

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTHERN OHIO
EASTERN DIVISION**

THE OHIO STATE UNIVERSITY)	
MORITZ COLLEGE OF LAW CIVIL CLINIC)	
55 W. 12th Ave.)	Case No. 14-2329
Columbus, Ohio 43201)	
)	
and)	
)	
ADVOCATES FOR BASIC)	
LEGAL EQUALITY, INC.)	Complaint for Injunctive Relief
525 Jefferson Ave., Ste. 300)	
Toledo, OH 43604)	
)	
Plaintiffs,)	
)	
v.)	
)	
U.S. CUSTOMS AND)	
BORDER PROTECTION)	
FOIA Division)	
799 9th Street NW, 10th Floor)	
Washington, DC 20229-1181)	
)	
Defendant)	
)	

Exhibit A:

Exhibit in Support of Plaintiffs' Complaint for Injunctive Relief



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SUBMITTED ONLINE

August 18, 2014

FOIA Officer/Public Liaison: Sabrina Burroughs
90 K Street NE, 9th Floor
Washington, DC 20229-1181

RE: Freedom of Information Act Request Concerning the Sandusky Bay Station of the Customs and Border Patrol

To Whom It May Concern:

This is a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 522, on behalf of Advocates for Basic Legal Equality (“ABLE”), a non-profit regional law firm providing legal assistance in civil rights and poverty law to low-income individuals and groups in western Ohio, and the Civil Law Clinic at Moritz College of Law, The Ohio State University, for documents related to the enforcement activities of Sandusky Bay Station of U.S. Customs and Border Patrol and/or its officers and/or staff (hereinafter “Sandusky CBP” or “Sandusky Border Patrol”).

Purpose

The purpose of this request is to provide the public with information regarding the Sandusky Border Patrol’s practices and procedures relating to apprehension, arrest and/or seizure, detention and/or custody, racial profiling, and collaborations with state and local law enforcement. Border enforcement questions go to the heart of the Constitution—and are central to our nation’s debates on immigration enforcement and reform—and thus are matters of great public concern. The public has a right to review such practices and procedures in order to ensure that constitutional safeguards are respected and the rights of the most vulnerable are upheld. In another recent case, a federal district court repeatedly ordered a local New York CBP office to search for and produce similar documents regarding the office’s procedures and practices.¹ Your prompt compliance in providing the records herein requested is necessary to vindicate the public’s right to be part of an “informed citizenry, vital to the functioning of a democratic society, needed to check against corruption, and to hold the governors accountable to the governed.”²

Request for Information

We request the following records created on or after October 1, 2008, and created by and/or in the possession of Sandusky CBP.

¹ *Families for Freedom v. U.S. Customs & Border Prot.*, 797 F. Supp. 2d 375, 382 (S.D.N.Y. 2011); *Families for Freedom v. U.S. Customs & Border Prot.*, 10 Civ. 2705 SAS, 2011 WL 4599592 (S.D.N.Y. Sept. 30, 2011); *Families for Freedom v. U.S. Customs & Border Prot.*, 837 F. Supp. 2d 287 (S.D.N.Y. 2011); *Families for Freedom v. U.S. Customs & Border Prot.*, 837 F. Supp. 2d 331 (S.D.N.Y. 2011).

² *Cody Zeigler, Inc. v. U.S. Dep’t of Labor, Occupational Safety & Health Admin.*, C2-00-134, 2002 WL 31159309 (S.D. Ohio Sept. 3, 2002); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1979).



The terms “records” should be understood broadly, including but limited to: all records or communications preserved in electronic and written form, such as correspondences, emails, documents, data, statistics, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, policies, procedures, memoranda, instructions, training materials, notes (including handwritten), orders, legal opinions, protocols, reports, technical manuals, technical specifications, studies, or any other record of any kind.

1. Copies of Form I-213 (“Record of Deportable/Inadmissible Alien”):
 - a. For each individual detained or taken into custody by Sandusky CBP; and
 - b. For each individual transferred to Sandusky CBP by state or local law enforcement officials.

This includes, but is not limited to, all Form I-213’s issued for which the Method of Location/Apprehension is coded OA (“Other Agency”) and/or the Narrative section mentions a state or local law enforcement agency.

2. Daily Apprehension Log for individuals apprehended by Sandusky CBP for whom I-213’s were issued. This includes, but is not limited to all data and statistics relating to:
 - a. Length of time in the United States;
 - b. Country of Citizenship;
 - c. Complexion; and
 - d. Criminal Record.
3. Copies of Form I-44 (“Report of Apprehension or Seizure”):
 - a. For each individual transferred to Sandusky CBP by state or local law enforcement officials; and
 - b. For each individual stopped but not arrested by Sandusky CBP for whom I-44’s were issued.
4. All records, data or statistics from the Daily Apprehension Log regarding individuals arrested by or transferred to Sandusky CBP for whom I-44’s were issued. This includes but is not limited to data or statistics regarding:
 - a. Length of time in the United States;
 - b. Country of Citizenship;
 - c. Complexion; and
 - d. Criminal Record.
5. All records that provide possible codes and/or words and/or phrases (hereinafter “code(s)”), along with explanations of those codes, that could be filled in by Sandusky CBP on the I-213 form and I-44:
 - a. Under “Method of Location/Apprehension”;
 - b. Under “Status when Found”;
 - c. Under “Criminal Record”; and
 - d. Under “Cmplxn,” and any records that instruct, guide, or train officers about how to determine how to classify arrestees by their complexion.
6. Copies of each Form I-247 (“Immigration Detainer”) issued by Sandusky CBP to a state or local law enforcement entity, as well as the records reflecting the following information:
 - a. The date on which the detainer was issued;
 - b. The date, if any, on which the detainer was cancelled or lifted, as well as the reason the detainer was cancelled or lifted;
 - c. The offense code, if any, and any records describing the meaning of the offense code;



- d. The date, if any, that the subject of the detainer was taken into CBP custody;
 - e. The receiving agency, facility, and/or police department to whom the detainer was sent; and
 - f. The nationality and/or country of origin of the individual subject to the detainer.
7. All records or communications between Sandusky CBP and state or local law enforcement agencies on the following topics:
 - a. The transfer of any individual/individuals from the state or local law enforcement agency to CBP;
 - b. Claims of US citizenship by individuals subject to immigration detainers;
 - c. Complaints related to immigration detainers;
 - d. The 48-hour limitation on detention pursuant to an immigration detainer, and any claims that an individual has been detained beyond that limit;
 - e. Crime victims and witnesses; and
 - f. Racial or ethnic profiling and/or racial or ethnic profiling concerns.
 8. All records setting forth policies and procedures related to the planning and/or implementation of immigration enforcement actions, including raids, patrols, and other contact with members of the public for the purpose of enforcing immigration law.
 9. All records indicating what methods of law enforcement were used by Sandusky CBP during immigration enforcement actions, including but not limited to pedestrian stops, vehicle stops, stops based on reasonable suspicion or consent, searches authorized by court-issued warrants or based on consent, and the locations, times, and dates on which such methods were used.
 10. All records that contain any information regarding arrest quotas, targets, goals and expectations that Sandusky CBP was required to meet from fiscal year 2008 to the present.
 11. All records containing guidance, including but not limited to that from other federal agencies or components of the Department of Homeland Security, for what sort of suspicious activities or suspicious groups of people Sandusky CBP should look for.
 12. Any records or communication that contain any information or directions regarding the U.S. Immigration and Customs Enforcement “bed quota.”
 13. Performance review standards for Sandusky CBP from fiscal year 2008 to the present.
 14. Any and all policies, procedures, guidelines, memoranda, instructions, protocols and training materials regarding racial or ethnic profiling governing Sandusky CBP.
 15. Any records concerning complaints received and/or investigated by the Office for Civil Rights and Civil Liberties (CRCL) against Sandusky CBP, including but not limited to:
 - a. Complaints alleging misconduct with respect to apprehension, arrest and/or seizure, detention and/or custody, racial profiling, and collaborations with state and local law enforcement;
 - b. Complaints received through the CRCL complaint line or email box or through referral from CBP;
 - c. Statistical anomalies (“yellow flags”) recognized through standing quarterly reviews of CBP by CRCL; and
 - d. Third-party research, such as non-governmental organization (NGO) reports or systematic media investigations.



Request for Fee Waiver

The requesters additionally seek a waiver of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents shall be furnished without any charge or at a [reduced] charge . . . 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.”). Disclosure in this case meets the statutory criteria, and a fee waiver would fulfill congressional intent.³

Disclosure of the records herein requested is in the public interest as it will inform the public on a matter of heightened controversy: a local Border Patrol’s immigration enforcement policies and practices, including racial profiling and its’ efforts to work with local law enforcement. Given the current debate on comprehensive immigration reform, and ongoing debates over local and state law enforcement’s cooperation with federal immigration enforcement, few issues are more important to the public. CBP’s practices and procedures regarding racial profiling have received national attention, addressed both by Congress during the drafting of comprehensive immigration reform and by the media due to the advocacy of immigrant rights groups and various lawsuits filed against CBP.⁴ Litigation of particular significance is *Muniz-Muniz v. U.S. Border Patrol*,⁵ where it was alleged that in enforcing immigration law, Sandusky Border Patrol has engaged in racial profiling. This lawsuit has received a significant amount of media attention.⁶ However, documents obtained through discovery in *Muniz-Muniz* have been placed under seal by the court.

The requesters are non-profit and educational organizations that have no commercial interest in this matter. The requesters will make any information that they receive as a result of this FOIA request available to the public, by publishing such information on ABLE’s website and through providing it to major journals such as the *Clearinghouse Review*, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill congressional intent in amending FOIA to the benefit of “noncommercial requesters.”⁷

Even if the request is not found to meet the statutory criteria, “fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). If a fee waiver is denied, the fees in this case should be limited to these reasonable standard charges as the requesters are a non-profit and educational institution seeking such records not for a commercial purpose, but rather to disclose such records the news media, and put them to use for research purposes. If a fee waiver is denied, the requesters are prepared to pay fees up to \$100.00. We ask that you inform us first if fees in excess of \$100.00 may be charged, though we reserve the right to appeal a denial of fee waivers.

The requesters certify that the above information is true and correct to the best of the requesters’ knowledge. 6 C.F.R. § 5.5(d)(3).

³ *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (internal quotation omitted)).

⁴ See, e.g., Brian Bennett, *Immigration rights groups accuse officials of racial profiling*, L.A. TIMES, Mar 13, 2013; Manuel Valdes, *ACLU Sues Border Patrol Over Alleged Racial Profiling in Pacific Northwest Border*, HUFF. POST, Apr. 26, 2012; Rebekah L. Cowell, *Raleigh church members sue feds, allege racial profiling*, INDY WEEK, Mar. 2, 2011.

⁵ 3:09 CV 2865, 2012 WL 5197250 (N.D. Ohio Oct. 19, 2012).

⁶ Brian Bennett, *Immigration rights groups accuse officials of racial profiling*, LOS ANGELES TIMES, March 13, 2013; Jessica Cuffman, *Federal legislators weigh in on Border Patrol allegations*, SANDUSKY REGISTER, Jan. 31, 2013.

⁷ *Judicial Watch*, 326 F.3d at 1312.



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If this request for records is denied in whole or in part, we ask that you justify all deletions by reference to specific provisions of the Freedom of Information Act. We expect you to release all segregable portions of otherwise exempt material. We request that responsive electronic records be provided electronically in their native file format, if possible. 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agencies' possession, and that the records be provided in separate, Bates-stamped files. We reserve the right to appeal a decision to withhold any information. We also request that you provide an estimated date on which you will complete the processing of this request. 5 U.S.C. § 552(a)(7)(B).

Thank you for your prompt attention to this matter. Please furnish all responsive records to Amna Akbar.

Sincerely,

Amna A. Akbar

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