

**Feb. 17, 2008**  
**Associate General Counsel (General Law)**  
**U.S. Department of Homeland Security**  
**FOIA Appeals**  
**Washington, DC 20528**

**Re: Freedom of Information Act Appeal**

**FOIA Case Number: 05-OPR-19041**  
**Original DHS Appeal No. 07-133**

Dear Associate General Counsel:

This is an appeal under the Freedom of Information Act as well as the Privacy Act of 1974 as set forth in Title 5, Section 552a, of the *United States Code* (5 U.S.C.552a), as amended.

On June 2, 2005, I requested documents from the Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), under the Freedom of Information Act.

I requested access to and copies of any and all directives, memoranda, letters, e-mails or other records, including written memoranda of telephone conversations, maintained by the Department of Homeland Security, U.S. Customs and Immigration Enforcement (ICE), pertaining to journalist Bill Conroy (myself). In particular, I am seeking such records in relation to ICE Office of Professional Responsibility agent Carlos Salazar and his visits to Mr. Conroy's home (9127 Alpine Trail, San Antonio, Texas 78250) on May 23, 2005, and his visit to Mr. Conroy's work office, the San Antonio Business Journal (70 NE Loop 410, Suite 350, San Antonio, Texas 78216)

Business Journal (70 NE Loop 410, Suite 350, San Antonio, Texas 78216) on May 24, 2005. I am seeking the records in relation to those visits and interviews conducted by Mr. Salazar and his associates both for those days as well as for any other time period related to those visits or its underlying purpose.

On Feb. 27, 2007, I finally received a formal response to my request in a letter signed by Catrina M. Pavlik-Keenan, FOIA officer for U.S. Immigration and Customs Enforcement (ICE). In her response, Ms. Pavlik-Keenan stated the following as the reason for denying my FOIA request:

*It has been determined that the documents you have requested are exempt from disclosure under Exemption 7 (A) of the FOIA.*

*... In reviewing the documents requested by you, I have determined that certain information is law enforcement information properly withheld under Exemption 7A of the FOIA. Exemption 7A of the FOIA authorizes the withholding of records or information compiled for law enforcement purposes when disclosure of that information could reasonably be expected to interfere with enforcement proceedings. Information is being withheld under this provision because (1) a law enforcement proceeding is pending or prospective and (2) release of the information could reasonably be expected to cause some articulable harm.*

I appealed the denial of my FOIA request as rationalized under Exemption 7(a).

On Oct. 15, 2007, I received a response to my appeal from the Office of General Counsel, Department of Homeland Security, indicating that "ICE has informed us that the investigation upon which Exemption (b)(7)(A) was invoked has closed. Accordingly, we are remanding your request back to ICE for processing and direct response to you."

So, some two years and four months after my initial FOIA filing, it appeared that my request would finally be fulfilled, given that all of ICE's stated reasons for withholding the information under FOIA had been resolved in my favor. However, in what appears to be a continuing effort on the part of ICE to stonewall the release of the requested records in defiance of the intent of FOIA, ICE responded to me on Feb. 11, 2008, indicating that the requested records would now be withheld in their entirety due to another set

of newly invoked exemptions to FOIA under the Privacy Act — (see **attached letter from ICE, Exhibit 1.**)

The rational, in short, is that ICE has “determined that the privacy interest of the identities of the individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the documents.”

The Privacy Act exemptions require agencies to strike a balance between an individual's privacy interest and the public's right to know. However, since only a clearly unwarranted invasion of privacy is a basis for withholding, there is a perceptible tilt in favor of disclosure in the exemption. Local 598 v. Department of Army Corps of Engineers, 841 F.2d 1459, 1463 (9th. Cir. 1988.

In addition, the FOIA expressly mandates that any "reasonably segregable portion" of a record must be disclosed to a requester after the redaction of the parts that are exempt.

As importantly, the Privacy Act exemptions only recently invoked in this case must be interpreted in light of the fact that the requestor (in this case me) has a right under the Privacy Act to view the government records because he is a subject of those records. The Privacy Act allows individuals to gain access to their own personal records and to seek correction or amendment of federally maintained records that are inaccurate, incomplete, untimely, or irrelevant.

In this case, the Assistant Secretary for Legislative Affairs for the Department of Homeland Security, in response to a query from a U.S. Congressman, concedes that I was interviewed as a witness in relation to the now-closed ICE OPR investigation (**letter attached, Exhibit 2**). As a result, the records now being denied me contain information about me that I am entitled to receive under the Privacy Act. Likewise, Dean Boyd, a public affairs spokesman for ICE, in a May 26, 2005, e-mail to me (**attached, Exhibit 3**) also confirms that I was interviewed as a “witness” as part of an ICE OPR investigation — which is now closed and not subject to ICE’s originally invoked FOIA exemption.

So clearly, the records ICE is seeking to withhold under Privacy Act exemptions contain information relevant to me and should not be withheld in their entirety since this would violate my rights under the Privacy Act.

The public interest test in this case also is sadly misrepresented in ICE's latest response to my FOIA/PA request. The requested documents are far from having only "minimal public interest," as ICE attempts to argue, absent any evidence to back up that statement.

The attempted questioning of a journalist at his home and workplace, absent a subpoena, and absent a clearly articulated reason for the attempted interrogation other than to coerce the journalist into revealing his sources, raises concerns that the action was, in fact, not part of a legitimate law enforcement activity, but rather a rogue action by the agents or, if authorized at a higher level, such as the U.S. Attorney for the region, an attempt to harass the reporter for pursuing news coverage that was embarrassing to those higher-level officials. **(See attached article, Exhibit 4.)**

As evidence of the high public interest inherent in this case and the records, two U.S. Congressmen wrote letters to the Department of Homeland Security and the Department of Justice requesting justification for the ICE agents' intimidating tactics against a journalist **(attached, Exhibits 2 and 5)**. In addition, the Reporters Committee for Freedom of the Press, a nationally recognized press freedom organization, also addressed a letter **(attached, Exhibit 6)** to the head of Homeland Security asking the department "to adopt guidelines regulating subpoenas of the news media similar to those used for the last three decades by the Department of Justice."

The RCFP specifically referenced my case in a press release distributed to the media concerning its letter to the Homeland Security Secretary.

From the June 8, 2005, RCFP press release **(attached, Exhibit 7)**:

*While journalists do not interact with officials from Homeland Security as much as with those from Justice (which includes the FBI), at least one recent incident involving a DHS employee has caused concern among journalists. After journalist Bill Conroy, who writes for The Narcosphere web site, wrote about a DHS memo that was leaked to him concerning modification of terrorism-related immigration records, agents appeared at his home and later at his office to question him about his source. The web site has called the incident a "botched attempt to intimidate" a journalist.*

In addition, a federal law enforcement organization sent a letter on June 3, 2005, to the Department of Homeland Security Inspector General asking for an investigation of the ICE agents' actions in my case.

From the letter (**attached, Exhibit 8**):

*I am writing on behalf of the Federal Hispanic Law Enforcement Officers Association (FHLEOA) to respectfully request an investigation of the Office of Professional Responsibility (OPR) of the Bureau of Immigration and Customs Enforcement (ICE) for the questionable actions taken by ICE OPR Special Agents regarding Mr. Bill Conroy, an investigative reporter and editor of the San Antonio Business Journal. Their actions appear to have been undertaken as retaliation against Mr. Conroy for his reporting of ICE wrongdoing.*

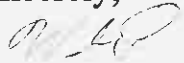
As a result, disclosure of the documents I request is in the public interest because the information is likely to contribute significantly to public understanding of the operations or activities of government. To withhold documents that might shed light on this important matter would not only thwart the underlying intention of the FOIA — as well as my privacy rights under the Privacy Act — but also serve to undermine confidence in the U.S. Justice System itself.

Give the actions to date by ICE in stonewalling the release of the requested information (and its shifting rational under the FOIA and Privacy Act, both of which apply to the requester in this instant case) it appears there is a case to be made that ICE is violating the terms of FOIA in an "arbitrary and capricious" manner and might also be exercising an "abuse of discretion."

Options on the table absent an administrative remedy to this case include legal action requesting an order enjoining the agency from relying on an invalid regulation or practice in all future FOIA undertakings. Cf. McGehee v. CIA, 697 F.2d 1095 (D.C. Cir. 1983); an order declaring the agency's actions to be violative of FOIA; an award of attorney's fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E). In addition, if the actions of the agency are deemed to be so flagrant to be arbitrary and capricious, the court can make a specific finding of that fact and refer the matter to the Merit System Protection Board for investigation. 5 U.S.C. § 552(a)(4)(F).

Given the length of time that this matter has languished in the administrative system to date, I would ask that you take into account the substantial merits of my request and act promptly by ordering release of the records in accordance with my valid claims under FOIA and the Privacy Act.

Sincerely,



Bill Conroy - professional journalist; member SPJ, IRE, SABEW

9127 Alpine Trail  
San Antonio, Texas 78250  
210-392-3662  
wkc6428@aol.com

CC:

Attorney Ronald Tonkin  
2777 Allen Pkwy  
Houston, TX 77019

Lucy Dalglish, Executive Director  
The Reporters Committee for Freedom of the Press  
1101 Wilson Blvd., Suite 1100,  
Arlington, VA 22209

U.S. Rep. Charles Gonzalez  
303 Cannon House Office Building  
Washington, DC 20515-4320

U.S. Rep. Henry Waxman  
2204 Rayburn House Office Building  
Washington, D.C. 20515

U.S. Sen. Chuck Grassley  
135 Hart Senate Bldg.  
Washington, DC 20510-1501

U.S. Sen. Russ Feingold  
506 Hart Senate Office Building  
Washington, DC 20510-4904

## Exhibit 1



U.S. Immigration  
and Customs  
Enforcement

February 11, 2008

Mr. Bill Conroy  
9127 Alpine Trail  
San Antonio, TX 78250

Re: **05-FOIA-19041**  
**DHS Appeal 07-133**

Dear Mr. Conroy:

This is response to your appeal to the Associate General Counsel regarding the processing of your Freedom of Information Act request 05FOIA19041 dated June 2, 2005. You specifically appealed our withholding records responsive to your FOIA request. In you request you asked for;

- Copies of any an all directives, memoranda, letters, emails or other records, including written memoranda of telephone conversations, maintained by the Department of Homeland Security, U.S. Customs and Immigration Enforcement (ICE) pertaining to journalist Bill Conroy. Records in relation to ICE Office of Professional Responsibility agent Carlos Salazar and his visit to Mr. Conroy's home on May 23, 2005 and his visit to Mr. Conroy's work office.

To provide you with the greatest degree of access authorized by law, we have considered your request under both the FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Information about an individual that is maintained in a Privacy Act system of records may be accessed by that individual<sup>1</sup> unless the agency has exempted the system of records from the access provisions of the Privacy Act.<sup>2</sup>

A search of the Office of Professional Responsibility (OPR) for documents responsive to your request produced a total of 20 pages. Of those pages, I have determined that the 20 pages of records are withheld in their entirety pursuant to Title 5 U.S.C. § 552(a) (k)(2) of the Privacy Act and Title 5 U.S.C. § 552 (b)(2)(high), (b)(6), (b)(7)(C) of the FOIA.

Twenty pages withheld in full as described below.

**Privacy Act Exemption (k)(2)** protects investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under

<sup>1</sup> 5 U.S.C. § 552a(d)(1).

<sup>2</sup> 5 U.S.C. §§ 552a(d)(5), (j), and (k).

Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence.

**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 privacy. *[The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, driver license, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal.]* 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.

**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.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.

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 60 days of the date of this letter, to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

If you need to contact us about this request, please refer to **05-FOIA-19041** and **DHS Appeal No. 07-133**. You may contact this office at (202) 732-0300.

Sincerely,



Catrina M. Pavlik-Keenan  
FOIA Officer

## Exhibit 2

AUG 19 2005

Office of Legislative Affairs

U.S. Department of Homeland Security

Washington, DC 20528



**Homeland  
Security**

The Honorable Charles A. Gonzales  
U.S. House of Representatives  
Washington, DC 20515-4320

Dear Representative Gonzales:

Thank you for your letter on behalf of your constituent, Bill Conroy, relating to the conduct of two Special Agents employed by the Department of Homeland Security, Immigration and Customs Enforcement (ICE), Office of Professional Responsibility (OPR).

I have reviewed the allegations contained in your constituent's letter and offer the following information. Mr. Conroy notes in his May 30, 2005, letter to your office that ICE Special Agents attempted to reach him at his home, and subsequently interviewed him at his place of work regarding their investigation of an unauthorized disclosure of a sensitive internal ICE memorandum by an ICE employee. Under DHS Delegation Order 7030, the Secretary of Homeland Security delegated all authority with respect to the investigation of alleged misconduct committed by officers, agents, or employees of ICE, the Bureau of Customs and Border Protection, and U.S. Citizenship and Immigration Services, to the Assistant Secretary for ICE. The Assistant Secretary for ICE has delegated such authority to the Director of OPR. Pursuant to these delegations, ICE OPR Special Agents have broad authority to conduct investigations into allegations of employee misconduct. This authority includes interviewing ICE employees as well as members of the public whom the Special Agents believe might have information relevant to their investigation. Members of the press are not entitled to any special treatment in this regard. Nevertheless, I have forwarded Mr. Conroy's concerns to ICE OPR for that office's review and appropriate action.

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative Affairs at (202) 205-4412.

Sincerely,

A handwritten signature in dark ink, appearing to read "Pamela J. Turner".

Pamela J. Turner  
Assistant Secretary for Legislative Affairs



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 4 2005

The Honorable Charles Gonzalez  
U.S. House of Representatives  
Washington, D.C. 20515


Dear Congressman Gonzalez:

This is in response to your correspondence on behalf of your constituent, Mr. Bill Conroy, who expresses concern regarding the legitimacy of visits to his office and home by law enforcement officials from the Bureau of Immigration and Customs Enforcement.

Because this matter involves an issue under the jurisdiction of the Department of Homeland Security (DHS), rather than the Department of Justice, it would be more appropriate for DHS to respond to your inquiry. To assist you, we have referred a copy of your correspondence to Ms. Pamela Turner, Assistant Secretary for Legislative Affairs for the Department of Homeland Security, Washington, D.C. 20528. Ms. Turner can also be reached by calling 202-205-4412. We have asked her to reply directly to you. A copy of our referral letter is enclosed.

Thank you for seeking our assistance in responding to your constituent's concerns. Should you require anything further, please do not hesitate to contact this office.

Sincerely,

  
*for* William E. Moschella  
Assistant Attorney General

Enclosure

cc: The Honorable Pamela Turner  
Department of Homeland Security



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Pamela Turner  
Assistant Secretary for Legislative Affairs  
Department of Homeland Security  
Washington, D.C. 20528

AUG 4 2005

Dear Ms. Turner:

We are forwarding a copy of correspondence we have received from Congressman Charles Gonzalez on behalf of his constituent, Mr. Bill Conroy, who expresses concern regarding the legitimacy of visits to his office and home by law enforcement officials from the Bureau of Immigration and Customs Enforcement.

Because this matter involves an issue under the jurisdiction of the Department of Homeland Security, rather than the Department of Justice, it would be more appropriate for your office to respond to the Congressman's inquiry. Please reply directly to Congressman Gonzalez. A copy of our letter advising him of this referral is enclosed.

Thank you for your assistance in responding to this inquiry.

Sincerely,

for William E. Moschella  
Assistant Attorney General

Enclosure

cc: The Honorable Charles Gonzalez  
U.S. House of Representatives

## Exhibit 3

Subj: RE: story 4u  
Date: Thursday, May 26, 2005 1:43:09 PM  
From: Dean.Boyd@dhs.gov  
To: Wkc6428@aol.com

Bill:

Here's what I've got for you...

"Agents from ICE's Office of Professional Responsibility were operating within the scope of their duties and in compliance with federal law in a legitimate effort to interview a potential witness while conducting an ongoing investigation "

Dean

-----Original Message-----

**From:** Wkc6428@aol.com [mailto:Wkc6428@aol.com]  
**Sent:** Thursday, May 26, 2005 10:02 AM  
**To:** Boyd, Ronald D  
**Subject:** story 4u

Dean,

Here's the story we discussed. I just want to make sure they were on sanctioned official U.S. government business in this matter. It seemed to be handled rather strangely.

I appreciate your time.

Bill Conroy

### **Customs Cops Visit Bill Conroy with an Attack on Press Freedom**

By Al Giordano,

<http://narcosphere.narconews.com/story/2005/5/24/222740/305>

# the narcosphere

narcosphere.narconews.com

a project of the narco news bulletin



## Customs Cops Visit Bill Conroy with an Attack on Press Freedom

By [Al Giordano](#),

Posted on Tue May 24th, 2005 at 10:27:40 PM EST

At 5:55 p.m. last night, Monday, May 23rd, in San Antonio, Texas, Agent Carlos Salazar of the U.S. Department of Homeland Security, accompanied by a female agent who failed to identify herself, made a surprise visit to the home of Narco News journalist Bill Conroy, a reporter, and author of the online book *Borderline Security*, who has broken a string of stories about embarrassing and worrisome problems inside Salazar's agency.

Identifying himself as an agent of "Customs OPR" (short for Office of Professional Responsibility, better known as "Internal Affairs"), Salazar told Conroy's wife of 23 years, Teddi Beam-Conroy, that he was looking for Bill. "He's at work," replied Teddy. Salazar asked when he would be home. "Probably around 7ish," she replied, asking the agents for a business card. Salazar flashed his badge. His partner never identified herself.

Teddi got a pen and paper and wrote down the agent's cell phone number, so that Bill could contact Salazar: The number Salazar left was 210-336-0036...

A short while later, journalist Bill Conroy dialed that number – 210-336-0036 – but Salazar did not answer. This was the first sign of deviation from standard operating procedure by the Customs agent: Internal Affairs agents (those who investigate other Customs agents) are supposed to keep their cell phones on at all hours and are aware of all incoming calls. It's part of the job... but not for Salazar at 210-336-0036 apparently... At least not last night... (Does anyone know if government employee Carlos Salazar is answering his cell phone, 210-336-0036, tonight, unlike last night? Inquiring citizens have a right to know!)

Today, Tuesday, May 24th, after the intimidating visit by cops to the family home – "I had to explain to my son that I hadn't done anything wrong," says Conroy – authentic journalist Bill Conroy went to work at his day job, as the mild-mannered and respected editor of a prominent business periodical.

Bill had left his own cell phone number on the voice mail of Agent Salazar at 210-336-0036. But Salazar didn't bother to call. He preferred, instead, to barge into Conroy's office at 2:30 p.m.

"I got a call from our receptionist. I was in my office editing copy for this week's paper," says Conroy. "The receptionist told me a Carlos Salazar was here to see me. I grabbed my tape recorder and a notebook and headed to the front of the office."

"When I got to the reception area, Salazar and another agent, a male, about my

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height, 5 foot 10 inches, were standing there," Conroy continues. "I said, 'I was expecting you guys. Let's go into the conference room.'"

"I sat down," tells Conroy. "Salazar sat down and opened up a black leather folder with papers in it. The other agent remained standing. I asked for their names - and they told me. Of course, I knew who Salazar was; the other guy ripped through his name. I heard something that I believe to be White, the first name was a common one like Tom or Mike, but I really didn't catch it; I was in full multi-tasking mode."

"I immediately said I was going to record the conversation and showed them the tape recorder. White objected immediately, saying I couldn't do that. 'This is an official investigation.' They both then pulled out their badges, just like in a Dragnet show. I told them I was aware they were there on official business. (The visit to my house the prior day tipped me off to that bit of reality.) I told them I still wanted to record the conversation. They continued to object. I then said I wasn't going to talk with them absent the tape recorder, that whatever they needed they could get from the story that was already published. I then suggested they provide me with their questions in writing and I would look them over and get back to them. They again refused. Salazar then said that he did want to talk about the story. 'I want to know your source,' he said point blank. I said I'm not going to talk beyond what was already in the story."

"This got the White guy pissed," notes Conroy. "I think he was playing the bad cop role. They both got up to leave. On the way out, White said to Salazar, something to the effect, 'I guess we'll take this to the U.S. Attorney then.'"

Now, what does this tell us about the way that "Sherlock Salazar" and "Gee Whizzer White" conduct business on the taxpayer payroll? Apparently, they made these two harassing visits to a prominent journalist, at his family home, and again at his office, without having talked to the U.S. Attorney for that region of Texas. (As one U.S. law enforcement agent told Narco News today, "that just is not done.")

Could it be that Salazar and White are rogue agents, acting to intimidate and harass the press, without the backing of U.S. Attorney Johnny "House of Death" Sutton, another frequent subject of investigative stories by the very same Bill Conroy published in Narco News?

"This whole scene lasted maybe 10 or 15 minutes," recalls Conroy. "As they left the conference room, I got up as well and followed them. At that point Salazar asked me who my supervisor was. 'Does he know you write for the NarcoSphere?' he asked. I informed him that my boss was aware that I was on the board of the nonprofit Fund for Authentic Journalism, and left it at that. He then asked for my boss's name. I said, 'I'm sure you already know that,' but added that they could ask the receptionist if they wished."

"I walked away. They went and talked to the receptionist and had them page my boss," says Conroy. "My publisher appeared up front. Salazar closed his folder and asked to speak to the publisher, 'alone.' The agents and my publisher went into a large conference room, which is across from the small conference room where I had met with them previously."

"I went back to my office and fumed, trying to read copy, that is, to get my job done. The paper goes to press on Wednesday," Conroy adds. "A short time later,

- Mark Smith
- Laura del Castillo
- Charlie Hardy
- RJ Maccani
- Charles Mostoller
- David B. Briones
- Aaron Shuman
- Nancy Davies
- John Bruning
- Marcos Meconi
- Keith Yearman
- Jonathan Mills
- Al Giordano
- Cindy Lou Wilmore
- Sean Donahue
- Romina Trincheri
- Juan Trujillo
- Jeff Simpson
- Paul Henry
- George Salzman
- Christopher Whalen
- Jeb Sprague
- Simon Fitzgerald
- Wim Dankbaar
- Diana Barahona
- Charles Faris
- Diego Mantilla
- Shawn O'Bryant
- Christopher Hyde
- David Keating
- Dennes Longoria
- Rich Gibson
- Anthony Fenton
- Steve Young
- Richard Pilkington
- Tatiana Ovando
- Jeremy Gordon
- Ricardo Sala
- Randall White
- Luis Gomez
- Teo Ballve
- Ben Masel
- Walt Lyford
- Jeremy Bigwood
- John F. Eden
- Irene Roca Ortiz
- Ron Smith
- Kevin Skerrett
- Jean Friedsky
- Gissel Gonzales
- Maria Eugenia Flores Castro
- José Mirtenbaum

my publisher came into my office. I expected that I might be fired. I really didn't know. But he was cool. He basically said that he told them I'm a journalist and that the story I wrote was done on my own time and had nothing to do with the newspaper. He knew full well they were trying to get him to come down on me. So my boss took a very courageous stand and basically told them there was nothing he could do to help them at this point."

"He did say, that after showing him some article, which he really didn't have a chance to read, that the agents told him this whole matter was about a leaked memo. The agents told my publisher that the leaked memo itself was not classified, but they wanted to find the source of the leak, because of the fear that this source 'might leak classified documents in the future.'"

There, another gross violation of due process under American law: The "leak" of a government document, a public document, that belongs rightfully to all the people in the land, was not even illegal. But "Sherlock Salazar" and "Gee-Whizzer White" are chasing a "crime" that has not been committed. And, in their overzealous and unethical efforts to track down and punish a courageous government whistleblower within their agency, they tried to intimidate the children and wife of a journalist, and then tried to intimidate his boss at a newspaper that had nothing to do with the story at hand,

Agent Carlos Salazar was so inept that he never even told Conroy which story (and thus, which source) he was chasing.

The story that best fits the description that I can think of is the following:

Homeland Security memo reveals terrorism records are being sanitized

That story led to some head-rolling inside the Department Homeland Security, including the transfer, out of a coveted Washington DC sinecure, of one of the officials responsible for the memo: a document in which officials order Customs agents to tamper with the results of anti-terrorism investigations.

If that is the story (I guess I'll have to ask Agent Salazar at 210-336-0036, from here, once I find a working telephone somewhere in a country called América), this botched attempt to intimidate journalist Bill Conroy may backfire even higher. For as much as U.S. Attorney Johnny Sutton's political ambitions have likely been stunted by the shining light of Conroy's reports on his mishandling of the House of Death case, I very much doubt that Sutton will allow himself to be dragged into a media circus over the intimidation of the journalist most renowned for investigating Sutton himself. I mean, that wouldn't look very good for Johnny Sutton, would it?

Meanwhile, Authentic Journalist Bill Conroy dressed himself in glory today. These goons tried to intimidate his family with slimey underworld "we know where you live" tactics. And they tried to get Conroy fired from his day job by talking to his boss at a newspaper that had nothing to do with his report. And Bill Conroy - even with his livelihood threatened - stood firm.

Conroy protected his sources, as authentic journalists do. Word will now spread far and wide that Bill Conroy is a man that whistleblowers and sources can trust. He was tested today. And he passed the test. And my guess is that in their efforts to destroy a journalist, Agent Salazar and whomever, if anyone, is behind this rogue-style cop action, just made the already formidable Bill Conroy even

- Manuela Aldabe
- Kevin Gallagher
- Bill Weaver
- Justin Delacour
- Claudia Espinoza
- Andrew Stelzer
- Reber Boulton
- Colleen Glynn
- Mike D'Allaire
- Jennifer Whitney
- Stan Gottlieb
- Alex Satanovsky
- Marcel Miranda
- Nate Johnson
- Richard Eramian
- Pablo Mamani
- Paul Silvester
- Andrew Grice
- Franz J.T. Lee
- Chris Herz
- Andrei Tudor
- Nora Callahan
- Gurujivan Khalsa
- Julia Steinberger
- Cynthia McKinney
- Fabio Mesquita
- Yasmin Khan
- Pablo Francischelli
- Baylen Linnekin
- Erik Siegrist
- Natalia Viana
- Amber Howard
- Linda Langness
- Kevin Okabe
- Sarah de Haro



### Narco News: Top Stories

Lawlessness and the Boomerang Effect in Oaxaca by Nancy Davies  
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Exclusive: Peace Corps, Fulbright Scholar Asked to Spy on Cubans, Venezuelans

stronger.

Needless to say, but worth repeating: An attack on one of our journalists is an attack on us all. The entire authentic journalism army stands proud and tall in defense of our colleague Bill Conroy. We will stand with him, nationally and internationally, and in favor of the people's right to know, to the ultimate consequences. Bill Conroy is not alone tonight, tomorrow night, or forever more.

As for Agent Carlos Salazar (he's the guy at 210-336-0036), I hope for his sake this wasn't a rogue, unauthorized attack on the press on his part. Because, so far, every other public official that has tried to silence a Bill Conroy story has ended up causing himself (or herself) problems when his or her superiors read the facts reported in Narco News.

The visits by the Customs cops to Bill Conroy's home and workplace this week confirm the accuracy of his reports: they wouldn't go fishing for the source of a story that wasn't accurate. (To paraphrase Homer Simpson: "It hurts because it is true!") They also confirm that many of our best readers are Homeland Security officials. (Thanks, guys, for your continuing readership.) After all, they, too, have to learn from Narco News what is happening with the security of the homeland along the Border: thus the obsession to try and intimidate our reporters and us into silence.

But there is no silence in a country called América tonight...

And from Bolivia, where Luis Gómez and Jean Friedman-Rudovsky report from the tumultuous front of a nation engulfed in immediate history, to the Border, where Bill Conroy inflicts the comfortable and the corrupt, and from all the other corners of our América...There will be even less silence tomorrow.

Customs Cops Visit Bill Conroy with an Attack on Press Freedom | 1  
comment (1 topical, 0 hidden) | [Post A Comment](#)

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*Comments and Notebook Entries reflect the opinions of those that sign them. The Narcosphere provides this forum for the free speech of its participants. Just because we don't delete or censor words doesn't indicate that we agree with them.*

**FAS Covers Conroy Story** ([4.00 / 1](#)) (#1)

by Dan Feder on Tue May 31st, 2005 at 10:46:12 PM EST

([User Info](#))

The widely read newsletter "Secrecy News," published by the Federation of American Scientists' Project on Government Secrecy, links to this story in [today's issue](#).

(For those wondering why they couldn't get into the Narcosphere earlier today, the FAS link brought a sudden spike in traffic that briefly crashed the database here around midday - I've corrected the problem and it shouldn't happen again.)

[Back to This Page](#) [Print](#) [Rate](#) [All](#) [1](#)

by Jean Friedman-Rudovsky and Brian Ross

Mexican Cop, Now in El Paso Hospital, Is a Marked Man by Bill Conroy

American Democracy vs. American Dictatorship by Jay J. Johnson-Castro, Sr.  
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Nogales Residents Say US is Building Border Wall on Mexico's Land by Brenda Norrell

Hispanic Law Enforcers Demand Apology from Florida Congresswoman by Bill Conroy

Michael Chertoff, Youve Been Sued by Jay J. Johnson-Castro, Sr.  
[View Comments](#)

St. Pete Company Sold Cessna Used In Drug Case, FBI Says by Howard Altman

Senator Ted Kennedy Pushes Immigration Reform and Obama for President on El Piolin Radio Show by Al Giordano

Third Cocaine Plane Surfaces and is Tied to Web of Government Connections by Bill Conroy  
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Operation Two-Fold by Douglas Valentine

Laughing at the News in Oaxaca by Nancy Davies  
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Immigration Policy: Will the Real Senator Clinton Please Stand Up? by Al Giordano

Medellin: The Peace of the Pacifiers by Forrest Hylton

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[Customs Cops Visit Bill Conroy with an Attack on Press Freedom](#) | **1**  
comment (1 topical, 0 hidden) | **Post A Comment**

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[Return to The NarcoSphere Homepage](#)

Mireya: We'll continue to resist; the Blood Spilled by Our Dead Will Not Be Betrayed by Juan Trujillo and Raúl Romero  
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El Tiempo:  
Congressman William Delahunt to Investigate U.S. Corporations Support for Colombian Paramilitaries by Dan Feder  
2 Comments

Over Three Thousand People From Five Continents Danced and Partied with the EZLN on its 14th Anniversary by Raúl Romero  
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A Texas Divided Will Be Broken In Two by Jay J. Johnson-Castro, Sr.  
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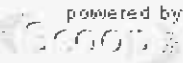
**Who's Online?**  
**(2)**

- Christopher Fee
- Dan Feder

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## Exhibit 4

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# Unclaimed Territory - by Glenn Greenwald

## About Me

**NAME:** GLENN GREENWALD

For the past 10 years, I was a litigator in NYC specializing in First Amendment challenges, civil rights cases, and corporate and securities fraud matters. I am the author of the *New York Times* Best-Selling book, *How Would A Patriot Act?*, a critique of the Bush administration's use of executive power, released May, 2006.

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WEDNESDAY, DECEMBER 06, 2006

## More on the Homeland Security and DOJ case

I want to follow-up on the [post from yesterday](#) regarding the complicity of Homeland Security and Justice Department officials -- including several very high level administration officials -- in the multiple murders committed by one of their paid informants. Radley Balko has some observations about this story [here](#) and [here](#):

*If true, this ought to be a scandal on par with Abu Ghraib. But in the three years since Luis Padilla's death, the Guardian reports that not a single American media outlet has spoken to his widow, and only the Dallas Morning News has given the case any coverage at all. It's certainly the first I've heard of it, and I follow drug war stories pretty closely.*

Added to the facts from yesterday is [this letter](#) (.pdf) from the DEA's Sandy Gonazlez (the now-fired whistleblower and former



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## **Articles about the Book**

\* [The San Francisco Chronicle](#)

\* [Publishers Weekly](#)

\* [National Review](#)

\* [The Nation](#)

\* [New York Times](#)

\* [Die Welt](#)

## **Posts about the Book**

\* [Review by Mercury News](#)

\* [Review by Greensboro News-Record](#)

\* [Review by Digby](#)

Agent in Charge of the DEA's El Paso Office) to the El Paso Director of Homeland Security's ICE. That letter provides even greater detail and documentation as to the extent not only of the DOJ and Homeland Security's knowledge of the multiple murders committed by their paid informant, but, worse still, their efforts to actively shield the murderer from prosecution and to prevent the Mexican Government from arresting him and his associates for these murders.

Beyond that, [this article](#) from *The San Antonio Current* (h/t [sysprog](#)) details the attempts by the U.S. Attorney in Texas who played a central role in all of this -- George Bush and Alberto Gonzales associate [Johnny Sutton](#) -- to intimidate and threaten the independent journalist from *Narco News* who obtained the DEA memorandum which brought all of this to light:

*When federal agents knock on your door, chances are they're not bringing you a Publisher's Clearinghouse check. Just ask San Antonio freelance journalist Bill Conroy: Federal agents visited his home and workplace trying to squeeze him for the source of a leaked Department of Homeland Security memo.*

*Conroy freelances investigative pieces about the drug war, border issues, and national security for Narco News, an online magazine covering Mexico and Central and South America. He is also the editor of the San Antonio Business Journal, but his work for Narco News is unrelated. . . .*

*According to Conroy's lawyer, Ron Tonkin, a former assistant U.S. attorney specializing in drug cases, around 6 p.m. on May 23, a man and woman identifying themselves as internal affairs agents with Immigration and Customs Enforcement visited Conroy's home. Conroy was still at work and his wife answered the door.*

[\\* Review by Paul Rosenberg](#)

[\\* Interview with Buzzflash](#)

[\\* Review by Buzzflash](#)

[\\* Advance Praise of the Book](#)

[\\* Recommendation by Tom Tomorrow](#)

[\\* Interview - Philadelphia Daily News](#)

[\\* Book talk - San Francisco](#)

[\\* Announcing the book project](#)

[\\* Announcing the book's release](#)

[\\* Blogosphere pushes book to Amazon #1](#)

[\\* From Working Assets' Jennifer Nix](#)

[\\* Book makes NY Times Bestseller List](#)

## Recent Posts

[In the other "war" -- more of the same](#)

[Howard Kurtz speaks on Jose Padilla: just some](#)

*At the behest of Conroy's wife, Agent Carlos Salazar gave her a phone number for Conroy to call him, then he and the unidentified agent left.*

*After receiving a call at work from his wife, Conroy phoned the number Salazar provided and left a voicemail, Tonkin said.*

*The Current called Salazar's number several times over the course of four days, but no one answered, nor was there voicemail.*

*Salazar didn't call Conroy back, but the next day, **he and a male agent showed up at the Business Journal. Conroy escorted them to a conference room, where Salazar reportedly said, "I want to know your source" of a leaked, yet unclassified DHS memo that had been the centerpiece of one of Conroy's Narco News stories.** Tonkin said Conroy refused to give up his source and told Salazar that if they planned on continuing to question him, he would record the conversation.*

*The agents left the conference room, reportedly asking Conroy, **"Does your boss know you write for Narcosphere?"***

*The agents then took Conroy's boss into a conference room, where, according to Tonkin, he told them Conroy had done the work on his own time for another publication and there was nothing he could do for them.*

[ie...](#)[The fruits of democracy](#)[The ongoing national disgrace of lawless indefinit...](#)[The Federal Government's domestic intelligence-gat...](#)[In case you didn't get enough of Tom Friedman yest...](#)[The Tom Friedman disease consumes Establishment Wa...](#)[The Bush administration and denial of habeas corpu...](#)[Rule of Law 101 and Neoconservatism](#)[Various items](#)

As is always true for the Bush administration, they are not interested in investigating severe government wrongdoing. But they are very vigilant about investigating -- and trying to ferret out and punish -- those who bring the wrongdoing to light (the classic case being their eagerness to punish the whistleblowers and journalists who informed Americans that the President was illegally eavesdropping on them, while doing everything possible to protect the lawbreakers themselves).

The context of this "visit" by federal agents to Conroy's home and office, as well as the accompanying threats issued to him, must be emphasized: the story which Conroy had reported on for *Narco News* involved the complicity in multiple murders on the part of federal DHS agents as well as the U.S. attorney who sent the agents to Conroy's home and business. Under the circumstances, receiving a "visit" to one's home and business by federal agents sent by the Bush associate at the heart of this matter would be seen by any reasonable person as quite intimidating, just as intended.

## E-mail

[GGreenwald@gclaw.us](mailto:GGreenwald@gclaw.us)

## Compendium of NSA arguments

[Index of NSA arguments](#)

The specific DHS memo which the agents claimed to be interested in was a DHS memo obtained by Conroy in which "ICE supervisors were ordered to purge terrorism records from the computer system and reclassify them as unrelated to terrorism." That order, by itself, seems corrupt on its face: "Mark Conrad, a retired supervisory special agent with U.S. Customs, told the Current that this order contradicts any protocol he knew of while an agent and violates federal law."

But there is little doubt that this unbelievably threatening behavior towards this reporter was motivated by the reporter's exposure of the complicity of ICE and Sutton's office in the Lalo murders:

*"The agents would not do this on their own," Conrad said, adding that in his experience as a supervisor, "we could not interview a reporter especially about sources or anything they had written **without***

## Blogs I Read

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## ***Washington approval, including the Department of Justice."***

*Tonkin and Conrad speculated that the visits were "payback" for Conroy's stories that were embarrassing to U.S. Attorney for the Western District of Texas Johnny Sutton. On April 1, Conroy reported on an alleged cover-up regarding ICE agents who were reportedly protecting a criminal informant accused of multiple drug-related murders in Ciudad Juárez. The case fell under Sutton's jurisdiction.*

Ordinarily -- meaning when our Republic works the way it is supposed to -- grave misconduct of this sort is investigated by Congress, which has as one of its principal functions the duty of *oversight*. It is the responsibility of Congress -- and, really, only Congress can fulfill the responsibility -- to ensure that the vast law enforcement powers under the control of the Executive branch [in order (theoretically) to execute our laws] are not abused.

But, needless to say, our Republic hasn't been functioning the way it is supposed to, in large part because the Congress has been ruled by authoritarian followers of the President who believe that the Leader does not err. Therefore -- outside of *Narco News* and a couple of isolated, ignored reporters -- nothing relating to any of these events has been investigated, neither by the media nor the Congress. And that is really as pure of a microcosm of the last five years as anything I can think of.

There just must be a Congressional investigation into this entire matter. The extent of wrongdoing here is staggering. It would be one thing if it were just some rogue law enforcement officers engaging in excessive, criminal and/or violent behavior. By itself, that would compel all sorts of investigations and

[The Left Coaster](#)[The Moderate Voice](#)[The Real McCain](#)[The Sideshow](#)[Tom Tomorrow](#)[Vichy Democrats](#)[Virginia Postrel](#)[Voioakh Conspiracy](#)[Washington Monthly](#)[Wired's 27B Stroke 6](#)

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corrective actions, but that would be a more commonplace outrage.

This case goes far beyond that. Agents of our government worked with, paid and *recorded* a serial murderer who repeatedly tortured and slaughtered people *with the knowledge of high-level DOJ and DHS officials*. The 30-year DEA agent in charge of the El Paso office who complained about this and brought it to light was threatened and then fired. The independent reporter who reported on it was harassed, intimidated and threatened by agents who, with pure malice, went to his boss in an unrelated job in order to disclose information about him that they thought would be damaging, if not get him fired -- all done to force the reporter to disclose his sources.

This is lawless, thug behavior of the most extreme type. And it resulted in the deaths of numerous people, including the brutal torture and murder of a completely innocent life-long resident of the United States (and husband and father of three), and at least 12 Mexicans, including at least some who were completely innocent of wrongdoing. Homeland Security's conduct also came close to resulting in the slaughter of a DEA agent and his wife and daughters. And those who objected and tried to bring all of this to light were threatened, intimidated and punished.

And all of it was done with the knowledge and consent of very high-ranking Homeland Security and Justice Department officials -- possibly including the Attorney General and others - - with at least the partial intent to protect a close associate of the President and Alberto Gonzales, an individual who continues to serve as a U.S. Attorney today. And the still-serving DEA administration herself appears to have actively sought to punish the DEA whistleblower.

I believe (without being certain) that it is the House Judiciary Committee (Chairman John Conyers), and specifically the Subcommittee on Immigration, Border Reform, and Claims, which has oversight responsibilities for ICE. In the Senate, it

would seem that oversight responsibility is within the jurisdiction of the Committee on Homeland Security and Governmental Affairs (Chairman Joe Lieberman), and specifically the Permanent Subcommittee on Investigations. I'm sure other Committees and Subcommittees have overlapping jurisdiction as well.

I think some sort of campaign is in order to demand a Congressional investigation into all of these events. It is a modest and focused enough objective such that an effectively designed campaign could succeed. I would think all that would be necessary is to find one new Chair of a House or Senate Subcommittee with some possible jurisdiction who would find this matter worthy of investigation. That shouldn't be too difficult.

As I said yesterday, the primary reason that this is all so worth investigating (beyond the heinous conduct that drove all of this) is because (a) the sheer lawlessness and thugishness is how the administration operates generally, (b) it involves political officials at very high levels of the administration, and (c) it removes terrorism manipulation and national security excuses from the equation.

And all of the issues here -- political, legal and moral -- are very straightforward and clear. Our Government really shouldn't be standing idly by and, worse, paying, actively protecting and assisting a homicidal psychopath while he continues with his torture and killing spree (that he records with our Government's equipment). Nor should it threaten and intimidate career DEA agents and investigative journalists who object all because high-level administration officials were directly responsible for the misconduct.

Pervasive, systematic criminality plagues our federal government. Investigating this most egregious matter seems to be a manageable and modest way -- not to mention, for Democrats, a politically risk-free way -- to expose and punish at least some of it.

posted by Glenn Greenwald | [\\_\\_\\_\\_\\_](#)

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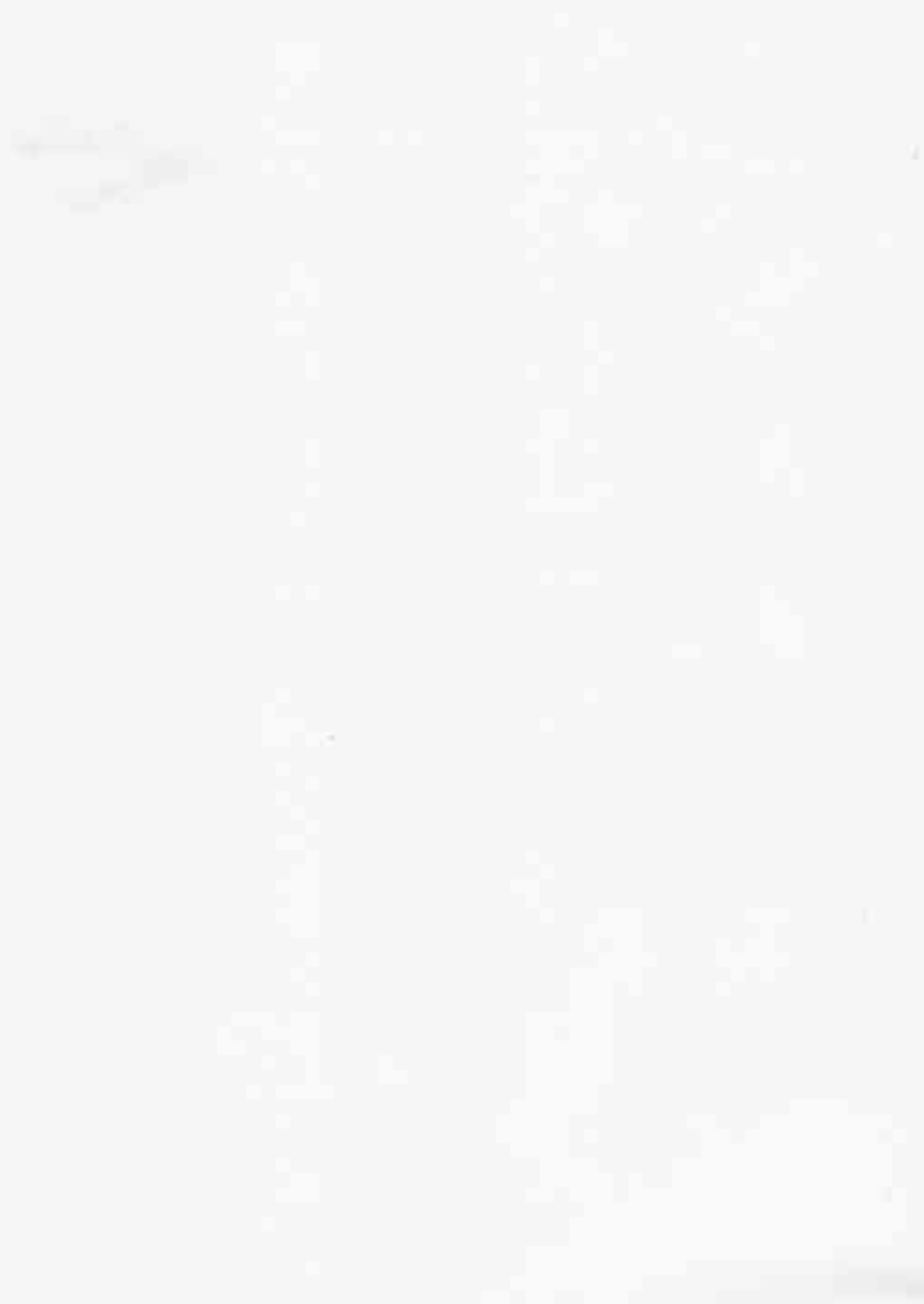
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## Exhibit 5





# The Narco News Bulletin

Reporting on the Drug War and Democracy from Latin America

## Congress Member to ICE: "Stop this Kind of Outrageous Activity"

U.S. Rep. Cynthia McKinney Blasts Johnny Sutton in Letter to Attorney General and Homeland Security Czar

By Cynthia McKinney

U.S. Representative, Georgia

July 6, 2005

June 29, 2005

The Honorable Michael Chertoff, Secretary  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Attorney General Alberto R. Gonzales  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

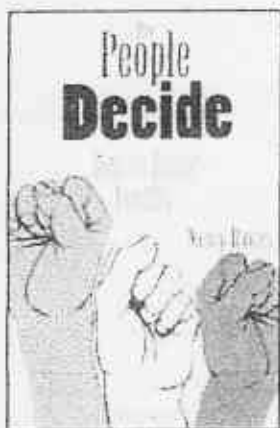
Dear Secretary Chertoff and General Gonzales:

Recent behavior by agents of the U.S. Department of Homeland Security / Immigration and Customs Enforcement (ICE) Division – acting in the jurisdiction of U.S. Attorney Johnny Sutton – constituted a violation of the U.S. Constitutional right of a free press.

I write you to plead that you put a stop to this kind of outrageous activity in each of your departments and to take measures to prevent such actions from occurring in the future.

On May 24, 2005, Agents Carlos Salazar and Steve White of ICE's Office of Professional Responsibility unit visited the San Antonio, Texas, workplace of journalist Bill Conroy in a very unprofessional attempt to intimidate Mr. Conroy into revealing sources of non-classified information and documents embarrassing to the Department and to the U.S. Attorney's office for the San Antonio, Texas, region. Agent Salazar, with another agent, additionally went to the home of Mr. Conroy and behaved in an intimidating manner toward the journalist's wife and children.

More troubling, still, is that the agents attempted to intimidate his employer at a business newspaper that had nothing to do with Mr. Conroy's reports for the Internet newspaper Narco News.



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I attach, for your information, printouts of reports from the San Antonio Current and Narco News about those incidents: "Unwelcome Guests," by Lisa Sorg (San Antonio Current, June 9), and "Customs Code Visit Journalist Bill Conroy in an Attack on Press Freedom," by Al Giordano (Narco News, May 24). Also included in the attachment are additional news stories on the incidents published by the Federation of American Scientists' Project on Government Secrecy and the Reporters Committee for Freedom of the Press, and a June 3 letter from the Federal Hispanic Law Enforcement Officers Association to Secretary Chertoff protesting these activities.

In particular, General Gonzales, I address this letter to you because many eyebrows have been raised here in Congress by the confluence of facts that demonstrate that Mr. Conroy, as a journalist, has reported a series of stories involving the "House of Death" case in Ciudad Juarez, Mexico, in which an undercover informant in the process of seeking to make a drug case for U.S. Attorney Johnny Sutton's office, allegedly committed numerous homicides while under the protection of that office.

Since it is well known throughout Washington that federal agents do not, as a rule, visit journalists in attempts to discover sources without authorization from the U.S. Attorney with jurisdiction, the behavior of the agents is seen as an attempt by U.S. Attorney Sutton to intimidate a journalist who has reported facts that are embarrassing to him.

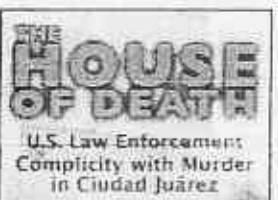
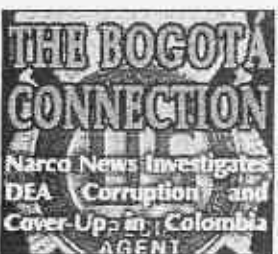
According to Mr. Conroy's publisher at the San Antonio Business Journal, agents Salazar and White told him that a document published by Mr. Conroy on Narco News, embarrassing to the Department of Homeland Security, was not classified but that the agents were seeking to find out the identity of the source out of a purely speculative fear that Mr. Conroy's source "might leak classified documents in the future."

This kind of speculative fishing expedition on the part of federal agents would be troubling under most circumstances. When it involves a transparent attempt to pressure an employer to fire his reporter for what the journalist reported for any publication (much more for a distinct publication) the threat to the First Amendment, which I know that both of you gentlemen have sworn to uphold, is clear, and it makes a mockery of the important work that both of your offices are doing in law enforcement.

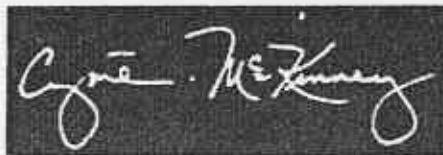
The Internet publication for which Mr. Conroy reports, The Narco News Bulletin ([www.narconews.com](http://www.narconews.com)) is one of the most widely respected international news sources reporting on U.S. policy on the Mexican border and throughout Latin America. In December 2001, the New York Supreme Court ruled that: "Narco News, its website, and the writers who post information, are entitled to all the First Amendment protections accorded a newspaper-magazine or journalist."

Thus, if U.S. Attorney Johnny Sutton or the ICE agents were under a misimpression that Internet journalists do not enjoy the same First Amendment protections as commercial newspapers, I hope you will educate them to this new reality under law.

Thank you for your attention to this matter of deep concern.



Sincerely,



Cynthia McKinney  
U.S. Representative, Fourth District – Georgia

CC: Michael J. Garcia  
Assistant Secretary  
U.S. Immigration and Customs Enforcement  
425 I St., NW  
Washington, D.C., 20536

Johnny Sutton, U.S. Attorney  
United States Attorney's Office  
601 NW Loop 410, Suite 600  
San Antonio, Texas 78216

Agents Carlos Salazar and Steve White  
Office of Professional Responsibility  
Immigration and Customs Enforcement  
45 NE Loop 410, Suite 600  
San Antonio, TX 78216

Members of the U.S. House Judiciary Committee

Members of the News Media



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**- The Fund for Authentic Journalism**

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## Exhibit 6

# THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

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*The New York Times*
- TONY MAURO  
*American Lawyer Media*
- DOYLE MCMANUS  
*Los Angeles Times*
- WILSON F. MINOR  
*Factual Reporting Service*
- SANDRA PEDDIE  
*Newsday*
- DAN RATHER  
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*The New York Times*
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- CAROLE SIMPSON  
*ABC News*
- SANDRA TORRY  
*USA Today*
- JUDY WOODRUFF  
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June 8, 2005

The Honorable Michael Chertoff  
Secretary  
Department of Homeland Security  
Washington, D.C. 20528

Dear Secretary Chertoff:

You have an enormous challenge ahead of you as you continue to shape the development of a major new department with a broad and important mandate. But while the policies and regulations that define the department continue to develop, we are writing to ask that you take one simple step to ensure that agents of your department respect the First Amendment rights of journalists: adopt a policy similar to the Attorney General's guidelines concerning subpoenas to and official interaction with the news media.

As you well know from your tenure at the Department of Justice, all agents of that department have been subject to these guidelines. *See* POLICY WITH REGARD TO THE ISSUANCE OF SUBPOENAS TO MEMBERS OF THE NEWS MEDIA, 28 C.F.R. § 50.10 (2005). And while, from our perspective, they do not fully protect the important First Amendment interests of journalists, they have nonetheless provided a very effective first line of defense for the news media.

The guidelines stress negotiations with the media over demands for information and emphasize the need to use alternative sources of information when possible, thereby negating the tendency to make questioning of reporters, who seek to serve the public in an independent fashion, the first step in an investigation.

The guidelines stress that members of the department must show that they have considered the imposition their work can place on "the free dissemination of ideas and information," § 50.10(a), which discourages those who might reflexively or casually demand information from reporters without fully considering the constitutional implications. This, along with approval from superiors in Washington, will help address situations in which officials appear at a reporter's home or office and question individuals in a manner which can easily be perceived as intimidating. *See, e.g.,* "Dept of Homeland Security Pursues Online Journalist," *Secrecy News*, FAS Project on Government Secrecy, May 31, 2005, available at <http://www.fas.org/sgp/news/secrecy/2005/05/053105.html>.

We recognize that terrorism-related investigations will not always allow for the

kind of review from Washington that the guidelines stress. However, the guidelines themselves address the needs of those rare situations, by specifying that "exigent circumstances" allow for notification to the Attorney General after the fact, rather than requiring prior approval. § 50.10(h). While the definition of what constitutes such circumstances is something that may be impossible to articulate, it is nonetheless clear that such action would be the exception, rather than the rule.

In recent years, the Reporters Committee has, with a coalition of other journalism organizations, worked with counsel from the FBI to propose changes to the guidelines to, among other things, apply the same standards to electronic communications and other newsgathering records, such as credit card statements held by third parties. We would be very receptive to the possibility of working with designated members of your department to both better tailor the Justice guidelines to Homeland Security and to address newsgathering concerns of the 21st century (the Justice guidelines were last amended in 1980 to address telephone toll records, well before reporters came to rely on email communications). If such an undertaking is acceptable to your department, we are confident that we can organize a coalition that would represent a broad and diverse range of news media interests, yet would be sufficiently manageable to accomplish the objective. Such coalitions have worked well with the FBI, as mentioned above, and on current efforts in the Congress to enact a reporter's shield law.

We are confident that adoption of the guidelines would not significantly interfere with the functioning of the department, as the 30-plus years of experience with the policy at Justice attests. In short, it seems that there is no downside to adopting this policy, and much — in the way of earning the public trust and serving the public interest — to be gained.

Sincerely,



Lucy A. Dalglish  
Executive Director



Gregg P. Leslie  
Legal Defense Director

## Exhibit 7

**PRESS RELEASE: The Reporters Committee for Freedom of the Press**

FOR IMMEDIATE RELEASE -- Contact: Lucy Dalglish, (703) 807-2100

To remove your address from this list, reply with "remove" in the subject line.

**Reporters Committee urges DHS to adopt guidelines on journalists**

June 8, 2005

The Reporters Committee for Freedom of the Press today urged Department of Homeland Security Secretary Michael Chertoff to adopt guidelines regulating subpoenas of the news media similar to those used for the last three decades by the Department of Justice.

"As you well know from your tenure at the Department of Justice, all agents of that department have been subject to these guidelines," the Reporters Committee wrote. "And while, from our perspective, they do not fully protect the important First Amendment interests of journalists, they have nonetheless provided a very effective first line of defense for the news media."

Chertoff previously served as Assistant Attorney General for the Criminal Division in the Department of Justice at the start of the Bush Administration, and was a federal prosecutor for more than 10 years before that.

"The Department of Homeland Security took over many functions previously conducted by the Justice Department," noted Lucy A. Dalglish, executive director of the Reporters Committee. "We sent this letter because it makes sense to extend the guidelines to the investigative functions of DHS."

The Attorney General guidelines, adopted in 1972, state, among other things: approval of the Attorney General is required before issuing a subpoena to a member of the news media; officials should attempt to negotiate with the media before trying to formally demand information; alternative sources of information other than the news media should be used whenever possible; and members of the department must show that they have considered the effect their actions will have on "the free dissemination of ideas and information." The guidelines were amended in 1980 to extend the same protections to subpoenas of telephone toll records.

While journalists do not interact with officials from Homeland Security as much as with those from Justice (which includes the FBI), at least one recent incident involving a DHS employee has caused concern among journalists. After journalist Bill Conroy, who writes for The NarcoSphere web site, wrote about a DHS memo that was leaked to him concerning modification of terrorism-related immigration records, agents appeared at his home and later at his office to question him about his source. The web site has called the incident a "botched attempt to intimidate" a journalist.

## Exhibit 8

# **Federal Hispanic Law Enforcement Officers Association, Inc.**

4445 Summer Oak Dr.  
Tampa, Florida 33618  
(813) 390-7532

June 3, 2005

The Honorable Richard L. Skinner  
Acting Inspector General  
Department of Homeland Security (DHS)  
Washington, D.C. 20528

Dear Mr. Skinner:

I am writing on behalf of the Federal Hispanic Law Enforcement Officers Association (FHLEOA) to respectfully request an investigation of the Office of Professional Responsibility (OPR) of the Bureau of Immigration and Customs Enforcement (ICE) for the questionable actions taken by ICE OPR Special Agents regarding Mr. Bill Conroy, an investigative reporter and editor of the San Antonio Business Journal. Their actions appear to have been undertaken as retaliation against Mr. Conroy for his reporting of ICE wrong doing.

As all federal agents must do, the ICE OPR agents swore to "support and defend the Constitution of the United States against all enemies." However they have violated Mr. Conroy's constitutionally protected freedom of speech. Mr. Conroy has done an outstanding job of truthfully reporting alleged misconduct in the DHS, and ICE in particular. Specifically, he has covered extensively the federal discrimination class action lawsuit filed against the former U.S. Customs Service, which is currently being litigated in U.S. District Court in Washington, D.C.

We believe there are a number of questions that must be answered in this matter such as who authorized the agents to contact Mr. Conroy's spouse and his immediate superior at the San Antonio Business Journal. Also, what are the motives behind these disturbing actions by government agents? Were these agents trying to send a message to DHS employees in order to intimidate them into not reporting misconduct and waste, fraud and abuse in the government?

For doing his job well as an investigative reporter, for the benefit of the entire nation, Mr. Conroy has now been targeted for retaliation by DHS bureaucrats in what can only be described as a blatant display of bully tactics, intimidation, and abuse of authority that threaten the freedoms all Americans hold dear. It can be argued that these agents and their superiors have now become domestic enemies of the Constitution they have sworn to protect. In reviewing the attached articles by Al Giordano dated May 24, 2005, and by Conroy himself dated April 7, 2005, our Board of Directors has concluded that the ultimate objective of the OPR "interview" of

Mr. Conroy was to obtain the names of the federal employees who made protected whistleblower disclosures to the press, to intimidate Mr. Conroy and his family, and to get him fired from his job with the San Antonio Business Journal. These actions are reprehensible to say the least.

As federal law enforcement officers we are well aware that prior to conducting investigations or interviews of members of the press such as Mr. Conroy, a series of approvals must be obtained from the investigative agency's headquarters as well as from the United States Attorney. These policies are in place with almost every federal agency because of the sensitivities involved, which include constitutional issues dealing with our basic freedoms such as freedom of speech.

We note that the DHS discontinued its requirement that department employees sign a secrecy pledge prohibiting them from sharing sensitive but unclassified information with the public. According to the agreement, any information that could compromise the privacy of individuals or "adversely affect the national interest or conduct of federal programs" was considered sensitive, according to New York Times (01/18/05). Prior to this policy change, violators risked administrative, disciplinary, criminal and civil penalties. One provision required signers to consent to government inspections "at any time or place" to ensure compliance. In the instant case, the OPR agents described the document in question as being non-classified.

Finally, as I'm sure you know, protected disclosures reported to you, or to any authorized recipient, fall under the Federal Employee Protection of Disclosures Act (Bill # S.494) which amended the Homeland Security Act of 2002. I ask that you direct DHS supervisors and management officials to obey the law and stop retaliating against employees for making protected disclosures. By exercising caution and common sense when dealing with employees, and by taking appropriate steps to eliminate the potential for retaliatory conduct, your organization can effectively reduce the risk of lawsuits and damages.

Thank you for your time, and know that you have our sincere best wishes for success in what we all know is a difficult but very important position.

Sincerely,

Sandalio Gonzalez  
National President

cc: The Honorable Michael Chertoff, Secretary of Homeland Security  
The Honorable Alberto Gonzales, Attorney General  
The Honorable Senator Chuck Grassley