

## **EXHIBIT B**



September 10, 2024

**Sent via SecureRelease Portal**

Privacy Office, Mail Stop 0655  
Department of Homeland Security  
2707 Martin Luther King Jr. AVE SE  
Washington, DC 20528-065

FOIA Officer  
U.S. Customs and Border Protection  
90 K Street, NE  
FOIA Division  
Washington DC 20229

**Sent via Email**

Office of Civil Rights and Civil Liberties  
Mail Stop 0190  
2707 Martin Luther King Jr. AVE SE  
Washington, DC 20528-065  
Email: crclfoia@hq.dhs.gov

**Re: FOIA Request for Records Related to CBP Soft-Sided Temporary Detention  
Facilities  
(Fee Waiver & Expedited Proceeding Requested)**

Dear Freedom of Information Officer:

This letter is a request for records (“Request”) made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, and the relevant implementing regulations, *see* 6 C.F.R. § 5 *et seq.* The Request is submitted by the American Civil Liberties Union Foundation of Southern California (“ACLU SoCal” or “Requestor”).

As specified below, Requestor seeks the disclosure of **records regarding the use of soft-sided temporary facilities used by U.S. Customs and Border Protection (“CBP”) for holding and processing migrants in Texas, including, but not limited to detention standards, contracts, and inspection and investigative reports resulting from examinations or investigations conducted by the Department of Homeland Security’s (“DHS”) Office of Civil Rights and Civil Liberties (“CRCL”) and Office of Immigration Detention Ombudsman**

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\*deceased

**(“OIDO”) of such facilities, as well as records related to CBP’s assessments of Department of Defense (“DOD”) sites for additional temporary soft-sided facilities.**

Requester also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d). The justifications for the fee waiver and expedited processing are set out in detail below.

**I. Background**

Since at least 2019, CBP has awarded contracts for temporary soft-sided facilities, which are tent-like structures for short-term detention of migrants at the U.S.-Mexico border. As of June 2022, CBP had five temporary soft-sided facilities in Texas, including three in the Rio Grande Valley sector in Texas, one in the Laredo, Texas sector, and one in the Del Rio, Texas sector.<sup>1</sup> On April 26, 2022, DHS Secretary Alejandro Mayorkas issued a Memorandum titled “DHS Plan for Southwest Border Security and Preparedness,” which discussed, in part, the “deployment of soft-sided facilities,” including the expansion of the agency’s use of soft-sided facilities, with “additional facility expansions still in the planning phase,” and CBP’s “assessment of DOD sites for potential additional temporary facilities.”<sup>2</sup>

Presidential-candidate Donald Trump and his associate, Stephen Miller, a former Trump administration official, have publicly stated plans to, if reelected in 2024, conduct mass deportations of noncitizens on an unprecedented scale.<sup>3</sup> A critical aspect of this scheme includes plans to “build huge camps to detain people while their cases are processed and they await deportation flights,” at “vast holding facilities that would function as staging centers” for immigrants.<sup>4</sup> Miller has stated that “these new camps would likely be built ‘on open land in Texas near the border,’” and look “similar to other facilities for migrants that have been built near the border.”<sup>5</sup> In other interviews, Miller has stated that a future administration would “put migrants in ‘camps’ or ‘tents.’”<sup>6</sup> This Request seeks information regarding CBP’s current use of, plans for, and assessment of additional sites for temporary soft-sided facilities.

**II. Requestor**

ACLU SoCal is a non-profit organization dedicated to defending and securing the rights granted by the U.S. Constitution and Bill of Rights. ACLU SoCal’s work focuses on immigrants’ rights, the First Amendment, equal protection, due process, privacy, and furthering civil rights for disadvantaged groups. As part of its work, ACLU SoCal monitors ICE enforcement practices and detention conditions. ACLU SoCal disseminates information to the public through its website and

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<sup>1</sup> DHS Office of Inspector General, *CBP Could Do More to Plan for Facilities Along the Southwest Border* 1-2 (2023), <https://www.oig.dhs.gov/sites/default/files/assets/2023-09/OIG-23-45-Aug23.pdf> [<https://perma.cc/Z7EX-GBJ3>].

<sup>2</sup> DHS Secretary Alejandro Mayorkas, *Memorandum: DHS Plans for Southwest Border Security and Preparedness*, 11 (Apr. 26, 2022), [https://www.dhs.gov/sites/default/files/2022-04/22\\_0426\\_dhs-plan-southwest-border-security-preparedness.pdf](https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf) [<https://perma.cc/6HFD-XFBU>].

<sup>3</sup> Isaac Arnsdorf, Nick Miroff, & Josh Dawsey, *Trump and Allies Planning Militarized Mass Deportations, Detention Camps*, Washington Post (Feb. 21, 2024), <https://www.washingtonpost.com/politics/2024/02/20/trump-mass-deportations-immigration/>; Charlie Savage, Maggie Haberman, Jonathan Swan, *Sweeping Raids, Giant Camps and Mass Deportations: Inside Trump’s 2025 Immigration Plans*, NY Times (Nov. 11, 2023), <https://www.nytimes.com/2023/11/11/us/politics/trump-2025-immigration-agenda.html>.

<sup>4</sup> Savage, et al., *supra* note 3.

<sup>5</sup> *Id.*

<sup>6</sup> Arnsdorf et al., *supra* note 3.

social media platforms, “Know Your Rights” documents, and other educational and informational materials. ACLU SoCal regularly submits FOIA requests to DHS and other agencies – including, for example, on ICE’s policies and practices for worksite immigration enforcement, and USCIS’s policies and practices for the adjudication of naturalization applications – and publicizes the information it obtains through its website, newsletters, reports and “Know Your Rights” presentations and materials.

### **III. Definitions**

For the purpose of this Request, the terms listed below are defined as follows:

“DOCUMENTS” has the same scope used in Rule 34(a)(1) of the Federal Rules of Civil Procedure and shall encompass every writing or record of every type and description and every tangible thing that is or has been in the possession, custody, or control of the federal agency or agencies that are the subject of this request and their employees, to which they have access, or of which they have knowledge, including, but not limited to, newspaper articles, magazine articles, news articles, correspondence, letters, contracts, files, electronic mail, memoranda, stenographic notes, handwritten notes, drafts, studies, publications, books, pamphlets, catalogs, purchase orders, receipts, advertisements, direct mail solicitations, point-of-sale and point-of-purchase materials, notebooks, diaries, models, devices, pictures, photographs, films, audiotapes, videotapes, computer records, voice recordings, maps, reports, surveys, minutes, data compilations, and statistical compilations, regardless of whether a particular DOCUMENT is privileged or confidential, and regardless of the form of storage (including, but not limited to, paper, microfiche, magnetic tape, magnetic disk (hard disk or floppy disk), CD-ROM, DVD, optical disk, or electronic storage device).

“CBP” means U.S. Customs and Border Protection, and any components, subcomponents, offices, or personnel therein.

“DHS” means the U.S. Department of Homeland Security, and any components, subcomponents, offices, or personnel therein.

“CRCL” means the DHS’s Office of Civil Rights and Civil Liberties, and any components, subcomponents, offices, or personnel therein.

“OIDO” means the DHS’s Office of the Immigration Detention Ombudsman, and any components, subcomponents, offices, or personnel therein.

“DOD” means the U.S. Department of Defense, and any components, subcomponents, offices, or personnel therein.

“DETENTION STANDARDS” means any set of requirements, regulations, or guidelines involving medical care, mental health care, dental care, access to counsel, visitation, searches of people’s bodies or their possessions, shackling, food, water, telephones, programming, library access, or religious services for people detained in a facility, including CBP’s National Standards on Transport, Escort, Detention, and Search (TEDS).

### **IV. Records Requested**

This Request seeks:

1. DOCUMENTS sufficient to show all DETENTION STANDARDS that have applied, from January 1, 2019 through the present, to people who are held in DHS custody at CBP's temporary soft-sided facilities in Texas, including, but not limited to facilities in the Rio Grande Valley, Laredo, and Del Rio, Texas sectors.
2. CBP contracts or agreements in effect from January 1, 2019, to the present, for temporary soft-sided facilities, including, but not limited to their construction and use, equipment, rent, utilities, and support services such as meals, medical care, childcare, and janitorial services.<sup>7</sup>
3. All inspection and investigative reports from CRCL examinations of temporary soft-sided detention facilities under the auspices of CBP from January 1, 2019 to the present, excluding personal identifying information about employees and detainees of detention facilities.
4. All inspection and investigative reports from OIDO examinations of temporary soft-sided detention facilities under the auspices of CBP from January 1, 2019 to the present, excluding personal identifying information about employees and detainees of detention facilities.
5. CBP's assessments of DOD sites for additional temporary soft-sided facilities, including, but not limited to the assessment referenced in DHS Secretary Mayorkas's April 26, 2022 Memorandum titled "DHS Plan for Southwest Border Security and Preparedness."<sup>8</sup>

Please construe this as an ongoing FOIA request, so that any records that come into the possession of the agency prior to your final response to this FOIA request should also be considered within the request's scope.

### **III. Fee Waiver Request**

Requestor requests that any fees associated responding to its FOIA request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k). Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), fees should be waived or reduced if disclosure is (1) in the public interest because it is "likely to contribute significantly to public understanding of the operations or activities of the government" and (2) "not primarily in the commercial interest of the requester." Disclosure in this case meets both of these tests. Requestor also requests a waiver or reduction of fees on the grounds that it qualifies as "representative[s] of the news media" and the

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<sup>7</sup> See DHS Office of Inspector General, *CBP Could Do More to Plan for Facilities Along the Southwest Border* 1 (2023), <https://www.oig.dhs.gov/sites/default/files/assets/2023-09/OIG-23-45-Aug23.pdf> (noting that "CBP awarded contracts for temporary soft-sided facilities . . . From FY 2019 through FY 2022, CBP funded contract task orders totaling more than 1.27 billion for temporary facilities, which also included support services such as meals, medical care, childcare, and janitorial services.")

<sup>8</sup> DHS Secretary Alejandro Mayorkas, *Memorandum: DHS Plans for Southwest Border Security and Preparedness*, 11 (Apr. 26, 2022), [https://www.dhs.gov/sites/default/files/2022-04/22\\_0426\\_dhs-plan-southwest-border-security-preparedness.pdf](https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf) [<https://perma.cc/6HFD-XFBU>].

records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(d)(1).

***A. Disclosure is in the public interest as it is likely to contribute significantly to the public's understanding of the operations and activities of government.***

*First*, disclosure pursuant to this Request is in the public interest. CBP's use of temporary, soft-sided facilities have prompted active concern and attention from the media and advocates. The media has widely documented the construction of these temporary detention facilities in Texas,<sup>9</sup> as well as the private corporations who have accepted contracts for such facilities.<sup>10</sup> Media outlets have reported on concerns regarding conditions of confinement at these facilities, including lack of medical attention, sexual abuse, COVID-19 and lice outbreaks, and hunger, particularly for children held at these facilities.<sup>11</sup>

In addition, Presidential-candidate Trump's proposed mass detention camps, through use of tent detention facilities in Texas, has attracted significant interest from advocates, lawmakers, and the public.<sup>12</sup>

Given current concerns regarding these facilities, as well as Trump's and his associated policy makers' clear intent to establish new mass detention camps in Texas, the public has a substantial interest in learning about existing contracts, standards, conditions, and policies regarding CBP soft sided temporary detention facilities.

***B. Disclosure is not primarily in the commercial interest of the Requestor.***

*Second*, Requestor is not filing this request to further a commercial interest. The Requestor is a 501(c)(3) nonprofit organization that intends to disseminate the information gathered by this

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<sup>9</sup> Erika Esquivel, *CBP's Tent-Like Facility in Northeast El Paso to Open in Mid-January*, CBS4News (Dec. 28, 2022), <https://cbs4local.com/news/local/cbps-tent-like-facility-in-northeast-el-paso-to-open-in-mid-january-migrants-texas-us-54-mesquite-hills-immigration-border-wall-title-42-supreme-court-dhs-alejandro-mayorkas-12-27-2022>; Nicole Chavez, *Inside the New Border Patrol Tent Facility for Migrants in Tornillo, Texas*, CNN (Aug. 16, 2019), <https://www.cnn.com/2019/08/16/politics/tornillo-texas-border-facility/index.html>; Helene Cooper & Zolan Kanno-Youngs, *Pentagon to Build Temporary Shelter for 7,500 Migrant Adults Facing Deportation*, NY Times (May 22, 2019), <https://www.nytimes.com/2019/05/22/us/politics/pentagon-border-deportation.html>; Christoph Koettl, et al., *A \$37 Million Temporary Fix: U.S. Builds 2 New Migrant Detention Centers*, N.Y. Times (May 2, 2019), <https://www.nytimes.com/video/us/10000006478883/migrant-detention-tents-texas.html>; Julia Ainsley, *Trump Admin's "Tent Cities" Cost More Than Keeping Migrant Kids with Parents*, NBC News (Jun. 20, 2018), <https://www.nbcnews.com/storyline/immigration-border-crisis/trump-admin-s-tent-cities-cost-more-keeping-migrant-kids-n884871>; Reynaldo Leanos Jr., *Inside Texas's New Migrant Tent Facility*, NPR (May 3, 2019), <https://www.npr.org/2019/05/03/719927985/inside-texas-new-migrant-tent-facility>.

<sup>10</sup> *See, e.g.* Charles P. Pierce, *Housing Migrants is a For-Profit Business. Members of Congress Are Doing Their Part* (Jun. 25, 2019), Esquire, <https://www.esquire.com/news-politics/politics/a28181070/migrant-child-tent-detention-facilities-for-profit/>.

<sup>11</sup> *See, e.g.* Anna Flagg & Julia Preston, *"No Place for a Child": 1 in 3 Migrants Held in Border Patrol Facilities is a Minor*, Politico (Jun. 16, 2022), <https://www.politico.com/news/magazine/2022/06/16/border-patrol-migrant-children-detention-00039291>; Hilary Anderson, *"Heartbreaking" Conditions in U.S. Migrant Child Camp*, BBC News (Jun. 22, 2021), <https://www.bbc.com/news/world-us-canada-57561760>; BBC, *Child Migrants: First Photos of Biden-Era Detention Centers*, Mar. 22, 2021, <https://www.bbc.com/news/world-us-canada-56491941>.

<sup>12</sup> *See, e.g.* Arnsdorf, et al., *supra* note 3; Savage et al., *supra* note 3; Ed Pilkington, *Mass Deportations, Detention Camps, Troops on the Street: Trump Spells out Migrant Plan*, The Guardian (May 3, 2024), <https://www.theguardian.com/us-news/article/2024/may/03/trump-mass-deportations-detention-camps-military-migrants>.

request to the public at no cost, including through the Requestor's website and social media. The ACLU SoCal regularly disseminates information to its members through action alerts, emails and newsletters (the ACLU SoCal has more than 28,000 members). *See* <http://www.aclusocal.org/about/>. Requestor may also compile a report or other publication on the government's treatment of immigrants based on information gathered through this FOIA. Requestor has repeatedly used information gathered through FOIA to disseminate information to the public through such forums. *See, e.g.*, <http://www.aclu.org/immigrants-rights/immigrant-detainee-rights-are-routinely-systematically-violated-new-report-finds> (ACLU SoCal report based on documents disclosed through FOIA). *See also* <http://www.aclusocal.org/about/report-directory/> (compiling recent ACLU SoCal reports). For example, based on information obtained from a February 2018 FOIA for records about ICE's practice of misrepresenting or concealing their identity when conducting enforcement actions, ACLU SoCal has both sued to stop this practice and provided community resources on it.<sup>13</sup> Thus, the records requested are not sought for commercial use and Requestor plans to disseminate the information disclosed as a result of this Request to the public at no cost.

***C. Requestor also qualifies for a fee waiver because it is a representative of the news media and the records are not sought for commercial use.***

Requestor is also entitled to a waiver of search fees on the grounds that it qualifies as “representative[s] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II); 28 C.F.R. § 16.10(c)(1)(i). Requestor meets the statutory and regulatory definitions of “representative[s] of the news media” because it 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)(III); *see also Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) (non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees). Courts have reaffirmed that nonprofit requestors who are not traditional news media outlets can qualify as representatives of the new media for the purposes of the FOIA, including after the 2007 amendments to the FOIA. *See ACLU of Washington v. U.S. Dep't of Just.*, No. C09-0642RSL, 2011 WL 887731, at \*18 (D. Wash. Mar. 10, 2011) (finding that the ACLU qualifies as a “representative of the news media”).

In sum, because disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the Requestor, and Requestor is a representative of the news media, Requestor is entitled to a total waiver of fees associated with this Request and should, in no event, be required to pay more than reasonable standard charges for document duplication. In the event that you decide not to waive the fees, please provide us with prior notice so that we can discuss arrangements.

**IV. Expedited Processing Request**

Requestor requests expedited processing of this Request pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). There is a “compelling need” for these records, as defined in

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<sup>13</sup> *See* ACLU of S. Cal., *Kidd v. Mayorkas* (last visited Aug. 2, 2024), <https://www.aclusocal.org/en/cases/kidd-v-mayorkas> (describing lawsuit and case developments); ACLU of S. Cal., *ICE Not Welcome: Verify, Document, and Report* (last visited Aug. 2, 2024), <https://www.aclusocal.org/icenotwelcome> (community resources).

the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(1)(ii).

***A. Requestor is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.***

Requestor is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). As detailed *supra*, Requestor has the ability and intention to widely disseminate the requested information through a variety of sources, including reports, newsletters, news briefings, right-to-know handbooks, and other materials, to the public at no cost. Indeed, obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor’s work and are among its primary activities. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”). Moreover, as mentioned *supra*, Requestor intends to distribute the information obtained through this FOIA request via its website and/or other means available to it.

***B. The records sought are urgently needed to inform the public about actual or alleged government activity.***

The requested records are also urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, the requested records pertain to CBP’s use of temporary, soft-sided detention facilities to hold migrants in Texas. As described *supra*, this is a matter of widespread media and public interest, including as it pertains to presidential candidate Trump’s plans, and the requested records will inform the public concern about this general subject. *See* 5 U.S.C. § 552(a)(6)(E)(i)(I).

Furthermore, denial of expedited disclosure of the requested records 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); 6 C.F.R. § 5.5(e)(1)(i). The prospect of using temporary tent facilities to detain noncitizens presents a serious threat of harm. As described above, people, including children, have faced lack of medical attention, sexual abuse, COVID-19 and lice outbreaks, and hunger at these facilities.<sup>14</sup>

Thus, the records that Requestor would proactively informing the public in a manner that can serve to reduce the threat of harm to individuals who may be detained at those facilities. Without such transparency, individuals fleeing to the United States may continue to suffer from unsafe conditions without adequate oversight or accountability. Given the foregoing, Requestor has satisfied the requirements for expedited processing of this Request.

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<sup>14</sup> *See, e.g.* Flagg, *supra* note 11; Anderson, *supra* note 11.



I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi); 6 C.F.R. § 5.5(e)(3).

**VII. Conclusion**

Thank you for your prompt attention to this Request. We look forward to your reply to this Request within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii) and 6 C.F.R. § 5.5(e)(4).

Please call me at (909) 380-7505 or email me at [ebitran@aclusocal.org](mailto:ebitran@aclusocal.org) if you have any questions or wish to obtain further information about the nature of the records in which we are interested. Please furnish the applicable records via email ([ebitran@aclusocal.org](mailto:ebitran@aclusocal.org)).

If the records must be sent via U.S. Mail, please send to the following address:

Eva Bitran  
ACLU of Southern California  
1313 W. 8th Street  
Los Angeles, CA 90017

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny a waiver of fees.

Sincerely,



Eva Bitran  
ACLU of Southern California  
1313 W. 8th Street  
Los Angeles, CA 90017