-020048 (to CBP-OIT-2020-020048)

The FOIA request CBP-2020-020048 has had its Tracking Number changed to CBP-OIT-2020-020048. This is normally due to the request being transferred to another agency (for example, EPA to Dept. of Commerce) or to a sub-agency to process it. Additional details for this request are as follows:

- Old Tracking Number: CBP-2020-020048
- New Tracking Number: CBP-OIT-2020-020048
- Requester Name: David Donatti
- Date Submitted: 12/16/2019
- Long Description: The ACLU seeks information regarding recently reported communications between the Department of Homeland Security (“DHS”), U.S. Customs and Border Protection (“CBP”), We Build the Wall Inc. (“WBW”), Fisher Industries, and American Eagle Brick Company as regard the private groups construction of border walls in New Mexico, Texas, and elsewhere.

EXHIBIT I

David Donatti

From: admin@foiaonline.gov
Sent: Tuesday, March 10, 2020 6:19 PM
To: David Donatti
Subject: FOIA Tracking Number Change for referral CBP-2020-041192 (to CBP-OIT-2020-041192)

The FOIA referral CBP-2020-041192 has had its Tracking Number changed to CBP-OIT-2020-041192. This is normally due to the referral being transferred to another agency (for example, EPA to Dept. of Commerce) or to a sub-agency to process it. Additional details for this referral are as follows:

- Old Tracking Number: CBP-2020-041192
- New Tracking Number: CBP-OIT-2020-041192
- Requester Name: David Donatti
- Date Submitted: 03/09/2020
- Long Description: 1. All records¹⁹ of communication received from or transmitted to WBW by DHS and/or CBP. This Request includes such records of communication from or transmitted to all persons representing WBW, including but not limited to founder Brian Kolfage, Stephen K. Bannon, John Daniel Moran, Jr., Dr. Robert S. Spalding III, Brig Gen, USAF (Ret), Erik Prince, Curt Schilling, Tom Tancredo, David Alexander Clarke Jr., Kris Kobach, Mary Ann Mendoza, Steve Ronnebeck, Dustin Stockton, Tiffiny Ruegner, Jennifer Lawrence, Amanda Shea, and/or any WBW advisory board members, staff, contractors, or subcontractors.
2. All records received from or transmitted to Fisher Industries and its affiliates by DHS and/or CBP related to the Sunland Park or Rio Grande Valley projects, including planning and/or coordination, execution, and financing of these projects, technical, environmental, or regulatory obligations or compliance/noncompliance therewith. Such request includes records of communication between DHS and/or CBP and all persons working with Fisher Industries, including but not limited to Fisher Sand & Gravel and American Eagle Brick Company and its affiliates.

EXHIBIT J

David Donatti

From: SCOTT, SHANNON
Sent: Friday, March 13, 2020 8:44 AM
To: David Donatti
Subject: CBP-2020-041192

Good Morning,

Your request for needs clarification:

1. All records¹⁹ of communication received from or transmitted to WBW by DHS and/or CBP. This Request includes such records of communication from or transmitted to all persons representing WBW, including but not limited to founder Brian Kolfage, Stephen K. Bannon, John Daniel Moran, Jr., Dr. Robert S. Spalding III, Brig Gen, USAF (Ret), Erik Prince, Curt Schilling, Tom Tancredo, David Alexander Clarke Jr., Kris Kobach, Mary Ann Mendoza, Steve Ronnebeck, Dustin Stockton, Tiffiny Ruegner, Jennifer Lawrence, Amanda Shea, and/or any WBW advisory board members, staff, contractors, or subcontractors.

2. All records received from or transmitted to Fisher Industries and its affiliates by DHS and/or CBP related to the Sunland Park or Rio Grande Valley projects, including planning and/or coordination, execution, and financing of these projects, technical, environmental, or regulatory obligations or compliance/noncompliance therewith. Such request includes records of communication between DHS and/or CBP and all persons working with Fisher Industries, including but not limited to Fisher Sand & Gravel and American Eagle Brick Company and its affiliates.

We need:

1. Date ranges, at a minimum at least a start date.
2. CBP can only look for specific person mail boxes, saying all transmitted between Fisher Industries and its Affiliates cannot be processed without specific names. You listed names in which we can search, if you would like to add more that's fine as well.
3. If you have other keywords you would like CBP to search please list those as well.

Please reply to this email NLT March 18, 2020, otherwise your request would be considered insufficient and closed.

Thank you,

Mr. Shannon L. Scott, M.S., C.C.F.E
Acting Subject Matter Expert
Customs and Border Protection
PDO, FOIA Division

EXHIBIT K



March 17, 2020

Via Electronic Mail

Mr. Shannon L. Scott, M.S., C.C.F.E
Acting Subject Matter Expert
Customs and Border Protection
PDO, FOIA Division

Re: CBP-2020-41192 Request for Clarification

Dear Mr. Scott,

Thank you for your attention to our Freedom of Information Act ("FOIA") request submitted December 16, 2019. This letter addresses your request for clarification sent March 16, 2020.

The American Civil Liberties Union of Texas ("ACLU") has requested:

1. All records¹ of communication received from or transmitted to We Build the Wall ("WBW") by the Department of Homeland Security ("DHS") and/or Customs and Border Protection ("CBP"). This Request includes such records of communication from or transmitted to all persons representing WBW, including but not limited to founder Brian Kolfage, Stephen K. Bannon, John Daniel Moran, Jr., Dr. Robert S. Spalding III, Brig Gen, USAF (Ret), Erik Prince, Curt Schilling, Tom Tancredo, David Alexander Clarke

¹ The term "records" as used in this request and in request number 2 includes, but is not limited to, all communications, data, and information preserved in physical or electronic (digital) formats, including but not limited to advisories, agreements, analyses, audio, calendar invitations, appointments, or reminders, contracts, correspondence, documents, e-mails, evaluations, faxes, files, guidelines, instructions, memoranda, memoranda of understanding, minutes of meetings or calls, notes, orders, policies, procedures, protocols, regulations, reports, rules, social-media posts, studies, technical manuals, text messages (SMS or other platforms), training manuals, or video.

United States DHS
United States CBP

Jr., Kris Kobach, Mary Ann Mendoza, Steve Ronnebeck, Dustin Stockton, Tiffany Ruegner, Jennifer Lawrence, Amanda Shea, and/or any WBW advisory board members, staff, contractors, or subcontractors.

2. All records received from or transmitted to Fisher Industries and its affiliates by DHS and/or CBP related to the Sunland Park or Rio Grande Valley (“RGV”) projects, including planning and/or coordination, execution, and financing of these projects, technical, environmental, or regulatory obligations or compliance/noncompliance therewith. Such request includes records of communication between DHS and/or CBP and all persons working with Fisher Industries, including but not limited to Fisher Sand & Gravel and American Eagle Brick Company and its affiliates.

Seeking clarification, you have requested:

1. Date ranges, at a minimum at least a start date.
2. CBP can only look for specific person mail boxes, saying all transmitted between Fisher Industries and its Affiliates cannot be processed without specific names. You listed names in which we can search, if you would like to add more that’s fine as well.
3. If you have other keywords you would like CBP to search please list those as well.

In response to your request for clarification:

1. Please search from **December 16, 2018** to the present.
2. Where specific names are necessary, please search for the following specific names, including reasonable iterations of these names as provided below:
 - a. Brian Kolfage
 - b. Ajay Bruno
 - c. Stephen K. Bannon
 - i. Steve Bannon
 - ii. Stephen Bannon
 - d. Donald Trump, Jr.
 - i. Don Trump
 - ii. Don Jr.
 - iii. Don Junior
 - e. John Daniel Moran, Jr.
 - i. John Moran
 - f. Dr. Robert S. Spalding III
 - i. Robert Spalding
 - ii. Rob Spalding
 - g. Erik Prince
 - h. Curt Schilling
 - i. Tom Tancredo
 - j. David Alexander Clarke Jr.
 - i. David Clarke
 - ii. Sheriff Clarke

United States DHS
United States CBP

- k. Kris Kobach
 - l. Kevin Cramer
 - m. Mary Ann Mendoza
 - n. Steve Ronnebeck
 - o. Dustin Stockton
 - p. Tiffany Ruegner
 - q. Jennifer Lawrence
 - r. Amanda Shea
 - s. Thomas Fisher
 - i. Tommy Fisher
3. Please additionally search for these key words and phrases
- a. We Build the Wall
 - b. WBW
 - c. GoFundMe
 - i. go fund me
 - d. Fisher Industries
 - e. Sunland Park
 - f. Rio Grande Valley
 - g. RGV
 - h. Mission
 - i. Fisher Sand
 - j. American Eagle
 - k. American Eagle Brick
 - l. Stinger Bridge
 - m. Cabeza Prieta
 - n. Yuma
 - o. Foreman Mike

Thank you for your time, and for your prompt attention to this matter. Please let us know if additional clarification would be helpful.

Sincerely,

/s/ David A. Donatti

David A. Donatti
Kathryn Huddleston
ACLU TX
P.O. Box 8306, Houston, TX 77288
713.942.8146

Shaw Drake
ACLU Border Rights Center
P.O. Box 8306, Houston, TX 77288
713.942.8146

EXHIBIT L

David Donatti

P.O. Box 8306
Houston, TX, 77288

03/10/2020

CBP-2020-041192

Dear David Donatti:

This notice acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP) received on 03/09/2020. Please use the following unique FOIA tracking number CBP-2020-041192 to track the status of your request. If you have not already done so, you must create a FOIAonline account at <https://foiaonline.gov>. This is the only method available to check the status of your pending FOIA request.

Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS FOIA regulations outlined on the DHS website, <https://www.federalregister.gov/documents/2016/11/22/2016-28095/freedom-of-information-act-regulations>. By submitting your request, you have agreed to pay up to \$25.00 in applicable processing fees, if any fees associated with your request exceed this amount, CBP shall contact you; however, the first 100 pages are free.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. Part 5 §5.5(a) of the DHS FOIA regulations, CBP processes FOIA requests according to their order of receipt. Although CBP's goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances pursuant to 6 C.F.R. Part 5 §5.5(c).

CBP's FOIA Division is working hard to reduce the amount of time necessary to respond to FOIA requests. We truly appreciate your continued patience.

For additional information please consult CBP FOIA website please click on [FOIA Act Resources](#) or visit <http://www.cbp.gov/site-policy-notice/foia>.

Sincerely,

U.S. Customs and Border Protection

EXHIBIT M

David Donatti
P.O. Box 8306
Houston, TX, 77288

04/29/2020

CBP-OIT-2020-020048

Dear David Donatti

The U.S. Customs and Border Protection (CBP) Freedom of Information Act (FOIA) Division received your letter inquiring about a FOIA request that you previously submitted to CBP reference FOIA number CBP-OIT-2020-020048.

This letter is to confirm that your FOIA request has been received by CBP and will be processed in the order it was received. Once responsive records are available, you will be notified electronically by CBP FOIA that records are available to view via your FOIAonline account. If you already have a FOIAonline account, you can view or print responsive records from your account. If you do not already have a FOIAonline account, please create one by taking the following steps:

- Simply go to your search engine (i.e., google, etc.) and type FOIAonline, then hit enter, that will take you to the FOIAonline site.
- From there, press the button on the right "Create Account" and follow the prompts to create a FOIAonline account.

Submitting a FOIA request online is the preferred method (vs. postal mail) for many reasons:

- You immediately receive a unique FOIA tracking number and acknowledgment that your FOIA request was received by CBP.
 - You can track your FOIA request any day/any time through your FOIAonline account.
 - When responsive records become available, you receive an email letting you know records can be viewed via your FOIAonline account,
 - You can view all of your historical FOIA requests via the "dashboard" in your FOIAonline account.
- In the future, please use your FOIAonline account to submit future FOIA requests to CBP. Please note that all FOIA requests for official travel records on an individual must include 1) the subject's name, 2) the subject's date of birth, and 3) third party consent. If this information is not provided with the original FOIA request, it will be considered "insufficient", and will not be processed.

Finally, the CBP FOIA office has a significant backlog of FOIA requests. The expected response time for a FOIA request for travel documents is 3-6 months. If you do not receive a response to your FOIA request within 20 business days, please do not resubmit the same FOIA request as it creates further delays. We are working very hard to clear the FOIA backlog and we thank you in advance for your cooperation.

CBP FOIA Division

EXHIBIT N



**Homeland
Security**

Privacy Office, Mail Stop 0655

January 13, 2020

David Donatti
ACLU of Texas
P.O. Box 8306
Houston, TX 77288-8306

Re: 2020-HQFO-00332

Dear Mr. Donatti:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), Privacy Office, dated December 16, 2019, and received in this office on December 30, 2019. You requested documents regarding:

1. All records of communication received from or transmitted to WBW by DHS and/or CBP. This Request includes such records of communication from or transmitted to all persons representing WBW, including but not limited to founder Brian Kolfage, Stephen K. Bannon, John Daniel Moran, Jr., Dr. Robert S. Spalding III, Brig Gen, USAF (Ret), Erik Prince, Curt Schilling, Tom Tancredo, David Alexander Clarke Jr., Kris Kobach, Mary Ann Mendoza, Steve Ronnebeck, Dustin Stockton, Tiffany Ruegner, Jennifer Lawrence, Amanda Shea, and/or any WBW advisory board members, staff, contractors, or subcontractors.
2. All records received from or transmitted to Fisher Industries and its affiliates by DHS and/or CBP related to the Sunland Park or Rio Grande Valley projects, including planning and/or coordination, execution, and financing of these projects, technical, environmental, or regulatory obligations or compliance/noncompliance therewith. Such request includes records of communication between DHS and/or CBP and all persons working with Fisher Industries, including but not limited to Fisher Sand & Gravel and American Eagle Brick Company and its affiliates.

Due to the subject matter of your request, I am transferring this request to the FOIA Officer for U. S. Customs & Border Protection (CBP), for processing under the FOIA and direct response to you. Please find their contact information below:

U. S. Customs & Border Protection (CBP)

FOIA Officer

U.S. Customs and Border Protection

90 K Street, NE

FOIA Division

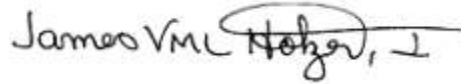
Washington, DC 20229

Phone: 202-325-0150

[CBP Website](#)

If you need to contact our office again about this matter, please refer to **2020-HQFO-00332**.
You may contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

A handwritten signature in black ink that reads "James VML Holzer, J." The signature is written in a cursive style with a horizontal line extending from the end.

James Holzer
Deputy Chief Privacy Officer (A)
Deputy Chief FOIA Officer