U.S. Department of Homeland Security
Washington, DC 20229

U.S. Customs and Border Protection

DIS-3 OT:RR:RDL:FAPL
CBP-AP-2019-013293 MMC

November 30, 2018

Mrs. Denise P. Cabrera
Los Angeles Immigration Attorneys
2670 N. Main Street, Suite 302
Santa Ana, CA 92705

Re: Freedom of Information Act Appeal; Maria Azucena Campos Higareda; CBP-2018-073454.

Dear Ms. Cabrera:

This is in response to your November 21, 2018 submission indicating your intent to appeal the September 26, 2018 no records found decision of the Freedom of Information Act (hereinafter "FOIA") Division, Privacy and Diversity Office, U.S. Customs and Border Protection ("CBP"). In your initial request you sought all border entry, exit, encounter, removal or any other CBP records that pertain to your client.

You are now appealing indicating you have evidence that indicates records exist. You have provided us with the results of a fingerprint search conducted by the DHS Office of Biometric Identity Management (OBIM). OBIM was previously known as the United States Visitor and Immigration Status Indicator Technology (US-VISIT) Program.

In addition to the information you initially provided about your client, this report includes the Fingerprint Identification number (FINS) for your client and indicates that the encounter with CBP legacy officers occurred on May 5, 2000.

Based on the information you have provided to date, my staff searched both the TECS and ENFORCE systems of records for records about your client. The TECS database is the principal information system supporting the border management and law enforcement mission of CBP. TECS is a computer-based telecommunications system containing investigative and law enforcement information pertaining to individuals, businesses, conveyances, and the importation and exportation of merchandise. ENFORCE is a system of records that maintains information useful in identifying, investigating, apprehending and/or removing aliens entering or present in the United States, as well as facilitating the legal entry and egress of individuals to and from the

United States. At CBP, ENFORCE is used to identify, investigate, apprehend and remove aliens that are or have unlawfully entered the United States.

Additionally, as a courtesy to you, we coordinated with U.S. Citizenship and Immigration Service (USCIS), National Records Center (NRC) to see if your client's A-file contains any CBP and its legacy agencies' records. No records meeting this description were found in the A-file

In performing a search we used all the personal identifiers you provided namely your client's full name, date of birth, A-file and FINS numbers.

This appellate search produced one (1) ENFORCE record consisting of one (1) page. That record is a 5/29/2000 Record of Deportable/Inadmissable Alien (I-213). For the reasons stated below we are releasing this record with redactions made pursuant to FOIA Exemptions (b)(6), (b)(7)(C), and (b)(7)(E).

Invoking Exemption (b)(6) permits the government to withhold information about an individual in "personnel and medical and similar files" when the disclosure "would constitute a clearly unwarranted invasion of personal privacy."[1] The information being withheld in this record concerns CBP Officers and third parties. We are withholding personal information such as CBP officers' first and last names and badge numbers and third party individuals' names and country of citizenship.

Information subject to exemption pursuant to (b)(6), must fall within the category of "personnel, medical files and similar files."[2] Once that threshold is met, Exemption (b)(6) requires a balancing test of the public's right to know the personal information against an individual's right to privacy to determine whether the information in question should be disclosed to the public.[3]

Concerning the first prong of the test, the "category of record" prong, personnel and medical files are easily identified but what constitutes a "similar file" requires further analysis. In *United States Department of State v. Washington Post Co.*,[4] the United States Supreme Court held that based upon a review of the legislative history of the FOIA, Congress intended the term "similar files" to be interpreted broadly, rather than narrowly.[5] The Court stated that the protection of an individual's privacy "surely was not intended to turn upon the label of the file which contains the damaging information."[6] Rather, the Court made clear that all information that "applies to a particular individual" meets the threshold requirement for Exemption 6 protection.

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[1] 5 U.S.C. §552(b)(6)

[2] *U.S. Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989).

[3] *Dep't of the Air Force v. Rose*, 425 U.S. 352 (1976).

[4] 456 U.S. 595 (1982).

[5] Id. at 599-603 (citing H.R. Rep. No. 89-1497, at 11 (1966); S. Rep. No. 89-813, at 9 (1965); S. Rep. No. 88-1219, at 14 (1964)).

[6] Id. at 601 (citing H.R. Rep. No. 89-1497, at 11 (1966)); see *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 152 (D.C. Cir. 2006) ("The Supreme Court has read Exemption 6 broadly, concluding the propriety of an agency's decision to withhold information does not 'turn upon the label of the file which contains the damaging information.'" (quoting *Wash. Post*, 456 U.S. at 601)).

The record at issue is considered an investigative record because it was created to determine whether a person seeking to enter the United States may do so. As such, the first prong of the Exemption 6 test is met.

As the "category of record" threshold has been met, we must examine whether disclosure of the identified information in the record at issue would constitute a clearly unwarranted invasion of personal privacy. Making that decision requires a balancing of the privacy interest that would be compromised by disclosure, against any public interest in the requested information.

The burden of establishing that disclosure would serve the public interest is on the requester.[7] You have not demonstrated any genuine and significant interest in CBP officers' first and last names or badge numbers, or third parties' names and country of citizenship. Neither have you demonstrated how the disclosure of this information will advance the primary goal of the FOIA (to shed light on the operation of the federal government). As such, we are invoking the (b)(6) exemption for this type of information in the record we are releasing to you.

Exemption (b)(7)(C) was also employed to withhold CBP officers' names and badge numbers and third parties names and country of citizenship from disclosure. Exemption (b)(7) is subdivided into six subparts, (A) through (F). The initial requirement for the use of all the (b)(7) exemptions is that the records or information subject to disclosure consideration have been "compiled for law enforcement purposes."[8] Additionally the (b)(7) exemptions apply to civil, criminal and administrative law enforcement proceedings.[9] The subject records have been complied for law enforcement purposes as they are from the ENFORCE system of records which contains records that concern enforcement and inspection activities relevant to the law enforcement mission of CBP.

Specifically, Exemption (b)(7)(C) exempts from disclosure "records and information compiled for law enforcement purposes" the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy."[10] This exemption protects, among other information, the identity of law enforcement personnel and third-parties referenced in files compiled for law enforcement purposes. This exemption is designed to protect law enforcement personnel conducting their official duties from harassment and annoyance in their private lives that could conceivably result from public disclosure of their identity.[11] Exemption (b)(7)(C) is also intended to protect third-parties identities in law enforcement files. Specifically, it is meant to protect a third party from comment, speculation and stigmatizing connotation associated with being identified in a law enforcement record.

The application of Exemption (b)(7)(C), to specific information requires the user to perform a balancing test regarding an individual's privacy interest versus the public interest of, in this

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[7] *Associated Press v. DOD*, 549 F.3d 62, 66 (2d Cir. 2008) ("The requesting party bears the burden of establishing that disclosure of personal information would serve a public interest cognizable under FOIA.")

[8] 5 U.S.C. 552 (b)(7).

[9] See generally *Center for National Policy Review v. Weinberger*, 502 F.2d 370 (D.C. Cir. 1974); *Detroit Free Press, Inc. v. Department of Justice*, 73 F.3d 93 (6th Cir. 1996); *Oritz v. Health and Human Services*, 70 F.3d 729 (2d Cir. 1995).

[10] 5 U.S.C. 552 (b)(7)(C).

[11] *Nix v. United States*, 572 F.2d 998, 1006 (4th Cir. 1978).

instance, CBP officers' first and last names as well as third parties' names and citizenship.[12] The privacy interests of the third parties—being protected from comment, speculation and stigmatizing connotation associated with being identified in a law enforcement record--- far outweigh whatever public interest, if any, exists in the release of their personally identifiable information. The same can be said for the privacy interests of the CBP officers (being protected from public disclosure of the identity of a law enforcement officer who, because of the conduct of his/her official duties, could conceivably be subject to harassment and annoyance in his/her private life) far outweigh whatever public interest, if any, exists in having CBP officers' information released. As such we are invoking the (b)(7)(C) exemption for this type of information that appears in the record we are releasing to you.

Exemption (b)(7)(E) exempts from disclosure information that would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.[13] Where the agency has a clear law enforcement mandate it only need establish a rational nexus between enforcement of a federal law and the information withheld based on a (b)(7) exemption.[14]

Pursuant to Exemption (b)(7)(E), redacted information such as the "Subject ID number" "case number" and "event number" are all CBP internal identification numbers. We are withholding this information to protect CBP's methods for categorizing, identifying, and navigating law enforcement records. Disclosure of this information would enable potential violators to design strategies to circumvent the investigative and examination procedures developed and employed by CBP in its mission to secure the border and enforce immigration laws by creating a potential compromise of a law enforcement database through technology based attacks.

The remaining information redacted pursuant to (b)(7)(E), consists of information that would reveal CBP procedures for screening and inspecting international travelers (to include inspection procedures and names of specific law enforcement databases used, procedures related to external/internal coordination/reporting and information which would reveal the scope and focus of certain law enforcement techniques). The release of this information would reveal CBP targeting and inspection techniques used in processing individuals who attempt to cross the border irregularly. Such a release would enable potential violators to design strategies to circumvent the examination procedures developed and employed by CBP in its mission to secure the border and enforce immigration laws by allowing potential violators to better prepare themselves to evade and exploit U.S. immigration and other laws.

The Freedom of Information Act, particularly Title 5 U.S.C. § 552 (a)(4)(B), provides you with the opportunity to seek judicial review of this administrative appeal. You may institute judicial

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[12]See *Castenada v. United States*, 757 F.2d 1010, 1012 (9th Cir. 1985).

[13]See *Fisher v. U.S. Dep't of Justice*, 772 F. Supp. 7 (D.D.C. 1991) (explicitly recognizing categorical protection for law enforcement techniques and procedures), aff'd 968 F.2d 92 (1992); and, *Hammes v. U.S. Customs Serv.*, 1994 WL 693717 (S.D.N.Y. 1994) (protecting criteria used to determine which passengers to stop and examine).

[14]See, *Costal Delivery Corp. v. U.S. Customs Serv*., 272 F. Supp.2d 958, 963 (C.D.Cal. 2003) (Customs has a clear law enforcement mandate; Exemption (b)(7)(E) used to withhold techniques or guidelines for law enforcement investigations); *Pons v. U.S. Customs Serv*., 1998 U.S. Dist. LEXIS 6084 (D.C.C. 1998) (protecting cooperative arrangements between Customs and other law enforcement agencies to keep them effective); and, *Judicial watch, Inc. v. FBI*, 2001 U.S. Dist. LEXIS 25732 (D.D.C. 2001)(protecting the "identities of two types of [FBI] records concerning prison inmates, "the release of which would enable inmates "to alter their activities[,] thus hindering the effectiveness of the technique").

review in the United States District Court in the district in which you reside, have a principal place of business, where the agency records are located, or in the United States District Court for the District of Columbia.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue 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.

You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

Sincerely,

Shari Suzuki

Shari Suzuki, Chief
FOIA Appeals, Policy, and Litigation
Regulations and Rulings
Office of International Trade

U.S. Department of Homeland Security

Subject ID (b) (7)(E)

Record of Deportable/Inadmissible Alien

Family Name (CAPS)	First	Middle	Sex	Hair	Eyes	Cmplxn
CAMPOS-HIRUEREDA, AZUCERA			F			

Country of Citizenship	Passport Number and Country of Issue	File Number	Height	Weight	Occupation
MEXICO		CASE No: (b) (7)(E) A			

U S Address	Scars and Marks

Date, Place, Time, and Manner of Last Entry	Passenger Boarded at	F B I Number	☐ Single ☐ Divorced ☐ Married ☐ Widower ☐ Separated
05/29/2000, 0600, 15 mile(s) E of LUK			

Number, Street, City, Province (State) and Country of Permanent Residence	Method of Location/Apprehension
	(b) (7)(E)

Date of Birth	Date of Action	Location Code	At/Near	Date/Hour
05/18/1974 Age:26	05/29/2000	TCA/AJO	Ajo, Arizona	05/29/2000 0721

City, Province (State) and Country of Birth	AR ☐	Form : (Type and No) Lifted ☐ Not Lifted ☐	By
SAYAO, MICHOACAN, MEXICO			(b)(6) &(b)(7)(C)

NIV Issuing Post and NIV Number	Social Security Account Name	Status at Entry	Status When Found
		PWA Mexico	TRAVEL/SEEKING

Date Visa Issued	Social Security Number	Length of Time Illegally in U S
		AT ENTRY

Immigration Record	Criminal Record
NEGATIVE	

Name , Address, and Nationality of Spouse (Maiden Name, if Appropriate)	Number and Nationality of Minor Children

Father's Name, Nationality, and Address, if Known	Mother's Present and Maiden Names, Nationality, and Address, if Known
See Narrative	See Narrative

Monies Due/Property in U S Not in Immediate Possession	Fingerprinted? ☐ Yes ☐ No	Systems Checks	Charge Code Words(s)
None Claimed			

Name and Address of (Last)(Current) U S Employer	Type of Employment	Salary	Employed from/to
		Hr	

Narrative (Outline particulars under which alien was located/apprehended Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation Indicate means and route of travel to interior)

FINS #:6492257

FATHER NAME AND ADDRESS:

Nationality: (b)(6) &(b)(7)(C)

MOTHER NAME AND ADDRESS:

Nationality (b)(6) &(b)(7)(C)

FUNDS IN POSSESSION:

Mexican Peso .00

NARRATIVE:
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oNE OF 16 APP'D IN A NISSAN PICKUP ON FR 1, MP 14.

(b)(6) &(b)(7)(C)
SPECIAL OPERATIONS SUPERVISOR
(Signature and Title of Immigration Officer)

Alien has been advised of communication privileges _____ (Date/Initials)

Distribution:

Received: (Subject and Documents) (Report of Interview)

Officer: (b)(6) &(b)(7)(C)

on: May 29, 2000 at 0721 (time)

Disposition: Voluntary Return

Examining Officer: (b)(6) &(b)(7)(C)