

Exhibit 1



CENTER FOR IMMIGRATION STUDIES

CBP FOIA REQUEST

VIA FOIA PORTAL

September 14, 2023

Re: Number of people referred for criminal prosecution under section 275(a) of the INA 2022/2023 (CIS#0041)

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, the Center for Immigration Studies (“the Center”), hereby requests the following records to be provided in electronic form to foia@cis.org:

- 1) Records sufficient to show the number of aliens encountered by CBP at the southern border, from May 12, 2023 through the date of the search, who were referred by DHS to DOJ for criminal prosecution for “Improper entry by alien” under section 275(a) of the INA¹.**
- 2) Records sufficient to show the number of aliens encountered by CBP at the southern border, from May 1, 2022 through October 1, 2022, who were referred by DHS to DOJ for criminal prosecution for “Improper entry by alien” under section 275(a) of the INA.**
- 3) Records sufficient to show the number of aliens encountered by CBP at the southern border, from May 12, 2023 through the date of the search who were referred by DHS to DOJ for criminal prosecution for “Improper entry by alien” under section 275(a) of the INA and prosecution was accepted by DOJ.**
- 4) Records sufficient to show the number of aliens encountered by CBP at the southern border, from May 1, 2022 through October 1, 2022, who were referred by DHS to DOJ for criminal prosecution for “Improper entry by alien” under section 275(a) of the INA and prosecution was accepted by DOJ.**

Information helpful to fulfilling the request: The requester would prefer responsive data to be aggregated by monthly or weekly intervals.

If any responsive record or portion thereof is claimed to be exempt from production under the provisions of FOIA, please provide sufficient identifying information with respect to each allegedly exempt record, or portion thereof, to allow the Center to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F. 2d 820 (D.C. Cir. 1973). In addition, any portion of

¹ <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1325&num=0&edition=prelim>.

a responsive record that can be reasonably segregated must be provided, after redaction of any exempt material. 5 U.S.C. § 552 (b). The Center will accept a “rolling production” of documents if necessary to facilitate the production of responsive records.

For the purpose of this request, the term “record” shall mean: 1) any written, printed, or typed material of any kind, including without limitation all correspondence memoranda, notes, messages, letters, cards, facsimiles, papers, forms, telephone messages, diaries, schedules, books, reports, calendars, chronological data, minutes, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazine or newspaper articles, or press releases; 2) any electronically, magnetically, or mechanically stored material of any kind, including without limitation all electronic mail, email, text messages, or chats; 3) any audio, aural, visual, or video records, recordings, or representations of any kind; 4) any graphic materials and data compilations from which information can be obtained; and 5) any materials using other means of preserving thought or expression.

The Center also hereby requests a waiver of any and all fees and charges pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)(II) and (a)(4)(A)(iii). First, the Center is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because under FOIA it qualifies as a member of the news media. *See National Security Archive v. Department of Defense*, 880 F. 2d 1381, 1387 (D.C. Cir. 1989) (“A representative of the news media is, in essence, a 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.”). The Center is a research institution whose mission is to provide immigration policymakers, the academic community, news media, and concerned citizens with reliable information about the social, economic, environmental, security, and fiscal consequences of legal and illegal immigration into the United States.² In service of this mission, the Center regularly obtains information about the operations and activities of government through FOIA and other means, uses its editorial skills to turn the information into distinct works, and widely disseminates the information through a variety media platforms.³ The Center intends to do likewise with the records it receives through this request.

Secondly, the Center is entitled to a complete waiver of both search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Under this provision, records “shall be furnished without any charge or at a charge reduced” if “the disclosure of the information is in the public interest because it 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). The Center is a 501(c)(3), not-for-profit, educational and research organization, and, by definition, it has no commercial purpose. The Center exists to educate the public about the operations and activities of the government concerning the issue of immigration, and to increase public understanding of the effect of immigration on U.S. systems. Once the Center obtains the requested records, it intends to analyze them and widely disseminate the results of its analysis

² See <https://cis.org/Center-For-Immigration-Studies-Background>.

³ See <https://cis.org/Publications>; see also <https://cis.org/Podcasts/Parsing-Immigration-Policy>; <https://www.facebook.com/CenterforImmigrationStudies/>; https://twitter.com/CIS_org; <https://www.youtube.com/@CenterforImmigrationStudies>.

utilizing a variety of media platforms.⁴ It also will make the records available to other members of the media or researchers upon request.

Finally, access to the requested records should be granted within twenty (20) business days from the date of your receipt of this letter, otherwise the Center is further entitled to a complete waiver of search and duplication fees. 5 U.S.C. § 552(a)(4)(A)(viii). Furthermore, the agency's failure to respond in a timely manner shall be viewed as a denial of this request, and the Center may immediately take further administrative or judicial action.

If you would like to discuss the request or any issues raised in this letter, please feel free to contact us at 202-466-8185 ext. 126 or foia@cis.org. For all other formal correspondence regarding this request, please email foia@cis.org. Thank you for your time and attention to this matter.

Sincerely,

Colin M. Farnsworth, Esq.
Chief FOIA Counsel
Center for Immigration Studies

⁴ *Id.*

Exhibit 2

**CBP FOIA - CBP-FO-2023-138605**

1 message

cbpfoia@cbp.dhs.gov <noreply@securerelease.us>
Reply-To: cbpfoia@cbp.dhs.gov
To: foia@cis.org

Fri, Sep 15, 2023 at 10:00 AM

Colin Farnsworth
Center for Immigration Studies
1629 K st. NW #600
Washington, District of Columbia 20006

09/15/2023

CBP-FO-2023-138605

Dear Colin Farnsworth,

This is a final response to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP), requesting the following:

- 1) Records sufficient to show the number of aliens encountered by CBP at the southern border, from May 12, 2023 through the date of the search, who were referred by DHS to DOJ for criminal prosecution for "Improper entry by alien" under section 275(a) of the INA .
- 2) Records sufficient to show the number of aliens encountered by CBP at the southern border, from May 1, 2022 through October 1, 2022, who were referred by DHS to DOJ for criminal prosecution for "Improper entry by alien" under section 275(a) of the INA.
- 3) Records sufficient to show the number of aliens encountered by CBP at the southern border, from May 12, 2023 through the date of the search who were referred by DHS to DOJ for criminal prosecution for "Improper entry by alien" under section 275(a) of the INA and prosecution was accepted by DOJ.
- 4) Records sufficient to show the number of aliens encountered by CBP at the southern border, from May 1, 2022 through October 1, 2022, who were referred by DHS to DOJ for criminal prosecution for "Improper entry by alien" under section 275(a) of the INA and prosecution was accepted by DOJ.

CBP is granting your request under the FOIA, Title 5 U.S.C. § 552. Upon initial review of your request, we have determined that the following documents can be found on the internet at the following link:

<https://www.cbp.gov/newsroom/stats/nationwide-encounters>. Section 275(a) falls under Title 8.

This completes the CBP response to your request. You may contact CBP's FOIA Public Liaison, Charlyse Hoskins, by sending an email via your SecureRelease account], mailing a letter to **90 K St, NE MS 1181**, Washington DC, 20229 or by calling 202-325-0150. (If you need telecommunication relay service (TRS) assistance to communicate with the CBP FOIA Office and you are in the United States, please dial 711 to obtain TRS assistance and notify the Communications Assistant that you want to contact the CBP FOIA Office at the telephone number (202) 325-0150). The FOIA Public Liaison is able to assist in advising on the requirements for submitting a request, assist with narrowing the scope of a request, assist in reducing delays by advising the requester on the type of records to request, suggesting agency offices that may have responsive records and receive questions or concerns about the agency's FOIA process.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you are not satisfied with the response to this request, you have a right to appeal the final disposition. Should you wish to do so, you must file your appeal within 90 days of the date of this letter following the procedures outlined in the DHS

regulations at Title 6 C.F.R. §5.8. Please include as much information as possible to help us understand the grounds for your appeal. You should submit your appeal via your SecureRelease account . If you do not have computer access, you may send your appeal and a copy of this letter to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, [90 K Street, NE, 10th Floor, Washington, DC 20229-1177](#). Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia. Additional information can be found at the following link https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/definitions-exemptions-foia_0.pdf.

Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS), which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, [8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001](#), e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. Please note that contacting the CBP FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.

Please notate file number CBP-FO-2023-138605 on any future correspondence to CBP related to this request.

Please note that this message has been sent from an unmonitored e-mail account. Any messages sent to this account will not be read.

Sincerely,

U.S. Customs and Border Protection

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and any disclosure, copying, or distribution of this message, or the taking of any action based on it, by you is strictly prohibited.

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Exhibit 3



CENTER FOR IMMIGRATION STUDIES

CBP FREEDOM OF INFORMATION ACT APPEAL

SUBMITTED VIA FOIA PORTAL

September 20, 2023

Re: Appeal of FOIA Request CBP-FO-2023-138605 (CIS#0041)

To Whom It May Concern:

My client submitted a request for records (“**FOIA Request**”) from the files of U.S. Customs and Border Protection (“**CBP**” or “**agency**”) pursuant to the Freedom of Information Act (5 U.S.C. § 552, as amended) (“**FOIA**”). On September 15, 2023 the agency provided its final determination (“**Final Response**”) concerning the FOIA Request. On behalf of my client, I now write to appeal the agency’s Final Response.

A. FOIA Request CBP-FO-2023-138605 (CIS#0041)

On September 14, 2023, my client submitted a request to CBP for the following:

- 1) Records sufficient to show the number of aliens encountered by CBP at the southern border, from May 12, 2023 through the date of the search, who were referred by DHS to DOJ for criminal prosecution for “Improper entry by alien” under section 275(a) of the INA[.]**
- 2) Records sufficient to show the number of aliens encountered by CBP at the southern border, from May 1, 2022 through October 1, 2022, who were referred by DHS to DOJ for criminal prosecution for “Improper entry by alien” under section 275(a) of the INA.**
- 3) Records sufficient to show the number of aliens encountered by CBP at the southern border, from May 12, 2023 through the date of the search who were referred by DHS to DOJ for criminal prosecution for “Improper entry by alien” under section 275(a) of the INA and prosecution was accepted by DOJ.**
- 4) Records sufficient to show the number of aliens encountered by CBP at the southern border, from May 1, 2022 through October 1, 2022, who were referred by DHS to DOJ for criminal prosecution for “Improper entry by alien” under section 275(a) of the INA and prosecution was accepted by DOJ.**

(Attachment 1.)¹ (Footnotes omitted)

B. CBP's Final Response

On September 15, 2023, CBP issued a Final Response letter. The letter stated in relevant part:

CBP is granting your request under the FOIA, Title 5 U.S.C. § 552. Upon initial review of your request, we have determined that the following documents can be found on the internet at the following link:

<https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

Section 235(b)(1) and section 240 of the INA fall under Title 8.

This completes the CBP response to your request.

(Attachment 2.)

C. Argument

CBP has failed to conduct an adequate search of the requested records. An agency's search is adequate only if it is "reasonably calculated to uncover all relevant documents." *Zemansky v. E.P.A.*, 767 F.2d 569, 571 (9th Cir. 1985) (quoting *Weisberg v. U.S. Dep't of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)) (internal quotation marks omitted). "An agency fulfills its obligations under FOIA if it can demonstrate *beyond material doubt* that its search was 'reasonably calculated to uncover all relevant documents.'" *Defs. of Wildlife v. United States Border Patrol*, 623 F. Supp. 2d 83, 91 (D.D.C. 2009) (quoting *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999)) (citation omitted) (emphasis added). To satisfy its FOIA obligations, an agency needs to adequately describe the scope and methods of its searches, which can reasonably be expected to uncover the records sought and demonstrate that the places most likely to contain responsive materials were searched. *Davidson v. E.P.A.*, 121 F. Supp. 2d 38, 39 (D.D.C. 2000). At a minimum, the agency must specify "what records were searched, by whom, and through what process." *Steinberg v. U.S. Dep't of Justice*, 23 F.3d 548, 552 (D.C. Cir. 1994).

CBP's search was inadequate for two reasons. First, CBP Final Response provided no information regarding the adequacy of its search. (Attachment 2.) Without specifying what records were searched, by whom, and through what process, our client cannot assume CBP's search was adequate. *Steinberg*, 23 F.3d 552. Moreover, the lack of detail in CBP's Final Response regarding its search suggests it likely could not demonstrate beyond a material doubt that its search was reasonably calculated to uncover all relevant documents. *Valencia-Lucena*, 180 F.3d at 325.

Second, the public link CBP provided to complete its response to my client's request, is not responsive to the request. Specifically, the link CBP provided does not provide any information regarding the number of people "who were referred by DHS to DOJ for criminal prosecution for

¹ All "Attachments" referenced herein are appended to this letter.

“Improper entry by alien” under section 275(a) of the INA” and “who were referred by DHS to DOJ for criminal prosecution for “Improper entry by alien” under section 275(a) of the INA and prosecution was accepted by DOJ.” (**Attachment 1.**)

For the reasons detailed above, CBP failed to demonstrate beyond a material doubt that its search was reasonably calculated to uncover all relevant documents. *Valencia-Lucena*, 180 F.3d at 325; *Campbell*, 164 F.3d at 28. Therefore, its search was not adequate.

D. Appellate Request

Given the foregoing, my client hereby appeals and requests that the documents responsive to the FOIA Request be produced within 20 days of this appeal. Thank you for your time and attention to this matter. If you require any additional information, please contact me at **(202) 466-8185 ext. 126** or through email at **foia@cis.org**.

Very truly yours,

/s/ Colin M. Farnsworth

Colin M. Farnsworth, Esq.

Chief FOIA Counsel

Center for Immigration Studies



CENTER FOR IMMIGRATION STUDIES

CBP FOIA REQUEST

VIA FOIA PORTAL

September 14, 2023

Re: Number of people referred for criminal prosecution under section 275(a) of the INA 2022/2023 (CIS#0041)

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The Center also hereby requests a waiver of any and all fees and charges pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)(II) and (a)(4)(A)(iii). First, the Center is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because under FOIA it qualifies as a member of the news media. *See National Security Archive v. Department of Defense*, 880 F. 2d 1381, 1387 (D.C. Cir. 1989) (“A representative of the news media is, in essence, a 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.”). The Center is a research institution whose mission is to provide immigration policymakers, the academic community, news media, and concerned citizens with reliable information about the social, economic, environmental, security, and fiscal consequences of legal and illegal immigration into the United States.² In service of this mission, the Center regularly obtains information about the operations and activities of government through FOIA and other means, uses its editorial skills to turn the information into distinct works, and widely disseminates the information through a variety media platforms.³ The Center intends to do likewise with the records it receives through this request.

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² See <https://cis.org/Center-For-Immigration-Studies-Background>.

³ See <https://cis.org/Publications>; see also <https://cis.org/Podcasts/Parsing-Immigration-Policy>; <https://www.facebook.com/CenterforImmigrationStudies/>; https://twitter.com/CIS_org; <https://www.youtube.com/@CenterforImmigrationStudies>.

utilizing a variety of media platforms.⁴ It also will make the records available to other members of the media or researchers upon request.

Finally, access to the requested records should be granted within twenty (20) business days from the date of your receipt of this letter, otherwise the Center is further entitled to a complete waiver of search and duplication fees. 5 U.S.C. § 552(a)(4)(A)(viii). Furthermore, the agency's failure to respond in a timely manner shall be viewed as a denial of this request, and the Center may immediately take further administrative or judicial action.

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Sincerely,

Colin M. Farnsworth, Esq.
Chief FOIA Counsel
Center for Immigration Studies

⁴ *Id.*



CBP FOIA - CBP-FO-2023-138605

cbpfoia@cbp.dhs.gov <noreply@securerelease.us>
Reply-To: cbpfoia@cbp.dhs.gov
To: foia@cis.org

Fri, Sep 15, 2023 at 10:00 AM

Colin Farnsworth
Center for Immigration Studies
1629 K st. NW #600
Washington, District of Columbia 20006

09/15/2023

CBP-FO-2023-138605

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If you are not satisfied with the response to this request, you have a right to appeal the final disposition. Should you wish to do so, you must file your appeal within 90 days of the date of this letter following the procedures outlined in the DHS regulations at Title 6 C.F.R. §5.8. Please include as much information as possible to help us understand the grounds for

your appeal. You should submit your appeal via your SecureRelease account . If you do not have computer access, you may send your appeal and a copy of this letter to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, [90 K Street, NE, 10th Floor, Washington, DC 20229-1177](#). Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia. Additional information can be found at the following link https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/definitions-exemptions-foia_0.pdf.

Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS), which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, [8601 Adelphi Road](#)-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. Please note that contacting the CBP FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.

Please notate file number CBP-FO-2023-138605 on any future correspondence to CBP related to this request.

Please note that this message has been sent from an unmonitored e-mail account. Any messages sent to this account will not be read.

Sincerely,

U.S. Customs and Border Protection

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and any disclosure, copying, or distribution of this message, or the taking of any action based on it, by you is strictly prohibited.

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v.E.1

Exhibit 4



CIS FOIA <foia@cis.org>

Receipt of Appeal, CBP-AP-2023-001944

1 message

noreply@cbp.dhs.gov <noreply@securerelease.us>
Reply-To: noreply@cbp.dhs.gov
To: foia@cis.org

Wed, Oct 4, 2023 at 4:01 PM

Hello, Mr. Farnsworth.

This message confirms receipt of your Freedom of Information Act appeal challenging the determination issued by U.S. Customs and Border Protection's FOIA Division as related to request file number CBP-FO-2023-138605. Your appeal tracking number is CBP-AP-2023-001944. Please reference that tracking number in any subsequent communications with the agency related to your appeal. Your appeal has been assigned to a CBP FOIA Appeals attorney and will be processed in the order it was received and as expeditiously as possible.

Your appeal is a priority, and we will make every effort to respond to your appeal as soon as possible.

Most Sincerely,
CBP FOIA Appeals

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