

January 27, 2023

Lynn Parker Dupree
Chief Privacy Officer and Chief FOIA Officer
Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. Avenue, SE
Washington, DC 20528

Via: Department of Homeland Security Freedom of Information Act SecureRelease submission portal

Re: Freedom of Information Act Request

Dear Ms. Dupree:

This is a request to several headquarters offices and operational components of the United States Department of Homeland Security (DHS) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and DHS implementing regulations, 6 C.F.R. §§ 5.1 through 5.13.

Background

In recent years, the United States Government has targeted what it describes as “non-traditional collectors,” or persons whose primary profession is not intelligence collection, whom it claims have infiltrated our society to steal American intellectual property and scientific knowledge on behalf of a foreign government. The best-known example of this work is the Department of Justice’s now-defunct China Initiative, a program the government has described as “protecting our critical infrastructure against external threats” and ensuring that foreigners in the United States not be “coopted into transferring technology contrary to U.S. interests.”¹

¹ *Information About the Dept. of Justice’s China Initiative and a Compilation of China-Related Prosecutions Since 2018*, U.S. DEP’T OF JUST. (Nov. 19, 2021), <https://www.justice.gov/archives/nsd/information-about-department-justice-s-china-initiative-and-compilation-china-related>.

While DOJ's programs have been publicly documented, little is known about DHS's potential work in this area, aside from references in testimony² and congressional reporting³ on operations that appear to serve similar ends of rooting out "foreign threats" to American research institutions. This framing, as is quickly borne out in the testimony, is typically a thinly veiled proxy for a singular focus on the government and people of China; at the very least, DHS appears to demonstrate an interest in assessing the relationship between foreign persons and American researchers. Supported by the vast data that DHS either holds or accesses and justified by its role in screening and approving immigrant travel and its connections with cybersecurity and national security research, DHS has programs that appear to serve the same ends as the DOJ's China Initiative.

At least five such programs exist within the Department of Homeland Security based on limited publicly available information. First, the Domestic Mantis Program or Domestic Mantis Initiative is a Homeland Security Investigations (HSI) program that looks into foreign students in the United States who shifted from a "nonsensitive" to a "sensitive" field of study, and whom the department asserts "could pose a substantial risk related to the diversion of sensitive technology, materials, or information."⁴ The second program, Project Steady Stare, appears to build on this effort.⁵

Third, HSI describes the Stellar Sunrise Project as a "rebrand" of some of this work in partnership with other DHS and federal government agencies, allowing it to reach further into the lives of nonimmigrant visa holders, and their spouses and dependents.⁶

Fourth, DHS's Forbidden Secrets initiative purported to investigate "visa fraud and threat actor attempts to utilize non-traditional methods of acquiring U.S. Government-funded academic research and developmental technology," and a former Secretary gave

² *Foreign Threats to Taxpayer-Funded Research: Oversight Opportunities and Policy Solutions: Hearing Before the S. Comm. on Finance*, 116th Cong. (2019) (statement of Louis A. Rodi III, deputy assistant director, Nat'l Sec. Investigations Div., U.S. Immigration and Customs Enf't), <https://www.finance.senate.gov/download/foreign-threats-to-taxpayer-funded-research-oversight-opportunities-and-policy-solutions>.

³ Immigration and Customs Enf't, *Visa Overstay Enforcement Investigations Expenditure Plan*, U.S. DEP'T OF HOMELAND SEC. (Aug. 1, 2016), at 4-5, <https://www.dhs.gov/sites/default/files/publications/Immigration%20and%20Customs%20Enforcement%20-%20Visa%20Overstay%20Enforcement%20Investigations%20Expenditure%20Plan.pdf>.

⁴ *Id.* at 5.

⁵ Rodi, *supra* note 2, at 51.

⁶ *Id.* at 51, 53.

personnel of the Office of Intelligence and Analysis and U.S. Customs and Border Protection an award for their work.⁷

Fifth, Project Campus Sentinel looks to be an Immigration and Customs Enforcement program “directed toward academic institutions that are approved by HSI to enroll nonimmigrant students,” for which the department claims that it partners with academic institutions to “proactively combat student visa exploitation and address inherent national security vulnerabilities in academia.”⁸

We file this request to understand and inform the American public about these programs.

FOIA Request

The Brennan Center for Justice (“the Brennan Center”) specifically requests all records that were in DHS’s possession or control from January 1, 2016, through the date of the production of records, that relate to, describe, or discuss the following programs:

1. Domestic Mantis Program or Domestic Mantis Initiative (DM);
2. Forbidden Secrets;
3. Project Campus Sentinel (PCS);
4. Project Steady Stare (PS2); and
5. Stellar Sunrise Project (SSP).

This request seeks all records about the above programs, with respect to each program or multiple programs in any combination, including but not limited to:

- A. Operational documents, such as concepts of operations, operations proposals, approval and decision memoranda, plans, job aids, and decision matrices;
- B. Policy documents;
- C. Legal analyses;
- D. Civil rights, civil liberties, or privacy assessments;
- E. Information sharing agreements or arrangements with non-DHS agencies, including federal, state, local, and foreign agencies;

⁷ *The Secretary’s Award for Unity of Effort 2019*, U.S. DEP’T OF HOMELAND SEC., <https://www.dhs.gov/unity-effort-2019> (last updated Nov. 14, 2019).

⁸ *Project Campus Sentinel*, U.S. IMMIGRATION AND CUSTOMS ENF’T, <https://www.ice.gov/outreach-programs/campus-sentinel> (last updated Jan. 7, 2021).

- F. Contracting documents with third-party providers (including corporate vendors, federally funded research and development centers, and academics), informational and promotional materials received from such third parties, and any products (see G below) received from such third parties;
- G. Products created by or during a program, such as intelligence reports and cables, tips and leads, memoranda, intelligence assessments, and records relating to immigration or border determinations; and
- H. Emails, including attachments to responsive emails.

This request seeks records regardless of their level of classification, or their draft or final status. And this request seeks records from several DHS entities. Specifically, at DHS headquarters, this is a request for records of the following offices:

- Office for Civil Rights and Civil Liberties;
- Office of the General Counsel;
- Office of Intelligence & Analysis;
- Office of Legislative Affairs;
- Secretary's Office;
- Office of Strategy, Policy, and Plans;
- Privacy Office; and
- Science and Technology Directorate.

It is also a request for the records of the following DHS operational components:

- U.S. Citizenship and Immigration Services;
- U.S. Customs and Border Protection; and
- U.S. Immigration and Customs Enforcement.

Request for Fee Waiver

The Brennan Center respectfully requests a waiver of all fees for document search, duplication, and review associated with this request in accord with 5 U.S.C. §§ 552(a)(4)(A)(ii)-(iii), because disclosure of the records sought is in the public interest, because they are likely to contribute significantly to public understanding of the operations or activities of the federal government's national security, immigration, and law enforcement agencies and operations, and because the Brennan Center has no commercial interest in this information. The Brennan Center is an independent, nonpartisan law and policy organization organized under 26 U.S.C. § 501(c)(3) that works to reform, revitalize, and when necessary, defend the nation's systems of

democracy and justice. The Brennan Center has a demonstrated ability to analyze, synthesize, and report on matters of public concern, in a manner that is available to and reaches the public on a widespread basis.

The Brennan Center qualifies as a “representative of the news media” for the same reasons that it is “primarily engaged in dissemination of information,” because the Brennan Center “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); 28 C.F.R. § 16.10(b)(6); *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 11 (D.C. Cir. 2003). The Brennan Center has released over 100 publications in the form of reports and papers on various issues of public importance in the period since January 2011.⁹ *Cf. Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11-12 (finding that the Electronic Privacy Information Center was representative of the news media based on its publication of seven books about national and international policies relating to privacy and civil rights); *see also Nat’l Sec. Archive*, 880 F.2d at 1386 (deeming National Security Archive a representative of the news media after it published one book and indicated its intention to publish a set of documents on national and international politics and nuclear policy). The Brennan Center is therefore entitled to a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(d)(1).

As a noncommercial requester, the Brennan Center also qualifies for waivers as an “educational institution” pursuant to 28 C.F.R. § 16.10 (c)(1)(i). The Brennan Center qualifies as an educational institution because it is affiliated with the NYU School of Law, which is plainly an educational institution under the definition provided in 28 C.F.R. § 16.10(b)(4). *See also Nat’l Sec. Archive*, 880 F.2d at 1381. Moreover, disclosure is not primarily in the Brennan Center’s commercial interests. *See* 28 C.F.R. § 16.10(d)(1). As stated above, the Brennan Center plans to make any information disclosed as a result of this request available to the public at no cost. A fee waiver would therefore fulfill Congress’s legislative intent that FOIA be “liberally construed in favor of

⁹ For representative examples of the Brennan Center’s previous publications on issues of public concern, *see, e.g.*, Michael Price, *National Security and Local Police*, BRENNAN CTR. FOR JUST. (Dec. 10, 2013), <https://www.brennancenter.org/our-work/research-reports/national-security-and-local-police>; Faiza Patel, et al., *Social Media Monitoring*, BRENNAN CTR. FOR JUST. (May 22, 2019), <https://www.brennancenter.org/our-work/research-reports/social-media-monitoring>; *Social Media Surveillance by Homeland Security Investigations: A Threat to Immigrant Communities and Free Expression*, BRENNAN CTR. FOR JUST. (Nov. 15, 2019), <https://www.brennancenter.org/our-work/research-reports/social-media-surveillance-homeland-security-investigations-threat>; Faiza Patel, et al., *A Course Correction for Homeland Security*, BRENNAN CTR. FOR JUST. (Apr. 20, 2022), <https://www.brennancenter.org/our-work/research-reports/course-correction-homeland-security>; Harsha Panduranga and Faiza Patel, *Stronger Rules Against Bias*, BRENNAN CTR. FOR JUST. (Sept. 15, 2022), <https://www.brennancenter.org/our-work/policy-solutions/stronger-rules-against-bias>.

waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. 27, 190 (1986) (Statement of Sen. Patrick Leahy)).

We look forward to your response within twenty (20) working days from the date you receive this request, as required by 5 U.S.C. § 552(a)(6)(A)(i). Please email the undersigned at lns.foia@brennan.law.nyu.edu if you have any questions. Thank you for your assistance.

Sincerely,

/s/ Spencer Reynolds

Spencer Reynolds
Counsel, Liberty & National Security Program
Brennan Center for Justice at NYU School of Law