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April 19, 2019

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Drive, SW, Building 410
Stop – 0665
Washington, D.C. 20528-0655

FOIA Officer
U.S. Customs and Border Protection
90 K Street, NW
9th Floor, Mail Stop 1181
Washington, DC 20229

Re: Freedom of Information Act Request/Expedited Processing Requested

Dear FOIA Officers:

This is a request under the Freedom of Information Act, 5 U.S.C. Sec. 552 (“FOIA”), on behalf of No More Deaths (“NMD”) and the Center for Constitutional Rights (“CCR”) (collectively “the Requesters”) for information from the Department of Homeland Security (“DHS”), the U.S. Customs and Border Protection (“CBP”), relating to policies and practices carried out by the U.S. Border Patrol (“Border Patrol”), Tucson Sector, along the U.S.-Mexico border.

A. Purpose of Request

This request seeks information relating to the CBP’s Joint Intelligence Operations Center (“JIOC”) and BP’s “BORSTAR” unit, specifically their role in responding to requests for emergency assistance along the U.S.-Mexico border, particularly in and around the Tucson, Arizona region. According to Border Patrol estimates, from 1998 to 2015, more than 6,500 migrants died on the U.S. side of the border, with an annual rate of approximately 250 to 500 migrant deaths.¹ Many more remain uncounted. As reported by the nonprofit organization Physicians for Human Rights, the majority of deaths are related to exposure to the elements, with

¹ Tara Brian and Frank Laczko, “Migrant Deaths around the World in 2015,” in *Fatal Journeys Volume 2: Identification and Tracing of Dead and Missing Migrants*, eds. Tara Brian and Frank Laczko, (International Organization for Migration, 2016), 16. <https://publications.iom.int/books/fatal-journeys-volume-2-identification-and-tracing-dead-and-missing-migrants>.

one study based on coroners' reports estimating that deaths due to environmental heat exposure represent approximately 73 percent of deaths of migrants crossing between ports of entry.² This issue is ongoing and urgent.³ Many of these individuals have fled persecution in their home countries with the aim of seeking asylum in the United States. Due to the government's restriction of access to the asylum process at official ports of entry—often referred to as “metering”⁴—an increasing number⁵ of individuals are left with no choice but to cross in between ports of entry, often travelling through the dangerous terrain of the Tucson sector to do so.

According to CBP, BORSTAR was “created in 1998 in response to,” among other things, “migrant deaths along our nation’s borders.”⁶ Although CBP represents that BORSTAR is empowered to conduct “tactical medical, search and rescue training,”⁷ the alarming number of migrant deaths under its watch merits closer scrutiny. Policies, procedures, and protocols are vital to provide clarity as to the causes and effects of this humanitarian crisis. Further, certain CBP and BP-initiated policies and practices may have actually forced individuals into the very situations that BORSTAR was designed to combat: according to the 1994 U.S. Border Patrol Strategic Plan, changes to enforcement infrastructure and practices would ideally “force [migrants to cross] over more hostile terrain, less suited for crossing and more suited for enforcement.”⁸ The public deserves to know the extent to which the federal government is responsible for this crisis and the methods, if any, which it intends to take to ameliorate it.

Government transparency is necessary not only in regards to how those individuals in need of rescue are treated, but how DHS and CBP interact with volunteers who come to their assistance as well. The Department of Justice recently prosecuted four NMD members for providing humanitarian assistance to these individuals in the Tucson sector: the alleged illegal conduct was leaving jugs and canned food for at-risk individuals potentially stranded in the desert.⁹ Beyond

² Kathryn Hampton, MSt, *Zero Protection: How U.S. Border Enforcement Harms Migrant Safety and Health*, Physicians for Human Rights (Jan. 10, 2019), https://phr.org/resources/zero-protection-how-u-s-border-enforcement-harms-migrant-safety-and-health/#_ednref11 (citing Sanjeeb Sapkota et al, *Unauthorized Border Crossings and Migrant Deaths: Arizona, New Mexico, and El Paso, Texas, 2002–2003*, *American Journal of Public Health* 96, 7 (2006): 1284).

³ Anne Flaherty, *More than 260 migrants died trying to cross the US southern border: Report*, ABC News (Dec 14, 2018), <https://abcnews.go.com/International/260-migrants-died-cross-us-southern-border-report/story?id=59832675>

⁴ Ron Nixon, *Asylum Claims Jump Despite Trump’s Attempt to Limit Immigration*, *New York Times* (Dec 10, 2018), <https://www.nytimes.com/2018/12/10/us/politics/trump-asylum-border-.html>

⁵ Julia Ainsley, *Since Trump restricted flow at border, more migrants trying to sneak through undetected*,

⁶ U.S., Customs and Border Protection, *Border Patrol Search, Trauma, and Rescue (BORSTAR)* (last visited Mar. 25, 2019), <https://www.cbp.gov/sites/default/files/documents/Border%20Patrol%20Search%2C%20Trauma%2C%20and%20Rescue.pdf>

⁷ *Id.*

⁸ “*Border Patrol Strategic Plan: 1994 and Beyond*,” U.S. Border Patrol, July 1994, (last visited Mar. 25, 2019), <http://cw.routledge.com/textbooks/9780415996945/gov-docs/1994.pdf>.

⁹ Kristine Phillips, *They left food and water for migrants in the desert. Now they might go to prison*, *Washington Post* (Jan. 20, 2019) https://www.washingtonpost.com/nation/2019/01/20/they-left-food-water-migrants-desert-now-they-might-go-prison/?utm_term=.3d93775d7fc0

prosecuting these individuals, the Border Patrol often takes matters in their own hands. Recently, the Washington Post published a video of Border Patrol agents dumping out gallon water jugs left for dehydrated migrants.¹⁰ From 2012 to 2015, humanitarians recorded a total of 3,586 vandalized gallon jugs of water, slashed with knives and emptied, conduct for which no Border Patrol agent was sanctioned.¹¹ CBP and BP misconduct is often more direct: since 2010, individuals have documented 77 CBP-related fatalities.¹² Information relating to potential CBP and BP misconduct is essential to validating public trust and opinion over the nation’s border immigration practices.

BORSTAR’s capacity and role as a “tactical medical, search and rescue,” unit merits particularly close scrutiny considering state, county, and local law enforcement agencies refer to Border Patrol “911” calls for emergency assistance. For instance, since 2007, Arizona’s Pima County began transferring its 911 calls from migrants directly to Border Patrol, instead of handling them in-house or transferring them to the county rescue services.¹³ Many other counties followed suit.¹⁴ According to many reports, this referral system has effectively transformed Border Patrol into the de facto emergency services provider in the greater-Tucson border area. The public has a right to understand the scope, nature, and parameters of this agreement, the right to assess the U.S. government’s capacity to serve as a de facto emergency service provider, and the right to analyze the efficacy with which it has done so.

B. Definitions

- 1) **Record(s).** In this request the term “Record(s)” includes, but is not limited to, all Records or communications preserved in electronic (including metadata) or written form, such as correspondences, emails, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, technical manuals, technical specifications, training manuals, studies, or any other Record of any kind.
- 2) **Agreements.** In this request the term “Agreement(s)” refers to any agreement, written or otherwise; communications; contracts and/or supplements, modifications or addendums to contracts or agreements.
- 3) **Communication(s).** In this request the term “communication” means the transmittal of information (in the forms of facts, ideas, inquiries or otherwise), including e-mails, texts

¹⁰ *Id.*

¹¹ Kathryn Hampton, MSt, *Zero Protection: How U.S. Border Enforcement Harms Migrant Safety and Health*, Physicians for Human Rights (Jan. 10, 2019), https://phr.org/resources/zero-protection-how-u-s-border-enforcement-harms-migrant-safety-and-health/#_ednref11

¹² John Burnett and Richard Gonzales, *Border Patrol Shooting Death of Immigrant Woman Raises Tensions in South Texas*, NPR Morning Edition, (May 24, 2018) <https://www.npr.org/sections/thetwo-way/2018/05/24/614268206/border-patrol-shooting-death-of-immigrant-woman-raises-tensions-in-south-texas>.

¹³ Puck Lo, *For migrants in Arizona who call 911, it’s Border Patrol on the line*, Al Jazeera (Mar. 25, 2018), <http://america.aljazeera.com/articles/2015/3/25/for-migrants-in-arizona-who-call-911-its-border-patrol-on-the-line.html>

¹⁴ *Id.*

- or other electronic forms of recorded communication.
- 4) **Relating to.** The term “relating to” as used herein means addressing, constituting, mentioning, discussing, describing, reflecting, identifying, dealing with, consisting of, explaining, referring to, containing, enumerating, or in any way concerning or pertaining to, in whole or in part, directly or indirectly.
 - 5) **Local Law Enforcement Agency.** In this request the term “local law enforcement agency” includes state, county, municipal, and other law enforcement agencies within the Tucson Sector, including, but not limited to, the Pima County Sheriff’s Department and the Santa Cruz County Sheriff’s Office.
 - 6) **Land Management Agencies.** In this request the term “land management agencies” refers to federal agencies overseeing land jurisdictions within the Tucson Sector, including but not limited to the Organ Pipe Cactus National Monument and the Cabeza Prieta Wildlife Refuge.
 - 7) **Border Patrol.** The term “Border Patrol” as used herein refers to the U.S. Border Patrol and includes all offices, and all officers, staff, agents, consultants, appointees and employees thereof. Border Patrol is a component of CBP.
 - 8) **BORSTAR.** The term “BORSTAR” as used herein refers to Border Patrol’s Search, Trauma, and Rescue (“BORSTAR”) unit and includes all offices, and all officers, staff, agents, consultants, appointees and employees thereof.
 - 9) **JIOC.** The term “JIOC” refers to CBP’s Joint Intelligence Operations Center. JIOC serves as an emergency coordinator to assist 911 dispatchers from Pima, Maricopa, Pinal, Cochise and Santa Cruz counties. JIOC then facilitates a Customs and Border Protection response.
 - 10) **Tucson Sector.** The term “Tucson Sector” refers to the operative Border Patrol section spanning 262 miles of linear border running east from Yuma County, Arizona to the Arizona/New Mexico state line, comprised of eight stations: Why, Casa Grande, Tucson, Nogales, Willcox, Sonoita, Bisbee, and Douglas.
 - 11) **Search and Rescue.** The term “search and rescue” (sometimes referred to as “SAR”) in this request refers to any emergency action taken in response to an alert of a lost, missing, or distressed individual or individuals, including but not limited to all actions taken as a result of a 911 call received by Joint Intelligence Operations Center (sometimes referred to as “JIOC”) or any other search and rescue mission activated by BORSTAR.

C. Request for Information

We hereby request all records related to the Border Patrol’s practice of assisting migrants through search and rescue operations in the Tucson Sector carried out by BORSTAR, or by other Border Patrol personnel within the Tucson Sector, including but not limited to the following:

1. Records of any communications between JIOC, BORSTAR, and any other Border Patrol personnel, and local law enforcement agencies or land

- management agencies located in the Tucson Sector regarding BORSTAR and/or search and rescue operations from January 1, 2016, to present.
2. Data and statistics regarding aggregate number of requests for assistance from local law enforcement agencies or land management agencies located in the Tucson Sector personnel from January 1, 2016, to present, including:
 - i. Total number of requests received and processed by JIOC, and
 - ii. Amongst the requests received and processed by JIOC, the respective number of calls classified as:
 - search and rescues;
 - medical emergency;
 - improperly routed;
 - hoax;
 - give ups;
 - apprehensions;
 - any other category.
 3. Data and statistics regarding each individual search and rescue operation conducted by BORSTAR agents or other Border Patrol personnel from January 1, 2016, to present, including:
 - i. Information relating to the search and rescue itself, including:
 - date;
 - time;
 - location.
 - ii. Information relating to individual or individuals for whom the search and rescue operation was initiated, including:
 - name;
 - age;
 - sex;
 - country of origin;
 - immigration status (if known).
 - iii. Information relating to the origin of the search and rescue operation, including:
 - referral by state, county, municipal, or other federal agency,
 - or whether initiated by Border Patrol itself.
 - iv. Outcome of search and rescue operation including
 - whether or not individual was located;
 - what actions were taken, if any;
 - what resources were used in the search including but not limited to helicopters, ground search teams, K-9 search teams, and cell-phone tracing technology;
 - if found, whether the individuals required and received medical care;
 - whether the individual survived.

4. The most current procedures, protocols, standards, training materials, or other guidance relating on what basis JIOC classifies requests for emergency assistance, including but not limited to “search and rescue,” “medical emergency,” “improperly routed,” “hoax,” “give ups,” and “apprehensions.”
5. The most current procedures, protocols, standards, training materials, or other guidance for JIOC, BORSTAR, and any other Border Patrol personnel initiating, conducting, and recording a search and rescue operation within the Tucson Sector, including but not limited to missing persons situations.
6. The most current agreements, memoranda of understanding, or other records reflecting arrangements for cooperation or communication with local law enforcement agencies or land management agencies in Tucson Sector regarding the handling of 911 calls, BORSTAR and/or search and rescue operations, including but not limited to internal policies or procedures relating to whether and under what circumstances Border Patrol will initiate search and rescue operations when assistance is requested from local law enforcement agencies.

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 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

The Center for Constitutional Rights (“CCR”) is a non-profit, public interest, legal, and public education organization that engages in litigation, public advocacy, and the production of publications in the fields of civil and international human rights. CCR’s diverse dockets include litigation and advocacy around immigration detention, post-9/11 immigration enforcement policies, policing, and racial and ethnic profiling. CCR is a member of immigrant rights networks nationally and provides legal support to immigrant rights movements. One of CCR’s primary



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activities is the publication of newsletters, know-your-rights handbooks, legal analysis of current immigration law issues, and other similar materials for public dissemination. These and other materials are available through CCR’s Development, Communications, and Advocacy Departments. CCR operates a website, <http://ccrjustice.org>, which addresses the issues on which the Center works. The website includes material on topical civil and immigrant rights issues and material concerning CCR’s work. All of this material is freely available to the public. In addition, CCR regularly issues press releases and sends regular updates to over 50,000 subscribers and issues “action alerts” that notify supporters and the general public about developments and operations pertaining to CCR’s work. CCR staff members often serve as sources for journalist and media outlets, including on immigrant rights.

No More Deaths/No Mas Muertes

No More Deaths is a humanitarian-aid organization based in Southern Arizona. It formed in 2004 as a coalition of community and faith groups, dedicated to ending death and suffering in the U.S.–Mexico borderlands through civil initiative. As a humanitarian organization, it engages in a number of direct-aid projects in the border region: delivering water, food, and medical aid to those crossing through the most deadly areas of the Sonoran Desert; conducting community search and rescue for border crossers in distress; providing phone services to those who have been recently deported to Mexican border cities; offering a free immigration legal clinic in Tucson primarily to stop deportations; and more. One of the organization’s key functions is reporting on and publishing key findings relating to its core work. Among many other publications including fact sheets, newsletters, mailing lists, and photographic and videographic reports, it released to the public three reports relating to abuses within the immigration system throughout the border region: *Crossing the Line* (2008), *A Culture of Cruelty* (2011), and *Shakedown* (2014). A fourth, *Disappeared*, is in progress and slated for release later this year. The organization continues to disseminate information relating to immigrants’ rights and conditions at the border to the public, reaching a wide membership. All of this material is also freely available to the public on its website, <http://nomoredeaths.org>.

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 the information is in the public interest, and disclosure is not in the commercial interest of institution). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987). Requesters meet the requirements of 6 C.F.R. § 5.11(k) because the subject of the request concerns the operations or activities of the government; the disclosure of the information is likely to contribute to a significant public understanding of government operations or activities due to the requesters’ expertise in the subject area and ability to convey the information; the Requesters’ primary interest is in disclosure;



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and they have no commercial interest in the information. In addition, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), 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).

NMD is an official ministry of the Unitarian Universalist Church of Tucson, a non-profit, tax-exempt organization. The mission of NMD is to stop the deaths of migrants in the desert and implement a set of faith- based principles for immigration reform. CCR is a non-profit organization dedicated to civil rights, human rights, and immigrant rights, and has a proven track-record of compiling and disseminating information and reports to the public about government functions and activities, including the government’s record and position on immigrants’ rights and human rights matters.

A. Release of the requested records is in the public interest.

Disclosure of the requested records is in the public interest because it will contribute significantly to public understanding of the government’s operations or activities. Requesters will also use the requested records to analyze the legality and safety of the practices used by Border Patrol agents. 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. Access to this information is crucial for the Requesters and the communities they serve to evaluate federal immigration action and their potential detrimental effects. Disclosure in this case therefore meets the statutory criteria, 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.’”). The Request satisfies the four criteria set forth by DHS (at 6 C.F.R. § 5.11(k)(2)) for determining whether this requirement is met, as follows:

1. The request concerns the operations or activities of the federal government. The requested records pertain directly to the operations and activities of the federal government (specifically, CBP and one of its subcomponents, the U.S. Border Patrol).
2. The disclosure is “likely to contribute” to an understanding of federal government operations and activities. The requested records will help the public determine the extent to which Border Patrol uses certain practices that may affect the life and/or safety of individuals. This information is not currently available in the public domain.
3. The information will contribute to an “understanding of a reasonably broad audience of persons interested in the subject.” Among other things, NMD intends to publish responsive records and analyze specific documents to raise public awareness of Border Patrol’s operations and activities. NMD intends to publish this information to as broad an audience as possible. Moreover, NMD is experienced in the subject area, and has historically disseminated information on these topics to the public.

4. The information will contribute significantly to public understanding of government operations or activities. Disclosure of the requested records will contribute “significantly” to the public’s understanding of the extent and implications of the federal government’s use of practices that may affect the lives and safety of migrants. This information is not currently available to the public through any source.

B. Disclosure of the information requested is not in Requesters’ commercial interest.

As described above, Requesters have no commercial interest in this matter and intend to use the requested records to benefit the general public by sharing the records publicly. Any information obtained as a result of this FOIA request will be made available to the public at no cost. The information requested will not be used by NMD to further any commercial interest. Requesters are not acting on behalf of any person whose commercial interest would be furthered by the requested information.

C. NMD qualify as representatives of the news media.

The Department of Homeland Security’s regulations implementing FOIA provide that “[n]o search fee will be charged for requests by . . . representatives of the news media.” 6 C.F.R. § 5.11(d)(1). Requesters meet the statutory and regulatory definitions of a “representative of the news media” because each of them is an “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)(II); *see also, e.g., National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); 6 C.F.R. § 5.11(b)(6) (“Representative of the news media or news media requester, means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.”). NMD are both “representative[s] of the news media” for the same reasons that both are “primarily engaged in the dissemination of information.” *See Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 1, 10–15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for FOIA purposes); *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).

For the foregoing reasons, a fee waiver or limitation should be granted. A fee waiver would also fulfill Congress’s legislative intent in amending FOIA, namely to ensure that the Act is liberally construed in favor of granting waivers for noncommercial requesters and to effectuate disclosure of documents of public importance. *See 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 marks and citation omitted); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that “disclosure, not secrecy, is the dominant objective of the Act,”) (quoting *Department of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).



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Should a total waiver be denied, fees should be “limited to reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). In the event a fee waiver or reduction of costs is denied, please notify us in advance if the anticipated costs associated with this Request exceed \$100.00.

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).

Requesters seek Track 1 expedited processing for this FOIA Request, pursuant to 5 U.S.C. § 552(a)(6)(E)(i) (“Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records—(I) in cases in which the person requesting the records demonstrates a compelling need. . . .”). Pursuant to DHS’s regulations implementing FOIA, a “compelling need” exists for expedited processing of a FOIA request when the request involves: (1) circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; and (2) an urgency to inform the public about an actual or alleged federal government activity. 6 C.F.R. § 5.5(d)(1)(i)–(ii). This Request meets both circumstances.

First, a “compelling need” exists when “a failure to obtain requested records on an expedited basis . . . could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” 5 U.S.C. § 552(a)(6)(E)(v)(I); *see also* 6 C.F.R. § 5.5(d)(1)(i) (requests are to be given expedited treatment whenever they involve “[c]ircumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual”). The requested records relate to actions of the CBP and Border Patrol Tucson Sector such as responding to migrants’ distress calls, dealing with life-saving aid supplies, and encountering groups of migrants in the desert. If not undertaken appropriately, these practices can pose an imminent threat to the life and physical safety of individuals. Requesters believe that expedited disclosure of these records will facilitate an expedited inquiry into the appropriateness of these actions. Moreover, expedited disclosure of these records will provide migrant aid groups such as NMD with information regarding the location and extent of these practices, allowing these groups to provide more appropriate and timely aid to those potentially impacted by these practices in the future. There is thus a “compelling need” for the requested records.

A compelling need can also be demonstrated “with respect to a request made by a person primarily engaged in disseminating information,” when the request involves an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. §

552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5 (d)(1)(ii).

NMD qualifies as an organization “primarily engaged in disseminating information” for the following reasons. Dissemination of information to the public about “actual or alleged government activity” is a critical and substantial component of NMD’s mission and work. For example, NMD has recently published two major reports: “Deadly Apprehension Methods: The Consequences of Chase & Scatter in the Wilderness” (2016) and “Interference with Humanitarian Aid: Death & Disappearance on the US-Mexico Border” (2018). These documents have been widely disseminated both at a national and international level. NMD volunteers have presented their findings from previous reports before Congress and in other national forums. Further, NMD’s work has been covered by national media including the New York Times,¹⁵ the Washington Post,¹⁶ and the Los Angeles Times.¹⁷ Depending on the results of this Request, NMD plans to disseminate the information they receive to the public using similar kinds of publications and distribution channels. NMD are therefore organizations “primarily engaged in disseminating information” within the meaning of the statute and the relevant regulations.

Furthermore, an “imminent threat to the life or physical safety of an individual” exists. NMD is uniquely positioned as a humanitarian assistance organization, providing aid to potentially thousands of individuals traversing the perilous terrain in and around the U.S.-Mexico border. Documents obtained in the FOIA would provide vital information regarding BORSTAR’s increasing role as the de facto emergency services provider for these individuals stranded in life-or-death situations. Recent reports referenced *supra* indicate that an increasing number of individuals are seeking asylum in between ports of entry due to the U.S.’s “metering” policy, a circumstance further concretizing this conclusion that these documents are urgently needed to prevent imminent death.

In addition, DHS grants expedited processing where the subject of the request is a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” 6 C.F.R. § 5.5(e)(1)(iv). As described in the sections above, the ongoing migration crisis and, particularly, the U.S. government’s inability to respond humanely, has garnered “widespread and exceptional media interest.”¹⁸ The

¹⁵ Justine Orlovsky-Schnitzler, *The Desert Should Not Be a Death Sentence*, New York Times (Dec. 18, 2018) <https://www.nytimes.com/2018/12/18/opinion/migrants-border-death.html>

¹⁶ Teresa Tomassoni, *Activists making ‘water drops’ for migrants near border say government intimidation is rising*, Washington Post (Jan. 29, 2019), https://www.washingtonpost.com/national/activists-making-water-drops-for-migrants-near-southern-border-say-government-intimidation-is-rising/2019/01/29/1f832464-1f52-11e9-8b59-0a28f2191131_story.html?utm_term=.35e0000a52c8

¹⁷ Molly Hennessy-Fiske, *Should activists aid migrants in the desert, or leave their fate to the Border Patrol?*, Los Angeles Times (Mar. 8, 2019), <https://www.latimes.com/nation/la-na-arizona-migrant-rescue-trial-20190308-story.html>

¹⁸ See, e.g., Anne Flaherty, *More than 260 migrants died trying to cross the US southern border: Report*, ABC News (Dec 14, 2018), <https://abcnews.go.com/International/260-migrants-died-cross-us-southern-border-report/story?id=59832675>; Nick Miroff and Robert Moore, *7-year-old migrant girl taken into Border Patrol custody dies of dehydration, exhaustion*, Washington Post (Dec. 13, 2018), <https://www.washingtonpost.com/world/national->



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government's well-documented¹⁹ hostility towards immigrants at the southern border calls into question the government's ability to handle the crisis such that it affects public confidence.

Conclusion and Certification

For all of the foregoing reasons, expedited processing of this Request is warranted and should be granted. In accordance with the requirements of FOIA and DHS's applicable regulations implementing FOIA, Requesters hereby certify that the foregoing is true and correct to the best of their knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi); 6 C.F.R. § 5.5(d)(3).

We look forward to your response regarding our request for expedited processing within ten (10) calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(d)(4). By codifying the presumption of openness through the FOIA Improvement Act of 2016, Congress has "put[] the force of law behind the notion that sunshine, not secrecy, is the default setting of our government." *See* Con. Rec. S3825 (daily ed. June 13, 2016 (statement of Sen. Leahy)).

If this Request is denied in whole or in part, the Requesters ask that the DHS and CBP justify all deletions by reference to specific exemptions of FOIA. The Requesters expects DHS and CBP 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 responsive records electronically to:

Angelo R. Guisado, Esq.
Center for Constitutional Rights
666 Broadway 7th Floor
New York, NY 10012
aguisado@ccrjustice.org

security/7-year-old-migrant-girl-taken-into-border-patrol-custody-dies-of-dehydration-exhaustion/2018/12/13/8909e356-ff03-11e8-862a-b6a6f3ce8199_story.html?utm_term=.fbc64fcc0dd

¹⁹ *See, e.g.,* Michelle Chen, *There Are Still Migrant Children Separated From Their Families*, *The Nation* (Jan. 30, 2019) <https://www.thenation.com/article/family-separation-border-central-american-immigration-crisis/>; Tim Elfrink and Fred Barbash, *These children are barefoot. In diapers. Choking on tear gas.*, *Washington Post* (Nov. 26, 2018), https://www.washingtonpost.com/nation/2018/11/26/these-children-are-barefoot-diapers-choking-tear-gas/?utm_term=.42b788b65b0a.