

Exhibit 2

The Protect-
Democracy
Project 

August 3, 2017

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El Centro Sector California
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Laredo Sector Texas
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Yuma Sector Arizona
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Via E-Mail

Re: Freedom of Information Act

To Whom It May Concern:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, The Protect Democracy Project hereby requests that your office produce within 20 business days the following records (see below for clarity on the types of records sought):

1. All documents setting forth policies, procedures, operations orders, guidelines, guidance, best practices, or requirements relating to interactions between any Department of Homeland Security (“DHS”) employee and any unaffiliated border enforcement group.
2. All communications between Big Bend Sector Texas, and any other component of DHS, relating to unaffiliated border enforcement groups.
3. All communications between any employee of Big Bend Sector Texas and any representative of any unaffiliated border enforcement group.
4. All communications between any employee of Big Bend Sector Texas and the Department of Justice relating to any unaffiliated border enforcement group, including but not limited to communications regarding policies concerning unaffiliated border enforcement groups or potential unlawful activities committed by any unaffiliated border enforcement group.
5. All documents describing, memorializing, or constituting policies or practices for disciplining any employee of DHS for actions or conduct related to unaffiliated border enforcement groups.
6. Any documents reflecting the number of disciplinary actions taken by DHS with respect to DHS employees relating to unaffiliated border enforcement groups.
7. All documents, including but not limited to any communications or memoranda, referring to any of the following entities: Arizona Border Recon, Arizona Militia, Citizen Defenders, The Minutemen Project, Rusty’s Rangers, Texas Militia or Three Percent United Patriots.
8. All documents referencing the content, or any responses to, Shane Bauer, “I Went Undercover with a Border Militia. Here’s What I Saw.,” *Mother Jones* (Nov./Dec. 2016).
9. All communications with, or documents in any way referencing, Tim Foley of the Arizona Border Recon.
10. All documents containing, discussing, or memorializing communications with any officer or member of the National Border Patrol Council or National ICE Council regarding any unaffiliated border enforcement group.
11. In addition to the records requested above, we also request records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched, and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or

certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

Except where otherwise noted, the timeframe for this request is January 1, 2013 through the date that searches are conducted for records responsive to this FOIA request.

For purposes of this request, “unaffiliated border enforcement group” means any group consisting of two or more individuals who are not employed by the U.S. government and who purport to monitor border crossing or otherwise support or enforce restrictions on individuals crossing the U.S. border. Unaffiliated border enforcement groups may in some instances refer to themselves, or be referred to, as militias, citizens’ border patrols, or armed patriot groups. Examples of unaffiliated border enforcement groups include, but are not limited to the following entities: Arizona Border Recon, Arizona Militia, Citizen Defenders, The Minutemen Project, Rusty’s Rangers, Texas Militia or Three Percent United Patriots. Although we use the phrase “unaffiliated border enforcement groups” as a shorthand in this request, we do not expect that phrase to appear in most responsive documents, so a search limited by that term would not be responsive to this request.

RESPONSIVE RECORDS

We ask that all types of records and all record systems be searched to discover records responsive to our request. We seek records in all media and formats. This includes, but is not limited to: agendas, manifests, calendars, schedules, notes, and any prepared documentation for meetings, calls, teleconferences, or other discussions responsive to our request; voicemails; e-mails; e-mail attachments; videos; talking points; faxes; training documents and guides; tables of contents and contents of binders; documents pertaining to instruction and coordination of couriers; and any other materials. However, you need not produce press clippings and news articles that are unaccompanied by any commentary (e.g., an email forwarding a news article with no additional commentary in the email thread).

We ask that you search all systems of record, including electronic and paper, in use at your agency, as well as files or emails in the personal custody of your employees, such as personal email accounts, as required by FOIA and to the extent that they are reasonably likely to contain responsive records. The Protect Democracy Project would prefer records in electronic format, saved as PDF documents, and transmitted via email or CD-rom.

If you make a determination that any responsive record, or any segment within a record, is exempt from disclosure, we ask that you provide an index of those records at the time you transmit all other responsive records. In the index, please include a description of the record and the reason for exclusion with respect to each individual

exempt record or exempt portion of a record, as provided by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). When you deem a portion of a record exempt, we ask that the remainder of the record to be provided, as required by 5 U.S.C. § 552(b).

EXPEDITED PROCESSING REQUEST

We request that you expedite the processing of this request pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). This request meets the criteria for expedited processing because there is “[a]n urgency to inform the public about an actual or alleged Federal Government activity,” this request is “made by a person who is primarily engaged in disseminating information;” and this request concerns “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that could affect public confidence.” 6 C.F.R. § 5.5(e)(ii), (iv). As explained below in more detail in the section of this request regarding a fee waiver, The Protect Democracy Project intends to disseminate the information obtained in response to this request.

The role of unaffiliated border enforcement groups in relation to immigration policy is a matter of urgent public importance. As an initial matter, immigration policy is currently a matter of the highest public concern. It was a driving issue in the 2016 presidential campaign,¹ and has been the subject of high-profile executive action in the new administration.² Beyond formal policy, the day to day implementation of immigration policy generates intense public interest.³ This has taken place against the backdrop of increasing public attention to the role that unaffiliated border groups may

¹ See, e.g., Janelle Ross, *From Mexican Rapists to Bad Hombres, the Trump Campaign in Two Moments*, Wash. Post, Oct. 16, 2016; Fox News, *Trump Stands by Statements on Mexican Illegal Immigrants, Surprised by Backlash*, Fox News, July 4, 2015, available at <http://www.foxnews.com/politics/2015/07/04/trump-stands-by-views-dangerous-mexican-illegal-immigrants-admits-surprised-by.html>.

² See, e.g., Julie Hirschfeld Davis et. al. *Trump to Order Mexican Border Wall and Curtail Immigration*, New York Times, Jan. 24, 2017; Brian Naylor, *Trump's Plan To Hire 15,000 Border Patrol And ICE Agents Won't Be Easy*, NPR, Feb. 23, 2017, available at <http://www.npr.org/2017/02/23/516712980/trumps-plan-to-hire-15-000-border-patrol-and-ice-agents-wont-be-easy-to-fulfill>; White House, Office of the Press Secretary, *President Donald J. Trump Taking Action Against Illegal Immigration*, June 28, 2017, available at <https://www.whitehouse.gov/the-press-office/2017/06/28/president-donald-j-trump-taking-action-against-illegal-immigration>.

³ See, e.g., Scott Martelle, *We're Seeing the Results of Trump's New Border Enforcement System. They Aren't Pretty*, L.A. Times, Feb. 27, 2018; Jonathan Blitzer, *The Border Patrol Was Primed for President Trump*, The New Yorker, Feb. 17, 2017, available at <http://www.newyorker.com/news/news-desk/the-border-patrol-was-primed-for-president-trump>.

play in relation to immigration enforcement.⁴ Significantly, some of the most influential reporting on that subject has come from investigative journalists because the public record does not currently contain adequate information about the subject.⁵ The public has a right to learn precisely what role unaffiliated border enforcement groups have played in recent years in relation to immigration policy and whether that role may be evolving in response to changes in immigration policy. In the absence of such information, the public cannot adequately assess the contours of federal immigration policy.

The core mission of The Protect Democracy Project, a new organization awaiting 501(c)(3) status, is to inform public understanding on operations and activities of the government. This request is submitted in accordance with the organization's mission to gather and disseminate information that is likely to contribute significantly to the public understanding of executive branch operations and activities. The Protect Democracy Project has routinely demonstrated the ability to disseminate information about its FOIA requests to a wide audience.⁶ The Protect Democracy Project has been recognized as an organization that meets the statutory criteria for expedited processing. *Protect Democracy Project, Inc. v. U.S. Dep't of Def.*, No. 17-CV-00842 (CRC), 2017 WL 2992076 (D.D.C. July 13, 2017). The Protect Democracy Project has no commercial interests.

It is therefore incumbent upon the government and urgent for your office to share any responsive records in an expedited manner. The interaction between unaffiliated border enforcement groups and the various components of DHS will inform public understanding of immigration enforcement priorities, the efficacy of federal immigration policy, and the safeguards protecting individuals at the border. The public must have an opportunity to understand the full picture of how unaffiliated border enforcement groups interact with official border enforcement entities.

⁴ See, e.g., Fernanda Santos, *At the Southern Border, a Do-It-Yourself Tack on Security*, New York Times, Dec. 21, 2016; Maxwell Barna, *'It's an American Problem': Meet the Militias Patrolling the US Border*, Vice News, June 31, 2014, available at <https://news.vice.com/article/its-an-american-problem-meet-the-militias-patrolling-the-us-border>.

⁵ See, e.g., Shane Bauer, *I Went Undercover with a Border Militia. Here's What I Saw.*, Mother Jones, Nov./Dec. 2016.

⁶ See, e.g., Lisa Rein, *Watchdog group, citing "integrity of civil service," sues Trump to find out if feds are being bullied*, Wash. Post, Apr. 27, 2017; Ben Berwick, *Going to Court for Civil Servants*, Take Care, April 28, 2017, <https://takecareblog.com/blog/going-to-court-for-civil-servants>; Charlie Savage, *Watchdog Group Sues Trump Administration, Seeking Legal Rationale Behind Syria Strike*, N.Y. Times, May 8, 2017, <https://nyti.ms/2pX82OV>; Justin Florence, *What's the Legal Basis for the Syria Strikes? The Administration Must Acknowledge Limits on its Power to Start a War*, Lawfare, May 8, 2017, <https://www.lawfareblog.com/whats-legal-basis-syria-strikes-administration-must-acknowledge-limits-its-power-start-war>.

Under penalty of perjury, I hereby affirm that the foregoing is true and correct to the best of my knowledge and belief.

FEE WAIVER

FOIA provides that any fees associated with a request are waived if “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 core mission of The Protect Democracy Project, a new organization awaiting 501(c)(3) status, is to inform public understanding on operations and activities of the government. This request is submitted in connection with the organization’s mission to gather and disseminate information that is likely to contribute significantly to the public understanding of executive branch operations and activities. The Protect Democracy Project has no commercial interests.

In addition to satisfying the requirements for a waiver of fees associated with the search and processing of records, The Protect Democracy Project is entitled to a waiver of all fees except “reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Federal law mandates that fees be limited to document duplication costs for any requester that qualifies as a representative of the news media. *Id.* The Protect Democracy Project operates in the tradition of 501(c)(3) good government organizations that qualify under FOIA as “news media organizations.” Like those organizations, the purpose of The Protect Democracy Project is to “gather information of potential interest to a segment of the public, use its editorial skills to turn the raw materials into distinct work, and distribute that work to an audience.” *Nat’s Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Indeed, The Protect Democracy Project has routinely demonstrated the ability to disseminate information about its FOIA requests to a wide audience.⁷ The Protect Democracy Project will disseminate information and analysis about this request – and any information obtained in response – through its website (protectdemocracy.org); its Twitter feed (<https://twitter.com/protctdemocracy>), which has more than 9,000 followers; its email list

⁷ See, e.g., Lisa Rein, *Watchdog group, citing “integrity of civil service,” sues Trump to find out if feds are being bullied*, Wash. Post, Apr. 27, 2017, https://www.washingtonpost.com/news/powerpost/wp/2017/04/27/watchdog-group-citing-integrity-of-civil-service-sues-trump-to-find-out-if-feds-are-being-bullied/?utm_term=.8647ab128f3e; Ben Berwick, *Going to Court for Civil Servants, Take Care*, April 28, 2017, <https://takecareblog.com/blog/going-to-court-for-civil-servants>; Charlie Savage, *Watchdog Group Sues Trump Administration, Seeking Legal Rationale Behind Syria Strike*, N.Y. Times, May 8, 2017, <https://nyti.ms/2pX82OV>; Justin Florence, *What’s the Legal Basis for the Syria Strikes? The Administration Must Acknowledge Limits on its Power to Start a War*, Lawfare, May 8, 2017, <https://www.lawfareblog.com/whats-legal-basis-syria-strikes-administration-must-acknowledge-limits-its-power-start-war>.

of approximately 20,000 people; and sharing information with other members of the press.

Given the 20-day statutory deadline, we hope to be as helpful as possible in clarifying or answering questions about our request. Please contact me at larry.schwartztol@protectdemocracy.org or (202) 516-7885 if you require any additional information. We appreciate your cooperation, and look forward to hearing from you very soon.

Sincerely,

Larry Schwartztol
Counsel
The Protect Democracy Project