August 12, 2013

VIA PRIORITY MAIL AND ELECTRONIC MAIL: CBPFOIA@dhs.gov

U.S. Customs and Border Protection
FOIA Division
799 9th Street NW, Mint Annex
Washington, DC 20229-1181
CBPFOIA@dhs.gov

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer:

Americans for Immigrant Justice (AI Justice) submits this request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et. seq. (hereinafter the “Request”).

REQUEST FOR INFORMATION

AI Justice requests disclosure of any and all records\(^1\) that were prepared, received, transmitted, collected and/or maintained by the U.S. Department of Homeland Security (DHS) and/or U.S. Customs and Border Protection (CBP)\(^2\) that describe, refer or relate to CBP’s use of drones in the state of Florida.

Specifically, please produce those records describing, referring or relating to:

(1) From January 2008 through June 2013, all memoranda, reports, correspondence, communications, or other documentation reflecting, recording or stating what territory in Florida is treated as “border” territory within the jurisdiction of and legalized patrol of CBP.

\(^1\) The term “records” as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, directives, documents, data, videotapes, audiotapes, emails, faxes, files, guidance, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

\(^2\) The term “CBP” as used herein means CBP headquarters offices, including any divisions, subdivisions or sections therein, CBP field operations offices, including any divisions, subdivisions or sections therein; CBP offices at ports of entry, including any divisions, subdivisions or sections therein; and any other CBP organizational structures and offices.

A non-profit organization dedicated to protecting and promoting the basic human rights of immigrants
(2) From January 2008 through June 2013, all memoranda, reports, correspondence, communications, or other documents regarding the use of drones by CBP or its agents and affiliates in the State of Florida.

From January 2008 through June 2013, all memoranda, reports, correspondence, communications, or other documents regarding drone accidents that have occurred within the state of Florida or along its borders under the direction of CBP.

(3) From January 2008 through June 2013, all memoranda, reports, correspondence, communications, or other documents regarding any federal grants given by CBP to domestic law enforcement agencies within the state of Florida for the purchase and/or use of drones.

(4) From January 2008 through June 2013, all memoranda, reports, correspondence, communications, or other documents regarding any drone use by CBP on behalf of other agencies\(^3\) in the state of Florida or along its borders.

(5) From January 2008 through June 2013, all memoranda, reports, correspondence, communications or other documents regarding any future plans by CBP for drone use in the state of Florida.

**REQUEST FOR WAIVER OF ALL COSTS**

AI Justice requests that all fees associated with this FOIA request be waived. AI Justice is entitled to a waiver of all costs because disclosure of the information is “... likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 522(a)(4)(A)(iii). See also 6 C.F.R. § 5.11(k) (Records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, AI Justice has the ability to widely disseminate the requested information. See Judicial Watch v. Rossotti, 326 F.3d 1309 (D.C. Cir. 2013) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

i. **Disclosure of the Information is in the Public Interest**

AI Justice aims to protect and promote basic human rights through a unique combination of free direct services, impact litigation, policy reform, and public education at local, state, and national levels. Grounded in real-world, real-people experience, AI Justice’s direct work with immigrant clients informs its broader policy work. Its multicultural and multilingual staff

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\(^3\) The phrase “other agencies” refers to U.S. Immigration Customs and Enforcement, Federal Bureau of Investigation (FBI), U.S. Marshals, and various state and local law enforcement agencies.
works to build alliances between immigrant and nonimmigrant groups, including
government, civic, social and faith-based communities. Advocates involved in immigration
issues, the national media, and federal and state policy makers, consider AI Justice to be one
of the most effective national groups fighting for justice.

CBP has been using drones to patrol the U.S. borders since 2004.\(^4\) CBP officers operate with
impunity within 100 miles of the southern border.\(^5\) Therefore, any land within 100 miles of a
border, or a port of entry, is considered border territory. Because Florida is surrounded by
several bodies of water, and contains many points of entry, CBP has previously asserted that
entire state of Florida is border territory. Consequently, CBP may be using drones to patrol
the entire state.

U.S. media outlets have increasingly covered the widespread use of drones, and information
regarding their use is in demand as the public examines the propriety of the use of drones and
the potential impact on civil rights of the public. Indeed, increasing public awareness of the
use of drones has sparked controversy regarding their use, particularly when used in a
domestic context.\(^6\) This is because the use of drones raises Fourth Amendment privacy
concerns.\(^7\) Although manned surveillance flights have generally been deemed constitutional,
drones pose a more serious threat to privacy than do manned flights because of their potential
for pervasive use in ordinary law enforcement operations and capacity for revealing far more
than the naked eye. See, e.g., Dow Chemical Co. v. United States, 476 U.S. 227 (1986)
(finding the use of an aerial photographer constitutional, but noting that “surveillance of
private property by using highly sophisticated surveillance equipment not generally available
to the public, such as satellite technology, might be constitutionally proscribed absent a
warrant.”).

With comprehensive immigration reform being debated in Congress, it is imperative that
information concerning how and to what extent CBP is using drones domestically being
made available to the public. Indeed, portions of the comprehensive immigration reform
legislation includes provisions for 24-hour surveillance of the border using drones.\(^8\) Such a
proposal furthers the constitutional concerns regarding domestic drone use. The Supreme
Court has suggested that continuous use of surveillance technology heightens the Fourth
“such dragnet type law enforcement practices” as “twenty-four hour surveillance of any

\(^4\) Press Release, U.S. Customs & Border Patrol, CBP Deploys 6th Unmanned Aircraft to
Enhance Border Security (May 19, 2010), available at

\(^5\) NATIONAL IMMIGRATION LAW CENTER, ANALYSIS OF SENATE IMMIGRATION REFORM BILL:

\(^6\) JAY STANLEY & CATHERINE CRUMP, ACLU, PROTECTING PRIVACY FROM AERIAL
SURVEILLANCE: RECOMMENDATIONS FOR GOVERNMENT USE OF DRONE AIRCRAFT, available at

\(^7\) Id. at 14.

\(^8\) NATIONAL IMMIGRATION LAW CENTER, supra note 6, at 5.

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citizen of this country” ever arose, it would determine if different constitutional principles would be applicable).

Disclosure of the requested information will contribute significantly to public understanding of the use of drones in Florida and enable the public to make informed decisions about the propriety and extent of drone use in Florida. Given the privacy concerns at stake here, the public has a strong interest in the disclosure of the requested information.

AI Justice has the capacity and intent to disseminate widely the requested information to the public. To this end, AI Justice will analyze and compile a report about the information obtained and disseminate it by:

- Posting the report on the AI Justice website, a website that is accessible by any member of the public;
- Hold a press conference presenting the report to the press;
- Circulate the report through online and social media channels operated by both AI Justice and other NGOs;
- Present key members of congress and the administration with the information for their use and further dissemination to constituents and key stake holders.

ii. **Disclosure of the Information is Not Primarily in the Commercial Interest of the Requester**

AI Justice is a 501(c)(3), tax-exempt, not-for-profit, charitable legal services organization. AI Justice’s work encompasses advocating for the basic human rights of immigrants through direct representation, policy reform, impact litigation, and public education. Therefore, AI Justice has no commercial interest that could be furthered by any FOIA request. Immigration attorneys, noncitizens and the general public will be able to obtain information about CBP’s use of drones policies and practices in Florida through dissemination of the information as described above, without any commercial benefit to AI Justice of any kind.

Please inform us if the charges for this FOIA production will exceed $50.00.

We look forward to receiving your response to this request within twenty working days, as required by FOIA. See 5 U.S.C. § 552(a)(6)(A)(i). Should you have any questions or concerns, please feel free to contact me at (305) 573-1106, ext. 1380, or via email at ljmenez@aijustice.org.

Sincerely,

[Signature]

Lomin Jimenez
Litigation Attorney