



May 13, 2019

**Submitted via foiaonline.gov**

FOIA Officer  
U.S. Customs and Border Protection  
90 K Street, NW  
9th Floor, Mail Stop 1181  
Washington, DC 20229

Dr. James V.M.L. Holzer  
Deputy Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW  
STOP-0655  
Washington, D.C. 20528-0655

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer:

The American Civil Liberties Union of New Mexico Foundation (ACLU-NM Foundation) submits this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq.

**Request for Information**

ACLU-NM requests the disclosure of any and all records<sup>1</sup> that were prepared, received, transmitted, collected and/or maintained by the U.S. Border Patrol (BP) and/or U.S. Customs and Border Protection (CBP) that describe, refer to, or relate to the apprehension, custody,

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<sup>1</sup> The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, training manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

processing, transfer, and/or release of migrants at the New Mexico border during the time period of **April 7-20, 2019**, as follows:

1. All BP and CBP records pertaining to the apprehension, custody, processing, transfer, and/or release of migrants who were apprehended on the aforementioned dates in Sunland Park, NM, a land area which may include, but is not limited to, the area known as Anapra, the land encompassed by Mt. Cristo Rey, land owned by the American Eagle Brick Company, the location of Monument One, and/or land owned by the Union Pacific Railroad.
2. The names, badge numbers, and on-duty time logs of all BP and CBP officers, agents, staff, and/or personnel who performed duties in their official capacities at the locations described in item 1 during the aforementioned dates.
3. All internal memoranda, documentation, or internal communications (including, but not limited to, emails, faxes, attached documents, dispatches, letters, memos, notes, texts, phone logs, directives, guidelines, or policies) within BP and/or CBP containing the words “UCP,” “United Constitutional Patriots,” “militia,” and/or “vigilante.”
4. All communications (including, but not limited to, emails, faxes, attached documents, dispatches, letters, memos, notes, texts, or phone logs) between BP and/or CBP and the following entities or individuals: United Constitutional Patriots (“UCP”), Patriots of the Constitution, James (“Jim”) Benvie, Larry Hopkins, Johnny Horton Jr., Jeff Allen, Gavin Clarkson, Mark Cheney, Armando Gonzalez, Steven Brant, “Viper,” Anthony Aguero, and/or Debbie Collins Farnsworth.

We request that records existing in electronic format be provided in electronic format or on a compact disc. If any of the requested records or information is not in a succinct format, we request the opportunity to view the documents in your offices.

If any of the information requested is considered exempt under applicable law, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

### **Request for Waiver of Fees**

ACLU-NM asks that BP, CBP, and DHS waive all fees associated with this FOIA request. Such a waiver is warranted because disclosure of the information is “...likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); see also 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, the Requesters have the ability to widely disseminate the requested information. See Judicial Watch

v. Rossotti, 326 F.3d 1309 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and nonconclusory terms, how and to whom it would disseminate the information it received).

#### A. *Disclosure of the Information Is in the Public Interest*

Disclosure of the requested information will contribute significantly to public understanding of BP apprehensions of migrants at or near the U.S.-Mexico border. Importantly, it will also offer insight into illegal vigilante activity carried out simultaneously by untrained individuals who attempt to exercise their own brand of border justice.<sup>2</sup> Numerous recent instances of armed civilians detaining migrant families and handing them over to BP agents demonstrate an urgent threat to public safety.<sup>3</sup> This conduct raises broad public concern about an armed militia, unsanctioned by the state or federal government, illegally apprehending migrants at the border.<sup>4</sup>

The request for information is timely: Statewide,<sup>5</sup> national,<sup>6</sup> and international<sup>7</sup> media continue to report on the anti-immigrant efforts of United Constitutional Patriots (UCP), Guardian Patriots, and other bands of vigilantes at the United States' southern border, yet little is known about the individuals and families who have suffered from these traumatic and illegal detentions. Furthermore, New Mexico's governor,<sup>8</sup> attorney general,<sup>9</sup> and Congressional representatives<sup>10</sup>

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<sup>2</sup> See, e.g., ACLU-NM Press Release, *ACLU of New Mexico Asks Governor and Attorney General to Investigate Armed Vigilantes Unlawfully Detaining Migrants in Southern New Mexico* (April 18, 2019), at <https://www.aclu-nm.org/en/press-releases/aclu-new-mexico-asks-governor-and-attorney-general-investigate-armed-vigilantes>.

<sup>3</sup> See, e.g., Simon Romero, *Militia in New Mexico Detains Asylum Seekers at Gunpoint*, *The New York Times* (April 18, 2019), at <https://www.nytimes.com/2019/04/18/us/new-mexico-militia.html>.

<sup>4</sup> See, e.g., Debbie Nathan, *Border Patrol in New Mexico Stood By as Right-Wing Militia Terrorized Migrants*, *The Appeal* (April 29, 2019), at <https://theappeal.org/border-patrol-in-new-mexico-stood-by-as-right-wing-militia-terrorized-migrants/>.

<sup>5</sup> See, e.g., Angela Kocherga, *'Patriots' Group Remains on the Border*, *Albuquerque Journal* (May 12, 2019), at <https://www.abqjournal.com/1314589/patriots-group-is-back-on-the-border.html>.

<sup>6</sup> See, e.g., Nausicaa Renner, *The Real Threat Uncovered by Armed Civilians at the Border*, *The New York Times Magazine* (May 8, 2019), at <https://www.nytimes.com/2019/05/08/magazine/the-real-threat-uncovered-by-armed-civilians-at-the-border.html>; Ken Klippenstein, *'Put Them All in a Gas Chamber,' Said Border Militia Member: Report*, *TYT Investigates* (May 6, 2019), at <https://tyt.com/stories/4vZLCHuOrYE4uKagy0oyMA/55ZimtgirWgUh9ZgMSPirI>;

Simon Romero, *Militia Defiant in New Mexico: 'It's My God-Given Right to Be Here,'* *The New York Times* (April 23, 2019), at <https://www.nytimes.com/2019/04/23/us/new-mexico-militia-border.html>.

<sup>7</sup> See, e.g., *Mexico Worried Over Abuses by Pro Trump Groups Against Migrants*, *Prensa Latina* (April 21, 2019), at <https://www.plenglish.com/index.php?o=rn&id=41116&SEO=mexico-worried-over-abuses-by-pro-trump-groups-against-migrants>.

<sup>8</sup> See, e.g., Mary Papenfuss, *New Mexico Governor Demands Right-Wing Militia Stop Illegally Holding Migrants*, *The Huffington Post* (April 20, 2019), at [https://www.huffpost.com/entry/new-mexico-border-militia-border\\_n\\_5cba764ee4b032e7ceb869d9](https://www.huffpost.com/entry/new-mexico-border-militia-border_n_5cba764ee4b032e7ceb869d9).

<sup>9</sup> See, e.g., Salvador Hernandez and Adolfo Flores, *A Militia Group Detained Hundreds of Migrants at Gunpoint at the Border*, *Buzzfeed News* (April 19, 2019), at <https://www.buzzfeednews.com/article/salvadorhernandez/militia-group-border-migrants-detain-united-constitutional>.

<sup>10</sup> See, e.g., Office of U.S. Congresswoman Deb Haaland Press Release, *Haaland Leads Effort Calling for Federal Investigation into Armed Militia Groups on the Southwest Border with Escobar, Lujan* (April 24, 2019), at <https://haaland.house.gov/media/press-releases/haaland-leads-effort-calling-federal-investigation-armed-militia-groups>; Office of U.S. Senator Martin Heinrich Press Release, *Udall, Heinrich Statement on Militia Group Illegally*

have condemned the vigilante activities and called for further investigation. People in New Mexico and other communities along the U.S.-Mexico border have a right to know the extent to which untrained and armed civilians have taken federal immigration enforcement into their own hands. The requested information will significantly enhance public understanding of this ongoing safety threat, giving concerned community members a more complete picture of the unauthorized encounters that may be enabling subsequent BP apprehensions.

Moreover, the requester has the capacity, intent and demonstrated ability to disseminate widely the requested information to a broad cross-section of the public, including a segment of the public most interested in and concerned about these immigration issues. ACLU-NM has regular contact with national print and news media and plans to share information gleaned from these FOIA disclosures with interested media.

ACLU-NM, a U.S. 501(c)(3) non-profit organization, is dedicated to preserving and advancing the civil rights and legal freedoms guaranteed by the United States Constitution and the Bill of Rights. ACLU-NM's mission is to maintain and advance the cause of civil liberties, civil rights and constitutional freedom in the state of New Mexico. We act to further our mission without consideration of political partisanship.

*B. Disclosure of the Information Is Not Primarily in the Commercial Interest of the Requesters*

ACLU-NM is a non-profit organization. The requester seeks the requested information for the purpose of disseminating it to members of the public who have access to our public websites and other free publications, and not for the purpose of commercial gain.

Thank you for your prompt attention to this request. If you have any questions, please do not hesitate to contact me by telephone or email.

Sincerely,



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