

EXHIBIT - 1



CREEC

CIVIL RIGHTS EDUCATION
AND ENFORCEMENT CENTER



**YOUNG
CENTER**

IMMIGRANT
CHILDREN'S
RIGHTS

March 12, 2024

Via SecureRelease Portal
U.S. Customs and Border Protection
Freedom of Information Act Office

Re: CBP One Disability Access FOIA Request and Notification

Al Otro Lado (“AOL”), the Civil Rights Education and Enforcement Center (“CREEC”) the Texas Civil Rights Project (“TCRP”), and the Young Center for Immigrant Children’s Rights (“Young Center”) seek to understand CBP’s policies and instructions for ensuring compliance with Sections 504 and 508 of the Rehabilitation Act, which mandates equal access to federal programs and electronic and information technology for persons with disabilities, respectively. Pursuant to 5 U.S.C. § 552(a)(3), the requestors seek disclosure of records concerning the compliance of the CBP One application with Sections 504 and 508. Pursuant to 5 U.S.C. § 552(a)(2), requestors also notify CBP of its responsibility to publicly post applicable disability policies to its online FOIA reading room.

I. REQUEST

Requestors seek the following records from CBP pursuant to 5 U.S.C. § 552(a)(3):

1. All CBP directives, policies, or memoranda concerning compliance with or interpretation or implementation of Section 508 of the Rehabilitation Act including, but not limited to, CBP Directive 5510-040A, *Electronic and Information Technology Accessibility under Section 508 of the Rehabilitation Act*.¹
2. All compliance reviews concerning CBP One application compliance with the Rehabilitation Act of 1973 and all associated Compliance Determination Forms.²

¹ See U.S. Customs and Border Protection (“CBP”), *Disability Access Plan for Public-Facing Programs and Activities* at 8, Jun. 19, 2019, <https://www.dhs.gov/sites/default/files/publications/cbp-disability-access-plan.pdf> (describing CBP Directive 5510-040A as “establishing guidance regarding the requirement for Federal agencies to provide members of the public with disabilities access to information and data that is comparable to the access available to those without disabilities.”); Dep’t of Homeland Sec’y, Management Directive 4010.2: *Section 508 Program Management Office & Electronic and Information Technology Accessibility* at 7, Oct. 26, 2005, <https://www.dhs.gov/sites/default/files/publications/07.%20MD%204010.2%20Section%20508%20Program%20Management%20Office%20and%20Electronic%20and%20Information%20Technology%20Accessibility.pdf> (Requiring DHS Component Section 508 Coordinators to “[e]nsure all Component policies and procedures related to EIT accessibility are in agreement with DHS EIT policies and procedures.”).

² See *Circumvention of Lawful Pathways*, 88 Fed. Reg. 94, at 31403 (May 16, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-05-16/pdf/2023-10146.pdf> (“[T]he CBP One app is

3. All communications sent or received by CBP officials between January 1, 2023, and the date that CBP conducts this search concerning any CBP One disability access issues containing the keywords “@alotrolado.org” and “disability.”
4. All CBP policies, memoranda, procedures, musters, standards, operations orders, reports, training materials, and other guidance concerning:
 - a. Access to and use of the CBP One application for individuals with disabilities;
 - b. Accommodations for individuals with disabilities;³
 - c. Determinations of whether CBP should grant an exception to any requirement to the CBP One process because of disability or medical need.

II. REQUEST FOR EXPEDITED PROCESSING

This request qualifies for CBP’s expedited processing track as it seeks records concerning “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 6 C.F.R. § 5.5(e)(1)(iv). Since January 2023, CBP has expanded its use of the CBP One application in processing asylum seekers. First, CBP began using the application to process requests for exemptions from the Center for Disease Control and Prevention’s (“CDC”) Title 42 order restricting asylum.⁴ After the CDC rescinded the Title 42 order, the Department of Homeland Security (“DHS”) began to penalize asylum seekers who did not use the application to schedule appointments with CBP at U.S. ports of entry.⁵

Nongovernmental organizations and members of Congress have criticized CBP’s increasing reliance on CBP One, citing concerns over the application’s glitches and inaccessibility for those with certain disabilities and language and technology proficiency issues.⁶ Media outlets have dedicated significant coverage to these concerns and raised questions about the fairness of requiring the use of an application that does not provide

undergoing a compliance review under section 508 of the Rehabilitation Act of 1973, which is expected to be completed by the end of May 2023. CBP expects a final certification by the end of August 2023.”)

³ See CBP, *supra*, n. 1 at 10 (“Additional Planned Activities: • Produce job aids to assist CBP employees to engage in effective communication and to provide reasonable accommodations and modifications to qualified individuals with disabilities encountered in CBP-conducted programs and activities”).

⁴ Lauren Villagran, *An abandoned building that became waiting room to US for migrants*, El Paso Times, Apr. 10, 2023,

<https://www.elpasotimes.com/story/news/2023/04/10/migrants-in-juarez-use-cbp-one-to-seek-exception-t-o-title-42-expulsion/70077647007/>.

⁵ Julie Watson and Gisela Saloman, *Asylum-seekers say joy over end of Title 42 turns to anguish induced by new US rules*, Associated Press, May 28, 2023,

<https://apnews.com/article/border-asylum-rules-immigration-title-42-biden-e77b4730682d889a2376b868c2fcac18>.

⁶ See e.g. Letter from Congressman Jesús G. "Chuy" García et al. to Secretary Alejandro Mayorkas, Mar. 13, 2023, https://castro.house.gov/imo/media/doc/cbponeletter_final.pdf; NETWORK Lobby for Catholic Social Justice et. al, *CBP ONE: The Latest Roadblock to Asylum in the United States*, Aug. 31, 2023, <https://networklobby.org/wp-content/uploads/2023/08/CBPOneReportFINAL83123.pdf>.

equitable access to the U.S. asylum system for all asylum seekers.⁷ As the media has shown a “widespread and exceptional” interest in CBP One’s lack of functionality for certain individuals, including those with disabilities, CBP should process this request expeditiously.

III. REQUEST FOR FEE WAIVER

The requestors seek waiver of all fees associated with this request because the records requested are “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). As discussed in Section II, the requested records will contribute significantly to the public’s understanding of whether CBP provides equitable access to its CBP One application.

Requestors do not seek these records for commercial reasons. All three are 501(c)(3) non-profit organizations established to advocate for immigrant and civil rights. The requestors will analyze and share the records obtained through this FOIA request via their social media accounts and other publicly accessible fora at no cost to the public.

IV. NOTIFICATION OF FAILURE TO MAKE RECORDS PUBLICLY AVAILABLE

Agencies must make publicly available their “statements of policy and interpretation” not already published in the Federal Register and “administrative staff manuals and instructions to staff that affect a member of the public.” 5 U.S.C § 552(a)(2)(B)-(C). DHS components have an affirmative obligation to publicly post these records. *See* 6 C.F.R. § 5.2. CBP’s *Disability Access Plan for Public-Facing Programs and Activities* lists at least one Section 508 related policy, CBP Directive 5510-040A, *Electronic and Information Technology Accessibility under Section 508 of the Rehabilitation Act*.⁸ Likewise, DHS’ Management Directive 4010.2: *Section 508 Program Management Office & Electronic and Information Technology Accessibility* indicates that CBP follows written Electronic and Information Technology policies.⁹ However, CBP has not posted any such policies, manuals, or instructions to its online FOIA reading room. These and other policies, interpretations, and manuals regarding compliance with Sections 504 and 508 must be made available on the CBP reading room for public viewing.¹⁰

⁷ *See e.g.* Suzanne Monyak, *House Democrats call to improve border appointment app*, Roll Call, Mar. 14, 2023, <https://rollcall.com/2023/03/14/house-democrats-call-to-improve-border-appointment-app/>; Lauren Sforza, *Markey urges DHS to drop smartphone app for migrants*, The Hill, Feb. 21, 2023, <https://thehill.com/homenews/senate/3867847-markey-urges-dhs-to-drop-smartphone-app-for-migrants/>; Valerie Gonzalez, *Improvements to CBP app for asylum seekers amplifies access*, My RGV, Apr. 1, 2023, <https://myrgv.com/featured/2023/04/01/improvements-to-cbp-app-for-asylum-seekers-amplifies-access/>; José Ignacio Castañeda Perez, *This family fled Mexico and sought asylum through an app. Not everyone is so lucky*, Arizona Republic, Feb. 1, 2023, <https://www.azcentral.com/story/news/politics/border-issues/2023/02/01/cbp-one-app-allows-migrant-family-request-asylum/69856098007/>.

⁸ *See* n. 1, *supra*.

⁹ *Id.*

¹⁰ This notification is not required by FOIA. Without prior notice, anyone may file a complaint challenging 5 U.S.C. § 552(a)(2) violations. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Justice*, 846 F.3d 1235, 1240 (D.C. Cir. 2017).

We appreciate your prompt attention to this request. In accordance with DHS regulations, we expect to receive an expedited processing determination within ten working days, a written determination as to our FOIA request within twenty working days, and posting of any applicable policies, manuals, and instructions to CBP's FOIA reading room as soon as possible. If you have any questions, do not hesitate to contact the undersigned counsel who represent the requestors for the purpose of this request.

Sincerely,

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