



VIA ELECTRONIC MAIL

April 26, 2016

FOIA Officer: Catrina Pavlik-Keenan
Freedom of Information Act Office
U.S. Immigration and Customs Enforcement
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009
ice-foia@dhs.gov

RE: Freedom of Information Act Request Regarding Operation Border Guardian

Dear FOIA Officer:

The National Immigration Project of the National Lawyers Guild (NIPNLG) submits this request for information under the Freedom of Information Act (FOIA), 5 U.S.C § 552. This request seeks information pertaining to the enforcement action conducted by U.S. Immigration and Customs Enforcement's (ICE's) entitled "Operation Border Guardian."¹

On January 23, 2016, ICE began conducting Operation Border Guardian with the purpose of taking into custody and deporting young people who entered the United States after January 1, 2014 as unaccompanied minors who have orders of removal, and who have no pending appeal or relief claim. On March 9, 2016, Department of Homeland Security (DHS) Secretary Jeh C. Johnson reported that 336 individuals had been taken into custody as a result of this enforcement action.² Many were detained on their way to or from school and some in their homes.³ According to reports, in at least one case, ICE officers identified themselves as "police" before gaining entrance into homes without a warrant, handcuffing and questioning everyone inside.⁴ Many of those now awaiting deportation as a result of Operation Border Guardian fled their home countries under threat of gang violence.⁵ The arrests sparked opposition or questions of

¹ Statement by Secretary Jeh C. Johnson on Southwest Border Security (Mar. 9 2016), available at <https://www.dhs.gov/news/2016/03/09/statement-secretary-jeh-c-johnson-southwest-border-security> (last visited April 20, 2016).

² *Id.*

³ Thomasi McDonald, *Durham Commission Urges End of ICE Raids following Arrest of Honduran Teen*, The News & Observer, The News & Observer, Feb. 3, 2016, <http://www.newsobserver.com/news/local/counties/durham-county/article58256943.html>; Meredith Hoffman, *Fear of Deportation is Driving Migrant Kids to Stay Home from School*, Vice, February 25, 2016, <http://www.vice.com/read/fear-of-deportation-is-driving-migrant-kids-to-stay-home-from-school>; Esther Yu-His Lee, *ICE Agents Are Arresting Teens On Their Way To School*, Think Progress, <http://thinkprogress.org/immigration/2016/04/14/3767955/chilling-effect-immigration-raid-teens/>

⁴ Hoffman, *supra* note 3

⁵ Joseph Tanfani, *Central American Immigrants, Wary of Recent Raids Sweeping Up Young People, Adjust To a Life of Fear*, LA Times, Mar. 11, 2016, <http://www.latimes.com/nation/la-na-immigration-raids-young-people->

inquiry from community members, immigration advocates, Durham governmental agencies, and several Congressional offices.⁶

We seek any and all records⁷ prepared, received, transmitted, collected and/or maintained by ICE or DHS⁸ related to Operation Border Guardian that were created between January 1, 2014 and the date the agency conducts an adequate records search.

The above records include, but are not limited to:

1. Records on interactions with raid subjects and individuals present at raid locations, including how ICE officers are instructed to gain access to residences, including but not limited to the use of ruses.
2. Internal memoranda, training materials, policies, directives and inter-agency agreements between ICE and other agencies, including, but not limited to, federal, state and local law enforcement agencies. This request includes any and all records containing, describing, or referring to assistance provided by or cooperation with local, state, or federal law enforcement officers or agencies, including, but not limited to, local police departments or sheriffs in the jurisdictions of enforcement operations conducted by ICE. Such records may include, but are not limited to agreements with counties, cities, towns, and municipalities, or any agent thereof; information-sharing agreements, including, but not limited to proposed agreements, Memoranda of Agreements, Memoranda of Understanding; or communication between DHS agents and any local or state law enforcement official;
3. Internal memoranda, records, and correspondence related to each enforcement action carried out under Operation Border Guardian.
4. Any and all records containing, describing, or referring to guidance, guidelines, rules, directives, policies, procedures, or trainings related to enforcement operations to identify,

[20160311-story.html](#); Amanda Holpuch, *She Left Honduras to Escape Violence, But a Legal Misstep Has Her Stuck in Detention*, The Guardian, Mar. 12 2016, <http://www.theguardian.com/us-news/2016/mar/12/us-immigration-policy-georgia-detention-center-honduras>

⁶ McDonald, *supra* note 3; Natalie Ritchie, *Durham School Board Asks Feds Not to Deport Honduran Teen*, The News & Observer, Feb. 12, 2016 <http://www.newsobserver.com/news/local/community/durham-news/article59998661.html>; Hoffman, *supra* note 3; Danny Hooley, *DPS Board of Education Condemns ICE Raids; Teen's Sister Makes Tearful Plea at Meeting*, Indy Week, Feb. 12, 2016, Letters on record with National Immigration Project. <http://www.indyweek.com/news/archives/2016/02/12/dps-board-of-education-condemns-ice-raids-teen-boys-sister-makes-tearful-plea-at-meeting>; Letter from Rep. Alma S. Adams, Ph.D., Member of Congress, to Sarah R. Saldana, Director, U.S. Immigration and Customs Enforcement (Mar. 31, 2016); Letter from Rep. G. K. Butterfield, Member of Congress, to Sarah R. Saldana, Director, U.S. Immigration and Customs Enforcement (Mar. 29, 2016); <http://www.theguardian.com/us-news/2016/mar/12/us-immigration-policy-georgia-detention-center-honduras>

⁷ The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training manuals, and studies.

⁸ ICE as used herein includes means offices, components, divisions, subdivision or sections therein, including but not limited to the Office of Principal Legal Advisor and Enforcement and Removal Operations.

locate, arrest, or remove individuals who entered the United States as unaccompanied minors who have since reached 18 years of age, including but not limited to individuals taken into custody on and after January 23, 2016.

5. Data or statistics about the age, gender, and nationality, state of residence, location of arrest, race, ethnicity, date of entry, whether they had final orders of removal, whether they had representation in their immigration case, whether they had applied for asylum and/or asked for credible fear interviews, where court proceedings were initiated, whether an *inabsentia* order was issued, for individuals apprehended as part of Operation Border Guardian.
6. Internal memoranda, records, and correspondence related to Operation Border Guardian apprehension policies or procedures of individuals currently enrolled in primary or secondary school;
7. Any internal memoranda, records, correspondence referencing enforcement actions carried out by the Atlanta Field Office, including Operation Border Guardian between January 23 and February 5, 2016.

We ask that the agency provide any records that exist in electronic form on a compact disc. Requesters also request that the agency provide any documents stored in Portable Document Format (PDFs) in a searchable PDF format.

If under applicable law any of the information is considered exempt, 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. We seek the release of all portions of otherwise exempt material that can be segregated.

Request for Fee Waivers

We seek a fee waiver in connection with this request pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 5 U.S.C. § 552(a)(4)(A)(ii)(II). NIPNLG is a national non-profit membership organization comprised of attorneys, jailhouse lawyers, community activists, law students, and other advocates seeking to advance the rights of noncitizens. The NIPNLG provides technical and litigation support to members and other advocates, provides training to the bar and the bench on immigration law, and is the author of four treatises on immigration law published by Thomson Reuters. In addition, NIPNLG staff present, and regularly publish practice advisories, on immigration law topics, which are disseminated to its members as well as to a large public audience through its website, www.nationalimmigrationproject.org. Finally, NIPNLG has contact with national print and news media and plans to share information gleaned from FOIA disclosures with interested media.

We ask that the agency waive all fees associated with this request. Such a waiver is warranted because the disclosure of 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. *See* 5 U.S.C. § 552(a)(4)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced charged when disclosure is in public interest and is not primarily in the commercial interest of the requestors). In addition, we have the ability to widely disseminate the requested information.⁹

A. Disclosure of Information is in the Public Interest

Disclosure of the information we request is in the public interest because it will contribute significantly to the public understanding of how the DHS executes Operation Border Guardian. Access to this information is fundamental to ensure fairness and transparency in immigration enforcement. Such information is of great public interest given that it has generated a great deal of media attention and that it affects a large population of individuals, including immigration attorneys and advocates, and individuals and family of individuals who may be directly targeted by Operation Border Guardian. *See* 6 C.F.R. § 5.11(k)(2)(iii)(stating that disclosure will contribute to public understanding when it affects a “reasonably broad audience of persons interested in the subject.”).

NIPNLG has the capacity and intent to disseminate widely the requested information to the public. We will review, analyze and and/or summarize the information obtained through this FOIA. In addition, NIPNLG staff will speak publicly and may publish practice advisories or related written materials to be shared with the public, organizational members and the academic community. We may make the information available through their website, which are accessible by any member of the public, and through action alerts, emails and newsletters.

Finally, we have frequent contact with national print and news media and plan to share information gleaned from FOIA disclosures with interested media.

B. Disclosure of Information is Not Primarily in the Commercial Interest NIPNLG

Disclosure of the information is in the public interest because it will contribute significantly to the public understanding of how EOIR processes and maintains individual case files. This request concerns how EOIR processes, stores, maintains, and uses individual case files. Access to this information is fundamental to ensure fairness and transparency in immigration proceedings before immigration judges and the Board of Immigration Appeals. Such information is of great public interest given that it affects a large population of individuals: immigration attorneys, immigration advocates, individuals with cases in immigration court, and individuals with appeals or motions pending before the Board of Immigration Appeals. *See* 6 C.F.R. § 5.11(k)(2)(iii)(stating that disclosure will contribute to public understanding when it affects a “reasonably broad audience of persons interested in the subject.”).

Requestor has the capacity and intent to disseminate widely the requested information to the public. We will review, analyze and and/or summarize the information obtained through this

⁹ *See Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received); *Cause of Action v. FTC*, 799 F.3d 1108, (D.C. Cir. 2015) (same).

FOIA. In addition, requestor's staff will speak publicly and may publish practice advisories or related written materials to be shared with the public, organizational members and the academic community. NIPNLG may make the information available through their website, which are accessible by any member of the public, and through action alerts, emails and newsletters. Finally, NIPNLG has frequent contact with national print and news media and plans to share information gleaned from FOIA disclosures with interested media.

IV. Request for a Limitation of Search and Review Fees

We also request a limitation of processing fees as “representatives of the media” pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . educational or noncommercial scientific institution . . . or a representative of the news media”) and 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged to “representatives of the news media”).

The “term ‘a representative of the news media’ means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii). The statutory definition does not require that the requestor be a member of the traditional media. As long as the requestor meets the definition in any aspect of its work, it qualifies for limitation of fees under this section of the statute.¹⁰

We qualify as a “representative of the news media” under the statutory definition, because we routinely gather information of interest to the public, uses editorial skills to turn it into distinct work, and distributes that work to the public.¹¹ Courts have reaffirmed that non-profit requestors who are not traditional news media outlets can qualify as representatives of the new media for the purposes of the FOIA, including after the 2007 amendments to the FOIA.¹² Accordingly, any fees charged must be limited to duplication costs.

V. Request for expedited processing

We request expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I) because there is a compelling need to investigate potential civil rights violations committed in the course of Operation Border Guardian, especially for those individuals arrested by the Atlanta Field Office. The vast majority of these individuals face immediate removal because they have final orders. In order to interview individuals before they are removed, it is critical the agency expeditiously release this information.

¹⁰ See *Cause of Action v. FTC*, 799 F.3d 1108 at 1114-1116 (D.C. Cir. 2015).

¹¹ See *Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) (non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees).

¹² See *ACLU of Washington v. U.S. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at *18 (D. Wash. Mar. 10, 2011) (finding that the ACLU qualifies as a “representative of the news media”).

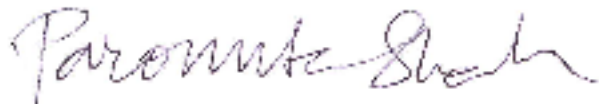
Thank you for your consideration of this request. We look forward to your response to our requests for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Please furnish the records as soon as they are identified to:

Paromita Shah
National Immigration Project of the National Lawyers Guild
14 Beacon Street, Suite 602
Boston, MA 02108

If you have any questions regarding this request, please contact Paromita Shah at 202-271-2286 or paromita@nipnl.org

Thank you in advance for your prompt response to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Paromita Shah". The signature is written in dark ink and is positioned below the word "Sincerely,".

Paromita Shah
Associate Director
National Immigration Project of the National Lawyers Guild