

March 1, 2018

Sam Kaplan  
Chief Privacy Officer/Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW  
STOP-0655  
Washington, D.C. 20528-0655

**Re: Freedom of Information Act Request**

To Whom It May Concern:

This is a request under the Freedom of Information Act, 5 U.S.C. Sec. 552 (“FOIA”), on behalf of 350 New Orleans (“350”), Humanitarian Enterprise of Loving People (“HELP”), L’Eau Est la Vie (“LELV”), and the Louisiana Bucket Brigade (“LBB”), (collectively “the Requesters”). Requesters seek information from U.S. Department of Homeland Security (“DHS”) that relates to the Bayou Bridge Pipeline project in the State of Louisiana. We ask that you please direct this request to all appropriate offices and components and/or departments within DHS, including, but not limited to the following offices or components: the Office of Intelligence and Analysis, the Office of Operations Coordination, the Office of Policy, and the Office of the General Counsel.

**A. Background and Purpose of Request**

This request concerns the surveillance and monitoring of public opposition to the Bayou Bridge Pipeline, which is the subject of intense controversy and debate.<sup>1</sup> The proposed

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<sup>1</sup> See, e.g., David J. Mitchell, *St. James Parish Council narrowly approves land use needed for controversial Bayou Bridge pipeline*, The Advocate, August 23, 2017, [http://www.theadvocate.com/baton\\_rouge/news/article\\_75ce88a4-885e-11e7-b190-2b6288b27150.html](http://www.theadvocate.com/baton_rouge/news/article_75ce88a4-885e-11e7-b190-2b6288b27150.html); Michael Patrick Welch, *Protests escalate over Louisiana pipeline by company behind Dakota Access*, The Guardian, January 15, 2017, <https://www.theguardian.com/environment/2017/jan/15/louisiana-bayou-bridge-pipeline-standing-rock>; Alexander Sammon, *Get Ready for the Trump Pipeline Boom*, Mother Jones, March 1, 2017, <http://www.motherjones.com/environment/2017/03/new-pipeline-protests-nationwide/#>; Sabrina Canfield, *Louisianans Fight Oil Pipeline Through Cancer Alley*, Courthouse News, October 9, 2017, <https://www.courthousenews.com/louisianans-fight-oil-pipeline-cancer-alley/>; KATC.com, *As pipeline co. faces fines for wetlands damage, Bayou Bridge opponents continue calls for environmental study*, October 17, 2017, <http://www.katc.com/story/36620384/as-pipeline-co-faces-fines-for-wetlands-damage-bayou-bridge-opponents-continue-calls-for-environmental-study>; Associated Press, *Environmentalists sue to stop Dallas-based Energy Transfer from building Louisiana pipeline*, Dallas Morning News, January 12, 2018, <https://www.dallasnews.com/business/energy/2018/01/12/environmentalists-sue-stop-dallas-based-energy-transfer-building-louisiana-pipeline>; Rachel Steffan, *Environmental group strongly condemns Bayou Bridge Pipeline permit*,

corporate-owned<sup>2</sup> and operated 162-mile oil pipeline would transport oil across Louisiana, affecting 11 parishes in the state and cutting across 700 waterways, including through the Atchafalaya Basin. Its construction has generated intense and growing public opposition across the entire state, including local faith leaders, fishermen, conservationists, and community members whose lives and property will be directly affected.<sup>3</sup>

Over the past few years, the Requesters along with other Louisiana-based community groups and individuals have led the push to stop this new pipeline from being built. This includes First Amendment-protected activities such as large and small-scale protests as well as online social media campaigns against the pipeline. Most recently, emails released through a state public records request<sup>4</sup> have revealed recent surveillance of local groups and individuals by state agencies, including those that partner with DHS, such as the Governor's Office of Homeland Security and Emergency Preparedness ("GOHSEP").

The emails reveal Louisiana officials are aligned with a growing national trend of surveillance intended to intimidate those who exercise their First Amendment rights.<sup>5</sup> Since the Standing Rock camp opposing the Dakota Access Pipeline in North Dakota was disbanded last year, 56 bills that heighten the risk and criminal penalties of dissent have been introduced across 30 states.<sup>6</sup> Many of these bills seek to frame protests as "riots" and activists as "terrorists" or in attempts to criminalize protected free speech activity.

Requesters are concerned about state and federal agencies monitoring their constitutionally-protected activities and the effect such surveillance can have in chilling the activities of not only those already advocating against the pipeline but members of the public at large. Community

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Beauregard Daily News, February 1, 2018, <http://www.beauregarddailynews.net/news/20180201/environmental-group-strongly-condemns-bayou-bridge-pipeline-permit>; Mark Schleifstein, *Bayou Bridge pipeline construction must stop, federal judge rules*, *Times-Picayune*, February 23, 2018, [http://www.nola.com/environment/index.ssf/2018/02/bayou-bridge-pipeline-construc\\_1.html](http://www.nola.com/environment/index.ssf/2018/02/bayou-bridge-pipeline-construc_1.html); Steve Hardy, *Three Bayou Bridge protesters arrested, block access to work site in Assumption Parish*, *The Advocate*, February 26, 2018, [http://www.theadvocate.com/acadiana/news/article\\_f157a8fe-1b23-11e8-bbe2-b7b28ba007fa.html](http://www.theadvocate.com/acadiana/news/article_f157a8fe-1b23-11e8-bbe2-b7b28ba007fa.html)

<sup>2</sup> Three companies - Phillips 66, Sunoco, and Energy Transfer Partners — have formed the Bayou Bridge Pipeline, LLC to build and operate the proposed pipeline.

<sup>3</sup> Dalfred Jones, *Supporters, opponents of Bayou Bridge Pipeline turn out for first public hearing*, *KLFY.com*, January 12, 2017, <http://klfy.com/2017/01/12/supporters-opponents-of-bayou-bridge-pipeline-turn-out-for-first-public-hearing/>; Steve Hardy, *Showdown in Napoleonville: Supporters, opponents clash over Bayou Bridge Pipeline proposal*, *The Advocate*, February 8, 2017, [http://www.theadvocate.com/acadiana/news/article\\_6b7ca9ce-ec93-11e6-8fbb-8fd900ee73c6.html](http://www.theadvocate.com/acadiana/news/article_6b7ca9ce-ec93-11e6-8fbb-8fd900ee73c6.html); Sabrina Canfield, *Resistance Builds to New Louisiana Oil Pipeline*, *Courthouse News*, November 1, 2017, <https://www.courthousenews.com/resistance-builds-new-louisiana-oil-pipeline/>; Jody Meche, *Guest Column: Crawfishermen under threat as oil, gas companies show flagrant disregard for our way of life*, *The Advocate*, October 24, 2017, [http://www.theadvocate.com/baton\\_rouge/opinion/article\\_7afdfae2-b83a-11e7-ad90-f77b6e7597e0.html](http://www.theadvocate.com/baton_rouge/opinion/article_7afdfae2-b83a-11e7-ad90-f77b6e7597e0.html)

<sup>4</sup> Documents produced through a December 6, 2017 public records request to the Louisiana Department of Environmental Quality. See Attachments 1 and 2 to this Request.

<sup>5</sup> Alleen Brown, Will Parrish, Alice Aperi, *Standing Rock Documents Expose Inner Workings of "Surveillance-Industrial Complex,"* *The Intercept*, June 3, 2017, <https://theintercept.com/2017/06/03/standing-rock-documents-expose-inner-workings-of-surveillance-industrial-complex/>

<sup>6</sup> Zoe Carpenter, *Since Standing Rock, 56 Bills Have Been Introduced in 30 States to Restrict Protests: In the year since the last activists were evicted, the crackdown on journalists and activists has only intensified*, *The Nation*, February 16, 2018, <https://www.thenation.com/article/photos-since-standing-rock-56-bills-have-been-introduced-in-30-states-to-restrict-protests/>.

members directly affected by pipeline construction have a right to transparency: to understand not only the actions government agencies are taking but the motives behind such actions.

## **B. Definitions**

- 1) **Record(s).** “Record(s)” as used herein includes, but is not limited to, all Records or communications in written or electronic form (including metadata), such as correspondences, calendars, calendar entries, agendas, itineraries, event programs, call logs, voice mails, phone messages, emails, text messages, messages through social media accounts such as but not limited to Facebook or Twitter, documents, data, videotapes, audio tapes, faxes, files, receipts, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, talking points, technical manuals, technical specifications, training manuals, studies, or any other Record of any kind.

## **C. Request for Information**

- a. Records demonstrating or related to communications between DHS and state and/or local enforcement entities in Louisiana regarding surveillance and/or monitoring of public opposition to the Bayou Bridge Pipeline project.
- b. Records, including memos, talking points, policies or protocols, regarding any type of coordination between DHS and state and/or local enforcement entities in Louisiana regarding surveillance and/or monitoring of public opposition to the Bayou Bridge Pipeline project.
- c. Communications and/or records regarding threat assessments, “field analysis” reports, or any other intelligence products relating to public opposition to the Bayou Bridge Pipeline project.
- d. Records or communications, including emails, policies, protocols, memos, operation manuals, regarding the use of social media monitoring of public opposition locally and nationally to the Bayou Bridge Pipeline project, including monitoring and/or surveillance of Requesters and their staff, board or individual members.
- e. Records or communications, received or regarding the existence, development or compilation of information and/or databases by DHS, on specifically named individuals or groups associated with public opposition locally and nationally to the Bayou Bridge Pipeline project, including Requesters and their staff, board or individual members.

## **D. Format of Production**

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records. Please provide the requested documents in the following format:

- Saved on a CD, CD-ROM or DVD;
- In PDF or TIF format wherever possible;
- Electronically searchable text wherever possible;

- Each paper record in a separately saved file;
- “Parent-child” relationships maintained, meaning that the requester must be able to identify the attachments with emails;
- Any data records in native format (i.e. Excel spreadsheets in Excel);
- Emails should include BCC and any other hidden fields;
- With any other metadata preserved.

#### **E. The Requesters**

***Louisiana Bucket Brigade*** is a 501(c)(3) nonprofit environmental health and justice organization working with communities that neighbor the state's oil refineries and chemical plants. Founded in 2000, LBB uses grassroots organizing to create an informed, healthy society that holds the petrochemical industry and government accountable for the true costs of pollution. LBB works with community groups throughout the state, providing technical support including media trainings. LBB is recognized locally and nationally as a go-to resource for the latest information regarding opposition to the Bayou Bridge Pipeline, issuing press releases regularly and maintaining a large social media following.

***Humanitarian Enterprise of Loving People (“HELP”)*** is a nonprofit organization of pastors and residents that own property, live, pray, recreate, and enjoy the environment in and near St. James Parish, on the west bank of the Mississippi River. Over many years, the residents have come together to organize HELP, and are concerned about living next to and between the industrial plants. HELP members have been publicly active and outspoken for many years, including testifying at local parish council meetings and being plaintiffs in recent litigation against the Louisiana Department of Natural Resources challenging the permit it issued for the Bayou Bridge Pipeline. HELP is consistently speaking up for the community to make sure that elected officials know the environmental threats and public health needs of the handicapped and elderly.

***L’eau Est la Vie (Water Is Life) Camp*** is an indigenous-led camp located in the heart of South Louisiana swamps that formed to protect a way of life against the proposed Bayou Bridge Pipeline through prayer and resistance. The Camp has expressed concern about all communities that stand to be impacted throughout the 162-mile stretch of land through which the pipeline would run, including through 700 bodies of water, and in particular the potential impact the pipeline could have on Bayou LaFourche, which is the source of drinking water for 300,000 people, including the United Houma Nation and residents in Ascension, Assumption, Terrebonne, and Lafourche Parishes. As a floating pipeline resistance camp, valuing and uplifting the voices of indigenous, Black, femme, and two spirit organizers.

***350 New Orleans*** is a volunteer climate activist group connecting the region to the international climate change movement led by 350.org. Their mission is to lend support to initiatives in New Orleans that raise consciousness and promote sound policy around climate change. They prioritize locally-grown initiatives, and collaborate extensively with other local groups, seeking to amplify the power of existing New Orleans- and Gulf-based groups working for climate justice in their own communities. 350 New Orleans uses online campaigns, grassroots organizing, and mass public actions to oppose new coal, oil and gas projects, and build 100% clean energy solutions that work for all.

## **F. Fee Waiver**

The Requesters are entitled to a fee waiver pursuant to 5 U.S.C. §552 (a)(4)(A)(iii) and 6 C.F.R. § 5.11(k) on the grounds that “disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester[s].” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge if disclosure is (1) “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. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987). Requesters meet both requirements of 6 C.F.R. § 5.11(k).

Requesters can demonstrate that disclosure is in the public interest, because they can show that (i) the subject concerns “operations or activities of the government”; (ii) the information requested will be “meaningfully informative about government operations and activities;” (iii) “the disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject”; and (iv) public understanding of the subject will be “enhanced” by the disclosure. 6 C.F.R. § 5.11(k) (2).

*First*, this Request clearly seeks information directly about the operations and activities of government, namely in regards to surveillance of constitutionally-protected activities. 6 C.F.R. § 5.11(k) (1)(i). *Second*, the information requested will be “meaningfully informative” because its purpose is to obtain information to further the public’s understanding government policies. 6 C.F.R. § 5.11(k) (2)(ii). This information is not already in the public domain. 6 C.F.R. § 5.11(k) (2)(ii).

*Third*, the disclosure will “contribute to the understanding of a reasonably broad audience of persons,” because requestors, with a strong history of analyzing information and disseminating it to the public, are well positioned to effectively disseminate the information requested 6 C.F.R. § 5.11(k) (2)(iii). Requesters consistently receive numerous queries of interest from the local and national media, other organizations, political representatives including members of Congress, and individuals seeking to inform their own opinions about the Bayou Bridge Pipeline and its potential effects on Louisiana’s environment, infrastructure, possible health hazards, and more. In addition, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), ), as organizations that regularly collect information, analyze it, create reports and informational matter, and publish them widely, the Requesters qualify as a “representatives of the news media,” defined as “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); 6 C.F.R. 5.11(b)(6). It is “presumed that representatives of the news media” meet the requirements of 6 C.F.R. § 5.11(k) (2) (iii).

Requesters can also clearly demonstrate that “disclosure is not primarily in the commercial interest of the requestor.” 6 C.F.R. § 5.11(k) (1)(ii) Requesters have no commercial interests at all. As described in Part E above, the Requesters are non-profit organizations dedicated to civil rights, human rights, and environmental justice, and have a proven track-record of compiling and disseminating information and reports to the public about government

functions and activities. The Requesters have undertaken this work in the public interest and not for any private commercial interest.

The Requesters will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory and regulatory criteria for a fee waiver, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'").

In the alternative, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II). ("[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media."). See also 6 C.F.R. § 5.11(d). If no fee waiver is granted and the fees exceed \$250.00, please contact the Requesters' undersigned counsel to obtain consent to incur additional fees.

### **G. Expedited Processing**

The Requesters are entitled to expedited processing of this request because there is a "compelling need" for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" is established when there exists an "urgency to inform the public concerning actual or alleged Federal Government activity," when the requester is a "person primarily engaged in disseminating information," 6 C.F.R. § 5.5(d)(ii).

There is a compelling and urgent need for transparency regarding the surveillance and monitoring of any First Amendment-protected activities of anyone opposed to the Bayou Bridge Pipeline. Not only is this transparency regarding opposition to BBP construction immediate and urgent, but the ongoing construction of oil pipelines is a highly controversial topic nationwide.<sup>7</sup> Members of the public, particularly those who may be directly impacted by pipeline construction, have a right to know the level of governmental surveillance of any activity they might take to oppose such construction and the potential effects on their privacy and security. This request is also particularly timely in light of the recent release of documents showing specific examples of monitoring and surveillance of Requesters in only the past few months.<sup>8</sup>

Requesters also qualify for expedited processing because they are "primarily engaged in disseminating information." 6 C.F.R. § 5.5(e)(1)(ii). Requesters are advocacy groups whose primary work includes dissemination of information, including publication of reports, press releases, petitions, and information and educational materials. Together, they have a broad membership base, and are each a critical information hub for advocates, elected officials, affected community members and the public.

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<sup>7</sup> See, e.g., Steve Holland, *Trump clears way for controversial oil pipelines*, Reuters, January 24, 2017, <https://www.reuters.com/article/us-usa-trump-pipeline/trump-clears-way-for-controversial-oil-pipelines-idUSKBN15820N>.

<sup>8</sup> See Attachments 1 and 2.

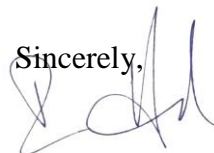
**H. Certification & Conclusion**

The Requesters certify that the above information is true and correct to the best of the Requesters' knowledge. *See* 6 C.F.R. § 5.5(e)(3). If this Request is denied in whole or in part, the Requesters ask that ICE justify all deletions by reference to specific exemptions of FOIA. The Requester expects ICE to release all segregable portions of otherwise exempt material, and reserves the right to appeal a decision to withhold any records or to deny the within application for expedited processing and waiver of fees.

Please furnish all applicable Records in electronic format as specified above to: Ian Head, Center for Constitutional Rights, 666 Broadway, 7<sup>th</sup> Floor, New York, NY 10012.

If you have any questions regarding the processing of this request, please contact me at the number below. Thank you for your consideration.

Sincerely,



Ian Head

Center for Constitutional Rights  
666 Broadway, 7<sup>th</sup> Floor  
New York, NY 10012  
Tel. 212-614-6470  
[ihead@ccrjustice.org](mailto:ihead@ccrjustice.org)

On Behalf of the Requesters

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**From:** James Waskom  
**Sent:** Wednesday, December 20, 2017 10:19 AM  
**To:** Chuck Brown  
**Subject:** FW: L'Eau est la Vie is more formally organized (Bayou Bridge) with vetting process.

**Categories:** RESPONSIVE

FYI

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**From:** Buren Ric Moore  
**Sent:** Wednesday, December 20, 2017 9:14 AM  
**To:** James Waskom; Casey Tingle; Christina Dayries; Christopher Guilbeaux; Jason Lachney; Kevin Breaux; \_GOHSEP-Regional Support Section  
**Subject:** L'Eau est la Vie is more formally organized (Bayou Bridge) with vetting process.

Meanwhile, No Bayou Bridge is organizing a resistance camp, which they call L'Eau est la Vie, French for "water is life." Unlike the Standing Rock protest camp, L'Eau est la Vie is more formally organized. Instead of merely showing up, the indigenous-led camp requires that they be first vetted. The vetting process claims to include a written application, a phone interview, and both webinar and in-person training on topics including swamp survival skills, anti-oppression, and "direct action." The application asks potential protesters if they have participated in resistance camps before, have received direct action training, or have previous organizing experience.

"If Energy Transfer Partners wants to provoke a giant, then that's what they will get," said Dallas Goldtooth"

"The vetting process claims to include a written application, a phone interview, and both webinar and in-person training on topics including swamp survival skills, anti-oppression, and "direct action."

<http://www.insidesources.com/bayou-bridge-pipeline-gets-final-permit-protesters-file-lawsuits-begin-building-camp/>



GOHSEP Intelligence Officer  
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7667 Independence Blvd.  
Baton Rouge, LA 70806  
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In the case of terrorism, to wait for an indication of crime before investigating it is to wait too long. There is no guarantee of success, but there has to be a guarantee of effort. Let's make it hard to hurt us. If you see something suspicious, report it.

**From:** James Waskom  
**Sent:** Thursday, January 04, 2018 11:15 AM  
**To:** Kevin Reeves; Chuck Brown; Thomas Harris; Glenn Curtis  
**Subject:** FW: BAYOU BRIDGE: 4 JAN 2018 Louisiana activist group outlines 2018 focus areas

**Categories:** RESPONSIVE

FYI

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**From:** Buren Ric Moore  
**Sent:** Thursday, January 04, 2018 10:01 AM  
**To:** James Waskom; Casey Tingle; Christina Dayries; Christopher Guilbeaux; Kevin Breaux; Jason Lachney; \_GOHSEP-Regional Support Section  
**Cc:** Kelli Polk; Gallo, Stephanie (NO) (FBI); Gabriel Tate  
**Subject:** BAYOU BRIDGE: 4 JAN 2018 Louisiana activist group outlines 2018 focus areas

Louisiana activist group outlines 2018 focus areas

Attachment 2



The [Louisiana Bucket Brigade](#) has identified three main focus areas for action in 2018: “Exposing and unravelling Big Oil’s jobs myth, organizing faith communities to participate in a year of prayer for Cancer Alley, and expanding our air monitoring program.”

Organizers noted that “in this past year, with your help, we have successfully fought to pre-empt the expansion of a polluting refinery in St. Rose, organized public opposition to the proposed Bayou Bridge Pipeline, and joined other groups in suing the EPA to expedite implementation of an important chemical safety rule, among other achievements. And starting on January 1, we’re right back at it, redoubling our efforts to safeguard our environment and protect the health and safety of our fellow Louisianans.”

On 4 January 2018 the Brigade will live stream from a hearing regarding the Bayou Bridge Pipeline at St. James Parish starting at 12.15pm. “Hear from local residents, like Pastor Joseph, who would be impacted by the pipeline as well as representatives from the [Tulane Environmental Law Clinic](#) who are righteously helping to STOP IT. SPREAD THE WORD!

The Brigade is also supporting the L’eau Est La Vie Pipeline occupation camp that has been established to oppose the Bayou Bridge pipeline on its route.

Lt. General Russel Honoré of the GreenARMY has circulated a fundraising appeal for the Brigade, noting that they are a key member of his GreenARMY.

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In the case of terrorism, to wait for an indication of crime before investigating it is to wait too long. There is no guarantee of success, but there has to be a guarantee of effort. Let's make it hard to hurt us. If you see something suspicious, report it.