

June 4, 2020

VIA FOIA ONLINE

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

Re: Expedited Freedom of Information Act Request

Dear FOIA Officer:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Customs and Border Protection (“CBP”) regulations.

Specifically, CREW requests all records from May 25, 2020 to the time this request is processed concerning:

1. Any internal memos or guidance detailing plans, processes, and protocols concerning the suspension or limitation of the immigration enforcement functions of U.S. Customs and Border Patrol (CBP) employees providing support to law enforcement officials responding to ongoing protest activity.
2. Any internal memos or guidance outlining consequences of ICE officials not adhering to the aforementioned plans, processes, and protocols.
3. All records regarding the “radicals & agitators” referenced in CBP Commissioner Mark Morgan’s June 1, 2020 tweet, including without limitation any records setting forth the criteria for determining whether an entity or individual qualifies as a “radical” or “agitator.”
4. All records regarding the utilization of CBP employees or assets to provide support to law enforcement responding to ongoing protest activity.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records. If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested

records. *See* 5 U.S.C. § 552(b). If it is your position that a document contains nonexempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *See Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977). Please be advised that CREW intends to pursue all legal remedies to enforce its right under the FOIA to access the requested documents. Accordingly, because litigation reasonably is foreseeable, DHS should institute an agency-wide preservation hold on documents potentially responsive to this request.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A) and CBP regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

George Floyd died in Minneapolis, Minnesota on May 25, 2020 after Derek Chauvin, an officer with the Minneapolis Police Department, knelt on Floyd's neck.¹ Floyd's death sparked nationwide protests.² As violence emerged alongside peaceful demonstrations, reports surfaced that outside agitators, including extremist groups, incited much of that violence.³ On June 1, 2020, Customs and Border Protection (CBP) spokeswoman Stephanie Malin emailed CQ Roll Call on their response to the protests, saying "It would not be appropriate to disclose law enforcement operational specifics which could jeopardize operational security...This deployment is about supporting the efforts of our federal, state and local partners, not about carrying out CBP's immigration enforcement mission."⁴ Given the lack of an official statement from CBP, it is unclear if there was any directive for the suspension or limitation of immigration enforcement, or any repercussions for officials who defy directives.

Additionally, many of the terms CBP leadership used to describe the groups CBP plans to identify and take enforcement actions against are nonspecific. CBP Acting Commissioner Mark Morgan tweeted about the deployment of CBP personnel to assist in with law enforcement and further stated that "These "protests" have devolved into chaos & acts of domestic terrorism by

¹ Jany, Libor, [Minneapolis police, protesters clash almost 24 hours after George Floyd's death in custody](https://www.startribune.com/minneapolis-police-protesters-clash-almost-24-hours-after-george-floyd-death-in-custody/), *The Star Tribune*, May 27, 2020, available at

<https://www.startribune.com/minneapolis-police-marchers-clash-over-death-of-george-floyd-in-custody/570763352/>

² Thanawala, Sudhin, [Protests, some violent, spread in wake of George Floyd death](https://apnews.com/baf3b29612527b8e9a841cb34f6f5789), *The Associated Press*, May 30, 2020, available at: <https://apnews.com/baf3b29612527b8e9a841cb34f6f5789>

³ *See, e.g.,* Hughes, Trevor, [There are anarchists': Minnesota officials say 'outside agitators' are hijacking peaceful protests](https://www.usatoday.com/story/news/nation/2020/05/30/george-floyd-protests-riots-violent-outside-agitators-minn-esota/5291658002/), *USA Today*, May 30, 2020, available at <https://www.usatoday.com/story/news/nation/2020/05/30/george-floyd-protests-riots-violent-outside-agitators-minn-esota/5291658002/>.

⁴ Misra, Tanvi, [Immigration agencies to assist law enforcement amid unrest](https://www.rollcall.com/2020/06/01/immigration-agencies-to-assist-law-enforcement-amid-unrest/), *Roll Call*, June 1, 2020, available at <https://www.rollcall.com/2020/06/01/immigration-agencies-to-assist-law-enforcement-amid-unrest/>.

groups of radicals & agitators.”⁵ Nonspecific terms like “radicals & agitators” raise questions around the official CBP criteria for people CBP targets. The terms also appears to reflect language used in Attorney General Bill Barr’s public statement on “Riots and Domestic Terrorism” and President Trump’s tweets raising concerns around how CBP became involved in policing protests in the first place and whether CBP was influenced by the President and DOJ officials seeking to accommodate the President.⁶

The requested records will shed light on the process CBP intends to use to intervene in the ongoing demonstrations, and whether there are mandated consequences to violating any directives indicating officers suspend or limit enforcement of CBP’s immigration function. At a time of historic turmoil, the public deserves to know exactly how CBP plans to intervene and if there is a standardized process to ensure accountability. In absence of any official statement from any division of CBP, the public deserves to know about any guidance ICE is adhering to in limiting immigration enforcement and if there are any procedural consequences for officers failing to comply.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public’s right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, www.citizensforethics.org. The release of information obtained through this request is not in CREW’s financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. See *Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a “representative of the news media” and broadly interpreting the term to include “any person or organization which regularly publishes or disseminates information to the public”).

CREW routinely and systematically disseminates information to the public in several ways. CREW’s website receives tens of thousands of page views every month. The website includes blog posts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts the documents it receives under the FOIA on its website.

⁵ Morgan, Mark, June 1, 2020 *available at* <https://twitter.com/CBPMarkMorgan/status/1267571804056489984?s=20>.

⁶Barr, William, *Attorney General William P. Barr's Statement on Riots and Domestic Terrorism*, Department of Justice, May 31, 2020, *available at* <https://www.justice.gov/opa/pr/attorney-general-william-p-barrs-statement-riots-and-domestic-terrorism>.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

Request for Expedition

CREW seeks expedition because the subject matter of the request is of widespread and exceptional media interest, and the requested information involves possible questions about the government's integrity that affect public confidence. As noted, the requested records will shed light on any CBP directives to limit immigration enforcement, consequences for failing to comply with such directives, and those targeted in CBP anti-protest control. In multiple instances, DHS has shown a severe lack of transparency in their immigration enforcement procedures which raises significant questions of government integrity that plainly affect public confidence. A copy of the request is enclosed.

CREW's primary purpose is to inform and educate the public about the activities of government agencies and officials. To that end, CREW routinely uses statutes like the FOIA to gather information the public needs to hold government agencies and officials accountable, and disseminates that information through social media and its website, which receives tens of thousands of views every month. The request for which CREW seeks expedition will directly further CREW's public-education mission.

Conclusion

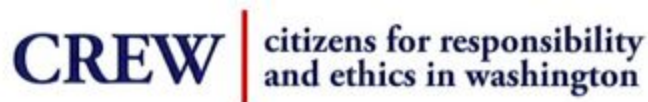
If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at mosuga@citizensforethic.org. Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to mosuga@citizensforethics.org. If the records cannot be produced electronically, please contact me and I will provide a mailing address. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Miru Osuga', with a small flourish at the end.

Miru Osuga
Communications Associate



June 4, 2020

BY EMAIL: foia.hq@dhs.gov

Jimmy Wolfrey
Senior Director, FOIA Operations
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655

Re: Request for Expedition of FOIA Request

Dear Mr. Wolfrey:

Pursuant to Department of Homeland Security (“DHS”) regulations, 6 C.F.R. § 5.5(e)(iii)(2), Citizens for Responsibility and Ethics in Washington (“CREW”) requests that you authorize the expedition of a Freedom of Information Act (“FOIA”) request CREW made today of DHS. I have enclosed a copy of this request

The request seeks copies of all records from May 25, 2020 to the time this request is processed concerning: (1) Any internal memos or guidance detailing plans, processes, and protocols concerning the suspension or limitation of the immigration enforcement functions of U.S. Customs and Border Patrol (CBP) employees providing support to law enforcement officials responding to ongoing protest activity; (2) any internal memos or guidance outlining consequences of ICE officials not adhering to the aforementioned plans, processes, and protocols; (3) all records regarding the “radicals & agitators” referenced in CBP Commissioner Mark Morgan’s June 1, 2020 tweet, including without limitation any records setting forth the criteria for determining whether an entity or individual qualifies as a “radical” or “agitator;” (4) all records regarding the utilization of CBP employees or assets to provide support to law enforcement responding to ongoing protest activity.

As CREW’s request explains, following following nationwide protests calling for justice over George Floyd’s death in Minneapolis, Minnesota on May 25, 2020 by the hands of Derek Chauvin, CBP officials were reportedly deployed to support “the efforts of our federal, state and local partners, not about carrying out CBP’s immigration enforcement mission.”⁷ Additionally, many of the terms CBP leadership used to describe the groups CBP plans to identify and take enforcement actions against are nonspecific. CBP Acting Commissioner Mark Morgan tweeted

⁷ Misra, Tanvi, [Immigration agencies to assist law enforcement amid unrest](https://www.rollcall.com/2020/06/01/immigration-agencies-to-assist-law-enforcement-amid-unrest/), *Roll Call*, June 1, 2020, available at <https://www.rollcall.com/2020/06/01/immigration-agencies-to-assist-law-enforcement-amid-unrest/>.

about the deployment of CBP personnel to assist in with law enforcement and further stated that “These “protests” have devolved into chaos & acts of domestic terrorism by groups of radicals & agitators.”⁸ Nonspecific terms like “radicals & agitators” raise questions around the official CBP criteria for people CBP targets. The terms also appears to reflect language used in Attorney General Bill Barr’s public statement on “Riots and Domestic Terrorism” and President Trump’s tweets raising concerns around how CBP became involved in policing protests in the first place and whether CBP was influenced by the President and DOJ officials seeking to accommodate the President.⁹ Given the lack of an official statement from CBP, it is unclear if there was any directive for the suspension or limitation of immigration enforcement, or any repercussions for officials who defy directives.

CREW is entitled to expedition because of the urgency to inform the public about an actual or alleged federal government activity and because the subject matter is of widespread and exceptional media interest and the requested information involves possible questions about the government’s integrity which affect public confidence. At a time of historic turmoil, it is of serious importance that the public knows the process CBP intends to use to intervene in the ongoing demonstrations and if there is a standardized process to ensure safety and accountability. The public deserves to know the extent to which CBP has in place formal guidance on limitations to immigration enforcement and if there are mandated consequences for noncompliance on or violation of existing guidances.

The urgency of obtaining the requested records is particularly acute because both the demonstrations and CBP’s response are ongoing and evolving daily. CBP’s actions will undoubtedly affect the safety of demonstrators, even as the public is in the dark regarding the specifics of the agency’s response. The public needs a full understanding of CBP’s decision-making process for intervening in the protests and if it has established standardized processes to ensure impartiality, transparency and accountability.

CREW’s primary purpose is to inform the public about the activities of government officials and those who influence public officials. Toward that end, CREW uses statutes like the FOIA to gather information about the public needs to hold public officials accountable. The request for which CREW seeks expedition will further those goals.

I certify the following is true and correct.



Miru Osuga
Communications Associate

⁸ Morgan, Mark, June 1, 2020 *available at* <https://twitter.com/CBPMarkMorgan/status/1267571804056489984?s=20>.

⁹ Barr, William, Attorney General William P. Barr's Statement on Riots and Domestic Terrorism, *Department of Justice*, May 31, 2020, *available at* <https://www.justice.gov/opa/pr/attorney-general-william-p-barrs-statement-riots-and-domestic-terrorism>.

Encl.