EXHIBIT W

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

September 21, 2017

Carrie DeCell
Knight First Amendment Institute
Columbia University

Subject: OIG Freedom of Information Act Request No. 2017-IGFO-00085
Final Response

Dear Ms. DeCell:

This responds to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS) Privacy Office (PRIV) dated March 15, 2017, seeking records relating to CBP and ICE electronic device searches. PRIV referred item 4(a) of your request to the DHS Office of Inspector General (OIG) for processing and direct response to you. DHS-OIG received that referral on March 31, 2017.

DHS-OIG previously responded to item 4(a) of your request on June 27, 2017, stating that DHS-OIG's Office of Audits has an ongoing matter which was withheld pursuant to FOIA Exemption 5. DHS-OIG has since conducted the searches proposed in emails between Scott Wilkins and David Glass; by email dated September 5, Mr. Wilkins confirmed that you would consider DHS-OIG to have fully complied with your request if we conduct the proposed searches and produce all non-exempt portions of responsive records. As such, this is a final response to your FOIA request.

The proposed searches agreed upon by Mr. Wilkins and Mr. Glass resulted in the enclosed page containing complaint narratives responsive to item 5 of your request. We reviewed the responsive records under the FOIA to determine whether they may be disclosed to you. Based on that review, this office is providing the following:

___1___ page is released in part (RIP).

The exemptions cited for withholding records or portions of records are marked below.

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

Freedom of Information Act, 5 U.S.C. § 552			**Privacy Act, 5 U.S.C. § 552a**
☐ 552(b)(1)	☐ 552(b)(5)	☒ 552(b)(7)(C)	☐ 552a(j)(2)
☐ 552(b)(2)	☒ 552(b)(6)	☐ 552(b)(7)(D)	☐ 552a(k)(2)
☐ 552(b)(3)	☐ 552(b)(7)(A)	☐ 552(b)(7)(E)	☐ 552a(k)(5)
☐ 552(b)(4)	☐ 552(b)(7)(B)	☐552(b)(7)(F)	☐ Other:

OIG redacted from the enclosed documents, names and identifying information of third parties to protect the identities of these individuals. Absent a Privacy Act waiver, the release of such information concerning the third parties named in these records would result in an unwarranted invasion of personal privacy in violation of the Privacy Act. Information is also protected from disclosure pursuant to Exemptions 6 and 7(C) of the FOIA further discussed below.

Exemption 6, 5 U.S.C. § 552(b)(6)

Exemption 6 allows withholding of "personnel and medical files and *similar files* the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6)(emphasis added). DHS-OIG is invoking Exemption 6 to protect the names of third parties and any information that could reasonably be expected to identify such individuals.

Exemption 7(C), 5 U.S.C. § 552(b)(7)(C)

Exemption 7(C) protects from public disclosure "records or information compiled for law enforcement purposes . . . [if disclosure] could reasonably be expected to cause an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). DHS-OIG is invoking Exemption 7(C) to protect the identities of third parties, and any information contained in these investigative records that could reasonably be expected to identify those individuals.

Referral

Additionally, 188 pages of potentially responsive records have been referred to Immigration and Customs Enforcement (ICE). ICE will process the records under the FOIA and respond to you directly.

Appeal

Although I am aware that your request is the subject of ongoing litigation and appeals are not ordinarily acted on in such situations, I am required by statute

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

and regulation to inform you of your right to file an administrative appeal.[1] If you choose to file an administrative appeal it must be in writing and received within 90 days after the date of this response. Please address any appeal to:

FOIA/PA Appeals Unit
DHS-OIG Office of Counsel
Stop 0305
245 Murray Lane, SW
Washington, DC 20528-0305

Both the envelope and letter of appeal must be clearly marked "Freedom of Information Act Appeal." Your appeal letter must also clearly identify the OIG's response. Additional information on submitting an appeal is set forth in the DHS regulations at 6 C.F.R. § 5.8.

Assistance and Dispute Resolution Services

Should you need assistance with your request, you may contact DHS-OIG's FOIA Public Liaison. You may also seek dispute resolution services from our FOIA Public Liaison. You may contact DHS-OIG's FOIA Public Liaison in any of the following ways:

FOIA Public Liaison
DHS-OIG Counsel
STOP 0305
245 Murray Lane, SW
Washington, DC 20528-0305
Phone: 202-254-4001
Fax: 202-254-4398
E-mail: foia.oig@oig.dhs.gov

Additionally, the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. Using

[1] For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: https://ogis.archives.gov
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

If you have any questions about this response, please contact us at 202-254-4001.

Sincerely,

Drew Lavine

Drew Lavine
OIG Office of Counsel

Enclosures

EXHIBIT X

U.S. Department of Homeland Security
Freedom of Information Act Branch
601 South 12th Street
Arlington, VA 20598-6020

Transportation Security Administration

July 14, 2017

3600.1
Case Number: 2017-TSFO-00207

Ms. Katherine Fallow
Knight First Amendment Institute at Columbia University
314 Low Library
535 West 116th Street
New York, NY 10027

Dear Ms. Fallow:

This letter responds to your Freedom of Information Act (FOIA) request dated March 15, 2017, addressed to the Department of Homeland Security, Customs and Border Protection (CBP), and the U.S. Immigration and Customs Enforcement seeking records concerning suspicionless searches of individuals' electronic devices at the nation's borders. On April 4, 2017, CBP referred your request to the Transportation Security Administration (TSA) FOIA Branch for search and direct response to you.

TSA completed its search and located records responsive to item (5) of your request: documents, including tear sheets and TRIP records, containing or relating to complaints filed by individuals or organizations about CBP's and/or ICE's search, review, retention or sharing of the information on travelers' electronic devices. Portions of the documents are being withheld pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Please refer to the Applicable Exemptions list at the end of this letter that identifies the authority for withholding the exempt material, which is indicated by a mark appearing in the block next to the exemption. An additional enclosure with this letter explains these exemptions in more detail.

The rules and regulations of the Transportation Security Administration applicable to Freedom of Information Act requests are contained in the Code of Federal Regulations, Title 6, Part 5. They are published in the Federal Register and are available for inspection by the public.

Referral

While processing your request, TSA located records that fall under the purview of the Customs and Border Patrol (CBP) and Department of State (State). Accordingly, your request and 47 pages of responsive records were referred to CBP and 5 pages were referred to State for processing and direct response to you. You may contact those offices directly at:

U.S. Customs and Border Control
The FOIA Division
1300 Pennsylvania Avenue, NW, Room 3.3D
Washington, D.C. 20229
Phone: (202) 325-0150

Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
SA-2
Washington, DC 20522-8100
Phone: (202) 261-8484

Fees

There are no fees associated with processing this request because the fees incurred do not exceed the minimum threshold necessary for charge.

Administrative Appeal

As the subject matter of this request is currently a matter of Federal district court litigation, the administrative appeal rights that normally accompany an agency's response to a FOIA request are not being provided.

If you have any questions pertaining to your request, please feel free to contact the FOIA Branch at 1-866-364-2872 or locally at 571-227-2300.

Sincerely,

Regina McCoy
FOIA Officer

Summary:
Number of Pages Released in Part or in Full: 938
Number of pages Referred: 52

APPLICABLE EXEMPTIONS
FREEDOM OF INFORMATION ACT AND/OR PRIVACY ACT

Freedom of Information Act (5 U.S.C. 552)

☐ (b)(1) ☐ (b)(2) ☐ (b)(3) ☐ (b)(4) ☐ (b)(5) ☒ (b)(6)

☐ (b)(7)(A) ☐ (b)(7)(B) ☒ (b)(7)(C) ☐ (b)(7)(D) ☐ (b)(7)(E) ☐ (b)(7)(F)

Enclosures

FREEDOM OF INFORMATION ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

Transportation Security Administration (TSA) FOIA Branch applies FOIA exemptions to protect:

Exemptions

Exemption (b)(1): Records that contain information that is classified for national security purposes.
Exemption (b)(2): Records that are related solely to the internal personnel rules and practices of an agency.
Exemption (b)(3): Records specifically exempted from disclosure by Title 49 U.S.C. Section 114(r), which exempts from disclosure Sensitive Security Information (SSI) that "would be detrimental to the security of transportation" if disclosed.
Exemption (b)(4): Records that contain trade secrets and commercial or financial information obtained from a person that is privileged or confidential.
Exemption (b)(5): Inter- or intra-agency records that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege:

- Deliberative process privilege – Under the deliberative process privilege, disclosure of these records would injure the quality of future agency decisions by discouraging the open and frank policy discussions between subordinates and superiors.
- Attorney work-product privilege – Records prepared by or at the direction of a TSA attorney.
- Attorney-client privilege – Records of communications between an attorney and his/her client relating to a matter for which the client has sought legal advice, as well as facts divulged by client to attorney and any opinions given by attorney based on these.

Exemption (b)(6): Records that contain identifying information that applies to a particular individual when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." This requires the balancing of the public's right to disclosure against the individual's right to privacy.
Exemption (b)(7)(A): Records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information…could reasonably be expected to interfere with law enforcement proceedings.
Exemption (b)(7)(C): Records containing law enforcement information when disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy" based upon the traditional recognition of strong privacy interests ordinarily appropriated in law enforcement records.
Exemption (b)(7)(E): Records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.
Exemption (b)(7)(F): Records containing law enforcement information about a person, in that disclosure of information about him or her could reasonably be expected to endanger his or her life or physical safety.

PRIVACY ACT
SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

Transportation Security Administration (TSA) FOIA Branch applies Privacy Act exemptions to protect:

Exemptions

Exemption (d)(5): Information compiled in reasonable anticipation of civil action or proceeding; self-executing exemption.
Exemption (j)(2): Principal function criminal law enforcement agency records compiled during course of criminal law enforcement proceeding.
Exemption (k)(1): classified information under an Executive Order in the interest of national defense or foreign policy.
Exemption (k)(2): Non-criminal law enforcement records; criminal law enforcement records compiled by non-principal function criminal law enforcement agency; coverage is less broad where individual has been denied a right, privilege, or benefit as result of information sought.
Exemption (k)(5): Investigatory material used only to determine suitability, eligibility, or qualifications for federal civilian employment or access to classified information when the material comes from confidential sources.
Exemption (k)(6): Testing or examination material used to determine appointment or promotion of federal employees when disclosure would compromise the objectivity or fairness of the process.

EXHIBIT Y

United States Department of State

Washington, D.C. 20520

July 19, 2017

Case No.: F-2017-13490
Segments: CA-0001

Ms. Katherine Fallow
Knight First Amendment Institute
535 West 116th Street
314 Low Library
New York, NY 10027

Dear Ms. Fallow:

In response to your request dated March 15, 2017 under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, the Transportation Security Administration referred five documents to the Department of State for our review and direct response to you. After reviewing these documents, we have determined that all five may be released in part. All released material is enclosed.

An enclosure explains the FOIA exemptions and other grounds for withholding material. All non-exempt material that is reasonably segregable from the exempt material has been released.

If you have any questions, you may contact Assistant United States Attorney David Glass at david.glass@usdoj.gov. Please refer to the case number shown above.

Sincerely,

Susan C. Weetman for

Eric F. Stein, Director
Office of Information Programs and Services

Enclosures: As stated

EXHIBIT Z

Page 001 of 282

Withheld pursuant to exemption

(b)(3):49 U.S.C. § 114(r)

of the Freedom of Information and Privacy Act

EXHIBIT AA

From: (b)(6);(b)(7)(C)
Sent: 11 Dec 2014 22:12:48 +0000
To: (b)(6);(b)(7)(C)
Subject: RE: CRCL complaint number (b)(6);(b)(7)(C)
Attachments: HB 12-04 Search and Seizure HB 9.14.2012.pdf
Importance: High

(b)(6);(b)(7)(C)

To follow-up regarding CRCL Complaint No. (b)(6);(b)(7)(C) ICE Homeland Security Investigations and the Office of Policy identified the following document (attached):

1. HSI HB 12-04, "Search and Seizures Handbook," dated 9/14/2002; and

We did not locate any policy documents that address the creation of a "Chinese Wall". I'm waiting on one more document from ICE Office of Policy – but I wanted you to have the above since I will be out of the office next week.

In the meantime, let me know if there is anything else we can do to assist.

v/r
(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

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From: (b)(6);(b)(7)(C)
Sent: Wednesday, December 03, 2014 11:22 AM
To: (b)(6);(b)(7)(C)
Subject: RE: CRCL complaint number (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

Thanks for checking with Policy. I think thorough is more favored than formal, so if there are more details that would be great, but a formal response isn't needed.

Thanks,

(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Wednesday, December 03, 2014 11:12 AM
To: (b)(6);(b)(7)(C)
Subject: RE: CRCL complaint number 14-03-DHS-0117

(b)(6);(b)(7)(C)

Good morning,

To answer your first question – since time has lapsed, there may be more details of the investigation that can be shared, but what I meant about a formal response was something in a written document instead of an email.

With regard to the policy question, let me check with the Office of Policy.

Thanks

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

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From: (b)(6)
Sent: Wednesday, December 03, 2014 10:14 AM
To: (b)(6)
Subject: RE: CRCL complaint number 14-03-DHS-0117

(b)(6)

Thanks for the response. If we were to request a more formal response, would it include more detail about (b)(6);(b)(7)(C) becoming a target of the investigation and the seizure of her laptop? Also, the information request included a request for copies of any policies related to the creation of a "Chinese wall," and policies/guidance/training related to the seizure of electronic information containing attorney client privileged material. Is that something HSI can provide as well?

Thanks so much,

(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Wednesday, November 19, 2014 1:28 PM
To: (b)(6);(b)(7)(C)
Subject: RE: CRCL complaint number 14-03-DHS-0117
Importance: High

(b)(6);(b)(7)(C)

Good afternoon,

The brief overview of the case and the role of the complaining party is provided below. Please note this response in its entirety is Law Enforcement Sensitive information as this is an open investigation targeting a human trafficking organization. Appropriate safeguards and caution are advised should there be a need to use this information or share past CRCL.

Many thanks for your patience! If you require a more formal response, please advise.

v/r
(b)(6)

****

(b)(5);(b)(6);(b)(7)(A);(b)(7)(C);(b)(7)(E)

(b)(5);(b)(6);(b)(7)(A);(b)(7)(C);(b)(7)(E)

From: (b)(6);(b)(7)(C)
Sent: Wednesday, November 19, 2014 12:06 PM
To: (b)(6);(b)(7)(C)
Subject: RE: CRCL complaint number 14-03-DHS-0117

Hi (b)(6);(b)(7)(C)

I saw your out of office last week. I hope things have settled down and was hoping you might have an update on the info request.

Thanks,

(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Friday, November 14, 2014 10:22 AM
To: (b)(6);(b)(7)(C)
Subject: RE: CRCL complaint number 14-03-DHS-0117

(b)(6);(b)(7)(C)

Checking in to see if we are still on schedule with the response.

Thanks,

(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Wednesday, October 22, 2014 2:18 PM
To: (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
Subject: RE: CRCL complaint number (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

May I get back to you first? I reached out to our Domestic Operations to see what they can uncover regarding HSI's involvement, if that is the case. But for now, if we could have until November 14, 2014, I'd appreciate it.

I'll follow-up with you as soon as I hear from Domestic Operations leadership.

Thanks

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

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From: (b)(6)
Sent: Wednesday, October 22, 2014 2:09 PM
To: (b)(6)
Cc:
Subject: RE: CRCL complaint number 14-03-DHS-0117

Certainly. How long do you think you need?

From: (b)(6)
Sent: Wednesday, October 22, 2014 2:02 PM
To: (b)(6)
Cc:
Subject: RE: CRCL complaint number 14-03-DHS-0117

(b)(6)

Good afternoon,

I've searched for your original email, but unfortunately it was not directed to me for response from ICE/HSI. In order to properly research and provide a response, may we have an extension?

Your consideration is greatly appreciated.

v/r
(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

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From: (b)(6)
Sent: Wednesday, October 22, 2014 1:38 PM
To: (b)(6)
Cc:
Subject: CRCL complaint number 14-03-DHS-0117

(b)(6)

I've attached an email CRCL sent out on September 30th, regarding a CRCL retained complaint investigating the search of an attorney's laptop. The attached email should have a copy of both the retention documents and the information request for this investigation. The information request has a due date of October 13, 2014, and as of today, CRCL hasn't received anything from ICE.

CRCL has been assuming, hopefully correctly, that most of the requested information will be provided by ICE HSI. Do you know when CRCL can expect to receive a response to this request?

Please contact me if you have any questions.

Thank you,

(b)(6)

(b)(6)

(b)(6);(b)(7)(C)

This message may contain attorney-client communications, attorney work product, and agency deliberative communications, all of which may be privileged and not subject to disclosure outside the agency or to the public. Please consult with the Department of Homeland Security, Office of General Counsel before disclosing any information contained in this email.

EXHIBIT BB

Freedom of Information Act Office

U.S. Department of Homeland Security
500 12th St SW, Stop 5009
Washington, DC 20536

U.S. Immigration and Customs Enforcement

March 23, 2018,

Katherine Fallow
Knight First Amendment Institute
475 Riverside Drive
Suite 302,
New York, NY 10115

RE: ICE FOIA Case Number 2017-ICLI-00011; *Knight First Amendment Institute v. Department of Homeland Security* (17-cv-548-TSC)

Dear Ms. Fallow:

This letter responds to the Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), submitted by your client Knight First Amendment Institute, dated March 15, 2017. In the FOIA request your client has requested copies of the following records:

1. Documents containing statistical information concerning the search, detention, retention or sharing of electronic devices or information of individuals at the border (or functional equivalent of the border) since fiscal year 2012
2. Documents relating to each instance since fiscal year 2012 in which CBP or ICE searched, detained, retained or shared an electronic device or the information accessible on it
3. Revisions of or documents supplementing or superseding the CBP and ICE directives concerning border searches of electronic devices
4. Certain documents relating to any reviews of CBP's or ICE's policies or practices concerning electronic device searches
5. Documents concerning or relating to complaints filed by individuals or organizations about CBP's or ICE's search, review, retention or sharing of the information on travelers' electronic devices
6. Documents reflecting policies, practices or procedures concerning how CBP officers handle "privileged or other sensitive materials," including "work-related information carried by journalists" as described in the CBP directive concerning border searches of electronic devices
7. Documents reflecting policies, practices and procedures concerning CBP's anti-discrimination policy as applied to discretionary electronic device searches.

This Production

ICE has processed for release, and encloses, 482 pages of records located by a search of ICE Offices of Homeland Security Investigations (HSI). Per the January 16, 2017 Joint Status Report, these documents are responsive to item number (2)(b). These documents have been Bates numbered 2017-ICLI-00011 1193 through 2017-ICLI-00011 1674. Portions of these documents have been withheld pursuant to FOIA Exemptions 6, 7(C) and 7(E) of the FOIA. Furthermore, the ICE FOIA Office sent three (3) pages to other government agencies for consultation.

ICE has applied FOIA Exemptions 6 and 7(C) to protect from disclosure the names, e-mail addresses, and phone numbers of ICE and DHS employees contained within the documents, as well as the names, and other personally identifiable information of other individuals contained within the records.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

ICE has applied FOIA Exemption 7(E) to protect from disclosure internal agency law enforcement case numbers, internal codes, agency software and hardware information, and instructional manuals, user manuals, and training materials related to a law enforcement system and database which contain law enforcement sensitive techniques and procedures that are not well known to the public.

FOIA Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. I have determined that disclosure of certain law enforcement sensitive information contained within the

responsive records could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

If you need to contact ICE about this matter, please contact the Department of Justice Attorney, David Glass at David.Glass@usdoj.gov.

Sincerely,

Catrina M. Pavlik-Keenan
FOIA Officer

Enclosure(s): 482 page(s)

EXHIBIT CC

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

April 30, 2018

Knight First Amendment Institute of Columbia University
475 Riverside Drive
Suite 302
New York, NY 10115

Re: 17-cv-00548 (2017-HQFO-00585)
Knight First, Interim Release

Dear Ms. Decell:

This is our second interim response to your Freedom of Information Act (FOIA) request to the U.S. Department of Homeland Security (DHS) dated March 7, 2017. This letter hereby describes the agency's processing efforts to date. We understand that this information will be provided to the Court supervising the civil litigation concerning this FOIA request.

DHS's Searches and Production

For this month's production DHS reviewed 95 pages of which 3 pages are released in full, 19 pages are released in part with redactions made pursuant to FOIA Exemptions 5 and 6, 18 pages are withheld in full pursuant to FOIA Exemption 5 and 55 pages have been referred to United States Customs and Border Protection (CBP) for review and a direct response to you. CBP contact information is provided below. DHS also reviewed 195 pages of records from the Compliance branch of the Office for Civil Rights and Civil Liberties (CRCL) of which 57 pages are released in full, 45 pages are released in part with redactions applied pursuant to FOIA Exemptions 5 and 6, 8 pages were duplicates, 1 page was non-responsive, 22 pages have been referred to the DHS Office of Inspector General (OIG) for review and direct response to you and 62 pages have been referred to CBP for review and direct response to you. The contact information for OIG is also provided below.

CBP FOIA Officer/Public Liaison: Sabrina Burroughs
1300 Pennsylvania Avenue, NW, Room 3.3D
Washington, D.C. 20229

DHS-OIG Counsel
STOP 0305
245 Murray Lane, SW
Washington, D.C. 20528-0305

The 142 pages for release are attached and bates stamped DHS-001-513-000208 to DHS-01-513-000350. If you need to contact our office about this matter, please refer to **2017-HQFO-00513**. You may contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

Kevin L. Tyrrell
Director FOIA Appeals and Litigation

EXHIBIT DD

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

May 10, 2019

Jenner & Block, LLP
Matthew S. Hellman
1099 New York Ave, NW
Suite 900
Washington, DC 200001

Re: 17-cv-00548 (2017-HQFO-00585/2017-HQLI-00013)
Knight First Amendment Institute v. DHS
Fifth Interim Release

Dear Mr. Hellman:

This is our fifth interim response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated March 15, 2017.

For this month's production DHS reviewed 3,956 pages. Of those 3,956 pages, 424 pages are released in full; 940 pages are released in part pursuant to FOIA exemption 5 and 6; and 41 pages are withheld in full pursuant to FOIA exemptions 5. There are also 809 pages that are marked as duplicate and 94 pages marked non-responsive. DHS also located 649 pages that are being referred to Customs and Border Protection (CBP); 293 pages being referred to Immigration Customs Enforcement (ICE); 7 pages are being referred to U.S. Department of Health & Human Services; and 2 pages referred to the Department of State for processing and direct response to you. There are 697 pages that were sent to other agencies for consultation The 1,364 pages for release are bates stamped DHS-001-00585-001926 to DHS-001-00585-003289.

Sincerely,

Bradley E. White
Acting, Director FOIA
Litigation

Enclosure

EXHIBIT EE

Electronic Device Inspection: A Follow-Up Study to CRCL

U. S. Customs and Border Protection
Office of Field Operations

October 2011

(V5A)



U.S. Customs and Border Protection

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Electronic Device Inspection Follow-Up Study

Issue:

- CRCL conducted an analysis of CBPs electronic device inspections covering two years of data from inbound travelers at airports
- They concluded that a potential bias existed (e.g., more inspections) against Perceived-Arab/Muslims
- The purpose of this study was to examine inspection referrals that resulted from officer discretion (b) (7)(E) with respect to name ethnicity

Summary of Findings:

- (b) (7)(E)
- (b) (7)(E)

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Electronic Device Inspection Follow-Up Study

Procedure:

- Establish the Baseline List:
  - Selected five airports with the greatest number of electronic device inspections from the CRCL study: (b) (7)(E)
  - Pulled eight days of inbound international passengers from 09/25/2911 through 10/02/2011 for each of the five airports
  - Resulted in 609,583 passenger names (Baseline List) distributed across the five airports
  - Baseline List traveler names were run through the (b) (7)(E) software program to develop a distribution of the origins or "ethnicities" of the names
  - The *highest probability* ethnicity was returned by (b) (7)(E) and was used in the analyses that follow

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Electronic Device Inspection Follow-Up Study

Procedure (Continued):

- Referral List:
  - Names of the actual passengers with electronic device inspections from the five airports were also run through (b) (7)(E) Referral List)
  - The Referral List was broken down into two types:
    - Mandatory Referrals: those referrals resulting from travelers (b) (7)(E) (b) (7)(E) that led to an electronic device inspection
    - Discretionary Referrals: those referrals based on officer discretion that led to an electronic device inspection
  - These referral types were not completely separated out in the CRCL study
- (b) (7)(E)
  - (b) (7)(E)

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Baseline List and (b) (7)(E) Analysis

$\hat{\varepsilon}^* = 4.44\%$ $\hat{\varepsilon}^* = 2.76\%$

Highest Probability Ethnicity of Name	(b) (7)(E)
*AFGHANI	
AMBIGUOUS	
ANGLO	
*ARABIC	
CHINESE	
EUROPEAN	
*FARSI	
FRENCH	
GERMAN	
HAN	
HISPANIC	
INDIAN	
*INDONESIAN	
JAPANESE	
KOREAN	
*PAKISTANI	
RUSSIAN	
*SOUTHWESTASIAN	
THAI	
VIETNAMESE	
YORUBAN	
Total	

(b) (7)(E)

* These names would likely correspond to the category of "Perceived Arab/Muslim from the CRCL Study.

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Correlations of Name Ethnicities Between Airport Pairs And (b) (7)(E) For the Baseline List

(b) (7)(E)

- Does the composition of the ethnicities of the names of inbound travelers on the Baseline List differ across the five airports and (b) (7)(E)

- The correlations indicate that the composition/distribution of the ethnicities of the traveling public were very similar for the five airports (all bolded asterisked (*) correlations are significant at $p < .0001$ ($df = 19$, $r > .7150$))

- (b) (7)(E)

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Correlations of Ethnicities of Mandatory Referrals Between Airport Pairs, Baseline List (b) (7)(E)

(b) (7)(E)

- This data is restricted to Mandatory Referrals (see Backup Slides)
- (b) (7)(E)
- (b) (7)(E)
- There is very little relationship between name ethnicities found in the Baseline List and the Mandatory Referrals.
- Asterisked and bolded correlations are significant at $p < .0001$ ($df = 19$, $r > .7150$)

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Correlations of Ethnicities of Discretionary Referrals Between Airport Pairs, Baseline List and (b) (7)(E)

(b) (7)(E)

- This data is for the Discretionary Referrals (see Backup Slides)
- This shows that there are no "across the board" relationships between those subjected to electronic device searches for Discretionary Referrals, indicating that some ports are using similar indicators for referrals (b) (7)(E) some are using different indicators (b) (7)(E)
- There are two patterns of Discretionary Referrals:
  - Those that show significant tendency to follow the name ethnicity pattern of the Baseline List (traveling public) (b) (7)(E)
  - Those that show a significant tendency to follow the name ethnicity pattern of the (b) (7)(E)
- Asterisked and bolded correlations are significant at $p < .0001$ ($df = 19$, $r > .7150$)

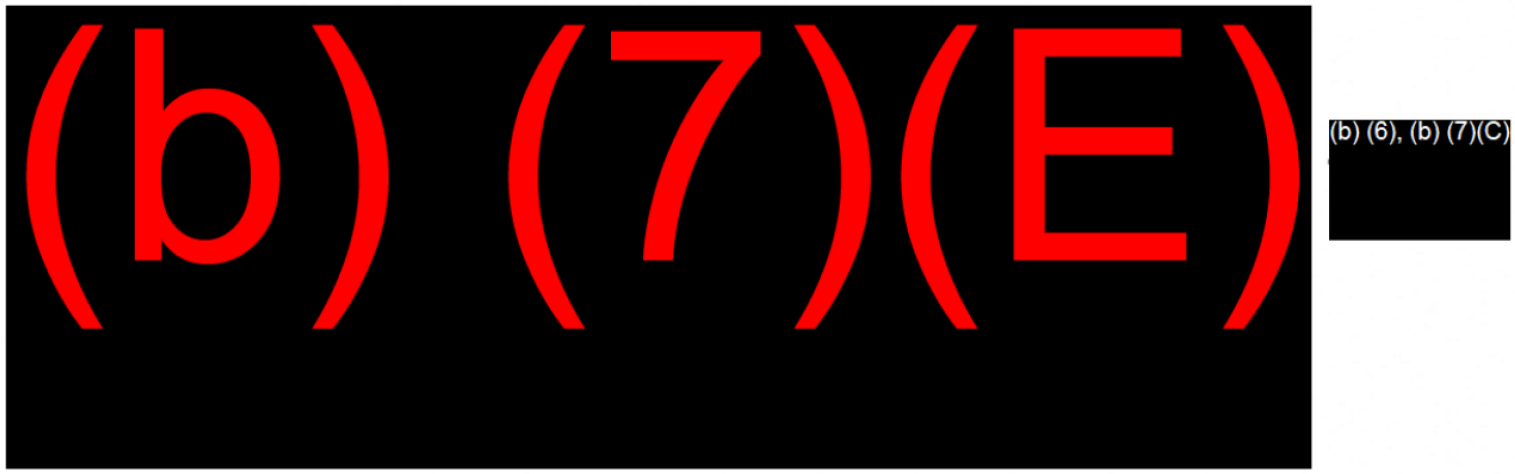
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Mandatory and Discretionary Referral Breakdown for "Perceived-Arabic/Muslim" and "Other" Ethnicities

- "P-A/M" (Perceived Arab/Muslim, CRCL terminology) consists of the following name ethnicities from (b) (7)(E) Afghani, Arabic, Farsi, Indonesian, Pakistani and Southwestasian (n = 6)

- "Other" refers to the remaining ethnic name categories (n = 15)

- The following table shows the average number of electronic device inspections per ethnic group for each port (e.g., each of the six P-A/M groups received an average of 7.33 inspections from Discretionary Referrals at (b) (7)(E)



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Discretionary Referrals Versus (b) (7)(E)

- Of the five airports, (b) (7)(E) over-referred P-A/Ms compared to other groups
- This is consistent with Slide 8, which showed a strong relationship between the name ethnicities of the Discretionary Referrals and the name ethnicities of (b) (7)(E) for these locations
- As seen below, the percentage breakdown for these two airports are not unlike the percentages reflected in (b) (7)(E)



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Summary/Conclusions

- A study by CRCL by suggested that CBP Officers at ports may be biased in that they perform more electronic device inspections on people perceived as being Arabic or Muslim (Perceived-Arab/Muslim, P-A/M)

- In the current study:

  - Inbound traveler names were pulled for five airports with the most electronic device inspections as found by CRCL
  - These names were put through the (b) (7)(E) software package to derive an unbiased list of name ethnicities
  - Names of individuals whose devices were searched at these same airports were also put through (b) (7)(E) to derive name ethnicities
  - (b) (7)(E)

- The incidence of inspections resulting from Discretionary Referrals was extremely small, extrapolated to be approximately 1 in every 166,667 passengers

- Analysis showed that two airports (b) (7)(E) inspected devices of P-A/M travelers at a higher percentage than other travelers

- Further analysis of the data, however, suggested that Discretionary Referrals at these two airports were more in line with the distribution of name ethnicities represented (b) (7)(E) (b) (7)(E) (which is a legitimate baseline) rather than the traveling public (which CRCL used as an implicit baseline)

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Backup Slides

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(b) (7)(E) Electronic Device Inspections by Name Ethnicity

Highest Probability Ethnicity of Name	Total Inspections		Mandatory Referrals	Discretionary Referrals	Total Passengers		(b) (7)(E)
*AFGHANI	9	2.33%	(b) (7)(E)		100	0.11%	
AMBIGUOUS	53	13.73%			10698	11.50%	
ANGLO	100	25.90%			26680	28.67%	
*ARABIC	49	12.69%			607	0.65%	
CHINESE	6	1.55%			10423	11.20%	
EUROPEAN	34	8.81%			10486	11.27%	
*FARSI	8	2.07%			527	0.57%	
FRENCH	1	0.26%			1880	2.02%	
GERMAN	2	0.52%			3826	4.11%	
HAN	7	1.81%			4989	5.36%	
HISPANIC	25	6.47%			5736	6.16%	
INDIAN	5	1.29%			4091	4.40%	
*INDONESIAN	11	2.85%			387	0.42%	
JAPANESE	2	0.52%			5568	5.98%	
KOREAN	1	0.26%			3256	3.50%	
*PAKISTANI	15	3.88%			269	0.29%	
RUSSIAN	1	0.26%			1071	1.15%	
*SOUTHWESTASIAN	50	12.95%			641	0.69%	
THAI	1	0.26%			335	0.36%	
VIETNAMESE	6	1.55%			1413	1.52%	
YORUBAN	0	0.00%			69	0.07%	
Total	386				93,052		

* These names would likely correspond to the category of "Perceived-Arab/Muslim from the CRCL Study.

Note: For Mandatory and Discretionary Referral percentages, the total number of inspections was used as the base.

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(b) (7)(E) Electronic Device Inspections by Name Ethnicity

Highest Probability Ethnicity of Name	Total Inspections		Mandatory Referrals	Discretionary Referrals	Total Passengers		(b) (7)(E)
*AFGHANI	11	2.97%	(b) (7)(E)		465	0.17%	
AMBIGUOUS	57	15.40%			40511	15.17%	
ANGLO	19	5.13%			75487	28.27%	
*ARABIC	92	24.86%			5440	2.04%	
CHINESE	3	3.14%			8576	3.21%	
EUROPEAN	12	3.20%			37961	14.21%	
*FARSI	12	3.20%			1006	0.38%	
FRENCH	0	0.00%			7667	2.87%	
GERMAN	0	0.00%			9759	3.65%	
HAN	0	0.00%			4408	1.65%	
HISPANIC	8	2.16%			40792	15.27%	
INDIAN	10	2.70%			7358	2.76%	
*INDONESIAN	0	0.00%			621	0.23%	
JAPANESE	0	0.00%			5184	1.94%	
KOREAN	1	0.27%			4901	1.84%	
*PAKISTANI	35	9.46%			1890	0.71%	
RUSSIAN	4	1.08%			8883	3.33%	
*SOUTHWESTASIAN	105	28.38%			4321	1.62%	
THAI	0	0.005			356	0.13%	
VIETNAMESE	0	0.00%			561	0.21%	
YORUBAN	1	0.27%			915	0.34%	
Total	370				267,062		

* These names would likely correspond to the category of "Perceived-Arab/Muslim from the CRCL Study.

Note: For Mandatory and Discretionary Referral percentages, the total number of referrals was used as the base.



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(b) (7)(E) Electronic Device Inspections by Name Ethnicity

Highest Probability Ethnicity of Name	Total Inspections		Mandatory Referrals	Discretionary Referrals	Total Passengers		(b) (7)(E)
*AFGHANI	4	0.51%	(b) (7)(E)		29	0.09%	
AMBIGUOUS	92	11.61%			3414	11.02%	
ANGLO	308	38.89%			11933	38.52%	
*ARABIC	106	13.38%			492	1.59%	
CHINESE	4	0.51%			1900	6.13%	
EUROPEAN	90	11.36%			4519	14.59%	
*FARSI	28	3.53%			154	0.50%	
FRENCH	18	2.27%			506	1.63%	
GERMAN	21	2.65%			1295	4.18%	
HAN	2	0.25%			736	2.38%	
HISPANIC	18	2.27%			1670	5.39%	
INDIAN	8	1.01%			695	2.24%	
*INDONESIAN	1	0.12%			46	0.15%	
JAPANESE	3	0.38%			2107	6.80%	
KOREAN	2	0.25%			659	2.13%	
*PAKISTANI	15	1.89%			90	0.29%	
RUSSIAN	7	0.88%			238	0.77%	
*SOUTHWESTASIAN	58	7.32%			300	0.97%	
THAI	2	0.25%			63	0.20%	
VIETNAMESE	2	0.25%			61	0.20%	
YORUBAN	3	0.38%			73	0.24%	
Total	792				30,980		

* These names would likely correspond to the category of "Perceived-Arab/Muslim from the CRCL Study.

Note: For Mandatory and Discretionary Referral percentages, the total number of referrals was used as the base.



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(b) (7)(E) Electronic Device Inspections by Name Ethnicity

Highest Probability Ethnicity of Name	Total Inspections		Mandatory Referrals	Discretionary Referrals	Total Passengers		(b) (7)(E)
*AFGHANI	4	1.30%	(b) (7)(E)		33	0.07%	
AMBIGUOUS	56	18.18%			5589	12.61%	
ANGLO	48	15.58%			21210	47.85%	
*ARABIC	85	27.59%			490	1.11%	
CHINESE	0	0.00			241	0.54%	
EUROPEAN	11	3.57%			6951	15.68%	
*FARSI	8	2.59%			136	0.31%	
FRENCH	3	0.97%			1333	3.01%	
GERMAN	0	0.00%			2577	5.81%	
HAN	0	0.00%			155	0.35%	
HISPANIC	7	2.27%			2928	6.61%	
INDIAN	1	0.32%			1061	2.39%	
*INDONESIAN	1	0.32%			81	0.18%	
JAPANESE	0	0.00%			84	0.19%	
KOREAN	0	0.00%			55	0.12%	
*PAKISTANI	12	3.89%			127	0.29%	
RUSSIAN	6	1.95%			707	1.59%	
*SOUTHWESTASIAN	60	19.48%			354	0.80%	
THAI	1	0.32%			23	0.05%	
VIETNAMESE	0	0.00%			92	0.21%	
YORUBAN	5	1.62%			103	0.23%	
Total	308				44,330		

* These names would likely correspond to the category of "Perceived-Arab/Muslim from the CRCL Study.

Note: For Mandatory and Discretionary Referral percentages, the total number of referrals was used as the base.

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(b) (7)(E) Electronic Device Inspections by Name Ethnicity

Highest Probability Ethnicity of Name	Total Inspections		Mandatory Referrals	Discretionary Referrals	Total Passengers		(b) (7)(E)
*AFGHANI	5	1.15%	(b) (7)(E)		133	0.08%	
AMBIGUOUS	63	14.55%			19414	11.15%	
ANGLO	96	22.17%			51317	29.47%	
*ARABIC	63	14.55%			1389	0.80%	
CHINESE	14	3.23%			14342	8.24%	
EUROPEAN	32	7.39%			19253	11.05%	
*FARSI	16	3.69%			1489	0.85%	
FRENCH	1	0.23%			4870	2.80%	
GERMAN	4	0.92%			4023	2.31%	
HAN	3	0.69%			7839	4.50%	
HISPANIC	22	5.08%			24576	14.11%	
INDIAN	1	0.23%			3003	1.72%	
*INDONESIAN	2	0.46%			613	0.35%	
JAPANESE	5	1.15%			8296	4.76%	
KOREAN	0	0.00%			6587	3.78%	
*PAKISTANI	17	3.92%			426	0.24%	
RUSSIAN	3	0.69%			1859	1.07%	
*SOUTHWESTASIAN	74	17.09%			1258	0.72%	
THAI	2	0.46%			1008	0.58%	
VIETNAMESE	7	1.61%			2304	1.32%	
YORUBAN	3	0.69%			160	0.09%	
Total	433				174,159		

* These names would likely correspond to the category of "Perceived-Arab/Muslim from the CRCL Study.

Note: For Mandatory and Discretionary Referral percentages, the total number of referrals was used as the base.



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EXHIBIT FF

CBP INTERNAL AFFAIRS REPORT:
BORDER SEARCH OF ELECTRONIC DEVICES AND DOCUMENTS
SUMMARY OF FINDINGS, RECOMMENDATIONS, AND RESPONSES RELEVANT TO CRCL IMPACT ASSESSMENT

FINDING	RECOMMENDATION	RESPONSE	STATUS
(b)(7)(E)	1. Identify and implement actions required to ensure data extraction methods provide precise statistics on the number of searches, detentions, and seizures of documents and electronic devices recorded in TECS. 2. Develop and implement new TECS module or enhance existing modules that will facilitate the accurate recording of search information, allow for automatic notification of required supervisory approvals, and enable the tracking of detained documents and electronic devices.	Concur; will complete by January 2011.	IN PROGRESS
There is confusion concerning CBP's policy regarding the need for electronic device searches to be conducted in the presence of a supervisor. Many supervisors believe that compliance with this requirement can be demonstrated if the supervisor is anywhere in the general area. (b) (7)(E)	3.(a) Clarify or reiterate CBP policy regarding the current procedural requirement that searches be conducted in the "presence of a supervisor."	Concur; will complete by November 2010.	CLOSED WITH ISSUANCE OF OCTOBER 25, 2010 MUSTER
There is confusion concerning CBP's policy regarding the need to obtain supervisory approval prior electronic device searches. (b) (7)(E)	3.(b) Clarify or reiterate CBP policy regarding the need to obtain supervisory approval before conducting an electronic device search.	Concur; will complete by November 2010.	CLOSED WITH ISSUANCE OF OCTOBER 25, 2010 MUSTER
Managers report confusion concerning CBP policy and responsibility for tracking electronic devices detained from travelers and turned over to ICE for translation, decryption and/or analysis.	3.(c) Clarify or reiterate CBP policy regarding the distinction between CBP's responsibility for tracking electronic devices transferred to ICE for decryption and subject matter expert assistance, and when ICE's concurrently-held border search authority is applicable.	Concur; will complete by November 2010.	CLOSED WITH ISSUANCE OF OCTOBER 25, 2010 MUSTER
(b) (7)(E)	3.(e) Clarify or reiterate CBP policy regarding the circumstances and requirement to destroy any copies of information, and to return any electronic device detained, when it is determined there is no intention to seize the device.	Concur; will complete by November 2010.	CLOSED WITH ISSUANCE OF OCTOBER 25, 2010 MUSTER