

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

AMERICAN CIVIL LIBERTIES UNION )  
FOUNDATION OF NEW HAMPSHIRE, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
UNITED STATES CUSTOMS AND )  
BORDER PROTECTION, )  
 )  
Defendant. )  
\_\_\_\_\_ )

No. 1:19-cv-00977-LM

DEFENDANT’S SUPPLEMENTAL DECLARATION  
IN SUPPORT OF ITS OBJECTION TO PLAINTIFF’S  
MOTION TO COMPEL DEFENDANT TO PRODUCE ADEQUATE VAUGHN INDEX

On November 5, 2021, Defendant objected to Plaintiff’s Motion to Compel Defendant to Produce Adequate *Vaughn* Index. Document Number (“DN”) 21. In support of the objection, Defendant provided a Declaration of Patrick Howard, a Branch Chief within the Freedom of Information Act Division at U.S. Customs and Border Protection, U.S. Department of Homeland Security. DN 21-1. On February 22, 2022, this Court issued an Order granting in part and denying in part Plaintiff’s motion for an adequate *Vaughn* Index. DN 25. In the Order, the Court instructed Defendant to supplement its declaration with respect to the 94 I-213 Forms as to which only the first page was disclosed. *Id.*

Defendant respectfully submits to the Court the Supplemental Declaration of Patrick Howard, attached as Exhibit A, and the Exhibits thereto. Defendant further refers the Court to the legal analysis and arguments contained in its original Objection. DN 21.

Respectfully submitted,

JOHN J. FARLEY  
United States Attorney

By: /s/ Michael McCormack  
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Dated: March 18, 2022

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

AMERICAN CIVIL LIBERTIES UNION )  
FOUNDATION OF NEW HAMPSHIRE, )

Plaintiff, )

v. )

No. 1:19-cv-00977-LM

UNITED STATES CUSTOMS AND )  
BORDER PROTECTION, )

Defendant. )

\_\_\_\_\_ )

**SUPPLEMENTAL DECLARATION OF PATRICK HOWARD**

I, PATRICK HOWARD, pursuant to 28 U.S.C. § 1746, declare and state as follows:

1. I am a Branch Chief within the Freedom of Information Act Division (FOIA Division) at U.S. Customs and Border Protection (CBP or the Agency), U.S. Department of Homeland Security (DHS). I have been a Branch Chief in the FOIA Division since February 8, 2015. In this capacity, I oversee a staff of Government Information Specialists (GIS), involved in the processing of requests for records submitted to CBP pursuant to FOIA, 5 U.S.C. § 552, the Privacy Act (PA), 5 U.S.C. § 552a, and other activities conducted pursuant to applicable records access provisions.

2. I am familiar with CBP’s procedures for responding to FOIA requests. I provide technical and administrative supervision and direction to a group of FOIA specialists in processing FOIA requests, and I assist with FOIA/PA litigation matters. I am personally familiar with the processing of FOIA/PA responses, including, at times, by directly reviewing for adequacy and compliance with federal laws and regulations. The statements I make in this declaration are based upon my personal knowledge, which includes knowledge acquired through

information furnished to me in the course of my official duties and agency files that I personally reviewed in the course of my official duties.

3. This declaration supplements the *DECLARATION OF PATRICK HOWARD IN SUPPORT OF DEFENDANT'S OBJECTION TO PLAINTIFF'S MOTION TO COMPEL DEFENDANT TO PRODUCE ADEQUATE VAUGHN INDEX*, dated November 3, 2021.

Further, this Supplemental Declaration is submitted pursuant this Court's Order dated February 22, 2022. This Court Ordered CBP to address: (1) why the agency initially turned over the documents but then determined after "additional review" that they were not responsive; and (2) whether the agency searched for the broader "non-checkpoint patrol operations" that the ACLU requested, and not just the arguably narrower "roving patrol operations" referenced in my previous declaration. These questions will be addressed in reverse order.

#### ***CBP Search for Responsive Records***

4. CBP searched for all records pertaining to non-checkpoint patrol operations to respond to Plaintiff's FOIA requests, dated March 25, 2019, and October 17, 2019. CBP searched for, and retrieved, potentially responsive records based upon the "broader" search terms. This search was conducted by CBP's component, the U.S. Border Patrol, using CBP's internal databases. Once CBP completed its search and located potentially responsive records, the documents were provided to a GIS for processing. Based upon Plaintiff's multiple requests, and because of the volume of potentially responsive documentation, CBP used a multi-stage approach to process and release responsive records and information. Ultimately, CBP released documents and information over the course of three productions.

5. Despite the large size of CBP as an organization, the FOIA Division currently

consists of only thirty-one (31) full-time GISs, six (6) FOIA assistants, four (4) interns, and four (4) supervisory employees. None of these employees are attorneys. FOIA assistants mainly work on retrieving documents for and otherwise assisting with responses to simple FOIA requests for traveler information. Of the four (4) supervisory employees, only one (1) is assigned to oversee the GISs assigned to FOIA litigation cases.

6. A GIS, sometimes referred to as a FOIA processor, is tasked with reviewing information and providing advice and assistance to managers and employees concerning FOIA issues, policies, and procedures. They are also responsible for processing FOIA requests for CBP records, a process that involves reviewing the content of records to determine the proper disclosure under FOIA. A GIS is responsible for reviewing and preparing draft responses to requests for releases of information, and in so doing, must apply any relevant statute, regulation, agency rule, and/or executive order that may pertain to FOIA requests. Additionally, a GIS must ensure compliance with DHS regulations, Department of Justice policies, and other applicable laws.

7. A Branch Chief in the FOIA Division is responsible for managing policy formulation, advising Agency management, and ensuring compliance with federal laws governing the flow of information. Branch Chiefs oversee the release of CBP documents and information, assist with FOIA litigation matters, and oversee the processing of FOIA responses and adherence to federal laws and regulations.

8. The FOIA Division identifies incoming FOIA requests as either simple or complex. A simple request—also referred to as a traveler request—is one where a member of the traveling public requests records related to his or her travel. Examples of traveler requests include records of a person's entry into and exit from the United States, I-94 records, and records

of inspections and interactions with CBP employees. The FOIA Division generally has access to CBP's travel database systems and is able to query the systems in order to quickly respond to simple FOIA requests.

9. Complex FOIA requests—also referred to as non-traveler requests—are all other types of requests received. Examples of complex requests include requests from businesses for import and export records, requests for Office of Professional Responsibility (OPR) investigation files, and requests from media sources or special interest groups focused on a variety of matters not specific to an individual traveler. The FOIA Division must first determine which CBP offices are likely to have responsive information and then work with those offices to gather any responsive records. Assessments of where responsive records are likely to be maintained are based on a review of the content of the request itself and the nature of the records sought, as well as the FOIA Division's familiarity with the types and location of records that each office maintains and discussion with knowledgeable Agency personnel. Potentially responsive records may be located in one or multiple systems of records, email systems, computer hard drives, and/or hard-copy files.

10. Plaintiffs' two (2) FOIA requests are each individually regarded as complex requests.

11. Based upon my experience, in a typical fiscal year, approximately 85% of the total volume of FOIA requests will be simple requests and 15% of the total volume will be complex requests.

12. The FOIA Division's caseload, which was already onerous, dramatically increased in Fiscal Year 2017, and has remained continuously high. The Agency received 88,937 FOIA requests in 2017, 87,392 in Fiscal Year 18, 86,278 in Fiscal Year 19, and 80,457 in Fiscal

Year 20. For Fiscal Year 2021, the Agency received approximately 103,974 requests, through September 21, 2021.

13. The continued high number of FOIA requests submitted to the Agency has kept the FOIA Division under considerable stress, as its limited FOIA processing staff and resources struggle to keep up with this workload.

14. As I noted above, normally the vast majority (85%) of FOIA requests that CBP receives are simple requests that seek one or more of certain categories of travel records related to an individual. Those records generally require minimal redactions due to their display format, and they typically involve routine redactions.

15. The complexity of the records at issue in this action also requires a correspondingly more extensive and complex review process. CBP employs a multi-office review process to ensure that all information that must be protected from release is properly withheld, and that all information that can be released is provided to requestors. Each page that CBP produces, in this and other complex litigation, will be reviewed multiple times.

16. Because Plaintiffs' FOIA requests are in litigation, attorneys in the CBP Office of Chief Counsel are also involved. After the initial and secondary review by the FOIA Division, Office of Chief Counsel attorneys may conduct, or answer questions pertaining to, reviews for responsiveness and redactions for applicable FOIA exemptions. They may also assist with the identification of what, if any, outside agency equities exist in potentially responsive records. Office of Chief Counsel attorneys will often consult with the assigned Assistant U.S. Attorney (AUSA) to determine the processing of outstanding requests pertaining to FOIA cases in litigation. The FOIA Division typically incorporates the feedback received from the AUSA in

order to process and produce responsive information for cases in litigation. The Agency currently has 117 FOIA cases in litigation.

17. No attorneys in the CBP Office of Chief Counsel are solely responsible for FOIA matters; rather, they all shoulder other responsibilities outside of the FOIA context. Therefore, these attorneys are unable to devote all of their time to this level of review.

18. Only after all of these multiple levels of review are completed are the non-exempt responsive records provided to the FOIA Division to release, as appropriate, to Plaintiffs. Depending on the volume of the responsive documentation, the FOIA Division may release multiple productions during cases in litigation.

19. As the foregoing makes clear, there are significant differences between the records at issue in this case (and the nature of processing and review involved) and those that are typically sought in 85% of the FOIA requests submitted to CBP. Given the sheer number of FOIA requests seeking these and similar records, CBP's FOIA processing resources are already under tremendous strain.

20. Ordinarily, CBP processes requests on a first-in, first-out basis. In this case, and because the two requests are the subject of litigation, CBP processed the releases in accordance with agreed-upon deadlines, which were established through communications between counsel for the parties.

21. CBP's normal processing rate for cases in litigation is to process between 250 and 500 pages a month. In this case, as more particularly described below, the FOIA Division processed in excess of 18,000 pages in two productions between September 17, 2019 (the date that the Complaint was filed) and April 8, 2020 (the date of the second production). An additional 260 pages were processed, and 195 pages were released for the supplemental

production of January 12, 2021. CBP searched for, and responded to, Plaintiff's FOIA requests for records pertaining to non-checkpoint patrol operations in New Hampshire.

### ***The 108 I-213 Forms***

22. On March 25, 2019, Plaintiff submitted a FOIA request to CBP, seeking records regarding CBP non-checkpoint patrol operations conducted in New Hampshire. *See* DN 7-1 (the first FOIA request). As stated above, in order to respond, the FOIA Division searched for records pertaining to non-checkpoint patrol operations conducted in New Hampshire. On December 4, 2019, the FOIA Division produced 17,842 partially redacted pages in response to this request and withheld in full (WIF) 88 pages. *See* DN 7-8.

23. Upon information, after the commencement of this litigation, counsel for the parties discussed the scope of Plaintiff's first FOIA request. CBP was informed that Plaintiffs were seeking I-213s and related records. Further, CBP was informed that, in order to avoid any confusion, Plaintiffs would serve a second request that identified the specific I-213s and related records being sought.<sup>1</sup> Thereafter, as previously stated, on October 17, 2019, Plaintiff submitted a second, subsequent FOIA request. *See* DN 7-2 (the second FOIA request). Then, on December 16, 2019, Plaintiffs filed their Amended Complaint. *See* DN 7.

24. The FOIA Division processed 305 pages in response to the October 17, 2019, request. On April 8, 2020, the FOIA Division produced 215 additional pages, in part or in full, and 90 pages were WIF. *See* Exhibit 1, attached hereto. For this second production, CBP produced, among other materials, the "first page" of 108 I-213 forms with partial redactions. These forms were also located as part of the electronic search for records relating to CBP non-

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<sup>1</sup> Note that I-213s are typically one form that is used within a file. It may or may not be the "first page" of the file. For purposes of consistency, the phrase "first page" will continue to be used to reference the documents at issue in the present Motion.

checkpoint patrol operations conducted in New Hampshire. As more particularly described below, with respect to the 108 I-213 forms, the responsive Agency “record” containing the requested information is the “first page,” retrieved from the CBP database, using the non-checkpoint parameters.

25. As stated in the letter dated April 8, 2020, this second production was released in response to the FOIA request to CBP submitted on October 17, 2019, as a supplement to FOIA CBP-2019-038942 (the March 25, 2019, FOIA request). *See* Exhibit 1, attached hereto.

26. The 108 I-213 forms were processed for production because they are CBP records that contain responsive information, as requested in numbers 1 and 5 of Plaintiff’s March 25, 2019, request, copied here:

1. Records containing descriptions of CBP non-checkpoint patrol operations in the State of New Hampshire, including the dates, times, and exact locations at which CBP agents were deployed; and the number, titles, and job ranks of CBP officers involved on each date and at each location;
  
5. With regard to persons subjected to any citizenship inquiry, records showing: a) the total number of people questioned; b) the country of origin of people questioned; c) the race and/or ethnicity of people questioned; c) the race and/or ethnicity of people questioned; d) the criminal or immigration charges filed against the person questioned, if applicable; e) the location and duration of the person’s detention, if applicable; f) the date of the person’s voluntary departure from the United States, if applicable; g) the date of the person’s removal from the United States, if applicable.

*See* DN 7-1.

27. The 108 I-213 forms are responsive CBP records of non-checkpoint operations in New Hampshire. The released pages, generally, contain or represent non-exempt requested information such as: locations; titles and ranks of officers (ex: Agent, BPA, and/or SBPA, etc.); the number of encounters (108); the race/ethnicity/nationality of the subjects; the charges; and, if applicable, dispositions. Thus, CBP produced non-exempt, responsive information in its

possession that responded to the Plaintiff's requests, in the format generated as a result of the Agency's database search.

28. Although CBP's redactions of the 108 I-213 pages do not appear to be at issue in this case, in an effort to expedite this matter, the following justifications are provided:

Exemptions (b)(6) and (b)(7)(C) have been applied within these documents to names and personally identifiable information and other identifying details of government employees, as well as names and personally identifiable information and other identifying details of third-party individuals, that would identify those individuals if released. Government employees, including CBP law enforcement officers, and third-party individuals have a protectable privacy interest in their identities that would be threatened by disclosure. Release of such information would constitute an unwarranted invasion of personal privacy.

Exemption (b)(7)(E) has been applied to references to information, codes, abbreviations, file numbers, and/or internal references that belong to agencies outside of U.S. Customs and Border Protection, such as the U.S. Federal Bureau of Investigations (FBI) and/or U.S. Immigration and Customs Enforcement (ICE). The Agency considers these internal references as law enforcement sensitive information as release may enable individuals to improperly access, navigate or manipulate government systems.

Exemption (b)(7)(E) has been applied to Agency file numbers, internal abbreviations, and/or internal codes. The Agency considers these internal references as law enforcement sensitive information as release may enable individuals to improperly access, navigate or manipulate CBP systems.

Exemption (b)(7)(E) has been applied to references to government databases within the documents. The Agency considers referrals to databases as law enforcement sensitive information. Furthermore, release of this information would enable an individual knowledgeable in government databases to improperly access the system, facilitate navigation or movement through the system, allow manipulation or deletion of data and/or interfere with enforcement proceedings.

Exemption (b)(7)(E) has been applied to operation details, including longitude and latitude, which the Agency considers law enforcement sensitive information. This information is not generally known or publicly disclosed. Disclosure of law enforcement techniques and procedures and internal agency investigative practices would be debilitating and detrimental to both CBP and the law enforcement community, and it would enable individuals to alter their patterns of conduct, adopt new methods of operation, relocate, change associations, and effectuate other countermeasures, thereby corrupting the integrity of ongoing investigations. It is the policy of CBP to not make operation locations publicly

available so as not to notify the non-local public traveling from other areas of the country or other countries. Disclosure of this information could also be used to aid individuals who may pose a threat to national security and/or who are seeking to violate immigration and customs laws and regulations in circumventing the law by taking proactive steps to alter their behavior to further conceal criminal activity, deprive the Agency of useful law enforcement data, or predict the Agency's investigative strategy to avoid detection, and otherwise countering operations and investigative actions taken by the Agency during enforcement operations at the border. As BP will be conducting patrol operations in these locations in the future, the Agency must maintain this information as tactics, techniques, and procedures, and therefore law enforcement sensitive.

29. As stated previously, after completion of this second production, CBP was informed that counsel for the parties met and conferred regarding the Plaintiff's demand for records/information relating to the I-213s. The Agency's understanding of the outcome of these discussions was that Plaintiff's inquiry focused on the release of complete I-213 packages, as requested in the second October 17, 2019, request; specifically, numbers 6 and 7.<sup>2</sup> With this understanding in mind, CBP performed an additional review of the October 17, 2019, FOIA request to verify the parameters. Also, as a result of these discussions, CBP agreed to supplement its productions by January 15, 2021.

30. The October 17, 2019, request sought I-213 records pertaining to roving patrol operations in New Hampshire. *See* DN 7-2 at ¶ 6 & 7. The requests are reproduced here:

*6. Records regarding any individual questioned, stopped, searched, detained, and / or arrested in roving patrol operations in New Hampshire by CBP (Swanton Sector or others if they conducted roving patrol operations in New Hampshire), including but not limited to:*

- a. Field Contact Data Sheets;*
- b. Forms I-247 (DHS "Immigration Detainer – Notice of Action");*
- c. Forms I-213 ("Record of Deportable/Inadmissible Alien");*
- d. Forms I-44 ("Report of Apprehension or Seizure");*
- e. Forms I-862 ("Notice to Appear");*
- f. Forms I-826 ("Notice of Rights and Request for Disposition"); and*
- g. Forms I-871 ("Notice of Intent/Decision to Reinstate Prior Order")*

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<sup>2</sup> The Agency acknowledges that there was a disconnect after the second production. Specifically, the records that responded to these two itemized requests had not yet been produced. Once the disconnect was identified through these communications between counsel for the parties, CBP agreed to resolve the issue.

7. Records relating to and / or containing information sufficient to show (since January 1, 2017):
- a. The total number of roving patrol **stops** made by CBP in New Hampshire;
  - b. The total number of roving patrol stops resulting in **searches**;
  - c. The total number of roving patrol stops resulting in **arrest**, as well as the disposition of each such arrest (e.g., Notice to Appear; criminal reentry charges and resolution thereof, etc.);
  - d. The citizenship of each individual **stopped** in the course of roving patrols;
  - e. The citizenship of each individual **searched** in the course of roving patrols;
  - f. The citizenship of each individual **arrested** in the course of roving patrols;
  - g. The apparent race or ethnicity of each individual **stopped** in the course of roving patrols;
  - h. The apparent race or ethnicity of each individual **searched** in the course of roving patrols;
  - i. The apparent race or ethnicity of each individual **arrested** in the course of a roving patrol;
  - j. The location of each roving patrol **stop**;
  - k. The location of each roving patrol stop resulting in a **search**;
  - l. The location of each roving patrol stop resulting in any **arrest**;
  - m. The type of each roving patrol **stop** (e.g., entry onto private land, pedestrian encounter, or vehicle stop);
  - n. The type of each roving patrol stop resulting in a **search** (e.g., entry onto private land, pedestrian encounter, or vehicle stop);
  - o. The type of each roving patrol stop resulting in **arrest** (e.g., entry onto private land, pedestrian encounter, or vehicle stop);
  - p. The date of each roving patrol **stop**;
  - q. The date of each roving patrol stop resulting in a **search**;
  - r. The date of each roving patrol stop resulting in any **arrest**;
  - s. The number of agents involved in each roving patrol **stop**;
  - t. The number of agents involved in any **search** in the course of a roving patrol, and whether a search involved one or more canines;
  - u. The number of agents involved in any **arrest** in the course of a roving patrol;
  - v. The basis for all stops **resulting in arrest**, including stops initiated by any state or local law enforcement agency;
  - w. The basis for all stops **not resulting in arrest**, including stops initiated by any state or local law enforcement agency;
  - x. The CBP agent(s)/officer(s) involved in determining whether reasonable suspicion or probable cause existed to justify each stop, and whether the reviewing agent(s)/officer(s) was or were the same as the agent(s)/officer(s) who initiated the stop under review;

*y. The date, time, and location of any roving patrol that was the subject of any complaint, internal or external investigation and the status and/or outcome of any such complaint or investigation.*

See DN 7-2. Plaintiff's second FOIA request clearly indicated, in detailed fashion, that the specific I-213s and related records that had been requested related directly to roving patrols. *Id.* Please note that each of the other individual requests (numbers 1-5, and 8) also specifically referenced roving patrols. *Id.* As indicated above, CBP understood that Plaintiff's second FOIA request was considered a subsequent clarification. CBP's additional review revealed that it had yet to disclose records that responded to these two itemized requests and, as a result, the Agency processed the outstanding records.

31. CBP re-examined the non-checkpoint operations records, released as the 108 I-213 forms. Then, CBP retrieved the remaining documentation relating to the 108 non-checkpoint encounters. During this additional review, responsive records were located for fourteen subjects that were "questioned, stopped, searched, detained and/or arrested in roving patrol operations in New Hampshire." See DN 7-2. Then, the complete packages for the fourteen responsive encounters were processed and released as part of CBP's supplemental (or third) production of January 12, 2021. See Exhibit 2, attached hereto.

32. However, CBP determined that 94 of the 108 non-checkpoint encounters, reflected in the I-213 "first pages" produced on April 8, 2020, did not pertain to roving patrol operations conducted in New Hampshire.<sup>3</sup> CBP used a plain reading approach when making this responsiveness determination, which incorporated a number of key factors. For example, request number 6 specifically states that the Plaintiffs sought "[r]ecords regarding any individual questioned, stopped, searched, detained, and/or arrested in roving patrol operations in New

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<sup>3</sup> More specifically, the remaining encounters involved intelligence-based operations and/or surveillance, which are distinct from roving patrols.

Hampshire by CBP (Swanton Sector or others if they conducted roving patrol operations in New Hampshire).” *See* DN 7-2. Moreover, request number 6 specifically lists I-213s, along with other government forms, in a line-item format. *Id.* Further, request number 7 states that the Plaintiffs sought “[r]ecords relating to and/or containing information sufficient to show” CBP’s roving patrol stops, searches, and arrests in New Hampshire. *Id.* (emphasis added). Also, all of the numbered requests specifically referenced roving patrols. *Id.* As previously stated, CBP received this second, subsequent request from Plaintiffs after the commencement of this litigation (but prior to the amendment of the Complaint), and after counsel for the parties clarified the Plaintiff’s position regarding I-213s and related documentation. Finally, CBP understood that the counsel discussions after the second production focused on any outstanding, responsive I-213 packages relating to the second request, numbers 6 and 7. Consequently, and within the context of these circumstances, the additional documents from the original 108 encounters that did not relate to roving patrol operations were identified as non-responsive for this supplemental, third production.

33. To summarize, the information contained on the 108 I-213s represents non-exempt CBP records and information that responds, generally, to request numbers 1 and 5 of Plaintiff’s first FOIA request, dated March 25, 2019. *See* DN 7-1, DN 7-8. These records were produced as part of the results of CBP’s database search for records relating to non-checkpoint patrol operations conducted in New Hampshire. However, 94 of these 108 I-213 records did not involve records relating to “roving patrol operations in New Hampshire.” *See* DN 7-2. As stated above, the second, more clarified request sought complete I-213 packages, but only for roving patrol operations. *Id.* Of the original 108 encounters, 94 did not involve roving patrol operations. Therefore, the remaining documents for 94 of the original 108 I-213s did not respond to request

numbers 6 and 7 of Plaintiff's second FOIA request, dated October 17, 2019. *Id.* As a result, the remaining documents of the 94 events were segregated as non-responsive and were not produced as part of the supplemental production on January 12, 2021.

I declare under the penalties of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

*Patrick Howard*

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Patrick Howard

Dated: March 10, 2022



**U.S. Customs and  
Border Protection**

1300 Pennsylvania Avenue NW  
Washington, DC 20229

April 8, 2020

SangYeob Kim  
Immigration Legal Fellow  
ACLU – New Hampshire  
18 Lowe Avenue  
Concord, NH 03301

**Re: FOIA Request Number CBP-2020-004821**

Dear Mr. Kim:

This is in response to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP) submitted on October 17, 2019, as a supplement to FOIA CBP-2019-038942, in which you requested the following information:

1. *Internal memoranda, legal opinion, guidance, directives, criteria, standards, rules, instructions, advisories, training materials and presentations, and any other written policies or procedures pertaining to roving patrol operations generally;*
2. *Internal memoranda, legal opinions, guidance, directives, criteria, standards, rules, instructions, advisories, training materials and presentations, and any other written policies or procedures pertaining to all searches and seizures (including arrests) made pursuant to roving patrol operations;*
3. *Audits, reports, statistical data and analysis, quotas, targets, goals, and performance standards, measures, or reviews, and all documents related to any incentives or bonus programs relating to roving patrol operations by the Swanton Sector;*
4. *Organizational charts, diagrams, or schematics pertaining to roving patrol operations in the Swanton Sector, including charts reflecting agency leadership structures or individuals involved in decision making related to roving patrol operations;*
5. *Internal memoranda, legal opinions, guidance, directives, criteria, standards, rules, instructions, advisories, training materials and presentations, and any other written policies or procedures or other records pertaining to CBP's authority to*

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*conduct roving patrol stops based on alleged or actual violations of local or state law, including traffic laws, in the Swanton Sector;*

6. *Records regarding any individual questioned, stopped, searched, detained, and / or arrested in roving patrol operations in New Hampshire by CBP (Swanton Sector or others if they conducted roving patrol operations in New Hampshire), including but not limited to:*

- a. *Field Contact Data Sheets;*
- b. *Forms I-247 (DHS “Immigration Detainer – Notice of Action”);*
- c. *Forms I-213 (“Record of Deportable/Inadmissible Alien”);*
- d. *Forms I-44 (“Report of Apprehension or Seizure”);*
- e. *Forms I-862 (“Notice to Appear”);*
- f. *Forms I-826 (“Notice of Rights and Request for Disposition”); and*
- g. *Forms I-871 (“Notice of Intent/Decision to Reinstate Prior Order”)*

7. *Records relating to and / or containing information sufficient to show (since January 1, 2017):*

- a. *The total number of roving patrol **stops** made by CBP in New Hampshire;*
- b. *The total number of roving patrol stops resulting in **searches**;*
- c. *The total number of roving patrol stops resulting in **arrest**, as well as the disposition of each such arrest (e.g., Notice to Appear; criminal reentry charges and resolution thereof, etc.);*
- d. *The citizenship of each individual **stopped** in the course of roving patrols;*
- e. *The citizenship of each individual **searched** in the course of roving patrols;*
- f. *The citizenship of each individual **arrested** in the course of roving patrols;*
- g. *The apparent race or ethnicity of each individual **stopped** in the course of roving patrols;*
- h. *The apparent race or ethnicity of each individual **searched** in the course of roving patrols;*
- i. *The apparent race or ethnicity of each individual **arrested** in the course of a roving patrol;*
- j. *The location of each roving patrol **stop**;<sup>2</sup>*
- k. *The location of each roving patrol stop resulting in a **search**;*
- l. *The location of each roving patrol stop resulting in any **arrest**;*
- m. *The type of each roving patrol **stop** (e.g., entry onto private land, pedestrian encounter, or vehicle stop);*
- n. *The type of each roving patrol stop resulting in a **search** (e.g., entry onto private land, pedestrian encounter, or vehicle stop);*
- o. *The type of each roving patrol stop resulting in **arrest** (e.g., entry onto private land, pedestrian encounter, or vehicle stop);*
- p. *The date of each roving patrol **stop**;*

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- q. The date of each roving patrol stop resulting in a **search**;*
  - r. The date of each roving patrol stop resulting in any **arrest**;*
  - s. The number of agents involved in each roving patrol **stop**;*
  - t. The number of agents involved in any **search** in the course of a roving patrol, and whether a search involved one or more canines;*
  - u. The number of agents involved in any **arrest** in the course of a roving patrol;*
  - v. The basis for all stops **resulting in arrest**, including stops initiated by any state or local law enforcement agency;*
  - w. The basis for all stops **not resulting in arrest**, including stops initiated by any state or local law enforcement agency;*
  - x. The CBP agent(s)/officer(s) involved in determining whether reasonable suspicion or probable cause existed to justify each stop, and whether the reviewing agent(s)/officer(s) was or were the same as the agent(s)/officer(s) who initiated the stop under review;*
  - y. The date, time, and location of any roving patrol that was the subject of any complaint, internal or external investigation and the status and/or outcome of any such complaint or investigation.*
- 8. All disciplinary records resulting from any alleged agent/officer misconduct or alleged violation of CBP and / or DHS rules or regulations related to roving patrol operations in the Swanton Sector.*

CBP has processed 305 pages of records in response to the above- referenced request. Sixty-six (66) pages of records are withheld in full pursuant to Title 5 U.S.C. § 552 (b)(5); twenty-four (24) pages are withheld in full pursuant to Title 5 U.S.C. § (b)(7)(E); and 215 pages are released, in part or in full, pursuant to Title 5 U.S.C. § 552 (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

Additional information regarding the applicable exemptions and response can be found at the following link: <https://www.cbp.gov/document/guidance/exemption-definitions>.

In response to number 5, above, you may find the information at the following: [https://www.immigrantjustice.org/sites/immigrantjustice.org/files/Miller%20Deposition\\_Exhibit%205.pdf](https://www.immigrantjustice.org/sites/immigrantjustice.org/files/Miller%20Deposition_Exhibit%205.pdf)

<https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search>

In response to number 8, above, no records were located.

Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

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As this matter is currently in litigation, if you need further assistance or would like to discuss any aspect of this response, please contact Michael McCormack, Assistant U.S. Attorney.

Sincerely,

U.S. Customs and Border Protection/FOIA Division  
Privacy & Diversity Office



**U.S. Customs and  
Border Protection**

1300 Pennsylvania Avenue NW  
Washington, DC 20229

January 12, 2021

SangYeob Kim  
Immigration Legal Fellow  
ACLU – New Hampshire  
18 Lowe Avenue  
Concord, NH 03301

**Re: FOIA Request Number CBP-2020-004821**

Dear Sir/Madame:

This is in further response to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP) submitted on October 17, 2019, as a supplement to FOIA CBP-2019-038942. This production supplements the documents produced on or about April 8, 2020 under FOIA CBP-2020-004821. Additional documents related to the following requested items are produced herewith:

6. *Records regarding any individual questioned, stopped, searched, detained, and / or arrested in roving patrol operations in New Hampshire by CBP (Swanton Sector or others if they conducted roving patrol operations in New Hampshire), including but not limited to:*
  - a. *Field Contact Data Sheets;*
  - b. *Forms I-247 (DHS “Immigration Detainer – Notice of Action”);*
  - c. *Forms I-213 (“Record of Deportable/Inadmissible Alien”);*
  - d. *Forms I-44 (“Report of Apprehension or Seizure”);*
  - e. *Forms I-862 (“Notice to Appear”);*
  - f. *Forms I-826 (“Notice of Rights and Request for Disposition”); and*
  - g. *Forms I-871 (“Notice of Intent/Decision to Reinstate Prior Order”)*
  
7. *Records relating to and / or containing information sufficient to show (since January 1, 2017):*
  - a. *The total number of roving patrol **stops** made by CBP in New Hampshire;*
  - b. *The total number of roving patrol stops resulting in **searches**;*
  - c. *The total number of roving patrol stops resulting in **arrest**, as well as the disposition of each such arrest (e.g., Notice to Appear; criminal reentry charges and resolution thereof, etc.);*
  - d. *The citizenship of each individual **stopped** in the course of roving patrols;*
  - e. *The citizenship of each individual **searched** in the course of roving*

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- patrols;*
- f. The citizenship of each individual **arrested** in the course of roving patrols;*
  - g. The apparent race or ethnicity of each individual **stopped** in the course of roving patrols;*
  - h. The apparent race or ethnicity of each individual **searched** in the course of roving patrols;*
  - i. The apparent race or ethnicity of each individual **arrested** in the course of a roving patrol;*
  - j. The location of each roving patrol **stop**;<sup>2</sup>*
  - k. The location of each roving patrol stop resulting in a **search**;*
  - l. The location of each roving patrol stop resulting in any **arrest**;*
  - m. The type of each roving patrol **stop** (e.g., entry onto private land, pedestrian encounter, or vehicle stop);*
  - n. The type of each roving patrol stop resulting in a **search** (e.g., entry onto private land, pedestrian encounter, or vehicle stop);*
  - o. The type of each roving patrol stop resulting in **arrest** (e.g., entry onto private land, pedestrian encounter, or vehicle stop);*
  - p. The date of each roving patrol **stop**;*
  - q. The date of each roving patrol stop resulting in a **search**;*
  - r. The date of each roving patrol stop resulting in any **arrest**;*
  - s. The number of agents involved in each roving patrol **stop**;*
  - t. The number of agents involved in any **search** in the course of a roving patrol, and whether a search involved one or more canines;*
  - u. The number of agents involved in any **arrest** in the course of a roving patrol;*
  - v. The basis for all stops **resulting in arrest**, including stops initiated by any state or local law enforcement agency;*
  - w. The basis for all stops **not resulting in arrest**, including stops initiated by any state or local law enforcement agency;*
  - x. The CBP agent(s)/officer(s) involved in determining whether reasonable suspicion or probable cause existed to justify each stop, and whether the reviewing agent(s)/officer(s) was or were the same as the agent(s)/officer(s) who initiated the stop under review;*
  - y. The date, time, and location of any roving patrol that was the subject of any complaint, internal or external investigation and the status and/or outcome of any such complaint or investigation.*

CBP has processed a total of 260 pages of additional records that respond to the above-referenced request(s). Records were located for fourteen (14) subjects that were questioned, stopped, searched, detained and/or arrested in roving patrol operations in New Hampshire. Sixty-five (65) pages of records are withheld in full due to the fact that they belong to agencies

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outside of U.S. Customs and Border Protection; and 195 pages are released, in part or in full, with redactions pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E). The breakdown of records for each of the fourteen subjects is as follows:

CBP processed twenty-two (22) pages of records for subject number four. Five (5) pages are withheld in full due to the fact that they belong to the U.S. Federal Bureau of Investigations (FBI) and/or U.S. Immigration and Customs Enforcement (ICE); and seventeen (17) pages are released, in part or in full, with redactions pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E).

CBP processed eighteen (18) pages of records for subject number seven. Five (5) pages are withheld in full due to the fact that they belong to the U.S. Federal Bureau of Investigations (FBI) and/or U.S. Immigration and Customs Enforcement (ICE); and thirteen (13) pages are released, in part or in full, with redactions pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E).

CBP processed twenty (20) pages of records for subject number twenty-five. Five (5) pages are withheld in full due to the fact that they belong to the U.S. Federal Bureau of Investigations (FBI) and/or U.S. Immigration and Customs Enforcement (ICE); and fifteen (15) pages are released, in part or in full, with redactions pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E).

CBP processed twenty-two (22) pages of records for subject number twenty-six. Five (5) pages are withheld in full due to the fact that they belong to the U.S. Federal Bureau of Investigations (FBI) and/or U.S. Immigration and Customs Enforcement (ICE); and seventeen (17) pages are released, in part or in full, with redactions pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E).

CBP processed twenty (20) pages of records for subject number fifty-two. Five (5) pages are withheld in full due to the fact that they belong to the U.S. Federal Bureau of Investigations (FBI) and/or U.S. Immigration and Customs Enforcement (ICE); and fifteen (15) pages are released, in part or in full, with redactions pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E).

CBP processed fifteen (15) pages of records for subject number fifty-four. Five (5) pages are withheld in full due to the fact that they belong to the U.S. Federal Bureau of Investigations (FBI) and/or U.S. Immigration and Customs Enforcement (ICE); and ten (10) pages are released, in part or in full, with redactions pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E).

CBP processed twenty-one (21) pages of records for subject number fifty-nine. Five (5) pages are withheld in full due to the fact that they belong to the U.S. Federal Bureau of Investigations (FBI) and/or U.S. Immigration and Customs Enforcement (ICE); and sixteen (16) pages are

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released, in part or in full, with redactions pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E).

CBP processed twenty-two (22) pages of records for subject number sixty-eight. Five (5) pages are withheld in full due to the fact that they belong to the U.S. Federal Bureau of Investigations (FBI) and/or U.S. Immigration and Customs Enforcement (ICE); and seventeen (17) pages are released, in part or in full, with redactions pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E).

CBP processed nine (9) pages of records for subject number seventy-seven. Nine (9) pages are released, in part or in full, with redactions pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E).

CBP processed thirteen (13) pages of records for subject number eighty-two. Five (5) pages are withheld in full due to the fact that they belong to the U.S. Federal Bureau of Investigations (FBI) and/or U.S. Immigration and Customs Enforcement (ICE); and eight (8) pages are released, in part or in full, with redactions pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E).

CBP processed twenty-one (21) pages of records for subject number eighty-four. Five (5) pages are withheld in full due to the fact that they belong to the U.S. Federal Bureau of Investigations (FBI) and/or U.S. Immigration and Customs Enforcement (ICE); and sixteen (16) pages are released, in part or in full, with redactions pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E).

CBP processed twenty-one (21) pages of records for subject number ninety-one. Five (5) pages are withheld in full due to the fact that they belong to the U.S. Federal Bureau of Investigations (FBI) and/or U.S. Immigration and Customs Enforcement (ICE); and sixteen (16) pages are released, in part or in full, with redactions pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E).

CBP processed fourteen (14) pages of records for subject number ninety-eight. Five (5) pages are withheld in full due to the fact that they belong to the U.S. Federal Bureau of Investigations (FBI) and/or U.S. Immigration and Customs Enforcement (ICE); and nine (9) pages are released, in part or in full, with redactions pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E).

CBP processed twenty-two (22) pages of records for subject number one-hundred five. Five (5) pages are withheld in full due to the fact that they belong to the U.S. Federal Bureau of Investigations (FBI) and/or U.S. Immigration and Customs Enforcement (ICE); and seventeen (17) pages are released, with redactions in part or in full, pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E).

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Additional information regarding the applicable exemptions and response can be found at the following link: <https://www.cbp.gov/document/guidance/exemption-definitions>.

Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

As this matter is currently in litigation, if you need further assistance or would like to discuss any aspect of this response, please contact Michael McCormack, Assistant U.S. Attorney.

Sincerely,

U.S. Customs and Border Protection/FOIA Division  
Privacy & Diversity Office