



**Homeland  
Security**

*Privacy Office, Mail Stop 0655*

February 13, 2020

**SENT BY E-MAIL TO: [echo@aclu.org](mailto:echo@aclu.org)**

Eunice Cho  
915 15th Street NW  
7th Floor  
Washington, DC 20005

Re: 2020-HQFO-00284

Dear Ms. Cho:

This is the final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated December 6, 2019, and received by this office on December 6, 2019. You are seeking the following:

1. Any and all records related to the identification, classification, treatment, and care of pregnant persons apprehended by CBP, subject to secondary screening, extended questioning, an enforcement examination, or detention by CBP, or in CBP custody, including, but not limited to TEDS Sections 3.9, 4.2, 5.1, 5.5, 5.6, and 5.7.;
2. Any and all records related to the identification, classification, treatment, and care of survivors or victims of sexual assault apprehended by CBP, subject to secondary screening, extended questioning, an enforcement examination, or detention by CBP, or in CBP custody;
3. Any and all records related to the use of restraints on pregnant people, or people in active labor, delivery, or post-delivery recuperation in CBP custody;
4. Any and all records related to the custody, classification, treatment, or care of pregnant people or people in active labor under or subject to the Migrant Protection Protocols;
5. Any and all records, including, but not limited to, any databases, spreadsheets, lists, and other data compilations, that reflect the following:
  - a. The total number of individuals in CBP custody identified as pregnant while in CBP custody, including any lists broken down by month and/or facility at which the individual was housed.
  - b. The total number of individuals in CBP custody who gave birth while in CBP custody,

including any lists broken down by month and/or facility at which the individual was housed.

c. The total number of individuals in CBP custody who had a miscarriage while in CBP custody, including any lists broken down by month and/or facility at which the individual was housed.

d. The total number of individuals in CBP custody who terminated a pregnancy while in CBP custody, including any lists broken down by month and/or facility at which the individual was housed.

e. The total number of pregnant individuals apprehended by CBP, including any lists broken down by month and/or location of the apprehension.

f. The total number of pregnant individuals under or subject to the Migrant Protection Protocols;

6. Any and all records, including significant incident reports (SIRs) and associated documentation, regarding the identification, care, and treatment of individuals who are pregnant, postpartum, who recently had a miscarriage or who recently had a terminated pregnancy in CBP custody;

7. Any and all records, including significant incident reports (SIRs) and associated documentation, regarding the identification, care, and treatment of individuals who are pregnant, postpartum, who recently had a miscarriage or who recently had a terminated pregnancy and who are subject to MPP;

8. Any and all records documenting the use of restraints on pregnant people, people in active labor, delivery, or post-delivery recuperation in CBP custody;

9. Any and all records regarding the request or provision of preventative contraception, emergency contraception, or abortions to people in CBP custody;

10. All press releases, statements, post-investigation reports, summaries, or records of communication within federal agencies or federal agencies and local agencies or federal agencies and Mexican government officials containing, describing, referring to, or revealing information related to pregnant people, or people in active labor, delivery, or post-delivery recuperation in CBP custody or subject to the MPP; and

11. Any and all records related to an investigation of the treatment of pregnant people, or people in active labor, delivery, or post-delivery recuperation in CBP custody or subject to the MPP by the DHS Office of Inspector General, the DHS Office for Civil Rights and Civil Liberties, or the CBP Office of Professional Responsibility.

Please note our office only conducted a search for **item #11** of your request.

A search of the Department of Homeland Security, Office of Civil Rights and Civil Liberties (CRCL) for documents responsive to your request produced a total of 20 pages. Of those pages, I have determined the pages are partially releasable pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(A), (b)(7)(C), and (b)(7)(E).

Enclosed are 20 pages with certain information withheld as described below:

**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(A)** protects from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. I have determined that the information you are seeking relates to an ongoing criminal law enforcement investigation. Therefore, I am withholding all records, documents, and/or other material, which if disclosed prior to completion, could reasonably be expected to interfere with law enforcement proceedings and final agency actions related to those proceedings. Please be advised that once all pending matters are resolved and FOIA Exemption 7(A) is no longer applicable, there may be other exemptions which could protect certain information from disclosure, such as FOIA Exemptions (6), 7(C), 7(D), and 7(E).

**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.

**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 determined that disclosure could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

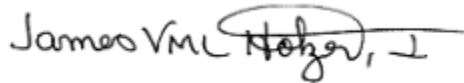
You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to:

Privacy Office, Attn: FOIA Appeals, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0655, Washington, D.C. 20528-0655, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS FOIA regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

Provisions of FOIA allow DHS to charge for processing fees, up to \$25, unless you seek a waiver of fees. In this instance, because the cost is below the \$25 minimum, there is no charge.

If you need any further assistance or would like to discuss any aspect of your request, please contact our FOIA Public Liaison and refer to **2020-HQFO-00284**. You may send an e-mail to [foia@hq.dhs.gov](mailto:foia@hq.dhs.gov), or call 202-343-1743 or 1-866-431-0486. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates 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. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in black ink that reads "James V. Holzer, Jr." with a stylized flourish at the end.

James Holzer  
Deputy Chief FOIA Officer

Enclosure(s): Responsive Documents, 20 pages