

# Exhibit 3

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

American Immigration Lawyers Association )  
)

*Plaintiff,* )

Case No. 1:16-CV-02470 (TNM)

v. )

U.S. Department of Homeland Security, )  
et al. )

*Defendants.* )

**FOURTH DECLARATION BY PATRICK HOWARD**

1. I am a Branch Chief in the Freedom of Information Act (“FOIA”) Division at U.S. Customs and Border Protection (“CBP”). I have been a Branch Chief in the FOIA Division in Washington, D.C. since February 8, 2015. I oversee a staff of eight Government Information Specialists and the processing of FOIA requests submitted to CBP and, thus, am familiar with CBP’s procedures for responding to FOIA requests. I provide technical and administrative supervision and direction to a group of FOIA specialists in processing FOIA requests, assist with FOIA/Privacy Act (“PA”) litigation matters, and am personally familiar with the processing of FOIA/PA responses, including by, at times, directly reviewing responses for adequacy and adherence to federal laws and regulations.
2. I am familiar with the FOIA request dated July 10, 2013 (“the Request”) submitted by the American Immigration Lawyers Association (“AILA”).

3. The purpose of this declaration is to explain withholdings pursuant to FOIA exemptions (b)(6), (b)(7)(C) and (b)(7)(E). This declaration summarizes the relevant facts and releases made by CBP and explains the reasons for applying FOIA exemptions.
4. The statements I make in this declaration are based on my personal knowledge, which includes knowledge acquired through information furnished to me in the course of my official duties as Branch Chief in CBP's FOIA Division, and agency files that I personally reviewed in the course of my official duties.

### **Plaintiff's FOIA Request**

5. On July 10, 2013 Plaintiff filed the instant FOIA request via CBP's online FOIA system. On June 10, 2016 Plaintiff filed the administrative appeal of the Request. On December 19, 2016 Plaintiff commenced the instant lawsuit.
6. Plaintiff's FOIA sought disclosure of records related to the CBP's Officer Reference Tool ("ORT"). In particular, Plaintiff sought records related to the following:
  - Instructions to the field/ports-of-entry regarding the discontinuation of the CBP Inspector's Field Manual (IFM) as a reference tool for CBP field personnel during the inspection and admission of individuals at United States air, land and sea ports-of-entry, including pre-clearance offices located outside the United States.
  - Instructions to the field/ports-of-entry regarding the implementation of the new CBP Officer's Reference Tool (ORT) for use during the inspection and admission of individuals at United States air, land and sea ports-of-entry, including preclearance offices outside the United States.
  - A complete copy of the portions of the ORT that have been finalized and implemented for use in the field/ports-of-entry. We ask that this FOIA request be treated as a "rolling" request and that copies of future sections of the ORT be released as they are finalized and implemented.
7. In response to Plaintiff's FOIA Request, CBP released 366 responsive, non-exempt records. Out of the 366 records, 363 records were policies and memoranda from Chapter

11 of ORT, two were screenshots from Chapters 11 and 12, and one was a memorandum instruction to CBP field offices.

8. In addition, on May 30, 2019, CBP partially released to Plaintiff additional 33 documents – out of which 30 documents were released as a result of a search in PODS, and three documents were released following the third agency review process. In a letter accompanying the release, CBP explained that it located 39 additional documents in Policy Online Document System (PODS). *See* Exhibit A. Out of the 39 documents, CBP explained that three documents were duplicates, and three documents were publicly available. CBP also advised the Plaintiff that it was withholding 2<sup>1</sup> documents in full pursuant to 5 U.S.C. § 552 (b)(6), (b)(7)(C), and (b)(7)(E). CBP partially released 30 documents from PODS. CBP also advised that it had completed the third agency review process for the documents from the ORT and partially released three documents, while withholding two documents in full pursuant to 5 U.S.C. § 552 (b)(7)(E).
9. CBP did not charge any fees to Plaintiff for this request.
10. On July 15, 2019, CBP provided Plaintiff a *Vaughn* document index detailing exemptions applicable to the records released to Plaintiff. *See* Exhibit B.
11. On July 31, 2019, upon further review, CBP released 6 documents to Plaintiff with revised redactions.
12. On September 19, 2019, Plaintiff provided CBP with a list of 143 documents for which it intended to challenge CBP's withholdings.
13. CBP reviewed the list the Plaintiff provided and on September 23, 2019, CBP released 10 documents to Plaintiff with revised redactions. Plaintiff agreed not to challenge CBP's

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<sup>1</sup> CBP advised the Plaintiff that it was referring one document to a third agency. CBP withheld that document in full, as documented in the ORT Document Index, Exhibit B, p. 245.

withholdings in those documents. On October 17, 2019, CBP released 62 additional documents with revised redactions. Plaintiff agreed not to challenge CBP's withholdings in 58 of those documents.

### **CBP's Withholdings Pursuant to FOIA Exemptions**

14. It is my understanding that Plaintiff challenges CBP's withholdings in 75 documents released by CBP. CBP withheld material pursuant to FOIA Exemptions (b)(6), (b)(7)(C), and (b)(7)(E).

*a. 5 U.S.C. § 552(b)(6) and 5 U.S.C. § 552(b)(7)(C): Personally Identifiable Information (PII)*

15. Exemption (b)(6) exempts from mandatory disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." This protection is afforded to information that would infringe on the personal privacy of individuals about whom it pertains. The determination whether disclosure "would constitute a clearly unwarranted invasion of personal privacy" involves a balancing of the public's right to know the information against the individual's right to privacy.

16. Exemption (b)(7)(C) exempts from mandatory disclosure "records or information compiled for law enforcement purposes" the disclosure of which "could reasonably be expected to constitute an unwarranted invasion of personal privacy." This exemption protects, among other information, the identity of law enforcement personnel and third parties referenced in files compiled for law enforcement purposes. The exemption is intended to protect law enforcement personnel from harassment and annoyance in their private lives due to the conduct of their official duties, which could conceivably result from public disclosure of their identity. In asserting this exemption, each piece of

information was scrutinized to determine the nature and strength of any individual's privacy interest. In withholding the information, the individual's privacy interest is balanced against the public's interest in disclosure. In each instance, it was determined that whatever public interest there might be, if any, in knowing the personal information of the individuals identified in the relevant records did not outweigh the privacy interests of said individuals.

17. In this case, the exemptions (b)(6) and (b)(7)(C) have been applied to personally identifiable information such as names, phone numbers, email addresses, and work addresses of CBP employees whose names have been provided as points of contact for the directives and policies released to Plaintiff s. CBP did not, apply Exemptions (b)(6) and (b)(7)(C) as a categorical matter to all such information. For example, CBP released names of senior officials whose identities are widely known among the public. However, CBP applied exemptions (b)(6) and (b)(7)(C) to handwritten signatures of senior officials at CBP, whose names were not otherwise redacted.
18. Individual's right to have his or her identity withheld from disclosure clearly outweighs the public interest, if any, in knowing the withheld information described in the paragraph above. First, the identification of CBP officials in association with the performance of their duties in an operational context risks unwarranted attribution and attention to the employee beyond the confines of their job and into their personal life, and disclosing the identities of these specific individuals would not meaningfully shed light on how the government performs its duties. To reveal the withheld information would constitute a clearly unwarranted invasion of personal privacy.

***b. 5 U.S.C. § 552(b)(7)(E): Records Or Information Compiled For Law Enforcement Purposes***

19. Exemption (b)(7)(E) exempts from mandatory disclosure “records or information compiled for law enforcement purposes” that, if released, “would disclose techniques and 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.” CBP is constrained in describing the techniques, procedures, and guidelines by its Exemption (b)(7)(E) withholdings, so as to avoid revealing information CBP seeks to protect, which is not generally known to the public. The discussion below thus aims to fairly represent the Exemption (b)(7)(E) withholdings but does not purport to be an all-inclusive rendering of all withheld information.
20. Under Exemption (b)(7)(E), investigative techniques and procedures are afforded categorical protection; guidelines are protected when their disclosure could reasonably be expected to risk the circumvention of law and regulations, impede effectiveness of law enforcement activities or associations, or endanger CBP investigatory practices and techniques. Even commonly known techniques and procedures may be protected where the circumstances of their usefulness are not widely known. Here, disclosure of the information withheld pursuant to this exemption would advise potential violators of CBP law enforcement guidelines, techniques and procedures, thereby enabling them to circumvent the law, avoid detection, and evade apprehension.
21. CBP invoked Exemption (b)(7)(E) to withhold the following types of information:
  - (i) *Codes and Functionalities of CBP Systems*

CBP withheld under Exemption (b)(7)(E) the names of certain databases not known to public, internal system codes, screenshots, functionalities, and information on how to use CBP's law enforcement systems. Disclosure of such information could be used to locate, access, and navigate internal law enforcement computer systems and/or databases, reveal the results of database queries that CBP officers perform and risk compromising the integrity of CBP systems.

*(ii) Training Materials for Users of CBP Systems*

CBP withheld under Exemption (b)(7)(E) training materials that Office of Field Operations provides to CBP Officers on how to use CBP's law enforcement systems. Such materials contain detailed instructions on how to enter information, navigate, conduct queries and use CBP systems. Such information would reveal types and location of information CBP gathers, analyzes and utilizes within such databases making them vulnerable to cyber-attacks. Disclosure of such information would allow wrongdoers to gain unauthorized access to CBP systems and databases and manipulate information available to CBP officers.

*(iii) Email Addresses of Group Listserves*

CBP withheld email addresses of group list serves which are not known to the public and only used within the agency, because disclosure of that information would reveal the means by which CBP communicates law enforcement information and could reasonably be expected to risk compromising the integrity of those email communications.

*(iv) Law Enforcement Methods for Processing Passengers at Ports of Entry*

CBP withheld under Exemption (b)(7)(E) law enforcement techniques and procedures, including officer instructions not generally known to the public, that CBP uses at ports of entry for examination and inspection of international travelers. For example, CBP withheld



instructions for CBP officers on (1) specific topics for questioning travelers seeking admission into the United States, (2) criteria CBP uses to determine which passengers require further scrutiny, (3) processing individuals who are identified to pose national security risk, (4) detecting fraudulent travel documents, or identifying individuals who seek admission into the United States using fraudulent schemes, (5) detecting individuals engaging in criminal activity, such as human trafficking, alien smuggling, or smuggling illegal substances.

Disclosure of such information would allow individuals to circumvent CBP's efforts, alter behavior, change associations, or develop countermeasures to thwart the effectiveness of CBP's law enforcement efforts. In addition, such information would advise potential violators of CBP's law enforcement techniques and procedures for assessing risk, thereby enabling them to circumvent the law, avoid detection, and evade apprehension.

(v) *Information Related to Targeting*

CBP applied Exemption (b)(7)(E) to information which relates to CBP's process for assessing risk on travelers seeking to enter the United States. This includes information regarding ongoing investigations or investigative techniques and procedures. Disclosure of such information would advise potential violators of CBP's law enforcement techniques and procedures for assessing risk, thereby enabling them to circumvent the law, avoid detection, and evade apprehension. Moreover, revealing information regarding ongoing investigations would thwart CBP's law enforcement efforts and risk individuals circumventing CBP's future efforts. Even commonly known techniques and procedures may be protected where the circumstances of their usefulness are not widely known.

**Determination Regarding Segregability**

22. All information CBP has withheld is exempt from disclosure pursuant to a FOIA exemption or is not reasonably segregable-whether because it is so intertwined with protected material that segregation is not possible, or its release would have revealed the underlying protected material. In responding to AILA requests in this case, CBP analysts and attorneys reviewed each release of records line-by-line to confirm that any withholdings were proper, examine whether any discretionary waiver of an exemption was warranted, and determine whether any segregable, non-exempt information could further be released. All reasonably segregable portions of the relevant records have been released to AILA.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed: November 14, 2019

*Patrick Howard*  
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PATRICK HOWARD  
FOIA Division  
Privacy and Diversity Office  
Office of the Commissioner  
U.S. Customs and Border Protection  
U.S. Department of Homeland Security