



COMMUNITY EDUCATION CENTER • IMMIGRATION POLICY CENTER • INTERNATIONAL EXCHANGE CENTER • LEGAL ACTION CENTER

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VIA ELECTRONIC AND FIRST CLASS MAIL

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Re: Freedom of Information Act Request

Dear FOIA Officers:

This letter constitutes a request for records made pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, by the American Immigration Council (AIC), the Michigan Organizing Project/Alliance for Immigrants & Reform Michigan (AIR), Migrant Justice (a project of Wheelock Mountain Farm), the New York

www.americanimmigrationcouncil.org

Immigration Coalition (NYIC), the Northwest Immigrant Rights Project (NWIRP), and OneAmerica (collectively, "Requesters").

Requesters seek records regarding the actual or purported use of U.S. Customs and Border Protection (CBP) personnel to provide interpretation and/or translation services to other law enforcement agencies. Over the past year, immigration advocates have reported that CBP personnel frequently assist other law enforcement officers by acting as Spanish-English interpreters. CBP personnel reportedly use these opportunities to question individuals about their immigration status and, in many cases, to initiate removal proceedings. Through this FOIA request, Requesters seek to promote greater transparency regarding these practices.

REQUESTERS

The **American Immigration Council (AIC)**, a non-profit organization, educates citizens about the enduring contributions of America's immigrants, supports sensible and humane immigration policies that reflect American values, promotes the just and fair administration of our immigration laws, and protects the legal rights of noncitizens. Through research, analysis and publications, AIC's Immigration Policy Center (IPC) provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. The Legal Action Center (LAC) provides technical assistance to immigration lawyers across the country and engages in impact litigation, including appearing as *amicus curiae* before administrative tribunals and federal courts in significant immigration cases on targeted legal issues.

The **Michigan Organizing Project/Alliance for Immigrants & Reform Michigan (AIR)** is a non-profit, statewide coalition of faith-based, civil rights and community-based organizations, labor unions, and service providers in Michigan working to reform the U.S. immigration system and promote immigrants' rights. AIR's strategies include grassroots and online organizing, federal and state advocacy, civic engagement, immigrants' rights education, media work, and strong coalition building across social sectors.

Migrant Justice (a project of Wheelock Mountain Farm), a nonprofit organization, builds the voice, capacity and power of the migrant farmworker community and engages allies to organize for social and economic justice and human rights. Through Migrant Justice, migrant farmworkers, with support from allies, build community and organizing capacity to achieve concrete victories such as creating one of the best Bias-Free Policing Policies in the country, ensuring undocumented workers access to Vermont's universal health care, and passing a law that provides access to driver's licenses regardless of immigration status.

The **New York Immigration Coalition (NYIC)** is a non-profit, umbrella policy and advocacy organization for nearly 200 groups in New York State that work with immigrants and refugees. NYIC aims to achieve a fairer and more just society that values the contributions of immigrants, extends opportunity to all by promoting immigrants' full civic participation, fosters immigrant leadership, and provides a unified voice and a vehicle for collective action for New York's diverse immigrant communities. NYIC's multi-ethnic, multi-racial, and multi-sector membership base includes grassroots community organizations, nonprofit health and human services organizations, religious and academic institutions, labor unions, and legal, social, and economic justice organizations. NYIC develops educational materials such as brochures and fact sheets in as many as 12 languages on new developments in immigration law and policy and provides hundreds of trainings and presentations in immigrant communities. NYIC also works with ethnic and mainstream media to disseminate important information to immigrant families.

The **Northwest Immigrant Rights Project (NWIRP)**, a nonprofit organization, promotes justice for low-income immigrants by pursuing and defending their legal status. NWIRP focuses on providing direct legal services, supported by the organization's education and public policy work. As part of its education and public policy mission, NWIRP strives to inform community members in Washington State and throughout the country about immigration policy and the realities experienced by its clients.

OneAmerica, a nonprofit organization, advances the fundamental principles of democracy and justice by building power in immigrant communities, in collaboration with key allies. Through grassroots community organizing, policy advocacy and strategic communications, OneAmerica provides a space for ordinary people, immigrant advocacy organizations, and allies to build a movement for justice for all.

REQUEST FOR INFORMATION

Requesters seek any and all records¹ that were prepared, received, transmitted, collected and/or maintained by CBP² and/or the Department of Homeland Security (DHS) that describe, refer or relate to the actual or purported use of CBP personnel, including U.S. Border Patrol agents, to provide interpretation and/or translation services to local, state or other federal law enforcement agencies from January 2009 to the present.

The requested records include, but are not limited to, those describing, referring, or relating to:

- (1) Legal or other agreements permitting or governing the use of CBP personnel as interpreters and/or translators for local, state or federal law enforcement agencies, including but not limited to any relevant Memoranda of Understanding, Memoranda of Agreement, work-share, or indemnification agreements between CBP (or DHS) and local, state or federal law enforcement agencies;
- (2) The terms and conditions under which CBP personnel may provide interpretation and/or translation services for local, state or federal law enforcement agencies;
- (3) The detailing, deputizing or cross-certification of CBP personnel to local, state or federal law enforcement agencies for purposes including the provision of interpretation and/or translation services;
- (4) Negotiations between CBP (or DHS) and local, state or federal law enforcement agencies regarding the use of CBP personnel as interpreters and/or translators;
- (5) Training materials or other records used to instruct, guide or otherwise prepare CBP personnel to serve as interpreters and/or translators for local, state or federal law enforcement agencies;

¹ The term "records" as used herein includes, but is not limited to communications, 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, manuals, technical specifications, training materials, and 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.

² The term "CBP" as used herein means CBP headquarters offices, including any divisions, subdivisions or sections therein; CBP field operations offices, including any divisions, subdivisions or sections therein; CBP offices at ports of entry, including any divisions, subdivisions or sections therein; Border Patrol stations; Border Patrol sectors; and/or any other CBP organizational structures.

- (6) Policies or procedures relating to the provision of interpretation and/or translation services to local, state or federal law enforcement agencies by CBP personnel, including but not limited to wearing of official uniforms, showing of identification, providing advisals of rights, making inquiries about immigration status of individuals encountered, or taking immigration enforcement action against individuals encountered;
- (7) Criteria or standards that CBP personnel working in collaboration with local, state or federal law enforcement agencies use to determine whether to make inquiries about immigration status or take immigration enforcement action;
- (8) I-213 forms (Record of Deportable/Inadmissible Alien), with personal identifying information redacted, indicating that CBP personnel, including but not limited to Border Patrol agents, provided, or were requested to provide, interpretation or translation assistance;³
- (9) Communications, whether electronic or conventional, within and among CBP, DHS, or any of their agents, agencies, subagencies, or offices, relating to the use of CBP personnel as interpreters and/or translators for local, state or federal law enforcement agencies;
- (10) Communications, whether electronic or conventional, to or from CBP or DHS relating to the use of CBP personnel as interpreters and/or translators for local, state or federal law enforcement agencies, including but not limited to communications with:
 - a. Federal agencies or officials, including but not limited to personnel within CBP or DHS; other federal agencies or personnel within those agencies; Congress, Members of Congress or their staff; and the White House;
 - b. State or local authorities, including but not limited to law enforcement agencies;
 - c. Members of the press;
 - d. Non-governmental organizations;
 - e. Members of the public;
- (11) All statistical data, reports or analysis regarding the number, source or content of requests from local, state or federal law enforcement agencies for assistance from CBP personnel, including the provision of interpretation and/or translation services;
- (12) All statistical data, reports or analysis regarding one or more of the following categories of information in cases involving individuals identified, stopped, detained or arrested by local, state or federal law enforcement agencies for whom CBP personnel have provided, or were requested to provide, interpretation and/or translation services:
 - a. Date CBP provided interpretation and/or translation services;
 - b. Location where CBP provided interpretation and/or translation services or responded to a call for interpretation and/or translation services;
 - c. Source of request to CBP for interpretation and/or translation services;
 - d. The race, ethnicity or national origin of each individual in need of interpretation and/or translation services;

³ Requesters are prepared to negotiate the appropriate scope of these records and are open to discussion of sampling as an appropriate means of producing individual records.

- e. The length of time each individual was detained while awaiting the arrival of CBP personnel;
 - f. Each individual's immigration status;
 - g. Whether each individual was placed in removal proceedings subsequent to the encounter with CBP personnel and, if so, the charges set forth in the Notice to Appear (Form I-862), whether the individual requested voluntary departure, and whether the request for voluntary departure was granted;
 - h. Whether each individual was subject to reinstatement of removal under 8 U.S.C. § 1231(a)(5);
 - i. Whether each individual was referred for criminal prosecution for illegal reentry pursuant to 8 U.S.C. § 1326;
 - j. Whether each individual was charged with a non-immigration-related offense following the encounter with a local, state or federal law enforcement agency and, if so, the nature of the charges;⁴
- (13) All statistical or other records regarding the funds received or spent annually by CBP for provision of interpretation and/or translation services to local, state or federal law enforcement agencies;
 - (14) Judicial or administrative complaints, including complaints filed with DHS or CBP, alleging unlawful or otherwise actionable conduct relating to the role of CBP personnel in providing interpretation and/or translation services to local, state or federal law enforcement agencies;
 - (15) Investigations opened or undertaken by CBP or DHS, including but not limited to DHS's Office of Inspector General and DHS's Office of Civil Rights and Civil Liberties, relating to the role of CBP personnel in providing interpretation and/or translation services to local, state or federal law enforcement agencies.

Requesters request that any records that exist in electronic form be provided in their native electronic format on a compact disc, digital video disk, or equivalent electronic medium. Requesters ask that any documents stored in Portable Document Format ("PDFs") be provided as individual files in a searchable PDF format. Finally, Requesters ask that reasonable metadata be transmitted along with files, including but not limited to maintaining parent-child relationships between e-mails and their attachments, author information, and date and time stamp information. If any of the requested records or information are not kept in a succinct format, we request the opportunity to view the documents in your offices.

All requested records that are responsive may be provided with personally identifying details redacted. FOIA exempts information from disclosure if that disclosure would lead to an unwarranted invasion of privacy. 5 U.S.C. § 552(b)(6). Determination of this exemption requires a balancing of the public's interest in obtaining the information against any possible invasions of privacy which would result from disclosure. *See, e.g., Wood v. FBI*, 432 F.3d 78, 87-89 (2d Cir. 2005). The Supreme Court has held that this balancing act does not preclude the disclosure of military records when names and other private details are redacted. *See Dep't of the Air Force v. Rose*, 425 U.S. 352 (1976). Requesters expect the release of all segregable portions of otherwise exempt material.

⁴ Requesters are prepared to negotiate the appropriate scope of these records and are open to discussion of sampling as an appropriate means of producing individual records.

If under applicable law any of the information requested 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.

REQUEST FOR WAIVER OF ALL COSTS

Requesters request that all fees associated with this FOIA request be waived. Under 5 U.S.C. § 552(a)(4)(A)(iii), fees may be waived where the requester has demonstrated that (i) disclosure of the information is in the public interest in that it is likely to contribute significantly to public understanding of the operations or activities of the government; and (ii) disclosure of the information is not primarily in the commercial interest of the requester.

i. *Disclosure of the Information is in the Public Interest*

DHS considers four factors set forth in 6 C.F.R. § 5.11(k)(2) when determining whether disclosure of the information is in the public interest:

- (1) "Whether the subject of the request concerns the 'operations or activities of the government,'"
- (2) "Whether the disclosure 'is likely to contribute' to an understanding of government operations or activities,"
- (3) "Whether disclosure of the requested information will contribute to 'public understanding'" as opposed to the individual understanding of the requester or a narrow segment of interested persons; and
- (4) "Whether the disclosure is likely to contribute 'significantly' to public understanding of government operations or activities."

For a request to be considered in the public interest, all four criteria must be satisfied. *Judicial Watch v. Dep't of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004).

The requested documents clearly concern identifiable "operations or activities" of the government. Requesters seek records related to the actual or purported use of employees of CBP, a federal government agency, to provide interpretation and/or translation services to local, state or federal law enforcement agencies.

The request satisfies the second criterion because disclosure is likely to contribute to a better understanding of CBP's provision of interpretation and/or translation services to local, state or federal law enforcement agencies and how these activities relate to CBP's mission, including the enforcement of the immigration laws. Requesters are not aware of any documents providing information responsive to this FOIA request. Because this information is not already in the public domain, its release will significantly increase understanding of DHS and CBP's operations.

Disclosure of the requested information also will contribute to "public understanding," as opposed to understanding of a narrow segment of interested persons. Release of this information to Requesters will significantly advance the general public's understanding of a critical aspect of CBP's collaboration with local, state and federal law enforcement agencies. It is likely that a proper search in response to this request will reveal a large volume of responsive information. As discussed in more detail below, Requesters have the capacity, expertise, and intention to review, analyze, and synthesize this information and make it accessible to a

broad public audience. In addition, Requesters have regular contact with national and local print and news media and plan to continue to share information gleaned from FOIA disclosures with interested media.

The request satisfies the last criterion because disclosure of the requested information will contribute significantly to public understanding about CBP's provision of interpretation and/or translation services to local, state or federal law enforcement agencies and how these activities relate to CBP's mission, including the enforcement of the immigration laws. This information will be particularly helpful to immigration attorneys who represent noncitizens who are questioned by CBP agents about their immigration status after being stopped, detained or arrested by a local, state or federal law enforcement agency, the noncitizens themselves, nonprofit organizations interested in civil or human rights, and other members of the public who are concerned with immigration enforcement or CBP's operations or activities.

AIC plans to draft and disseminate a summary of the information obtained through this FOIA request on its website, which contains immigration-related information and news and is accessible by any member of the public. AIC's website receives more than 115,000 monthly page views (or 1.5 million yearly page views), and information available on the website is regularly shared and re-posted on other websites with large audiences, including Alternet, a website with 2.3 million monthly visitors. AIC also will publish a summary of the information received in an IPC report and in the LAC quarterly newsletter. IPC reports are directly distributed to 26,000 recipients, and the LAC newsletter is directly distributed to 12,000 recipients. These publications also are available to the public on the AIC website.

AIR will distribute the summary electronically to its list of over 8,000 subscribers. AIR will also distribute the summary in hard copy to its member organizations, including 60 faith, labor, and civil rights organizations across Michigan. In addition, AIR will publicize the summary in Spanish and Arabic language news outlets and on its website.

Migrant Justice will disseminate the summary to its 2,500 Vermont members through an e-mail blast and to an additional 5,000 Vermont residents through its partner organization, the Vermont Workers' Center. Migrant Justice's other partner organizations throughout Vermont will amplify coverage. Migrant Justice will utilize social media to reach an additional 1,000 users and post the summary report as a feature story on its website, which averages 500 visitors per month. Finally, Migrant Justice will disseminate the summary through its migrant farmworker produced newsletter, which reaches approximately 500 migrant dairy workers in Vermont.

NYIC will disseminate the summary report through electronic correspondence to 10,048 recipients, including its nearly 200 member organizations; through social media to 1,400 users; and through its website, which receives 7,000 visits per month and an average of 55,000 visits (and 143,000 page views) per year. NYIC's members will, in turn, disseminate the report to their own constituents and members.

NWIRP has an electronic mailing list that reaches over 6,000 individuals and also distributes information through a list of over 250 media contacts. NWIRP will distribute the information obtained through this FOIA request through its e-mail list, through social network contacts and through its website, which is accessible to immigration attorneys, social service providers and other community members.

OneAmerica has a strong multi-ethnic member base of ten community groups and youth across Washington State that will disseminate the information obtained through this FOIA request to their

communities through local media and regular meetings. In the northern border region of Washington, base leaders and ally organizations disseminate information every week to Spanish and English speaking communities through local radio, faith services, and family networks in Skagit and Whatcom counties. OneAmerica also staffs the Washington Immigrant Rights Coalition, a coalition of over 70 nonprofit, labor, and faith organizations, and has the capacity to disseminate information widely through partner organizations. OneAmerica has an e-mail distribution list of 9,294 individuals, a website that receives 7,980 views per month, and an active social media presence through Facebook and Twitter.

ii. ***Disclosure of the Information Is Not Primarily in the Commercial Interest of the Requester.***

DHS considers two factors set forth in 6 C.F.R. § 5.11(k)(2) when determining whether disclosure of the information is in the public interest:

- (1) "Whether the requester has a commercial interest that would be furthered by the requested disclosure," and
- (2) "Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure," thereby rendering the disclosure "primarily in the commercial interest of the requester."

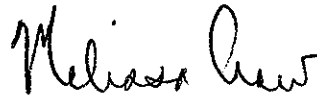
Requesters are all 501(c)(3), tax-exempt, not-for-profit educational and charitable organizations. They seek the requested information for the purpose of disseminating it to the general public and not for the purpose of commercial gain. The information received in response to this FOIA request will be disseminated free of charge through the extensive networks described above to the Requesters' various constituencies, including faith, civil rights and community-based organizations, labor unions, legal and social service providers, academic institutions, immigration lawyers, noncitizens and other interested members of the public.

Given that FOIA's fee waiver requirements are to "be liberally construed in favor of waivers for noncommercial requesters," a waiver of all fees is justified and warranted in this case. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003). If you deny the fee waiver request, we respectfully ask for a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Please inform us if the charges for this FOIA production will exceed \$25.00.

Thank you in advance for your response to this request within twenty working days, as FOIA requires. *See* 5 U.S.C. § 552(a)(6)(A)(i). If you have any questions, please feel free to contact me at (202) 507-7523.

Sincerely,



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