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**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

March 28, 2018

Mr. John Greenewald, Jr.

[REDACTED]

Subject: Freedom of Information Act Request No. 2017-IGFO-00118  
Final Response

Dear Mr. Greenewald, Jr:

This responds to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS) Office of Inspector General (OIG), dated July 6, 2017, seeking a final report for DHS/OIG Investigation: I14-BP-TUC-16379. Your request was received in this office on July 6, 2017.

In response to your request, a search of the DHS-OIG Office Investigations was conducted. That search resulted in the enclosed records responsive to your request. We reviewed the responsive records under the FOIA to determine whether they may be disclosed to you. Based on that review, this office is providing the following:

15 page(s) are released in full (RIF);  
47 page(s) are released in part (RIP).

The exemptions cited for withholding records or portions of records are marked below.

| <b>Freedom of Information Act, 5 U.S.C. § 552</b> |   |  | <b>Privacy Act,<br/>5 U.S.C. § 552a</b> |
|---|---|--|---|
| <input type="checkbox"/> 552(b)(1)                | <input type="checkbox"/> 552(b)(5)            | <input checked="" type="checkbox"/> 552(b)(7)(C) | <input type="checkbox"/> 552a(j)(2)     |
| <input type="checkbox"/> 552(b)(2)                | <input checked="" type="checkbox"/> 552(b)(6) | <input type="checkbox"/> 552(b)(7)(D)            | <input type="checkbox"/> 552a(k)(2)     |
| <input type="checkbox"/> 552(b)(3)                | <input type="checkbox"/> 552(b)(7)(A)         | <input type="checkbox"/> 552(b)(7)(E)            | <input type="checkbox"/> 552a(k)(5)     |
| <input type="checkbox"/> 552(b)(4)                | <input type="checkbox"/> 552(b)(7)(B)         | <input type="checkbox"/> 552(b)(7)(F)            | <input type="checkbox"/> Other:         |

OIG redacted from the enclosed documents, names and identifying information of third parties to protect the identities of these individuals. Absent a Privacy Act waiver, the release of such information concerning the third parties named in these records would result in an unwarranted

invasion of personal privacy in violation of the Privacy Act. Information is also protected from disclosure pursuant to Exemptions (b)(6) and (b)(7)(C) of the FOIA further discussed below.

### **Exemption 6, 5 U.S.C. § 552(b)(6)**

Exemption 6 allows withholding of “personnel and medical files and *similar files* the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6)(emphasis added). DHS-OIG is invoking Exemption 6 to protect the names of third parties and any information that could reasonably be expected to identify such individuals.

### **Exemption 7(C), 5 U.S.C. § 552(b)(7)(C)**

Exemption 7(C) protects from public disclosure “records or information compiled for law enforcement purposes . . . [if disclosure] could reasonably be expected to cause an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). DHS-OIG is invoking Exemption 7(C) to protect the identities of third parties, and any information contained in these investigative records that could reasonably be expected to identify those individuals.

### **Referral**

Additionally, 29 pages have been referred to Immigration & Customs Enforcement (ICE), a DHS component. ICE will process the record under the FOIA and respond to you directly. Should you wish to contact ICE you may write to: U.S. Immigration and Customs Enforcement, Freedom of Information Act Office, 500 12th Street, S.W., Stop 5009 Washington, D.C. 20536-5009; or you may call 202-732-0660.

### **Appeal**

You do, however, have the right to appeal this response.<sup>1</sup> Your appeal must be in writing and received within 90 days after the date of this response. Please address any appeal to:

FOIA/PA Appeals Unit  
DHS-OIG Office of Counsel

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<sup>1</sup> For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Stop 0305  
245 Murray Lane, SW  
Washington, DC 20528-0305

Both the envelope and letter of appeal must be clearly marked “Freedom of Information Act/Privacy Act Appeal.” Your appeal letter must also clearly identify the DHS-OIG’s response. Additional information on submitting an appeal is set forth in the DHS regulations at 6 C.F.R. § 5.8.

### **Assistance and Dispute Resolution Services**

Should you need assistance with your request, you may contact DHS-OIG’s FOIA Public Liaison. You may also seek dispute resolution services from our FOIA Public Liaison. You may contact DHS-OIG’s FOIA Public Liaison in any of the following ways:

FOIA Public Liaison  
DHS-OIG Counsel  
STOP 0305  
245 Murray Lane, SW  
Washington, DC 20528-0305  
Phone: 202-254-4001  
Fax: 202-254-4398  
E-mail: [foia.oig@oig.dhs.gov](mailto:foia.oig@oig.dhs.gov)

Additionally, the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road - OGIS  
College Park, MD 20740-6001  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>  
Telephone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 1-877-684-6448

If you have any questions about this response, please contact us at 202-254-4001.

Sincerely,

*Mark K. Hill*

Mark K. Hill  
Senior FOIA/PA Disclosure Specialist

Enclosure(s)



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

[www.oig.dhs.gov](http://www.oig.dhs.gov)

**MEMORANDUM FOR:** Matthew Klein  
Assistant Commissioner  
Office of Internal Affairs  
U.S. Customs and Border Protection

**FROM:** Paul Leonard  
Special Agent in Charge  
Tucson Field Office

**SUBJECT:** [REDACTED]  
Border Patrol Agent  
Tucson, AZ

**CASE NUMBER:** I14-BP-TUC-16379

Attached is our Report of Investigation (ROI) on the above subject.

The ROI is furnished for you to evaluate and make an administrative decision regarding the above listed subject. Should you take any administrative action in response to our ROI, please inform this office so we can update our records. Please destroy the ROI upon disposition of this matter.

Should you have any questions regarding the contents of the ROI or need additional information, you may contact me at (520) [REDACTED]

Attachment

**DEPARTMENT OF HOMELAND SECURITY  
OFFICE OF INSPECTOR GENERAL**

**REPORT OF INVESTIGATION**

**I14-BP-TUC-16379**



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## OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

### REPORT OF INVESTIGATION

|                              |  |
|------------------------------|--|
| <i>Case Number:</i>          | I14-BP-TUC-16379   |
| <i>Case Title:</i>           | [REDACTED]   |
| <i>Report Status:</i>        | Border Patrol Agent (GS-12)<br>United States Border Patrol<br>Tucson, AZ<br>Final            |
| <i>Alleged Violation(s):</i> | 18 USC § 2252A; Activities Relating to Material Constituting or Containing Child Pornography |

### SYNOPSIS

The Department of Homeland Security (DHS) Office of Inspector General (OIG) initiated this investigation based on an allegation received from the Joint Intake Center, Washington, D.C., that [REDACTED] was involved in the illegal manufacturing and distribution of child pornography.

During the course of this investigation, the DHS OIG assisted in the execution of a search warrant, conducted database checks, reviewed records, and conducted a subject interview.

The DHS OIG investigation of the allegation was substantiated and [REDACTED] was indicted, arrested, pled guilty and was sentenced to 71 months incarceration and supervised released for life.

|                                |                       |                      |          |
|--------------------------------|-----------------------|----------------------|----------|
| <i>Reporting Agent</i>         |                       | <i>Distribution:</i> |          |
| Name: [REDACTED]               | Signature: [REDACTED] | Headquarters         | Original |
| Title: Special Agent           | Date: [REDACTED]      | Component(s)         | cc       |
| <i>Approving Official</i>      |                       | Other                | cc       |
| Name: Paul Leonard             | Signature: [REDACTED] |                      |          |
| Title: Special Agent in Charge | Date: 1/19/2016       |                      |          |

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## REPORT OF INVESTIGATION

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### DETAILS

The Department of Homeland Security (DHS) Office of Inspector General (OIG) initiated this investigation based on an allegation received from the Joint Intake Center, Washington, D.C., detailing an allegation of misconduct, in which [REDACTED], Border Patrol Agent (BPA), Tucson, Arizona, was allegedly involved with the illegal manufacturing and distribution of child pornography. (Exhibit 1)

**Allegation: BPA [REDACTED] was involved with the illegal manufacturing and distribution of child pornography.**

The DHS OIG received and reviewed Homeland Security Investigations (HSI) reports of Investigations (ROIs) detailing that [REDACTED], BPA, Tucson, AZ, shared child pornography with an undercover HSI SA. The pictures were shared through the use of a private peer to peer file sharing computer network. (Exhibit 2)

The DHS OIG assisted HSI Tucson Field Office on executing a search warrant for [REDACTED] residence. Agents seized several electronic devices and hardware for potential evidence. A forensic preview of the seized electronic evidence discovered over 2,500 child pornographic images and videos in a folder. Agents were able to match the shared child pornographic images [REDACTED] shared with the undercover HSI SA. Prior to the search warrant being executed, HSI and the DHS OIG SAs approached [REDACTED] at the Tucson Border Patrol Station in an attempt to conduct a voluntary interview. BPA [REDACTED] declined to submit to an interview. (Exhibit 3 and 4)

[REDACTED] was indicted for violations of 18 USC 2252 (a) (2) and (b) (1) (Distribution of Child Pornography) and 18 USC 2252A (a) (5) (B) and (b) (2) (Possession of Child Pornography). [REDACTED] pled guilty to the indictment of Distribution of Possession of Child Pornography and was sentenced to incarceration for a period of 71 months to be followed by supervised release for life. (Exhibit 5, 6, and 7)

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## EXHIBITS

| NUMBER | DESCRIPTION   |
|--------|---|
| 1      | Joint Intake Center Report, dated September 26, 2014.   |
| 2      | Memorandum of Activity dated September 29, 2014, Receipt of Information from Homeland Security Investigations.            |
| 3      | Memorandum of Activity dated October 7, 2014, Execution of Search Warrant and Subject Interview.                          |
| 4      | Memorandum of Activity dated October 21, 2014, Records Review: Receipt of Information, HSI Report of Investigation (2-5). |
| 5      | Memorandum of Activity dated November 26, 2014, Indictment of [REDACTED] BPA, TUC.  |
| 6      | Memorandum of Activity dated July 27, 2015, Plea of Guilty.   |
| 7      | Memorandum of Activity dated January 6, 2015, Sentencing of [REDACTED] BPA, Tucson, AZ.                                   |

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(b)(6) and (b)(7)(c), unless specifically indicated otherwise in the margin of this document

# **EXHIBIT 1**

Requester's Name: John Greenewald, Jr  
FOIA NO.: 2017-IGFO-00118

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6 PAGES

from OIG's ROI Case No. I14-BP-TUC-16379  
Exhibit 1 are referred to ICE for processing  
and direct response to the requester.

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(b)(6) and (b)(7)(c), unless specifically indicated otherwise in the margin of this document

# EXHIBIT 2



Homeland  
Security

MEMORANDUM OF ACTIVITY

Type of Activity: Other: Receipt of Information from Homeland Security Investigations (HSI).

Case Number: I14-BP-TUC-16379

Case Title: [REDACTED]; BPA, Tucson, AZ

On September 29, 2014, [REDACTED], Special Agent (SA), Department of Homeland Security (DHS), Office of Investigations (OIG), Tucson, AZ, reviewed a Report of Investigation (ROI) dated September 26, 2014. The report was provided by [REDACTED], SA, Homeland Security Investigations (HSI). The ROI states that an IP Century Link address registered to [REDACTED] [REDACTED] Border Patrol Agent (BPA), Tucson, AZ (TUS), allegedly shared child pornography pictures to an undercover HSI SA. The pictures were shared through the use of a private peer to peer file sharing network.

HSI Case Number is TU07QL11WM0003.

Below is the verbatim "Detail of Investigation" portion of the ROI:

1. This investigation initiated from the Homeland Security Investigations (HSI) Resident Agent in Charge (RAC) Wilmington, Delaware office. RAC Wilmington is conducting an ongoing investigation of child exploitation violations on private peer to peer (P2P) file sharing networks.
2. On September 8, 2014, RAC Wilmington Special Agent (SA) [REDACTED] logged into the file sharing network on an undercover computer and identified a user with the nickname [REDACTED] who was sharing files in password protected shared folders. The folders were named "New Folder (3)", "New Folder", and "picsl (2)". SA [REDACTED] initiated a chat with user [REDACTED] who provided SA [REDACTED] with a password of [REDACTED] to access the protected shared folders.
3. On September 8, 2014, at approximately 1:10PM (EST), SA [REDACTED] selected 55 images of child pornography and began to download the files directly from user [REDACTED] folders on the peer to peer network. All files depicted children engaged in sexually explicit activity including sexual abuse by adults, sexual activity with other children, and children posing nude in sexually explicit poses.
4. While downloading the files from [REDACTED], SA [REDACTED] used a software utility to identify the Internet Protocol (IP) address that was being utilized by [REDACTED] at that specific time. The software utility identified the IP address as [REDACTED] (suspect IP address). SA [REDACTED]

|   |  |
|---|--|
| Name, Title, Signature, and Date:<br><br>[REDACTED] | Reviewing Official Name, Title, Signature<br>10/1/2014<br>[REDACTED] |
|---|--|

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## MEMORANDUM OF ACTIVITY

[REDACTED] conducted a query of the American Registry for Internet Numbers (ARIN) online database which revealed that the IP address [REDACTED] was registered to the Century Link internet service provider (ISP). SA [REDACTED] also determined that the IP address was located near Tucson, Arizona based on information provided by the Maxmind geolocation online service.

5. On September 9, 2014, SA [REDACTED] served an administrative summons on Century Link requesting subscriber information and IP connection logs for IP address [REDACTED] for the timeframe of the online undercover connection.
6. On September 10, 2014, Century Link responded to SA [REDACTED]'s summons and identified the subscriber account to which the suspect IP address was assigned on the date and time that the files were downloaded as: [REDACTED]  
[REDACTED] The information showed that the account was currently active, was active since May 23, 2012, and had a user id of [REDACTED]. On September 11, 2014, SA [REDACTED] queried a publicly available website and determined that [REDACTED] was listed as a resident at [REDACTED].
7. Because the target IP address is assigned to a subscriber in Tucson, Arizona, SA [REDACTED] transferred the information to the HSI Deputy Special Agent in Charge Office in Tucson for follow-up investigation. On September 17, 2014 the case was assigned to HSI SA [REDACTED]  
[REDACTED]
8. On September 19, 2014 SA [REDACTED] received a file from SA [REDACTED] containing documentation of his online session with [REDACTED]. This file contained profile information, screen captures of the names and thumbnail pictures of files contained in [REDACTED]" shared folders. A copy of the administrative summons and a copy of the information received from the Internet Service Provider (ISP), Century Link, which identified the subscriber as [REDACTED]. The file also contained a compact disk copy of all 55 downloaded images.
9. SA [REDACTED] reviewed the screen captures and session log provided by SA [REDACTED] and confirmed that the downloaded files were from [REDACTED]" computer which was utilizing IP address [REDACTED]. SA [REDACTED] also reviewed the 55 downloaded images and determined them all to be child pornography. The filenames and brief description of eight of the files are as follows:
  - a. 111/1; 2006 older man fuckt little boy kolja 10 yo pthc (12): This file is a color photograph of a nude male child who appears to be 7 to 10 years old. The child is lying on his back with his legs extended with his anus featured as the focal point of the photograph.

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## MEMORANDUM OF ACTIVITY

- b. # (485).jpg: This file is a color photograph of a male child who appears to be 7 to 10 years old. The child is pictured with an erect adult penis in his mouth as if he is performing oral sex.
  - c. Iligeorge rape 76776\_1198162201 (1).jpg: This file is a color photograph of a nude male child who appears to be 8 to 12 years old. The child is lying on his back with his legs extended up toward his shoulders and it appears that an adult male is in the process of performing anal sex. The child's eyes are closed and his mouth is open as if he is crying or screaming.
  - d. hurts\_so\_good\_-\_001.jpg: This file is a color photograph of a nude female child who appears to be between 7 and 10 years old that is tied to a chair. The child appears to have both arms tied to the chair behind her while her right leg is tied to the right front leg of the chair and her left leg is tied to the left rear leg of the chair. This configuration caused the child's legs to be spread and her vulva to be prominently displayed.
  - e. bhhun.jpg: This file is a color photograph of a male child who appears to be between 5 and 9 years old. The child is in the shower with an adult male who is positioned with his penis rubbing on the lower cheek of the child. The child has his eyes closed and appears to be wincing and attempting to move away from the adult.
  - f. ccca89df3c52.jpg: This file is a color photograph of a nude male child who appears to be 5 to 8 years old. The child is lying on his back with his knees in the air and his feet drawn up to his buttocks. The child's hands are tied behind his back with blue material and his legs are bound together at the ankles with what appears to be black tape.
  - g. 5485247xEx.jpg: This file is a color photograph of a nude male child who appears to be 5 to 9 years old. The child is on a bed in a semi-reclined position with his legs pulled up so that his feet are touching his head. His anus is being penetrated with a large diameter black object, possibly a large sex toy and his genitalia are prominently displayed.
  - h. 094.jpg: This file is a color photograph of a male child who appears to be 5 to 9 years old. The child is pictured with an adult's erect penis in his mouth and appears to be performing oral sex on an adult male.
10. On September 25, 2014, SA [REDACTED] provided HSI Intelligence Research Specialist (IRS) [REDACTED] with biographical information for the subscriber provided by Century Link and requested a full identification of the individual and any other individual who may be residing at [REDACTED]. According to IRS [REDACTED] an inquiry into the electrical utility subscriber at [REDACTED] revealed that [REDACTED] was the subscriber for that address.

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## MEMORANDUM OF ACTIVITY

In addition, according to the Tucson Electric Power (TEP) records [REDACTED] claimed that his employer was the United States Department of Homeland Security (DHS).

11. IRS [REDACTED] immediately notified SA [REDACTED] that the target of investigation was possibly a DHS employee. SA [REDACTED] queried the DHS global e-mail contact list for [REDACTED]. According to the DHS contact list, [REDACTED] is a United States Border Patrol Agent assigned to the Tucson, Arizona Border Patrol Station.
12. On September 25, 2014, SA [REDACTED] performed a drive by surveillance of [REDACTED] and noted a Ford pickup truck parked in the driveway bearing Arizona license number [REDACTED]. On September 26, 2014, SA [REDACTED] queried the TECS database by that license number to determine the registered owner of the pickup truck. According to the database the registered owner is [REDACTED] at that address.
13. On September 26, 2014, SA [REDACTED] notified Group Supervisor (GS) [REDACTED] of the possible misconduct of a DHS employee. GS [REDACTED] then notified DSAC Tucson management and the Office of Professional Responsibility (OPR) Assistant Special Agent in Charge (ASAC), in Tucson, Arizona.

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Requester's Name: John Greenewald, Jr.  
FOIA NO.: 2017-IGFO-00118

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6 PAGES

from OIG's ROI Case No. I14-BP-TUC-16379  
Exhibit 2 are referred to ICE for processing  
and direct response to the requester.

All redacted information in this document is withheld pursuant to FOIA exemptions  
(b)(6) and (b)(7)(c), unless specifically indicated otherwise in the margin of this document

# **EXHIBIT 3**



Homeland  
Security

MEMORANDUM OF ACTIVITY

Type of Activity: Other: Execution of Search Warrant and Subject Interview.

|              |                  |             |            |                 |
|--------------|------------------|-------------|------------|-----------------|
| Case Number: | I14-BP-TUC-16379 | Case Title: | [REDACTED] | BPA, Tucson, AZ |
|--------------|------------------|-------------|------------|-----------------|

On October 7, 2014, the Department of Homeland Security (DHS), Office of Inspector General (OIG) Tucson Field Office assisted Homeland Security Investigations (HSI) in executing a search warrant at the residence belonging to [REDACTED], Border Patrol Agent (BPA), Tucson Border Patrol Station (TUS), Tucson, AZ, located at [REDACTED].

HSI Tucson DSAC Office secured a warrant after an IP Century Link address registered to, allegedly distributed child pornography pictures to an undercover HSI computer. The pictures were shared through the use of a private peer to peer file sharing network. The aforementioned address was searched in an effort to locate and identify any and all computers, electronic storage devices, and other media capable of distributing, storing or producing child pornography.

Prior to the search warrant being executed, HSI and DHS OIG SAs approached BPA [REDACTED] at the TUS to attempt a voluntary interview, to which BPA [REDACTED] declined.

|   |   |
|---|---|
| Printed Name, Classification and Date<br>[REDACTED]   | Reviewing Office<br>10/7/2014<br>[REDACTED] |
| <b>IMPORTANT NOTICE</b><br>This report is intended solely for the official use of the Department of Homeland Security, or any entity receiving a copy directly from the Office of Inspector General. This report remains the property of the Office of Inspector General, and no secondary distribution may be made, in whole or in part, outside the Department of Homeland Security, without prior authorization by the Office of Inspector General. Public availability of the report will be determined by the Office of Inspector General under 5 U.S.C. 552. Unauthorized disclosure of this report may result in criminal, civil, or administrative penalties. |   |



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

**FEDERAL EMPLOYEE WARNING FORM**

You are being asked to provide information as part of an investigation being conducted by the Office of the Inspector General into alleged misconduct and/or improper performance of official duties. This investigation is being conducted pursuant to the Inspector General Act of 1978, as amended.

This is a voluntary interview. Accordingly, you do not have to answer questions. No disciplinary action will be taken against you solely for refusing to answer questions.

Any statement you furnish may be used as evidence in any future criminal proceeding or agency disciplinary proceeding, or both.

**ACKNOWLEDGMENT**

I understand the warnings and assurances stated above and I am willing to make a statement and answer questions. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

10/7/2014 0918  
(Date/Time)

[Redacted]  
(Printed Name)

Tucson Az  
(Location)

[Redacted]

[Redacted]  
(Witness' Printed Name)

[Redacted]  
(Witness' Signature)

[Redacted]  
(Witness' Printed Name)

[Redacted]  
(Witness' Signature)

10/7/2014 0907  
(Date/Time)

10/7/14 0909  
(Date/Time)

Advice of Rights (Garrity)

INV FORM-27 (06/13)

All redacted information in this document is withheld pursuant to FOIA exemptions  
(b)(6) and (b)(7)(c), unless specifically indicated otherwise in the margin of this document

# **EXHIBIT 4**



Homeland  
Security

MEMORANDUM OF ACTIVITY

Type of Activity: Records Review: Receipt of Information, HSI Report of Investigation (2-5).

Case Number: I14-BP-TUC-16379

Case Title: [REDACTED], BPA, TUC

On October 21, 2014, [REDACTED], Special Agent (SA), Department of Homeland Security (DHS), Office of Investigations (OIG), Tucson, AZ, reviewed Homeland Security Investigation (HSI) Report of Investigations (ROIs) for HSI case number TU07QL11WM0003. ROIs were numbered 2 through 5. The reports were provided by [REDACTED], SA, Homeland Security Investigations (HSI). The ROIs are details of the investigation alleging that [REDACTED], Border Patrol Agent (BPA), Tucson, AZ (TUS), shared child pornography pictures to an undercover HSI SA. The pictures were shared through the use of a private peer to peer file sharing network.

See attached documents.

|   |   |            |
|---|---|------------|
| [REDACTED]  | Reviewing Official<br>Field<br>10/30/2014 | [REDACTED] |
| <b>IMPORTANT NOTICE</b>   |   |            |
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Requester's Name: John Greenewald, Jr.  
FOIA NO.: 2017-IGFO-00118

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17 PAGES

from OIG's ROI Case No. I14-BP-TUC-16379  
Exhibit 4 are referred to ICE for processing  
and direct response to the requester.

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# **EXHIBIT 5**



Homeland  
Security

MEMORANDUM OF ACTIVITY

Type of Activity: Other: Indictment of [REDACTED], BPA, TUC.

**Case Number:** I14-BP-TUC-16379 **Case Title:** [REDACTED], BPA, TUC

On November 26, 2014, [REDACTED], Special Agent (SA), Department of Homeland Security (DHS), Office of Investigations (OIG), Tucson, AZ, received a scanned copy of a Grand Jury Indictment on [REDACTED], Border Patrol Agent (BPA), Tucson, AZ. The indictment shows a true bill indictment was received on November 25, 2014, charging violations for 18 USC 2252 (a)(2) and (b)(1) (Distribution of Child Pornography) and 18 USC 2252A(a)(5)(B) and (b)(2) (Possession of Child Pornography) against BPA [REDACTED].

|            |                                  |            |
|------------|----------------------------------|------------|
| [REDACTED] | Reviewing Official<br>11/26/2014 | [REDACTED] |
|------------|----------------------------------|------------|

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FILED - CLERK'S OFFICE

DEPARTMENT COPY

2014 NOV 25 PM [2:14]

CLERK'S DISTRICT COURT  
DISTRICT OF ARIZONA

1 JOHN S. LEONARDO  
2 United States Attorney  
3 District of Arizona  
4 Carin C. Duryee  
5 Assistant U.S. Attorney  
6 United States Courthouse  
7 405 W. Congress Street, Suite 4800  
8 Tucson, Arizona 85701  
9 Telephone: 520-620-7300  
10 Email: carin.duryee@usdoj.gov  
11 Attorneys for Plaintiff

12  
13 IN THE UNITED STATES DISTRICT COURT  
14 FOR THE DISTRICT OF ARIZONA  
15

16 United States of America,  
17 Plaintiff,  
18 vs.  
19  
20 Defendant.

**INDICTMENT**

**Violations:**

18 USC §§ 2252(a)(2) and (b)(1)  
(Distribution of Child Pornography)  
Count 1

18 USC §§ 2252A(a)(5)(B) and (b)(2)  
(Possession of Child Pornography)  
Count 2

CR14-1964TUC JAS(EJM)

16  
17 THE GRAND JURY CHARGES:  
18  
19

20 **COUNT ONE**  
21

**DISTRIBUTION OF CHILD PORNOGRAPHY**

22 On or about September 8, 2014, in Tucson, in the District of Arizona, [REDACTED]  
23  
24 [REDACTED] using any means or facility of interstate or foreign commerce, did knowingly  
25 distribute child pornography, that is, visual depictions, the production of which involved  
26 the use of minors engaging in sexually explicit conduct, as defined in Title 18, United  
27 States Code, Section 2256(2), and which depicted such conduct, which had been shipped  
28

1 and transported in interstate or foreign commerce by means of computer, or otherwise,  
2 including, but not limited to, the following files:

3 “! Dad-fickt-SON 00007.jpg”  
4 “094.JPG”  
5 “5485247xEx.jpg”  
6 “bs5637.jpg” and  
“hurts\_so\_good\_-\_001.jpg”

7  
8 All in violation of Title 18, United States Code, Sections 2252(a)(2) and (b)(1).

9  
10 **COUNT TWO**

11 **POSSESSION OF CHILD PORNOGRAPHY**

12 Beginning on a date unknown but including the period between September 8,  
13 2014 and October 7, 2014, in Tucson, in the District of Arizona, [REDACTED]  
14 did knowingly possess child pornography, that is, visual depictions, the production of  
15 which involved the use of minors, including pre-pubescent minors, engaging in sexually  
16 explicit conduct, as defined in Title 18, United States Code, Section 2256(2), and which  
17 depicted such conduct, that had been mailed, shipped and transported in interstate and  
18 foreign commerce by any means, including computer, and which was produced using  
19 materials which had been mailed and shipped and transported in interstate and foreign  
20 commerce; that is, [REDACTED] knowingly possessed on a Dell Inspiron laptop  
21 computer, s/n 1C9K1N1 , images of child pornography, including, but not limited to, the  
22 following files:  
23  
24  
25  
26  
27  
28

1 "Man fucking 5yo kid violent (2,12).mpg"  
2 "BOYRAPED\_AF2.MPEG"  
2 "Babyshivid 4Yo Fucked In Tub.avi"  
3 "Boy - Boy Tied On Table Face Fucked By Man.mpeg"  
3 "Babyshivid 2yo Slave Play Black Mask 004.avi"  
4 "child from his hands tied to the ankles fucked by man RAPE RAPE.wmv"  
4 "137493526582\_g002.jpg"  
5 "00(1) (2).jpg"  
5 "13 (2).jpg" and  
6 "bond\_08.jpg"

7 All in violation of Title 18, United States Code, Sections 2252A(a)(5)(B) and  
8 (b)(2).

9

10

11

12

13

A TRUE BILL

14

15

16

*/s/*

Presiding Juror

17

JOHN S. LEONARDO  
United States Attorney  
District of Arizona

NOV 25 2014

18

*/s/*

20

Carin C. Duryee  
Assistant U.S. Attorney

REDACTED FOR  
PUBLIC DISCLOSURE

21

22

23

24

25

26

27

United States of America v. [REDACTED]  
Indictment Page 3 of 3

28

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# EXHIBIT 6



Homeland  
Security

MEMORANDUM OF ACTIVITY

Type of Activity: Other: Plea of Guilty

Case Number: I14-BP-TUC-16379

Case Title: [REDACTED], BPA, TUC

On July 27, 2015, [REDACTED], Special Agent (SA), Department of Homeland Security (DHS), Office of Inspector General (OIG), Tucson, AZ, received notification from [REDACTED], SA, DHS, Homeland Security Investigations (HSI), that [REDACTED] Border Patrol Agent (BPA), Tucson, AZ, pled guilty to the indictment of Distribution and Possession of Child Pornography. Sentencing is scheduled for October 28, 2015 at 8:30 a.m.

Digitally signed by Jonathan Alvarez  
ON 07/27/2015 08:33:46 AM CDT  
from Tucson Field Office  
sanj.alvarez@oig.dhs.gov  
caulf  
Date 2015-07-27 13:33:46 -07:00

Reviewing O  
7/27/2015

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Defendant.

) CR 14-01964-001-TUC-JAS(DTF)

**MAGISTRATE JUDGE'S  
FINDINGS AND RECOMMENDATION  
UPON A PLEA OF GUILTY**

Upon Defendant's request to enter a plea of guilty pursuant to Rule 11 of the Federal Rules of Criminal Procedure, this matter was referred to the Magistrate Judge by the District Court, with the written consents of the Defendant, counsel for the Defendant, and counsel for the United States.

Thereafter, the matter came on for a hearing on Defendant's plea of guilty to Count(s) 1 & 2 of the Indictment which charges Title 18 USC Section 2252(a)(2) and (b)(1) Distribution of Child Pornography and Title 18 USC Sections 2252A(a)(5)(B) and (b)(2) Possession of Child Pornography in full compliance with Rule 11, Federal Rules of Criminal Procedure, before the Magistrate Judge, in open court and on the record.

In consideration of that hearing and the allocution made by the Defendant under oath on the record and in the presence of counsel, and the remarks of the Assistant United States Attorney,

(A) I FIND as follows:

- (1) that Defendant is competent to plead;
- (2) that Defendant understands his/her right to trial;

(3) that Defendant understands what the minimum mandatory and maximum possible sentence is, including the effect of the supervised release term, and defendant understands that the sentencing guidelines apply and that the court may depart

1 from those guidelines under some circumstances;

- (4) that the plea of guilty by the Defendant has been knowingly and voluntarily made and is not the result of force or threats or of promises;
  - (5) that Defendant understands the nature of the charge against him/her;
  - (6) that Defendant understands that his/her answers may later be used against him/her in a prosecution for perjury or false statement; and
  - (7) that there is a factual basis for the Defendant's plea;

(B) I RECOMMEND that the District Court accept the Defendant's plea of guilty to Count(s) 1 & 2 of the Indictment which charges Title 18 USC Section 2252(a)(2) and (b)(1) Distribution of Child Pornography and Title 18 USC Sections 2252A(a)(5)(B) and (b)(2) Possession of Child Pornography.

10 (C) The parties have fourteen (14) days from the date of service of this Report and  
11 Recommendation to file written objections with the District Court.

**IT IS FURTHER ORDERED:**

13 (D) Presentence Report to be prepared. (1) Any objection(s) to the presentence report shall  
14 be filed no later than 14 days after receiving the presentence report pursuant to Fed.R.  
15 Crim.P. 32 (f) (1); (2) any response to the objection(s) to the presentence report shall be filed  
16 no later than 11 days after receiving the objection(s); (3) any sentencing memorandum shall  
17 be filed no later than 5 business days prior to sentencing; (4) Any party seeking to continue  
18 a sentencing date shall file a Motion to Continue no later than two (2) business days prior to  
19 the date of the hearing. Additionally, counsel shall telephonically notify chambers when  
sentencing is within two (2) business days; (5) failure to comply with this Order may result  
in the imposition of sanctions.

DATED this 22<sup>nd</sup> day of July, 2015.



D. Thomas Ferraro  
United States Magistrate Judge

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# EXHIBIT 7



OFFICE OF INSPECTOR GENERAL  
Department of Homeland Security

MEMORANDUM OF ACTIVITY

Type of Activity: Other: Sentencing of [REDACTED], BPA, Tucson, AZ.

Case Number: I14-BP-TUC-16379

Case Title: [REDACTED] BPA, TUC

On January 6, 2016, [REDACTED], Border Patrol Agent (BPA), Tucson, AZ, appeared before the Honorable District Judge James Soto and was sentenced to incarceration for a period of 71 months followed by a life time of supervised release.

(Attachments: Judgment in a Criminal Case)

Digitally signed by Joaquin Alvarez  
DN: cn=Joaquin Alvarez, o=DHS OG,  
o=Tucson Field Office,  
email:[joaquin.alvarez@homeland.dhs.gov](mailto:joaquin.alvarez@homeland.dhs.gov),  
SUS  
Date: 2016.01.11 1309:27 -07'00'

Reviewing Off  
1/11/2016

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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

**United States of America**

v.

**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed on or After November 1, 1987)

No. CR 14-01964-001-TUC-JAS(EJM)

[REDACTED] (Retained)

Attorney for Defendant

USM#: 35467-408

**THE DEFENDANT ENTERED A PLEA OF guilty on 7/22/2015 to The Indictment without a plea agreement. On 1/6/2016 defendant entered a plea of guilty with a plea agreement as to Count 2 of the Indictment.**

**ACCORDINGLY, THE COURT HAS ADJUDICATED THAT THE DEFENDANT IS GUILTY OF THE FOLLOWING OFFENSE(S):** violating Title 18, U.S.C. §2252A(a)(5)(B) and §2252A(b)(2), Possession of Child Pornography, a Class C Felony offense, as charged in Count 2 of the Indictment.

**IT IS THE JUDGMENT OF THIS COURT THAT** the defendant is hereby committed to the custody of the Bureau of Prisons for a term of **SEVENTY ONE (71) MONTHS** on Count 2, with credit for time served. Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **LIFE** on Count 2. Defendant may apply for early termination after 20 years of supervised released.

**IT IS ORDERED** that all remaining counts are dismissed on motion of the United States.

**CRIMINAL MONETARY PENALTIES**

The defendant shall pay to the Clerk the following total criminal monetary penalties:

**SPECIAL ASSESSMENT: \$100.00      FINE: \$0      RESTITUTION: \$0**

The defendant shall pay a special assessment of \$100.00, which shall be due immediately.

The Court finds the defendant does not have the ability to pay a fine and orders the fine waived.

If incarcerated, payment of criminal monetary penalties are due during imprisonment at a rate of not less than \$25 per quarter and payment shall be made through the Bureau of Prisons' Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, Attention: Finance, Suite 130, 401 West Washington Street, SPC 1, Phoenix, Arizona 85003-2118. Payments should be credited to the various monetary penalties imposed by the Court in the priority established under 18 U.S.C. § 3612(c). The total special assessment of \$100.00 shall be paid pursuant to Title 18, United States Code, Section 3013 for Count 2 of the Indictment.

Any unpaid balance shall become a condition of supervision and shall be paid within 90 days prior to the expiration of supervision. Until all restitutions, fines, special assessments and costs are fully paid, the defendant shall immediately notify the Clerk, U.S. District Court, of any change in name and address. The Court hereby waives the imposition of interest and penalties on any unpaid balances.

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant is placed on supervised release for a term of LIFE on Count 2.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

It is the order of the Court that, pursuant to General Order 12-13, which incorporates the requirements of USSG §§5B1.3 and 5D1.2, you shall comply with the following conditions, of particular importance, you shall not commit another federal, state or local crime during the term of supervision and the defendant shall abstain from the use of illicit substances:

- 1) You shall not commit another federal, state, or local crime during the term of supervision.
- 2) You shall not leave the judicial district or other specified geographic area without the permission of the Court or probation officer.
- 3) The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
- 4) You shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 5) You shall support your dependents and meet other family responsibilities.
- 6) You shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 7) You shall notify the probation officer at least ten days prior to any change of residence or employment.
- 8) You shall refrain from excessive use of alcohol and are subject to being prohibited from the use of alcohol if ordered by the Court in a special condition of supervision.
- 9) You shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 801) or any paraphernalia related to such substances, without a prescription by a licensed medical practitioner. The use or possession of medicinal marijuana, even with a physician's written certification, is not permitted. Possession of controlled substances will result in mandatory revocation of your term of supervision.
- 10) You shall not frequent places where controlled substances are illegally sold, used, distributed or administered, or other places specified by the Court.
- 11) You shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 12) You shall permit a probation officer to visit at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 13) You shall immediately notify the probation officer (within forty-eight (48) hours if during a weekend or on a holiday) of being arrested or questioned by a law enforcement officer.
- 14) You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court.
- 15) As directed by the probation officer, you shall notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics, and shall permit the probation officer to make such notification and to confirm your compliance with such notification requirement.
- 16) If you have ever been convicted of a felony, you shall refrain from possessing a firearm, ammunition, destructive device, or other dangerous weapon. If you have ever been convicted of a misdemeanor involving domestic violence, you shall refrain from possession of any firearm or ammunition. Possession of a firearm will result in mandatory revocation of your term of supervision. This prohibition does not apply to misdemeanor cases that did

- not entail domestic violence, unless a special condition is imposed by the Court.
- 17) Unless suspended by the Court, you shall submit to one substance abuse test within the first 15 days of supervision and thereafter at least two, but no more than two periodic substance abuse tests per year of supervision, pursuant to 18 U.S.C. §§ 3563(a)(5) and 3583(d);
  - 18) If supervision follows a term of imprisonment, you shall report in person to the Probation Office in the district to which you are released within seventy-two (72) hours of release.
  - 19) You shall pay any monetary penalties as ordered by the Court. You will notify the probation officer of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.
  - 20) If you have ever been convicted of any qualifying federal or military offense (including any federal felony) listed under 42 U.S.C. § 14135a(d)(1) or 10 U.S.C. § 1565(d), you shall cooperate in the collection of DNA as directed by the probation officer pursuant to 42 U.S.C. § 14135a(a)(2).

The following special conditions are in addition to the conditions of supervised release or supersede any related standard condition:

1. You shall attend and participate in a sex offender treatment program and sex offense specific evaluations as approved by the probation officer. You shall abide by the policies and procedures of all the treatment and evaluation providers. You shall contribute to the cost of such treatment and assessment not to exceed an amount determined to be reasonable by the probation officer based on ability to pay.
2. You are restricted from engaging in any occupation, business, volunteer activity or profession where you have the potential to be alone with children under the age of 18 without prior written permission. Acceptable employment shall include a stable, verifiable work location and the probation officer must be granted access to your work site.
3. You shall not utilize, by any means, any social networking forums offering an interactive, user-submitted network of friends, personal profiles, blogs, chat rooms or other environment which allows for interaction with others without prior written permission from the probation officer.
4. You shall reside in a residence approved, in advance, by the probation officer. Any changes in the residence must be pre-approved in writing by the probation officer.
5. You shall not go to and/or loiter within 100 feet of school yards, parks, playgrounds, arcades, or other places primarily used by children under the age of 18, without prior written permission of the probation officer.
6. You shall attend and participate in periodic polygraph examinations as a means to determine compliance with conditions of supervision and the requirements of your therapeutic program, as directed by the probation officer. No violation proceedings will arise solely on the result of the polygraph test. A valid Fifth Amendment refusal to answer a question during a polygraph examination will not be used as a basis for a violation proceeding. You shall contribute to the cost of such polygraph examination not to exceed an amount determined to be reasonable by the probation officer based on ability to pay.
7. You shall register as a sex offender in compliance with all federal, state, tribal or other local laws or as ordered by the Court. Failure to comply with registration laws may result in new criminal charges.
8. You shall provide all financial documentation requested by the probation office.
9. You shall not be in the company of or have contact with children who you know are under the age of 18, including family members, without prior written permission. Contact includes, but is not limited to, letters, communication devices, audio or visual devices, visits, or

communication through a third party. You shall immediately report any contact to the probation officer.

10. You shall not possess or use a computer (including internet capable devices) with access to any on-line computer service at any location (including place of employment) without the prior written permission of the probation officer. This includes any Internet service provider, bulletin board system, or any other public or private network or e-mail system. If you are allowed by the probation officer access to a computer, you will comply with the conditions of the Computer Use Agreement.

11. You shall submit your person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct, and by any probation officer in the lawful discharge of the officer's supervision functions. You shall consent to and cooperate with the seizure and removal of any hardware and/or data storage media for further analysis by a law enforcement or the probation officer with reasonable suspicion concerning a violation of a condition of supervision or unlawful conduct. You shall warn any other residents that the premises may be subject to searches pursuant to this condition.

12. You shall consent, at the direction of the probation officer, to having installed on your computer(s), at your own expense, any hardware or software systems to monitor your computer use. You shall submit to random computer monitoring as directed by the probation officer, at any time, with or without suspicion you have violated the conditions of supervision.

13. You shall not knowingly or intentionally possess, view, or otherwise use material depicting sexually explicit conduct as defined in 18 U.S.C. § 2256 (2). You will submit any records requested by the probation officer to verify your compliance with this condition. You shall not enter any location where the primary function is to provide these prohibited materials.

**THE COURT FINDS** that you have been sentenced in accordance with the terms of the plea agreement and that you have waived your right to appeal and to collaterally attack this matter. The waiver has been knowingly and voluntarily made with a factual basis and with an understanding of the consequences of the waiver.

The Court may change the conditions of probation or supervised release or extend the term of supervision, if less than the authorized maximum, at any time during the period of probation or supervised release. The Court may issue a warrant and revoke the original or any subsequent sentence for a violation occurring during the period of probation or supervised release.

The Court orders commitment to the custody of the Bureau of Prisons and recommends that the defendant be placed in an institution in Englewood, Colorado.

Date of Imposition of Sentence: **Wednesday, January 6, 2016**

  
\_\_\_\_\_  
James A. Solo  
United States District Judge

DATED this 6<sup>th</sup> day of January,  
2016.

**RETURN**

I have executed this Judgment as follows: \_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_, the  
institution designated by the Bureau of Prisons, with a certified copy of this judgment in a Criminal case.

By: \_\_\_\_\_  
United States Marshal

Deputy Marshal

CR 14-01964-001-TUC-JAS(EJM) - Berner

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