

EXHIBIT “D”

CBP-AP-2020-012534 Appeal Details



Submitted



Evaluation



Assignment



Processing



Closed

Contact Information

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Appeal Information

Agency	U.S. Customs and Border Protection- FOIA Appeals
Will Pay Up To	\$0.00
Date Submitted	11/14/2019
Estimated Date of Completion	12/13/2019
Fee Category	N/A
Request Track	
Request Phase	Submitted
Final Disposition	Undetermined

Basis for Appeal

Basis for Appeal	Appeal to FOIA Request CBP-2019-072432: The CBP's final response letter dated 10/19/19 regarding FOIA Request No. CBP-2019-072432 is fraught with inaccuracies. This appeal is based on the grounds that not only did the CBP fail to conduct an adequate search based on the detailed request parameters, but furthermore failed to preserve evidence when a request for preservation of evidence had been timely provided to the Department of Homeland Security. First, the final response letter references only Mr. Eiswerth's request for video and audio, stating only that the retention period for video and audio footage is 90 days from the date of the incident. This response completely ignores and fails to address Mr.
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Eiswerth’s request for, not only audio/ video, but all documents, photographs, CBP policies, and correspondence related to Mr. Eiswerth’s detention. The request even defines the term “DOCUMENTS” and goes so far as to give examples of the term “correspondence.” The original request attachment is again uploaded to this appeal. Second, on May 4, 2019, Mr. Eiswerth’s prior counsel electronically submitted a request for preservation of evidence to the Homeland Security Task Force Officer responsible for the subject detention. A true and correct copy of the letter is attached. As Mr. Eiswerth was detained on March 26, 2019, this notice was timely submitted well within the 90-day retention period for all audio and video regarding the incident. Under federal law, therefore, the CBP was put on notice not to destroy any evidence related to this incident and is now answerable for any conduct to the contrary. *Apple v. Samsung* (2012) 888 F. Supp. 2d 976, 990.

Supporting Files

Download	Attached File Name	Size (MB)	File Type
<input type="checkbox"/>	Preservation Letter.pdf	0.2053	Adobe PDF Document
<input type="checkbox"/>	190731 FOIA Request Attachment.pdf	0.0406	Adobe PDF Document

Appeal to FOIA Request CBP-2019-072432

The CBP's final response letter dated 10/19/19 regarding FOIA Request No. CBP-2019-072432 is fraught with inaccuracies. This appeal is based on the grounds that not only did the CBP fail to conduct an adequate search based on the detailed request parameters, but furthermore failed to preserve evidence when a request for preservation of evidence had been timely provided to the Department of Homeland Security.

First, the final response letter references only Mr. Eiswerth's request for video and audio, stating only that the retention period for video and audio footage is 90 days from the date of the incident. This response completely ignores and fails to address Mr. Eiswerth's request for, not only audio/ video, but all documents, photographs, and correspondence related to Mr. Eiswerth's detention. The request even defines the term "DOCUMENTS" and goes so far as to give examples of the term "correspondence." The original request and attachment are again uploaded to this appeal.

Second, on May 4, 2019, Mr. Eiswerth's prior counsel electronically submitted a request for preservation of evidence to the Homeland Security Task Force Officer responsible for the subject detention. As Mr. Eiswerth was detained on March 26, 2019, this notice was timely submitted well within the 90-day retention period for all audio and video regarding the incident. Under federal law, therefore, the CBP was put on notice not to destroy any evidence related to this incident and is now answerable for any conduct to the contrary. *Apple v. Samsung* (2012) 888 F. Supp. 2d 976, 990.

**FOIA REQUEST ON BEHALF OF KELLY JAMES EISWERTH
ATTACHMENT TO DESCRIPTION:**

- 1) All audio/video recordings of Mr. Eiswerth, including but not limited to surveillance and law enforcement body camera recordings, prior to entering the Andrade Port of Entry on March 26, 2019;
- 2) All audio/video recordings of Mr. Eiswerth, including but not limited to surveillance and law enforcement body camera recordings, at the Andrade Port of Entry on March 26, 2019;
- 3) All audio/video recordings of Mr. Eiswerth, including but not limited to surveillance and law enforcement body camera recordings, leaving the Andrade Port of Entry on March 26, 2019;
- 4) All audio/video recordings, including but not limited to surveillance and law enforcement body camera recordings, of any law enforcement official interacting with Mr. Eiswerth at the Andrade Port of Entry on March 26, 2019.
- 5) All audio/video recordings, including but not limited to surveillance and law enforcement body camera recordings, of Mr. Eiswerth's detention by U.S. Customs and Border Protection Officers on March 26, 2019;
- 6) All audio/video recordings of Mr. Eiswerth on March 26, 2019;
- 7) All audio/video recordings of law enforcement officers interviewing Mr. Eiswerth on March 26, 2019;
- 8) All audio/video recordings of any law enforcement official with Mr. Eiswerth at the Andrade Port of Entry on March 26, 2019.
- 9) All audio/video recordings involving Mr. Eiswerth's detention by U.S. Customs and Border Protection Officers on March 26, 2019;
- 10) All audio/video recordings of witnesses to Mr. Eiswerth's interaction with U.S. Customs and Border Protection Officers on March 26, 2019;
- 11) All audio/video recordings of witnesses to Mr. Eiswerth's interaction with U.S. Customs and Border Protection Officers on March 26, 2019;
- 12) All photographs taken of Mr. Eiswerth at the Andrade Port of Entry on March 26, 2019;
- 13) All photographs taken of any law enforcement officer following his/her interaction with Mr. Eiswerth at the Andrade Port of Entry on March 26, 2019;
- 14) All DOCUMENTS evidencing the need to use force on Mr. Eiswerth on March 26, 2019, at the Andrade Port of Entry. As used herein, the term DOCUMENT shall mean any written, printed, typed, recorded, electronic or graphic matter including, but not limited to, files, correspondence, letters, contracts, records, reports, social media

activity, social media posts, books, papers, telegrams, memoranda, notes, diaries, calendars, color photographs, sketches and every other means of recording upon any tangible thing and form of communication or representation including letters, words, pictures, sounds, symbols or combinations of them, and further including originals, drafts, and duplicates thereof;

15) All DOCUMENTS including, but not limited to, use of force reports, interoffice memos, correspondence, emails, and intraoffice memos, relating to the administrative handling of Mr. Eiswerth at the Andrade Port of Entry on March 26, 2019. As used herein, the term DOCUMENT shall mean any written, printed, typed, recorded, electronic or graphic matter including, but not limited to, files, correspondence, letters, contracts, records, reports, social media activity, social media posts, books, papers, telegrams, memoranda, notes, diaries, calendars, color photographs, sketches and every other means of recording upon any tangible thing and form of communication or representation including letters, words, pictures, sounds, symbols or combinations of them, and further including originals, drafts, and duplicates thereof;

16) All controlling U.S. Customs and Border Protection policies regarding the use of force at the time of Mr. Eiswerth's detention at the Andrade Port of Entry on March 26, 2019;

17) All controlling U.S. Customs and Border Protection policies regarding detention of civilians at the time of Mr. Eiswerth's detention at the Andrade Port of Entry on March 26, 2019; and

18) All correspondence, including but not limited to reports, memoranda, and emails, regarding Mr. Eiswerth's detention at the Andrade Port of Entry on March 26, 2019.

SLACK-MENDEZ LAW FIRM

ATTORNEYS AT LAW

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May 4, 2019

Via Email Only: Joshua.Rodriguez2@ice.dhs.gov

Joshua Rodriguez
Task Force Officer
U.S. Department of Homeland Security
2051 N. Waterman Ave., Ste 101
El Centro, CA 92243

Re: **PRESERVATION OF EVIDENCE**

Our Client: Kelly James Eiswerth
Date of Accident: 03/26/2019
Location: Andrade Port of Entry

Dear Officer Rodriguez:

Kelly James Eiswerth has retained us to investigate and pursue claims related to an assault by five (5) U.S. Customs agents without reason at the Andrade Port of Entry. Please direct all further communications to me.

I am requesting that U.S. Department of Homeland Security preserve all information related to this incident and the day it happened. Under Arizona law, all persons in possession of information or materials that are relevant or could reasonably lead to the discovery of relevant information relating to a matter that could be the subject of litigation are required to preserve all such materials and information. See *Souza v. Fred Carries Contracts, Inc.*, 191 Ariz. 247, 250, 955 P.2d 3, 6 (App. 1997). Pursuant to this authority, I request that you preserve (and send to me) any known information in your possession or control that may shed light on this claim including, without limitation:

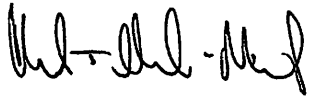
1. All surveillance or other video from the Port of Entry on day of the incident.
2. All video, photographs, incident reports, and any written or recorded statements or investigative reports prepared by you, your investigators or others since the time of the incident.

Joshua Rodriguez
Task Force Officer
U.S. Department of Homeland Security
May 4, 2019
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3. All records of people in attendance at the Port of Entry on the day of the incident.

I look forward to hearing from you on this matter. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles J. Slack-Méndez". The signature is written in a cursive style with some stylized flourishes.

Charles J. Slack-Méndez