



December 17, 2021

United States Customs & Border Protection (CBP)

FOIA Officer
90 K Street, NE
FOIA Division
Washington, DC 20229

RE: FOIA Request to U.S. Customs & Border Protection (CBP) for Records Regarding Border-Related Human Trafficking and Exploitation of Women and Children, the Cancellation or Postponement of Operation Talon, and Taking Down CBP's Press Release on Arrest of Persons on the FBI's Terrorism Watch List

Dear CBP FOIA Officer:

This letter is a request ("Request") in accordance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and the corresponding department/agency implementing regulations.

The Request is made by the American Center for Law and Justice ("ACLJ")¹ on behalf of itself and over 88,000 of its members.

Background

Pursuant to DHS FOIA regulation 6 C.F.R. §5.3(b), this Background addresses "the date, title or name, author, recipient, and subject matter of the record[s]" requested, to the extent known.

Records discussing and showing what actions are being taken to protect unaccompanied minors and women from trafficking and/or exploitation

According to the State Department:

In the United States, individuals vulnerable to human trafficking include unaccompanied foreign national children without lawful immigration status; individuals seeking asylum; migrant laborers, including undocumented workers

¹The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.

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and participants in visa programs for temporary workers; foreign national domestic workers in diplomatic households; persons with limited English proficiency

Human trafficking occurs when a trafficker uses force, fraud, or coercion to compel another person to work or engage in a commercial sex act, and does not require crossing a border. By contrast, migrant smugglers engage in the crime of bringing people across international borders through deliberate evasion of immigration laws. While these are distinct crimes, individuals who are smuggled may become vulnerable to and victims of human trafficking.²

It has been reported that:

Criminal cartels that are trafficking families, women, children and single adults over the southern border earned as much as \$14 million a day in February, according to a report on Monday.

“Trafficking is a multibillion-dollar industry,” former Tucson Border Patrol Chief Roy Villareal, who retired in December after 30 years with the agency told Fox News.

“A lot of these vulnerable populations use their life savings. Some are essentially indentured servants and they’re working off this debt for a long period of time. In other cases, some of these migrants are asked to transport narcotics or some form of crime to work off a different part of their debt,” he said.³

There are reports of many teenage boys being bused into Dallas by the Administration.⁴ The Mexican press is reporting girls as young as seven attempting to cross alone.⁵

For Fiscal year 2020:

ICE agents arrested more than 143,000 people in the interior. The most convictions or criminal charges pending against them were for driving under the influence (74,000), followed by drug offenses (67,000). Only 1,900 had been charged or convicted of homicide.

² *About Human Trafficking*, STATE DEPARTMENT, <https://www.state.gov/humantrafficking-about-human-trafficking/> (last visited Apr. 5, 2021).

³ Mark Moore, *US-Mexico Border Traffickers Earned as Much as \$14M a Day Last Month*, N.Y. POST (Mar. 22, 2021), <https://nypost.com/2021/03/22/us-mexico-border-traffickers-earned-as-much-as-14m-a-day-last-month/>.

⁴ Alex Boyer & Stephen Dial, *Gov. Abbott Wants DPS to Investigate if Children Crossing the Border are Victims of Human Trafficking*, FOX4 (Mar. 17, 2021), <https://www.fox4news.com/news/gov-abbott-wants-dps-to-investigate-if-children-crossing-the-border-are-victims-of-human-trafficking>.

⁵ AP, *“Mi Padre Me Dijo que Cruzara Sola” [My Father Told Me to Cross Alone]*, REFORMA (Mar. 24, 2021), https://www.reforma.com/aplicacioneslibre/preacceso/articulo/default.aspx?__rval=1&urlredirect=https://www.reforma.com/mi-padre-me-dijo-que-cruzara-sola/ar2149568?referer=--7d616165662f3a3a6262623b727a7a7279703b767a783a--.

Convictions or criminal charges of the aliens arrested also included 1,800 homicide-related crimes, 1,600 kidnappings, 37,000 assaults, and 10,000 sex crimes, according to ICE data. Further, ICE announced that in FY 2020 they had successfully deported 185,884 immigrants. Of those, 4,276 were known or suspected gang members, 675 of whom are believed to be members of the brutal gang MS-13. It was also reported that 31 were known or suspected terrorists.⁶

Despite the statistics above, migrants are being released from custody without a court date, and the number is growing.⁷ Furthermore:

US border authorities have posted online a terrifying gallery of illegal immigrants they recently busted crossing in from Mexico — including suspected pedophiles, rapists and murderers.

The parade of at least 10 hardened criminals comes amid a southern border crisis that has been blamed on the Biden administration's eased policies.⁸

Rep. John Katko (R-N.Y.), who serves on the Homeland Security Committee, stated that “[p]eople they've caught in the last few days over there in sector three or monument three have been on the terror watch list. Individuals that they have on the watch list for terrorism are now starting to exploit the southern border.”⁹

In January 2021, unaccompanied minors increased to 5,700 from 4,855 in December.¹⁰ These numbers are increasing. “More than 16,000 migrant children are currently in U.S. custody, with 5,000 of those in the hands of Border Patrol, which is encountering about 530 unaccompanied minors every day.”¹¹

⁶ Raymond Lahoud, *Illegal Immigrants Arrested in FY 2020 Had Average of Four Criminal Convictions or Charges Each*, ICE SAYS, NAT. L. REV. (Jan. 7, 2021), <https://www.natlawreview.com/article/illegal-immigrants-arrested-fy-2020-had-average-four-criminal-convictions-or-charges>.

⁷ Quinn Owen & Benjamin Siegel, *Migrants Released from Rio Grande Valley Without Court Dates*, ABC NEWS (Mar. 24, 2021), <https://abcnews.go.com/Politics/migrants-released-rio-grande-valley-court-dates/story?id=76642838>.

⁸ Gabrielle Fonrouge & Kate Sheehy, *Border Agent Shares Photos of Suspected Criminals Crossing Into US*, N.Y. POST (MAR. 22, 2021), <https://nypost.com/2021/03/22/border-patrol-agent-shares-photos-of-criminals-crossing-into-us/>.

⁹ Melanie Arter, *Rep. John Katko: People on the Terror Watch List Caught Coming Across the Border in Last Few Days*, CNS NEWS (Mar. 15, 2021), <https://cnsnews.com/article/washington/melanie-arter/rep-john-katko-people-terror-watch-list-caught-coming-across>.

¹⁰ Ariel Zilber & James Gordon, *Biden Administration Prepares to Open ANOTHER Tent Facility in Texas to Cope with 500 New Migrants Expected to Arrive by End of the Week after They Relaxed Border Laws*, DAILY MAIL (Feb. 28, 2021), <https://www.dailymail.co.uk/news/article-9309275/Bidens-relaxation-immigration-laws-means-border-officials-prepare-open-tent-facility.html>.

¹¹ Manuel Bojorquez, *Biden Administration to Open Emergency Shelters with More Than 16,000 Migrant Children in U.S. Custody*, CBS EVENING NEWS (Mar. 24, 2021), <https://www.cbsnews.com/news/immigration-migrant-children-emergency-shelters/>.

Records Regarding Cancellation or Postponement of Operation Talon

According to a report, “Biden’s administration recently cancelled Operation Talon, a Trump administration program aimed at removing convicted sex offenders living in the United States illegally.”¹² According to Reuters, “The Department of Homeland Security (DHS) told Reuters the operation was not canceled but postponed, and the logistical decision to do so was made by ICE operators, not the president.”¹³

Records about CBP removing a press release about the arrest of two illegal aliens on the FBI’s Terrorism Watch List and No-Fly List

According to a recent report by the *Federalist*:

U.S. Customs and Border Protection will not answer why a press release outlining the arrest of two Yemeni illegal aliens who appeared on both the FBI’s Terrorism Watch List and No-Fly List was removed from its website on Tuesday.

In the now-archived announcement, CBP explained that agents apprehended two men near Calexico, California, between the end of January and the end of March, a period during which illegal border crossings soared to record-setting numbers. The announcement detailing both incidents, including the discovery of a cellular phone sim card in one of the migrant’s shoes, however, was quietly exchanged, without explanation, with a link to a page denying access to members of the public on Tuesday. Searches for the original release on the CBP website also did not yield any recent results.¹⁴

In March, CBP told Newsweek that,

[e]ncounters with terrorists at U.S. borders are “very uncommon,” according to a statement released Wednesday from U.S. Customs and Border Protection (CBP).

“Our border security efforts are layered and include multiple levels of rigorous screening that allow us to detect and prevent people who pose national security or

¹² Human Events Staff, *Biden cancels Trump’s “Operation Talon” Program that Targeted Sex Offenders Living in U.S. Illegally*, HUMAN EVENTS (Feb. 26, 2021), <https://humanevents.com/2021/02/26/biden-cancels-trumps-operation-talon-program-that-targeted-sex-offenders-living-in-u-s-illegally/>.

¹³ Reuters Staff, *Fact Check: Decision to postpone Operation Talon was made by ICE and not Biden administration, DHS says*, REUTERS (Mar. 1, 2021), <https://www.reuters.com/article/uk-factcheck-operation-talon/fact-check-decision-to-postpone-operation-talon-was-made-by-ice-and-not-biden-administration-dhs-says-idUSKCN2AT3KS>.

¹⁴ Jordan Davidson, *CBP Won’t Say Why Its Press Release On Arrest Of Two Yemeni Terror-Watch Illegals Was Scrubbed*, THE FEDERALIST (April 6, 2021), <https://thefederalist.com/2021/04/06/cbp-wont-say-why-its-press-release-on-arrest-of-two-yemeni-terror-watch-illegals-was-scrubbed/>.

public safety risks from entering the United States,” CBP said in the statement provided to Newsweek.¹⁵

Indeed, when the ACLJ attempts to access the CBP press release at <https://www.cbp.gov/newsroom/local-media-release/two-yemeni-men-arrested-border-patrol-identified-fbi-s-terrorism-0>, the message “Access Denied” appears.

Records Requested

For purposes of this Request, the term “record” is “any information” that qualifies under 5 U.S.C. § 552(f). The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government or private account or server, consistent with the holdings of *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016) (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

When this Request names a person or an office, it includes any alias or pseudonym name and any electronic communication account any such official might use.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is November 4, 2020, to the date this Request is processed.

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, ACLJ hereby requests that the U.S. Department of Homeland Security produce the following:

1. Records of information provided, via email, memorandum, visual presentation, briefing, or talking points, to U.S. Department of Homeland Security (“DHS”) Secretary Alejandro Mayorkas or his immediate subordinates or assistants, the Deputy Secretary, or the Chief of Staff, listing the totals of illegal border crossings or any demographic or other such statistics.
2. Records of information prepared for or transmitted to the White House, via email, memorandum, visual presentation, or talking points, listing the total number of illegal border crossings, unaccompanied minors, or women, excluding any personal identifiers of victims or legitimate law enforcement records. Such records would be within the custody of any DHS official or component authorized to communicate with the White House, but

¹⁵ Nicole Fallert, *Border Patrol Says Encounters With Terrorists at Borders Are Uncommon, Despite Claims*, NEWSWEEK (Mar. 17, 2021), <https://www.newsweek.com/border-patrol-says-encounters-terrorists-borders-are-uncommon-despite-claims-1576812>.

seems to include the office of the Secretary, the Deputy Secretary, or the Chief of Staff, and any White House liaison staff.

3. Records of any interactions or communications between Secretary Mayorkas, or his immediate subordinates, assistants, liaisons, or designates, the Deputy Secretary, or the Chief of Staff, and the White House, regarding the issue of human trafficking or exploitation of women and children, excluding any personal identifiers of victims or legitimate law enforcement records.
4. Records of information prepared for or provided to Secretary Mayorkas, or his immediate subordinates or assistants, the Deputy Secretary, or the Chief of Staff, of actions being taken to protect unaccompanied minors and women from trafficking and/or exploitation in the process of crossing the border and the process of transferring to different locations within the United States after crossing or apprehension, excluding any personal identifiers of victims or legitimate law enforcement records.
5. Records of information prepared for or provided to Secretary Mayorkas, or his immediate subordinates or assistants, the Deputy Secretary, or the Chief of Staff, regarding why Operation Talon should not be, should be, or was, paused, postponed or canceled, excluding any personal identifiers of victims or legitimate law enforcement records.
6. Records of communications of officials within the office of Secretary Mayorkas, or his immediate subordinates or assistants, the Deputy Secretary, or the Chief of Staff, as well as the DHS press/information office, leading to or substantively regarding the removal on or around April 6, 2021, of a CBP press release from its website announcing the arrest of two individuals who were named on the FBI terror watchlist.
7. Records of any communications to or from Secretary Mayorkas regarding human trafficking or sexual exploitation, excluding any personal identifiers of victims or legitimate law enforcement records.

These Requests do NOT seek actual investigatory law enforcement files of any particular investigation or case, or any personal identifiers of any victim.

Each request seeks records which include, but are not limited to, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DHS electronic mail or message accounts, non-DHS electronic mail or message accounts, personal electronic mail or message accounts, DHS servers, non-DHS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

CONCLUSION

If this Request is denied in whole or in part, the ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions and provide any judicially required explanatory information, including but not limited to, a *Vaughn* Index.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director
Benjamin P. Sisney, Senior Litigation Counsel
John A. Monaghan, Senior Litigation Counsel
American Center for Law and Justice



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Handwritten signature of Jordan Sekulow in cursive script.

Jordan Sekulow
Executive Director

Handwritten signature of Benjamin P. Sisney in cursive script.

Benjamin P. Sisney
Senior Litigation Counsel

Handwritten signature of John A. Monaghan in cursive script.

John A Monaghan
Senior Litigation Counsel