

Exhibit A



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August 7, 2024

Sent via SecureRelease Portal

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street SW, Stop 5009
Washington, DC 20536-5009
Email: ICE-FOIA@dhs.gov

RE: FOIA Request: List of All U.S. Immigration and Customs Enforcement (“ICE”) Detention Facilities, Including Population Information (Fee Waiver & Expedite Processing Requested)

Dear Freedom of Information Act Officer:

This letter is a request for records (“Request”) made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, and the relevant implementing regulations, *see* 6 C.F.R. § 5 *et seq.* The Request is submitted by the American Civil Liberties Union Foundation (“ACLU” or “Requestor”). Requestor seeks the disclosure of **records sufficient to show all currently operational or contracted ICE detention facilities, along with their maximum bed space available to ICE.**

ICE spends \$3.4 billion taxpayer dollars annually on its detention network. But it does not publish system-wide statistics on the capacities of the facilities making up this network. This Request seeks this information to better inform the public about ICE’s expansive detention network.

Requestor also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d). The justifications for the fee waiver and expedited processing are set out in detail below.

I. Definitions

For purposes of this request, the terms listed below are defined as follows:

“DOCUMENTS” has the same scope used in Rule 34(a)(1) of the Federal Rules of Civil Procedure and shall encompass every writing or record of every type and description and every tangible thing that is or has been in the possession, custody, or control of the federal agency or agencies that are



the subject of this request and their employees, to which they have access, or of which they have knowledge, including, but not limited to, newspaper articles, magazine articles, news articles, correspondence, letters, contracts, files, electronic mail, memoranda, stenographic notes, handwritten notes, drafts, studies, publications, books, pamphlets, catalogs, purchase orders, receipts, advertisements, direct mail solicitations, point-of-sale and point-of-purchase materials, notebooks, diaries, models, devices, pictures, photographs, films, audiotapes, videotapes, computer records, voice recordings, maps, reports, surveys, minutes, data compilations, and statistical compilations, regardless of whether a particular DOCUMENT is privileged or confidential, and regardless of the form of storage (including, but not limited to, paper, microfiche, magnetic tape, magnetic disk (hard disk or floppy disk), CD-ROM, DVD, optical disk, or electronic storage device).

“ICE” means Immigration and Customs Enforcement, and any components, subcomponents, offices, or personnel therein.

“IMMIGRATION DETENTION FACILITY” means Service Processing Centers, Contract Detention Facilities, Family Residential Facilities, Intergovernmental Service Agreement (“IGSA”) Facilities, Dedicated Intergovernmental Service Agreement (“DIGSA”) Facilities, Intergovernmental Agreement (IGA) Facilities, and any other facilities where individuals may be held in ICE custody for 72 hours or more.

“MAXIMUM BED SPACE AVAILABLE TO ICE” refers to the maximum number of people ICE can detain at a given IMMIGRATION DETENTION FACILITY. For example, if the government’s contract with an IMMIGRATION DETENTION FACILITY permits it to hold up to 500 people in ICE custody and 700 people in US Marshals Service custody at a facility, then the “MAXIMUM BED SPACE AVAILABLE TO ICE” at this facility would be 500.

II. Requested Records

The ACLU seeks the release of the following records. Please construe this as an ongoing FOIA request, so that any records that come into the possession of the agency prior to your final response to this FOIA request should also be considered within the request’s scope.

1. DOCUMENTS sufficient to show all currently operational or contracted IMMIGRATION DETENTION FACILITIES, along with their MAXIMUM BED SPACE AVAILABLE TO ICE.



III. Fee Waiver Request

Requestor requests that any fees associated responding to its FOIA request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k). Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), fees should be waived or reduced if disclosure is (1) in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Disclosure in this case meets both of these tests. Requestor also requests a waiver or reduction of fees on the grounds that it qualifies as “representative[s] of the news media” and the records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(d)(1).

A. Disclosure is in the public interest as it is likely to contribute significantly to the public’s understanding of the ICE detention network for which taxpayers pay \$3.4 billion annually.

ICE operates a nationwide immigration detention network, at significant cost to taxpayers. How ICE chooses to spend this budget, and what detention capacity it obtains and uses with these funds, is of major public importance. In negotiating each year’s appropriations bill, Congress determines the size of the nation’s immigration detention system. These negotiations generate significant public interest. For instance, when the House released its 2024 appropriations bill, much of the media attention focused on the money appropriated to ICE’s detention network and the resulting increase to the size of this network.¹

As another example, there is significant public interest in closing problematic ICE detention facilities. The Biden administration succeeded in closing some problematic facilities, thus ending the serious abuses occurring in those facilities and saving the taxpayers money.² It

¹ *E.g.*, Caitlin Emma and Jennifer Scholtes, *Congressional leaders roll out final \$1.2T funding package ahead of Saturday shutdown deadline*, Politico, Mar. 21, 2024, <https://www.politico.com/live-updates/2024/03/21/congress/funding-package-unveiled-00148221>; Kaia Hubbard, *Lawmakers unveil \$1.2 trillion funding package, kicking off sprint to avoid government shutdown*, CBS News, Mar. 21, 2024, <https://www.cbsnews.com/news/government-funding-package-spending-congress/>; *Winners and losers as America at last reaches a budget deal*, The Economist, Mar. 23, 2024, <https://www.economist.com/united-states/2024/03/23/winners-and-losers-as-america-at-last-reaches-a-budget-deal>.

² *E.g.*, Priscilla Alvarez, *Biden administration to close two immigration detention centers that came under scrutiny*, CNN, May 20, 2021, <https://www.cnn.com/2021/05/20/politics/ice-detention-center/index.html>; Michelle Hackman, *Biden to Close ‘Dilley’ Detention Center, Shift Resources Amid Border Crackdown*, Wall Street Journal, June 10, 2023, <https://www.wsj.com/politics/policy/biden-to-close-dilley-detention-center-shift-resources-amid-border-crackdown-2b2cfc5>.



failed, however, to close several additional facilities that it had identified for closure.³ Information about the specific extent of ICE’s detention network could help the public to identify additional facilities that could readily be closed, ending abuses at those facilities and lowering taxpayer expenditures on ICE’s detention network.

B. Disclosure is not primarily in the commercial interest of the Requestor.

The ACLU is not filing this request to further a commercial interest. The ACLU is a 501(c)(3) nonprofit organization and therefore has no commercial interest. The ACLU intends to make any relevant information obtained through this FOIA available to the public. *See* 6 C.F.R. § 5.11(k)(1)(ii); 6 C.F.R. § 5.11(k)(3). The ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee.

The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU website also includes many features on information obtained through FOIA requests. For example, the ACLU’s “Predator Drones FOIA” webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU’s FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves.

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, in February 2017 the ACLU produced an analysis of documents released in response to a FOIA request about the TSA’s behavior detection program. The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the ACLU plans to disseminate the information disclosed as a result of this Request to the public at no cost.

³ Ted Hesson, *Exclusive: Biden officials kept immigration jails despite internal cost concerns*, Reuters, September 27, 2023, <https://www.reuters.com/world/us/biden-officials-kept-immigration-jails-despite-internal-cost-concerns-2023-09-27/>.



C. Requestor also qualifies for a fee waiver because it is representative of the news media and the records are not sought for commercial use.

The ACLU is also entitled to a waiver of search fees on the grounds that the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The ACLU meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *ACLU v. U.S. Dep’t of Just.*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).

Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. For example, the ACLU regularly publishes *ACLU Magazine*, which reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 950,000 households. The ACLU also publishes regular updates and alerts via email to approximately four million subscribers (both ACLU members and nonmembers). These updates are additionally broadcast to 5.9 million social media followers (members and non-members). The magazine, email, and social-media alerts often include descriptions and analysis of information obtained through our FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news, and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests. Similarly, ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

The ACLU also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties. The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See*



<https://www.aclu.org/multimedia>.

Underscoring this point, courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU's are "representatives of the news media" as well. *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr. v. U.S. Dep't of Defense*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for purposes of the FOIA); *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a "public interest law firm," a news media requester).⁴

As a representative of the news media, the ACLU plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use. On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a "representative of the news media." A fee waiver would fulfill Congress's legislative intent in amending FOIA.⁵ Additionally, on account of these factors, the ACLU has not been charged fees associated with responding to FOIA requests on numerous occasions.⁶

In sum, because disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the requester, and because the ACLU is a representative of the news media, the ACLU is entitled to a total waiver of fees associated with this Request and should, in no event, be required to pay more than reasonable standard charges for document duplication. In the event that you decide not to waive the fees, please provide me with prior notice so that we can discuss arrangements.

⁴ Courts have found these organizations to be "representatives of the news media" even though they engage in litigation and lobbying activities beyond their dissemination of information and public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 5; *Nat'l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

⁵ *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requestors.'") (citation omitted); *Citizens for Responsibility & Ethics in Washington v. U.S. Dep't. of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) ("[FOIA's] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.") (internal quotation marks and citation omitted).

⁶ For example, in August 2016, the ICE FOIA Office and DHS Privacy Office both granted fee waivers to the ACLU for a FOIA request seeking a DHS OIG super-memorandum and ICE's response to that memorandum. Similarly, in March 2016, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about selected deaths in detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office. In July 2015, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about the use of segregation in ICE detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office.



IV. Expedited Processing Request

The ACLU requests expedited processing of this Request pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(1)(ii).

A. Requestor is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). As detailed *supra*, the ACLU has the ability and intention to widely disseminate the requested information through a variety of sources, including reports, newsletters, news briefings, right-to-know handbooks, and other materials, to the public at no cost. Indeed, obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU*, 321 F. Supp. 2d at 29 n.5 (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).⁷ Moreover, as mentioned *supra*, the ACLU intends to distribute the information obtained through this FOIA request via its website and/or other means available to it.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

The requested records are also urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, the requested records pertain to ICE’s detention network and the ways in which ICE spends its significant detention budget. As described *supra*, this is a matter of widespread media and public interest, and the requested records will inform the public of ICE’s activity. 5 U.S.C. § 552(a)(6)(E)(i)(I). Detention of noncitizens, including ICE’s large detention budget, is a matter subject to significant public debate. This Request will shed critical light on these questions. This information is urgently needed so that the public is aware of how ICE is spending its Fiscal Year 2024 detention budget before the deadline for Congress to appropriate funds for Fiscal Year 2025, which falls on October 1, 2024.

⁷ Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11.



I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi); *see also* 6 C.F.R. § 5.5(e)(3).

V. Conclusion

Thank you for your prompt attention to this Request. We look forward to your reply to this Request within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii) and 6 C.F.R. § 5.5(e)(4).

Please call me at 646-905-8907 or email me at dgalindo@aclu.org if you have any questions or wish to obtain further information about the nature of the records in which we are interested. Please furnish the applicable records via email (dgalindo@aclu.org).

If the records must be sent via U.S. Mail, please send to the following address:

Daniel Galindo
ACLU Immigrants' Rights Project
125 Broad Street
New York, NY 10004

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny a waiver of fees.

Sincerely,

/s/ Daniel Galindo

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Exhibit B



Daniel Galindo
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Immigrants' Rights Project
ACLU National Legal Department

August 7, 2024

Sent via SecureRelease Portal

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street SW, Stop 5009
Washington, DC 20536-5009
Email: ICE-FOIA@dhs.gov

**Re: FOIA Request for Records Related to Detention of Noncitizens at Commercial Lodging Facilities
(Fee Waiver & Expedited Processing Requested)**

Dear Freedom of Information Officer:

This letter is a request for records (“Request”) made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, and the relevant implementing regulations, *see* 6 C.F.R. § 5 *et seq.* The Request is submitted by the American Civil Liberties Union Foundation (“ACLU” or “Requestor”). Requestor seeks, for the period of January 1, 2023 through the present, the disclosure of **records related to detention of noncitizens at commercial lodging facilities, including but not limited to contracts, memoranda, communications, policy, guidance, data, records, or other documents.**

Requester also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d). The justifications for the fee waiver and expedited processing are set out in detail below.

I. Background

As part of its processing and removal operations, U.S. Immigration and Customs Enforcement (“ICE”) detains noncitizens, often for prolonged periods of time stretching weeks, months, and years. While ICE maintains some of its own detention centers and its own contracts with private companies for additional detention space, ICE also relies on contracts with commercial lodging facilities to fill this need. Despite the critical role these particular lodging facilities play in the removal system, the underlying contracts and procedures remain shrouded in secrecy.

Requestor seeks to better understand how this system functions, including the players involved and internal agency protocols regarding detention of noncitizens in locations not operated



by ICE or one of its private contractors. This information is especially urgent given presidential-candidate Donald Trump’s stated plan to round up noncitizens on a vast scale and detain them pending deportation flights, if reelected in 2024.¹

II. Records Requested

This Request seeks, for the period from January 1, 2023 through the present:

- (1) ICE contracts in effect during any portion of the designated time period for hotels, motels, or other commercial lodging providers to detain noncitizens.
- (2) Memoranda, guidance, or any other documents regarding ICE’s policies or protocols for detaining noncitizens (including single adults, noncitizen children and family units) in hotels, motels, or other commercial lodging facilities.
- (3) Documents sufficient to show the total number of beds currently—i.e., as of the date of the agency’s last response to this request—available at hotels, motels, or other commercial lodging facilities to detain noncitizens.

Please construe this as an ongoing FOIA request, so that any records that come into the possession of the agency prior to your final response to this FOIA request should also be considered within the request’s scope.

III. Fee Waiver Request

Requestor requests that any fees associated responding to its FOIA request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k). Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), fees should be waived or reduced if disclosure is (1) in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Disclosure in this case meets both of these tests. Requestor also requests a waiver or reduction of fees on the grounds that it qualifies as “representative[s] of the news media” and the records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(d)(1).

¹ Ronald Brownstein, *Trump’s ‘Knock on the Door’*, Atlantic (Feb. 8, 2024), <https://www.theatlantic.com/politics/archive/2024/02/trumps-immigration-plan-is-even-more-aggressive-now/677385/>.



A. Disclosure is in the public interest as it is likely to contribute significantly to the public’s understanding of the operations and activities of government.

First, disclosure pursuant to this Request is in the public interest. Immigration advocacy groups and the public at large have paid particular attention to ICE’s contracts for detaining noncitizens.

There is intense local interest when migrants are detained in hotels.² Community members are often surprised and concerned to learn that recognizable hotel chains, such as Best Western or Comfort Suites, participate in ICE detention.³ And such proposed contracts often face serious pushback from community members.⁴

Immigration advocacy groups and internal government watchdogs have raised concerns about potential abuse or failure to follow protocols in hotels or motels.

For example, immigration advocacy groups have “raised serious concerns regarding the treatment and lack of freedom of movement” of individuals detained in hotels and motels.⁵ An NGO employee who visited a hotel where ICE detained noncitizens “was told during her visit that [noncitizens] could only leave [their rooms] with an escort.”⁶ Legal advocates describe the “cloak of mystery” surrounding these sites as purposeful. Javier Hidalgo, the interim director of family detention services for the Refugee and Immigrant Center for Education and Legal Services (“RAICES”), stated that “[w]hen functioning as designed, you can basically move people through those sites unseen.”⁷ Hidalgo noted that hiding due process violations, such as failing to provide space for confidential legal visitation, is easier at hotels.⁸ Others advocates worried that conditions in hotels used to detain families with children do not meet the standards of the *Flores* settlement.⁹

² See, e.g., Rene Kladzyk, *What We Do – and Don’t – Know about the Hotels ICE Uses to Detain Migrant Families*, El Paso Matters (Aug. 26, 2021), <https://elpasomatters.org/2021/08/26/what-we-do-and-dont-know-about-the-hotels-ice-uses-to-detain-migrant-families/>; *US Holding Young Migrant Kids in Arizona Hotels Before Deporting Them*, USA Today (July 22, 2020), <https://www.usatoday.com/story/news/politics/immigration/2020/07/22/ice-contractor-holding-migrant-kids-hotels-before-deportations/5491714002/>.

³ See, e.g., Kladzyk, *supra* note 1 (“You drive past and you would never know that there’s anything happening in there.”).

⁴ Dee-Ann Durbin, *Hotels Pressured to Not Hold ICE Detainees*, Chi. Trib. https://digitaledition.chicagotribune.com/tribune/article_popover.aspx?guid=b5a8d80a-a9f2-44b8-a166-0f95caf56437; Karsten Strauss, *Major hotel Franchises Decline to House Detained Migrants for ICE*, Forbes (Oct. 16, 2019), <https://www.forbes.com/sites/karstenstrauss/2019/07/24/major-hotel-franchises-decline-to-house-detained-migrants-for-ice/>.

⁵ *Id.*

⁶ Kladzyk, *supra* note 1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*



The Department of Homeland Security’s Office of Inspector General (“OIG”) has expressed many similar concerns with ICE’s use of commercial lodging. OIG issued a report finding that none of the commercial facilities it investigated required handheld video cameras to record use-of-force incidents inside hotel rooms.¹⁰ Multiple hotels also had blind spots in their interior camera coverage.¹¹ OIG found that ICE’s hotel operations suffered from “broad lapses in compliance” with the family residential standards.¹² In OIG’s opinion, such lapses demonstrated that families detained at these hotels “may not have received the level of care intended” by those standards.¹³

Moreover, the expense of detention space is a matter of both governmental and public concern. ICE’s contracts for detention are significant. For instance, one contract for short-term family detention at a hotel cost the government over \$86 million.¹⁴ Professor Daniel Mount, an associate professor of hospitality management at Penn State University, said that the government generally pays a higher rate than a budget hotel could command on the market.¹⁵

Reports issued by OIG suggest serious mismanagement of these contracts. For instance, OIG issued a report finding that ICE “spent approximately \$17 million for hotel space and services at six hotels that went largely unused between April and June 2021” resulting “in millions of dollars spent on unused hotel space.”¹⁶ Lawmakers have also raised concerns about the high price for this type of contract.¹⁷ And NGOs who assist migrants echoed concerns about “the lack of transparency surrounding these contracts.”¹⁸

Finally, presidential-candidate Donald Trump has announced plans to, if reelected in 2024, arrest noncitizens on a vast scale and detain them pending deportation, garnering intense public scrutiny.¹⁹ Trump’s mass deportation plan has faced public outcry, from fears that it will

¹⁰ Dep’t of Homeland Sec., Off. of Inspector Gen., *ICE Spent Funds on Unused Beds, Missed COVID-19 Protocols and Detention Standards while Housing Migrant Families in Hotels 10-11* (2022), <https://www.oig.dhs.gov/sites/default/files/assets/2022-04/OIG-22-37-Apr22.pdf>.

¹¹ *Id.* at 11.

¹² *Id.*

¹³ *Id.*

¹⁴ Camilo Montoya-Galvez, *ICE Taps Nonprofit to House Some Migrant Families in Border-Area Hotels*, CBS News (Mar. 20, 2021), <https://www.cbsnews.com/news/ice-taps-nonprofit-to-house-some-migrant-families-in-border-area-hotels/>.

¹⁵ *See* Durbin, *supra* note 3.

¹⁶ *Unused Beds, supra* note 10, at 3.

¹⁷ *See, e.g.*, Letter from Marsha Blackburn, Senator, to Alejandro Mayorkas, Secretary of DHS (Mar. 30, 2021), <https://www.blackburn.senate.gov/services/files/BB96BE52-8DB0-44F2-9E75-46E387A63A44>.

¹⁸ *100+ Organizations Raise the Alarm on ICE Custody Programs*, Refugees Int’l (June 21, 2021), <https://www.refugeesinternational.org/advocacy-letters/100-organizations-raise-the-alarm-on-ice-custody-programs/>.

¹⁹ *See, e.g.*, Charlie Savage, Maggie Haberman & Jonathan Swan, *Sweeping Raids, Giant Camps as Mass Deportations: Inside Trump’s 2025 Immigration Plans*, N.Y. Times (Nov. 11,



undermine the rule of law and due process, to concerns that staffing and funding the system could weaken other federal agencies, to worries about the economic and fiscal impact of removing a significant slice of the workforce.²⁰ The public, therefore, has a strong interest in understanding the contracts in place that could help facilitate detention of noncitizens swept up by Trump's proposed deportation apparatus.

Disclosure of the requested records will shed light upon ICE's detention operations run out of commercial facilities. The requested records will thus contribute significantly to the public's understanding of ICE's enforcement practices and its treatment of people in its custody.

B. Disclosure is not primarily in the commercial interest of the Requestor.

Second, Requestor is not filing this request to further a commercial interest. Requestor is a 501(c)(3) nonprofit organization and therefore has no commercial interest. Requestor intends to make any relevant information obtained through this FOIA available to the public.²¹ Requestor publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee.

Requestor also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which Requestor is focused. Requestor's website also includes many features on information obtained through FOIA requests. For example, the ACLU's "Predator Drones FOIA" webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves.²² Requestor has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, in February 2017 the ACLU produced an analysis of documents released in response to a FOIA request about the TSA's

2023), <https://www.nytimes.com/2023/11/11/us/politics/trump-2025-immigration-agenda.html>; Philip Bump, *The Incomprehensible, Unattainable Scale of Trump's Deportation Plan*, Wash. Post (May 15, 2024), <https://www.washingtonpost.com/politics/2024/05/15/trump-immigration-deportation-plan/>.

²⁰ Brownstein, *supra* note 1; Ctr. for Migration Studies of N.Y., *How Trump's Mass Deportation Plan Would Hurt the United States* (Mar. 27, 2024), <https://cmsny.org/how-trump-mass-deportation-plan-would-hurt-usa/>.

²¹ See 6 C.F.R. § 5.11(k)(1)(ii); 6 C.F.R. § 5.11(k)(3).

²² See also *FOIA Database Regarding the U.S. Government's Violent Extremism Initiatives*, ACLU, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.



behavior detection program. Requestor plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and Requestor plans to disseminate the information disclosed as a result of this Request to the public at no cost.

C. Requestor also qualifies for a fee waiver because it is a representative of the news media and the records are not sought for commercial use.

Requestor is also entitled to a waiver of search fees on the grounds that it qualifies as “representative[s] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Requestor meets the statutory and regulatory definitions of “representative[s] of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *ACLU v. U.S. Dep’t of Just.*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).

Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor’s work and are among its primary activities. For example, the ACLU regularly publishes *ACLU Magazine* that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 950,000 households. The ACLU also publishes regular updates and alerts via email to approximately 4 million subscribers (both ACLU members and nonmembers). These updates are additionally broadcast to 4.9 million social media followers (members and non-members). The magazine, email, and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

Requestor also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,²³ and ACLU attorneys are interviewed

²³ *See, e.g.*, Press Release, ACLU, U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, ACLU, CIA Releases Dozens of Torture Documents in Response to ACLU Lawsuit (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, ACLU, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>.



frequently for news stories about documents released through ACLU FOIA requests.²⁴ Similarly, Requestor regularly publishes and disseminates reports that include a description and analysis of government documents obtained through FOIA requests.²⁵ This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

Requestor also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties. The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See* <https://www.aclu.org/multimedia>.

Underscoring this point, courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to Requestor’s are “representatives of the news media” as well. *See, e.g., Elec. Privacy Info. Ctr. v. U.S. Dep’t of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *Jud. Watch, Inc. v. U.S. Dep’t of Just.*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a non-profit “public interest law firm,” a news media requester).²⁶

²⁴ *See, e.g.,* Cora Currier, *TSA’s Own Files Show Doubtful Science Behind Its Behavior Screening Program*, Intercept (Feb. 8, 2017), <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program/> (quoting ACLU attorney Hugh Handeyside); ABC News, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC News (June 15, 2016), <http://abcn.ws/2jy40d3> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Surveillance*, Guardian (Mar. 17, 2016), <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler).

²⁵ *See, e.g.,* Manar Waheed, *Customs and Border Protection Violated Court Orders During the First Muslim Ban Implementation* (Jan. 24, 2018), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/customs-and-border-protection-violated-court>; Vera Eidelman, *We Sued for Records About Trump’s Muslim Bans. Here’s What We Found Out.* (Oct. 24, 2017), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/we-sued-records-about-trumps-muslim-bans-heres>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Galen Sherwin et al., ACLU, *Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (May 27, 2016), <https://www.aclu.org/report/leaving-girls-behind>.

²⁶ Courts have found organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information and public education activities. *See, e.g., Elec.*



As representatives of the news media, Requestor plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use. On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news media.”²⁷ A fee waiver would fulfill Congress’s legislative intent in amending FOIA.²⁸ Additionally, on account of these factors, Requestor has not been charged fees associated with responding to FOIA requests on numerous occasions.²⁹

In sum, because disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the Requestor, and Requestor is a representative of the news media, Requestor is entitled to a total waiver of fees associated with this Request and should, in no event, be required to pay more than reasonable standard charges for document duplication. In the event that you decide not to waive the fees, please provide us with prior notice so that we can discuss arrangements.

IV. Expedited Processing Request

Requestor requests expedited processing of this Request pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(1)(ii).

Privacy Info. Ctr., 241 F. Supp. 2d at 6; *Nat’l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

²⁷ For example, in May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ.

²⁸ *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requestors.’”) (citation omitted); *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) (“[FOIA’s] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.”) (internal quotation marks and citation omitted).

²⁹ For example, in August 2016, the ICE FOIA Office and DHS Privacy Office both granted fee waivers to the ACLU for a FOIA request seeking a DHS OIG super-memorandum and ICE’s response to that memorandum. Similarly, in March 2016, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about selected deaths in detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office. In July 2015, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about the use of segregation in ICE detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office.



A. Requestor is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

Requestor is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). As detailed *supra*, Requestor has the ability and intention to widely disseminate the requested information through a variety of sources, including reports, newsletters, news briefings, right-to-know handbooks, and other materials, to the public at no cost. Indeed, obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor’s work and are among its primary activities. *See ACLU*, 321 F. Supp. 2d at 29 n.5 (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).³⁰ Moreover, as mentioned *supra*, Requestor intends to distribute the information obtained through this FOIA request via its website and/or other means available to it.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

The requested records are also urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, the requested records pertain to ICE’s detention operations. As described *supra*, ICE detention is a matter of widespread media and public interest, and the requested records will inform the public concern of this activity by ICE. 5 U.S.C. § 552(a)(6)(E)(i)(I). Detention and treatment of immigrants in ICE’s custody, including the location where and the conditions under which it occurs, are matters subject to significant public debate. As identified here, various advocacy groups have expressed serious concerns regarding the lack of transparency and information available regarding ICE’s programs to detain noncitizens in commercial hotels. This Request will shed critical light on ICE’s detention contracts, policies and protocols.

This information is particularly urgent given presidential-candidate Trump’s plans to implement a mass deportation system. One of the cornerstones of Trump’s system is detaining noncitizens pending deportation. It is likely that Trump would look to existing contracts with commercial lodging facilities to absorb some of the noncitizens that his administration detains. It is important to know where the facilities are located and what their capacity is, to allow the public, the media, and members of Congress to address detention occurring in their communities, guard

³⁰ Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11.



against abuses occurring at local facilities, and work to limit the expansion of ICE’s detention apparatus in their communities.

Furthermore, denial of expedited disclosure of the requested records could “reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” 5 U.S.C. § 552(a)(6)(E)(v)(I); 6 C.F.R. § 5.5(e)(1)(i). As discussed above, the media, advocates, and the government itself have found that conditions in hotels and motels are ripe for abuse. A review of the contracts, operations, policies, and protocols for ICE’s detention operations will enable organizations to assess the efficacy of ICE’s oversight of detention in hotels and motels, and to understand what precautions, if any, contractors are obligated to take to protect the safety of noncitizens detained in these facilities. Without such transparency, individuals detained in commercial facilities may continue to suffer from unsafe conditions without adequate oversight or accountability. Given the foregoing, Requestor has satisfied the requirements for expedited processing of this Request.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi); *see also* 6 C.F.R. § 5.5(e)(3).

V. Conclusion

Thank you for your prompt attention to this Request. We look forward to your reply to this Request within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii) and 6 C.F.R. § 5.5(e)(4).

Please call me at 646-905-8907 or email me at dgalindo@aclu.org if you have any questions or wish to obtain further information about the nature of the records in which we are interested. Please furnish the applicable records via email (dgalindo@aclu.org).

If the records must be sent via U.S. Mail, please send to the following address:

Daniel Galindo
ACLU Immigrants’ Rights Project
125 Broad Street
New York, NY 10004

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny a waiver of fees.



Sincerely,

/s/ Daniel Galindo

Daniel Galindo
American Civil Liberties Union Foundation
Immigrants' Rights Project
125 Broad Street
New York, NY 10004

Noelle Smith
American Civil Liberties Union Foundation
Immigrants' Rights Project
425 California St., 7th Floor
San Francisco, CA 94104

Exhibit C



Daniel Galindo
Senior Staff Attorney
Immigrants' Rights Project
ACLU National Legal Department

August 7, 2024

Sent via SecureRelease Portal

Department of Homeland Security
Privacy Office
2702 Martin Luther King Jr. Ave SE
Washington, DC 20528-065

**Re: FOIA Request for Records Related to Intra-Agency Details
(Fee Waiver & Expedited Processing Requested)**

Dear Freedom of Information Officer:

This letter is a request for records (“Request”) made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, and the relevant implementing regulations, *see* 6 C.F.R. § 5 *et seq.* The Request is submitted by the American Civil Liberties Union Foundation (“ACLU” or “Requestor”). Requestor seeks the disclosure of **records, from the period of January 1, 2023 through the present, explaining the policies of the Department of Homeland Security (“DHS”) and its components related to detailing personnel from one component to another.**

Requestor also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d). The justifications for the fee waiver and expedited processing are set out in detail below.

I. Background

DHS includes numerous diverse components—from Customs and Border Protection (“CBP”) to the Federal Emergency Management Agency (“FEMA”) to the Federal Protective Service. Each component employs hundreds or thousands of individuals. Nevertheless, several DHS components have faced chronic complaints of understaffing. DHS sometimes addresses this by detailing employees from one component to another component. This request seeks to understand when an employee from one component can be detailed (i.e. assigned) to another component and the circumstances under which DHS or a DHS component policy permits such a detailing or an assignment.¹

¹ This Request uses the terms “detailing” and “assignment,” and their iterations, interchangeably to refer to “[a] temporary assignment of an employee to a different position or duties for a specific period, with the employee



II. Definitions

For the purpose of this Request, the terms listed below are defined as follows:

“DOCUMENTS” has the same scope used in Rule 34(a)(1) of the Federal Rules of Civil Procedure and shall encompass every writing or record of every type and description and every tangible thing that is or has been in the possession, custody, or control of the federal agency or agencies that are the subject of this request and their employees, to which they have access, or of which they have knowledge, including, but not limited to, newspaper articles, magazine articles, news articles, correspondence, letters, contracts, files, electronic mail, memoranda, stenographic notes, handwritten notes, drafts, studies, publications, books, pamphlets, catalogs, purchase orders, receipts, advertisements, direct mail solicitations, point-of-sale and point-of-purchase materials, notebooks, diaries, models, devices, pictures, photographs, films, audiotapes, videotapes, computer records, voice recordings, maps, reports, surveys, minutes, data compilations, and statistical compilations, regardless of whether a particular DOCUMENT is privileged or confidential, and regardless of the form of storage (including, but not limited to, paper, microfiche, magnetic tape, magnetic disk (hard disk or floppy disk), CD-ROM, DVD, optical disk, or electronic storage device).

“CBP” means Customs and Border Protection, and any components, subcomponents, offices, or personnel therein.

“DHS” means Department of Homeland Security, and any components, subcomponents, offices, or personnel therein.

“FEMA” means Federal Emergency Management Agency, and any components, subcomponents, offices, or personnel therein.

“HSI” means Homeland Security Investigations, and any components, subcomponents, offices, or personnel therein.

“ICE” means Immigration and Customs Enforcement, and any components, subcomponents, offices, or personnel therein.

“USCIS” means U.S. Citizenship and Immigration Services, and any components, subcomponents, offices, or personnel therein.

returning to his/her regular duties at the end of the detail.” See *Immigr. & Customs Enf’t, ICE Merit Promotion Procedures* 3 (Aug. 30, 2021), https://www.ice.gov/doclib/foia/policy/1028.1_iceMeritPromotionProcedures.pdf. This Request is limited to intra-agency details within DHS; it does not include detail of DHS staff to outside agencies (i.e., Department of State).



III. Records Requested

This Request seeks, for the period from January 1, 2023 through the present, the following records from DHS and any of its components:

1. Memoranda, policies, guidance, or any other document from DHS, or any component or subcomponent thereof (including without limitation FEMA and HSI), regarding policies for detailing an employee or contractor from DHS, any component, or any subcomponent to a different component or subcomponent.
2. Memoranda, policies, guidance, or any other document from any DHS component or subcomponent (including without limitation CBP, ICE, and USCIS) regarding policies for receiving an employee or contractor detailed from DHS or a component or subcomponent thereof.

Please construe this as an ongoing FOIA request, so that any records that come into the possession of the agency prior to your final response to this FOIA request should also be considered within the request's scope.

IV. Fee Waiver Request

Requestor requests that any fees associated responding to its FOIA request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k). Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), fees should be waived or reduced if disclosure is (1) in the public interest because it is "likely to contribute significantly to public understanding of the operations or activities of the government" and (2) "not primarily in the commercial interest of the requester." Disclosure in this case meets both of these tests. Requestor also requests a waiver or reduction of fees on the grounds that it qualifies as "representative[s] of the news media" and the records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(d)(1).

A. Disclosure is in the public interest as it is likely to contribute significantly to the public's understanding of the operations and activities of government.

Disclosure pursuant to this Request is in the public interest. The public has expressed interest in staffing shortages at DHS components, particularly ICE and CBP. The media has published articles discussing staffing shortages at CBP and ICE.² These articles have focused on

² *See, e.g.,* Zoe Todd & Jodi Wei, 'Send Help': Inside CBP's Multi-Year Staffing Struggle, PBS Frontline (Jan. 7, 2020), <https://www.pbs.org/wgbh/frontline/article/border-patrol-staffing-migrant-crisis/>; Joe Davidson, *Immigration Cop Shortage and a Caution Against Hiring Too Quickly*, Washington Post (July 23, 2018),



a broad range of issues caused by understaffing, from dangerous conditions at detention facilities, including a lack of staffing for ICE medical clinics, to flagging morale and unsustainable overtime expectations for CBP and ICE employees.³

The government has likewise recognized that staffing shortages create dangerous conditions for noncitizens detained in ICE detention. For instance, Department of Homeland Security’s Office of Inspector General’s (“OIG”) report about one ICE facility “identified critical staffing shortages and violations of ICE detention standards that compromised the health, safety, and rights of detainees.”⁴

The government has also recognized the impact of staffing shortages on CBP and ICE personnel. OIG found that “CBP’s and ICE’s current method of managing law enforcement staffing is unsustainable.”⁵ OIG reported that understaffing at CBP and ICE has “negatively impacted the health and morale of law enforcement personnel, who feel overworked and unable to perform their primary law enforcement duties.”⁶ Congress is concerned, too. Legislators from both sides of the aisle have introduced legislation to address personnel shortages at ports of entry.⁷ And Congress has held hearings regarding the personnel needs of CBP and ICE.⁸

Staffing shortages also affect local economies. For instance, CBP has closed several border crossings due to staffing shortages.⁹ After one such closure was announced in San Diego, the city’s

<https://www.washingtonpost.com/news/powerpost/wp/2018/07/23/immigration-cop-shortage-a-caution-against-hiring-too-quickly/>.

³ See, e.g., Todd & Wei, *supra* note 2; Davidson, *supra* note 2; Tom Dreisbach, *Government’s Own Experts Found ‘Barbaric’ and ‘Negligent’ Conditions in ICE Detention*, NPR (Aug. 16, 2023),

<https://www.npr.org/2023/08/16/1190767610/ice-detention-immigration-government-inspectors-barbaric-negligent-conditions>.

⁴ Dep’t of Homeland Sec., Off. of Inspector Gen., *Violations of ICE Detention Standards at Torrance County Detention Facility 4* (Sept. 28, 2022), <https://www.oig.dhs.gov/sites/default/files/assets/2022-09/OIG-22-75-Sep22.pdf>.

⁵ Dep’t of Homeland Sec., Off. of Inspector Gen., *Intensifying Conditions at the Southwest Border Are Negatively Impacting CBP and ICE Employees’ Health and Morale*, at i (May 3, 2023), <https://www.oig.dhs.gov/sites/default/files/assets/2023-05/OIG-23-24-May23.pdf> (hereinafter “Intensifying Conditions”).

⁶ *Id.*

⁷ Sen. Homeland Sec. & Governmental Affairs Comm., *Peters and Cornyn Reintroduce Bipartisan Bill to Address Staffing Shortages at Ports of Entry* (Apr. 28, 2023), <https://www.hsgac.senate.gov/media/dems/peters-and-cornyn-reintroduce-bipartisan-bill-to-address-staffing-shortages-at-ports-of-entry-2/>; Senator Hassan Cosponsors Bipartisan Bill to Strengthen Border Security, Increase Number of Officers at Ports of Entry (Apr. 2, 2022), <https://www.hassan.senate.gov/news/press-releases/senator-hassan-cosponsors-bipartisan-bill-to-strengthen-border-security-increase-number-of-officers-at-ports-of-entry>.

⁸ *Watch Live: Homeland Security Watchdog Testifies on Staff Shortage at Border*, The Hill (June 6, 2023), <https://thehill.com/homenews/4036416-watch-live-homeland-security-ig-testifies-on-staff-shortages-at-the-border/>.

⁹ U.S. Customs & Border Protection, *Statement from CBP on Operations in San Diego, California* (Dec. 7, 2023), <https://www.cbp.gov/newsroom/national-media-release/statement-cbp-operations-san-diego-california>; U.S.



mayor said that the decision “will deal an enormous blow to San Diego’s economy and upend holiday season for families who celebrate together on both sides of the border.”¹⁰ Arizona’s governor said a similar closure in her state “caused a month of strain and concern for Arizona’s border communities.”¹¹ The president of the Arizona Chamber of Commerce noted that Mexican visitors spend an average of \$7 million per day in Arizona, and said that, during a border closure, “our shop owners felt it, the border communities felt it, these hard-working people struggling to keep their restaurants and hotels open in a post-COVID world, they all felt it.”¹²

DHS has responded to shortages by detailing staff from one DHS component to assist another component. For instance, one OIG report described how Homeland Security Investigations special agents have been detailed to the Southwest border to assist CBP.¹³ Another OIG report described CBP’s strategy of “detailing agents from other sectors to assist the burdened sectors.”¹⁴ OIG has reported several concerns with such temporary details, including leaving permanent duty stations short staffed, increased stress for employees forced to take on responsibilities outside of their typical roles, depleted morale for employees forced to work away from their homes or to miss holidays or vacations with their families.¹⁵ But little is publicly known about how these details operate.

Gathering information about detailing is particularly salient given plans described by presidential-candidate Donald Trump and others affiliated with his campaign to implement a mass deportation machinery. According to a former ICE chief of staff, “[s]taffing the internment camps and constant flights that [Trump advisor Stephen] Miller is contemplating could require 50,000 . . . people.” Given that DHS components have previously addressed staffing shortages using details or other temporary assignments, the agency is likely to again rely on detailing to obtain some of the staff necessary to operate Trump’s mass deportation plan. Given the intense public interest in Trump’s proposed deportation machine, the public, the media, and Congress all have a strong

Customs & Border Protection, Statement from CBP on Operations in Lukeville, AZ (Dec. 1, 2023), <https://www.cbp.gov/newsroom/national-media-release/statement-cbp-operations-lukeville-az>.

¹⁰ Alexandra Mendoza, *PedWest Border Crossing to Close Again Saturday - Just Weeks After Reopening*, San Diego Union-Trib. (Dec. 8, 2023), <https://www.sandiegouniontribune.com/2023/12/08/pedwest-border-crossing-to-close-again-saturday-just-weeks-after-reopening/>.

¹¹ Rafael Bernal, *Arizona Governor Says Reopened US-Mexico Border Ports Shouldn’t Have Closed*, The Hill (Jan. 3, 2024), <https://thehill.com/latino/4387071-arizona-katie-hobbs-us-mexico-border-ports-immigration/>.

¹² Kevin Stone, *Lukeville Port of Entry on Arizona-Mexico Border Reopens After Monthslong Closure*, KTAR News (Jan. 4, 2024), <https://ktar.com/story/5555800/lukeville-port-of-entry-on-arizona-mexico-border-set-to-reopen-thursday-morning/>.

¹³ See *Intensifying Conditions*, *supra* note 7, at 15.

¹⁴ Dep’t of Homeland Sec., Off. of Inspector Gen., *Capping Report: CBP Struggled to Provide Adequate Detention Conditions During 2019 Migrant Surge 23* (June 12, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-38-Jun20.pdf>.

¹⁵ See *Intensifying Conditions*, *supra* note 7, at 15.



interest in understanding the nuts-and-bolts of one of the mechanisms available for an administration under Trump to staff its ramped up deportation machine.

In sum, disclosure of the requested records will shed light on how our immigration system is staffed, and what structures are in place for detailing personnel from one DHS agency to another. The requested records will thus contribute significantly to the public's understanding of the U.S. immigration system.

B. Disclosure is not primarily in the commercial interest of the Requestor.

Requestor is not filing this request to further a commercial interest. Requestor is a 501(c)(3) nonprofit organization and therefore has no commercial interest. Requestor intends to make any relevant information obtained through this FOIA available to the public.¹⁶ Requestor publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee.

Requestor also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which Requestor is focused. Requestor's website also includes many features on information obtained through FOIA requests. For example, the ACLU's "Predator Drones FOIA" webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves.¹⁷ Requestor has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, in February 2017 the ACLU produced an analysis of documents released in response to a FOIA request about the TSA's behavior detection program. Requestor plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and Requestor plans to disseminate the information disclosed as a result of this Request to the public at no cost.

¹⁶ See 6 C.F.R. § 5.11(k)(1)(ii); 6 C.F.R. § 5.11(k)(3).

¹⁷ See also *FOIA Database Regarding the U.S. Government's Violent Extremism Initiatives*, ACLU, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.



C. Requestor also qualifies for a fee waiver because it is a representative of the news media and the records are not sought for commercial use.

Requestor is also entitled to a waiver of search fees on the grounds that it qualifies as “representative[s] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Requestor meets the statutory and regulatory definitions of “representative[s] of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *ACLU v. U.S. Dep’t of Just.*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).

Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor’s work and are among its primary activities. For example, the ACLU regularly publishes *ACLU Magazine* that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 950,000 households. The ACLU also publishes regular updates and alerts via email to approximately 4 million subscribers (both ACLU members and nonmembers). These updates are additionally broadcast to 4.9 million social media followers (members and non-members). The magazine, email, and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

Requestor also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,¹⁸ and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.¹⁹ Similarly,

¹⁸ *See, e.g.*, Press Release, ACLU, U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, ACLU, CIA Releases Dozens of Torture Documents in Response to ACLU Lawsuit (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, ACLU, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>.

¹⁹ *See, e.g.*, Cora Currier, *TSA’s Own Files Show Doubtful Science Behind Its Behavior Screening Program*, Intercept (Feb. 8, 2017), <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program/> (quoting ACLU attorney Hugh Handeyside); ABC News, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC News (June 15, 2016), <http://abcn.ws/2jy40d3> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Surveillance*, Guardian (Mar. 17, 2016),



Requestor regularly publishes and disseminates reports that include a description and analysis of government documents obtained through FOIA requests.²⁰ This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

Requestor also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties. The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. See <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. See <https://www.aclu.org/multimedia>.

Underscoring this point, courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to Requestor’s are “representatives of the news media” as well. See, e.g., *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *Jud. Watch, Inc. v. U.S. Dep’t of Just.*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a non-profit “public interest law firm,” a news media requester).²¹

As representatives of the news media, Requestor plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use. On account of these factors, fees associated with responding to FOIA requests

<https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler).

²⁰ See, e.g., Manar Waheed, *Customs and Border Protection Violated Court Orders During the First Muslim Ban Implementation* (Jan. 24, 2018), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/customs-and-border-protection-violated-court>; Vera Eidelman, *We Sued for Records About Trump’s Muslim Bans. Here’s What We Found Out.* (Oct. 24, 2017), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/we-sued-records-about-trumps-muslim-bans-heres>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Galen Sherwin et al., ACLU, *Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (May 27, 2016), <https://www.aclu.org/report/leaving-girls-behind>.

²¹ Courts have found organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information and public education activities. See, e.g., *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 6; *Nat’l Sec. Archive*, 880 F.2d at 1387; see also *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.



are regularly waived for the ACLU as a “representative of the news media.”²² A fee waiver would fulfill Congress’s legislative intent in amending FOIA.²³ Additionally, on account of these factors, Requestor has not been charged fees associated with responding to FOIA requests on numerous occasions.²⁴

In sum, because disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the Requestor, and Requestor is a representative of the news media, Requestor is entitled to a total waiver of fees associated with this Request and should, in no event, be required to pay more than reasonable standard charges for document duplication. In the event that you decide not to waive the fees, please provide us with prior notice so that we can discuss arrangements.

V. Expedited Processing Request

Requestor requests expedited processing of this Request pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(1)(ii).

A. Requestor is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

Requestor is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). As detailed *supra*, Requestor has the ability and intention

²² For example, in May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ.

²³ *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requestors.’”) (citation omitted); *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) (“[FOIA’s] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.”) (internal quotation marks and citation omitted).

²⁴ For example, in August 2016, the ICE FOIA Office and DHS Privacy Office both granted fee waivers to the ACLU for a FOIA request seeking a DHS OIG super-memorandum and ICE’s response to that memorandum. Similarly, in March 2016, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about selected deaths in detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office. In July 2015, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about the use of segregation in ICE detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office.



to widely disseminate the requested information through a variety of sources, including reports, newsletters, news briefings, right-to-know handbooks, and other materials, to the public at no cost. Indeed, obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor’s work and are among its primary activities. *See ACLU*, 321 F. Supp. 2d at 29 n.5 (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).²⁵ Moreover, as mentioned *supra*, Requestor intends to distribute the information obtained through this FOIA request via its website and/or other means available to it.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

The requested records are also urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). As identified above, there is widespread media and public interest in staffing shortages at ICE and CBP, as well as the possible solution of detailing staff from other DHS components to fill the gap. The requested records pertain to the detailing policies of DHS and its components and, as such, will inform the public concern. 5 U.S.C. § 552(a)(6)(E)(i)(I). Moreover, members of the public, Congress, and the new media have a strong interest in accessing this information in the event that Trump is reelected, to understand the mechanics of one strategy for staffing his proposed deportation machine.

Furthermore, denial of expedited disclosure of the requested records could “reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” 5 U.S.C. § 552(a)(6)(E)(v)(I); 6 C.F.R. § 5.5(e)(1)(i). Staffing shortages, particularly inadequate medical staff at detention facilities, places noncitizens in harm’s way. OIG has reported that “remote locations, competing opportunities, difficulty offering competitive pay rates, and cumbersome hiring processes adversely affect ICE’s ability to attract qualified [medical] staff.”²⁶ In many instance, physicians do not regularly work on site.²⁷ Inspection reports written by experts hired by DHS’s

²⁵ Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11.

²⁶ Dep’t of Homeland Sec., Off. of Inspector Gen., *Many Factors Hinder ICE’s Ability to Maintain Adequate Medical Staffing at Detention Facilities*, at i (Oct. 29, 2021), <https://www.oig.dhs.gov/sites/default/files/assets/2021-11/OIG-22-03-Oct21.pdf>.

²⁷ *See Dreisbach, supra* note 3.



Office for Civil Rights and Civil Liberties detailed numerous incidences where noncitizens in ICE detention received inadequate or no medical care at all due to staffing shortages.²⁸

A review of DHS's detailing policies will enable advocacy organizations, the media, and Congress to understand the staffing options available to DHS components. Without such transparency, individuals who interact with understaffed agencies may continue to suffer from unsafe conditions. Given the foregoing, Requestor has satisfied the requirements for expedited processing of this Request.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi) and 6 C.F.R. § 5.5(e)(3).

VI. Conclusion

Thank you for your prompt attention to this Request. We look forward to your reply to this Request within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii) and 6 C.F.R. § 5.5(e)(4).

Please call me at 646-905-8907 or email me at dgalindo@aclu.org if you have any questions or wish to obtain further information about the nature of the records in which we are interested. Please furnish the applicable records via email (dgalindo@aclu.org).

If the records must be sent via U.S. Mail, please send to the following address:

Daniel Galindo
ACLU Immigrants' Rights Project
125 Broad Street
New York, NY 10004

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny a waiver of fees.

²⁸ *See* Dreisbach, *supra* note 3.



Sincerely,

/s/ Daniel Galindo

Daniel Galindo
American Civil Liberties Union Foundation
Immigrants' Rights Project
125 Broad Street
New York, NY 10004

Noelle Smith
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Immigrants' Rights Project
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Exhibit D



Daniel Galindo
Senior Staff Attorney
Immigrants' Rights Project
ACLU National Legal Department

August 7, 2024

Sent via SecureRelease Portal

U.S. Customs and Border Protection
Freedom of Information Act Office
90 K St NE MS 1181
Washington, DC 20229
Email: cbpfoiapublicliaison@cbp.dhs.gov

**Re: FOIA Request for Records Related to Ground Transportation of Noncitizens
Between Detention Centers and to Airports for Removal
(Fee Waiver & Expedited Processing Requested)**

Dear Freedom of Information Officer:

This letter is a request for records (“Request”) made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, and the relevant implementing regulations, *see* 6 C.F.R. § 5 *et seq.* The Request is submitted by the American Civil Liberties Union Foundation (“ACLU” or “Requestor”). Requestor seeks the disclosure of **records related to U.S. Customs and Border Protection (“CBP”) ground transportation of noncitizens between detention centers and to airports for removal from the period of January 1, 2023, through the present, including, but not limited to, contracts for bus transport between detention centers and to airports for removal flights, and internal policies and procedures for transporting noncitizens, including unaccompanied noncitizen children, to removal flights.**

Requester also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d). The justifications for the fee waiver and expedited processing are set out in detail below.

I. Background

The Department of Homeland Security (“DHS”) conducts removals through a combination of chartered flights, commercial airlines, and ground transportation, including buses and vans.¹ The buses and vans used to transport noncitizens for deportation are generally managed by immigration agencies like CBP and Immigration and Customs Enforcement (“ICE”), which contract and subcontract with private corporations including the GEO Group, CoreCivic, ISS

¹ ICE, *ICE Air Operations Prioritizes Safety and Security for Its Passengers*, U.S. Dep’t of Homeland Sec. (Nov. 15, 2021), <https://www.ice.gov/features/ICE-Air>.



Action, and G4S Secure Solutions, to provide transportation between detention centers and to airports.²

Despite the critical role that bus and van transport plays in the removal system, little is known about CBP's relationships with these private contractors or the agency's oversight and management of the ground transportation of noncitizens throughout the deportation process. This secrecy has masked responsibility for serious harm and abuse inflicted on noncitizens during their movement from detention centers to airports. For example, immigration officials have recently implemented use of a full-body restraint device during bus/van rides known as "the WRAP," which restrains a person's legs in an extended position while cuffing their hands at their back. Noncitizens have reported that immigration officials haul WRAP-bound deportees onto buses, across airport tarmacs, and onto deportation flights – amounting to many hours on end in full-body restraints, causing sores, muscle strain, and even nerve damage.³ Noncitizen adults and children have also reported high temperatures, restrictions on food and water, and shackling aboard ICE and CBP vehicles.⁴

Requestor seeks to better understand how this system functions, including the players involved in the bus and van transport of noncitizens for deportation and broader internal agency procedures regarding ground transportation between detention centers and airports. This information is especially urgent given presidential-candidate Donald Trump's stated plan to conduct mass arrests of noncitizens and operate around-the-clock deportations.⁵

² McKenzie Funk, *At Seattle's Boeing Field, Real-Time Video Offers a Rare Glimpse of America's Troubled Deportation Flights*, Pro Publica (Mar. 8, 2024), <https://www.propublica.org/article/seattle-boeing-field-ice-deportation-flights>; Ashleigh Dye, *Sweetheart Deal Nets GEO Group \$15 Million Payout from ICE for Haitian Deportation Flights*, Prison Legal News (May 1, 2022), <https://www.prisonlegalnews.org/news/2022/may/1/sweetheart-deal-nets-geo-group-15-million-payout-ice-haitian-deportation-flights/>.

³ *Abuses in the Air: Sports Travel and Deportation Industry*, University of Washington Center for Human Rights (June 2022), <https://jsis.washington.edu/humanrights/wp-content/uploads/sites/22/2022/06/Abuses-in-the-Air-PDF.pdf>

⁴ National Immigrant Justice Center, et al., *Complaint re: Systemic Abuse of Unaccompanied Immigrant Children by U.S Customs and Border Protection*, at 2 (June 11, 2014), <https://www.acluaz.org/sites/default/files/documents/DHS%20Complaint%20re%20CBP%20Abuse%20of%20UICs.pdf>; Senator Richard Blumenthal, et al., *Letter to CBP re: Mistreatment of Pregnant Migrants in CBP Custody*, at 2 (Feb. 12, 2020), <https://www.blumenthal.senate.gov/imo/media/doc/FINAL%20CBP%20Mistreating%20Pregnant%20Individuals%20Letter.pdf>; *ACLU Files Abuse Claims, Seeks Information on ICE Transport Contracts*, ACLU of Northern California (July 9, 2018), <https://aclunc.org/news/aclu-files-abuse-claims-seeks-information-ice-transport-contracts>

⁵ Ronald Brownstein, *Trump's 'Knock on the Door'*, The Atlantic (Feb. 8, 2024), <https://www.theatlantic.com/politics/archive/2024/02/trumps-immigration-plan-is-even-more-aggressive-now/677385/>.



II. Records Requested

This Request seeks, for the period from January 1, 2023 through the present, the following records:

- (1) All CBP contracts for ground transportation to transfer noncitizens to airports for removal flights.
- (2) Documents sufficient to show the capacity and location of CBP-owned or CBP-contracted buses available to assist with transporting noncitizens to airports for removal, as well as the total number of buses.
- (3) Memoranda, guidance, or any other documents regarding CBP's policies and procedures for transporting noncitizens, including unaccompanied children, to removal flights.

Please construe this as an ongoing FOIA request, so that any records that come into the possession of the agency prior to your final response to this FOIA request should also be considered within the request's scope.

III. Fee Waiver Request

Requestor requests that any fees associated responding to its FOIA request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k). Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), fees should be waived or reduced if disclosure is (1) in the public interest because it is "likely to contribute significantly to public understanding of the operations or activities of the government" and (2) "not primarily in the commercial interest of the requester." Disclosure in this case meets both of these tests. Requestor also requests a waiver or reduction of fees on the grounds that it qualifies as "representative[s] of the news media" and the records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(d)(1).

A. Disclosure is in the public interest as it is likely to contribute significantly to the public's understanding of the operations and activities of government.

First, disclosure pursuant to this Request is in the public interest for several reasons. The public has a strong interest in learning about CBP ground transportation to airports. Reports of abuse and injuries on CBP-owned and CBP-contracted buses and vans heighten this public interest. The high cost of CBP ground transportation, as well as DHS's reported lack of oversight of transportation contracts, is also a matter of both public and governmental concern.



There is significant local interest in tracking where and how CBP transports noncitizens for removal. Across the country, local news organizations regularly report when immigration officials shuttle noncitizens via buses and vans to staging facilities and local airports.⁶ Media and NGO reports also reflect public interest in the companies who receive contracts to operate transportation.⁷ Meanwhile, immigration advocates closely monitor the number of noncitizens transported to local airports for deportation, as well as immigration officials' treatment of them while in transit. For example, immigration advocates and members of the public in Washington come weekly to an observation room at King County International Airport to view a livestream video feed of noncitizens arriving by bus and boarding deportation flights.⁸ These advocates collect data on the number of people deported and document instances of abuse or mistreatment of migrants they observe.⁹

Reports of abuse and injuries on DHS-operated buses and vans have also increased the public's interest in understanding how CBP operates their ground transportation.¹⁰ In July 2017, DHS contractor G4S Secure Solutions transported nine detained migrant women between two detention centers in California in a windowless van with no air conditioning.¹¹ Officials held the women in the van for more than 24 hours and denied them adequate food and water, causing several women to vomit and faint in the extreme heat.¹² DHS's Office of Inspector General ("OIG") previously reported that multiple CBP-contracted vans they inspected during an investigation had high interior temperatures between 95 and 100 degrees even with engines and

⁶ See, e.g., *Immigration Law Group Files Suit to Block ICE Buses from Leaving Bend with Detainees*, KTVZ News (Aug. 12, 2020), <https://ktvz.com/news/bend/2020/08/12/immigration-law-group-files-suit-to-block-ice-buses-from-leaving-bend-with-detainees/> (Bend, OR); Rafael Carranza, *How Much Does It Cost to Deport One Migrant? It Depends*, AZCentral (May 1, 2017), <https://www.azcentral.com/story/news/politics/immigration/2017/04/28/deportation-costs-illegal-immigration/99541736/> (Mesa, AZ); Cat Ferguson, *ICE Used Oakland Airport to Deport and Transfer Tens of Thousands of Immigration Detainees*, Mercury News (July 21, 2019), <https://www.mercurynews.com/2019/07/21/ice-used-oakland-airport-to-deport-and-transfer-tens-of-thousands-of-immigration-detainees/> (Oakland, CA).

⁷ *Transportation and Deportation: Immigrant Deportations*, Investigate: A Project of The American Friend Services Committee (2022), <https://investigate.afsc.org/tags/transportation-and-deportation>; Manuel Madrid, *Five Florida Companies Make Millions Thanks to ICE Contracts*, Miami New Times (July 5, 2019), <https://miamiherald.com/news/the-florida-companies-making-millions-off-of-ice-contracts-11206390>.

⁸ See Funk, *supra* note 2.

⁹ *Id.*

¹⁰ See, e.g., Zachary Basu, *ACLU Claims ICE Abuse During Transport of Detained Immigrants*, Axios (July 10, 2018), <https://www.axios.com/2018/07/10/aclu-ice-abuse-transport-detained-immigrants>; *Abuses in the Air*, *supra* note 3; Funk, *supra* note 2; see also No More Deaths, *Crossing the Line: Human Rights Abuses of Migrants in Short-Term Custody on the Arizona/Sonora Border*, at 18 (September 2008), <https://nomoredeaths.org/wp-content/uploads/2014/10/CrossingTheLine-full.compressed.pdf> (reporting excessive heating, excessive air conditioning, high speed driving, and restrictions on food and water for noncitizen detainees on CBP vehicles).

¹¹ *ACLU Files Abuse Claims*, *supra* note 4.

¹² *Id.*



air conditioning on.¹³ In November 2020, another noncitizen reported that he was restrained in “the WRAP” for at least nine hours during his bus transport from the Prairieland Detention Center to an unidentified airport, and on his subsequent removal flight to Cameroon, resulting in acute pain, sores, and an infection.¹⁴ Over the last decade, both noncitizen children and pregnant noncitizens have also reported being shackled—often painfully—during CBP transport.¹⁵ Despite shackling, noncitizen detainees are often left without seatbelts aboard CBP vehicles. In June 2021, a CBP vehicle crashed, injuring all ten noncitizen detainees in the vehicle, including life-threatening injuries for at least two of the detainees who were flown out by helicopter.¹⁶ While both CBP agents driving the vehicle were reported as wearing seatbelts, the ten detained passengers’ seatbelt status was “unknown.”¹⁷ Although CBP policy states that employees and detainees in CBP vehicles must wear seatbelts when in motion,¹⁸ that is only true if seatbelts are available on the vehicle, which is often not the case on prison-contracted vans.¹⁹

Moreover, the expense of DHS removal operations is a matter of both governmental and public concern. CBP’s contracts for ground transportation are some of the agency’s largest contracts, valued at over \$285 million, yet the agency fails to carefully monitor its ground contractors.²⁰ OIG previously found that CBP had not developed an effective plan to provide efficient and cost effective ground transportation for detainees, did not provide sufficient management or oversight of its transportation program, and was not prepared to make long-term decisions regarding transportation services.²¹ OIG has also expressed concern that other DHS components, such as ICE, overpay for ground transportation related to removals.²² Public data

¹³ Dep’t of Homeland Sec., Off. of Inspector Gen., Response to Allegations that a U.S. Customs and Border Protection Contractor Transports Detainees in Non-Air-Conditioned Vehicles, at 3 (Jan. 27, 2016), <https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/2016/OIG-16-25-Jan16.pdf>

¹⁴ *Abuses in the Air*, *supra* note 3 (citing complaint submitted to DHS Office of Civil Rights and Civil Liberties on October 13, 2021).

¹⁵ National Immigrant Justice Center, *supra* note 4, at 2; Senator Richard Blumenthal, *supra* note 4, at 2.

¹⁶ Ursula Muñoz-Schaefer, *Border Patrol Vehicle Carrying Immigrants Involved in Crash*, The Big Bend Sentinel (June 16, 2021), <https://bigbendsentinel.com/2021/06/16/border-patrol-vehicle-carrying-immigrants-involved-in-crash/>

¹⁷ *Id.*

¹⁸ U.S. Customs and Border Protection, National Standards on Transport, Escort, Detention, and Search, at 6 (June 2015), <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>

¹⁹ See, e.g., Julia Dahl, *No Seat Belts for Prisoners in Texas Bus Crash*, CBS News (Jan. 15, 2015), <https://www.cbsnews.com/news/no-seat-belts-for-prisoners-in-texas-bus-crash/>

²⁰ See U.S. Government Accountability Office, U.S. Customs and Border Protection: Contracting for Transportation and Guard Services for Detainees, at 2 (Oct. 17, 2016), <https://www.gao.gov/assets/gao-17-89r.pdf>

²¹ Dep’t of Homeland Sec., Off. of Inspector Gen., U.S. Customs and Border Protection’s Ground Transportation of Detainees, at 1 (Jan. 2011), https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/OIG_11-27_Jan11.pdf

²² OIG reviewed ten ICE ground transportation contracts worth over \$433 million and found that ICE “did not consistently use quality assurance surveillance to monitor contract performance” and “did not adequately review invoices to ensure expenses were correct, supported, and reasonable.” Furthermore, ICE consistently overpays for charter bus services it does not use. In 2022, although the Department of Homeland Security repeatedly requested an



regarding the size of CBP's busing contracts suggests the public should be similarly concerned about overpayment by CBP.

Finally, presidential-candidate Trump has announced plans to, if reelected, conduct mass arrests of noncitizens and operate round-the-clock deportation operations, garnering intense public scrutiny.²³ Trump's mass deportation plan has faced public outcry, from fears that it will undermine the rule of law and due process, to concerns that staffing and funding the system could weaken other federal agencies, to worries about the economic and fiscal impact of removing a significant slice of the workforce.²⁴ The public, therefore, has a strong interest in understanding this essential component of Trump's proposed deportation apparatus.

Disclosure of the requested records will shed light upon CBP's ground transportation system. The requested records will thus contribute significantly to the public's understanding of the federal government's removal process.

B. Disclosure is not primarily in the commercial interest of the Requestor.

Second, Requestor is not filing this request to further a commercial interest. Requestor is a 501(c)(3) nonprofit organization and therefore has no commercial interest. Requestor intends to make any relevant information obtained through this FOIA available to the public.²⁵ Requestor publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee.

Requestor also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which Requestor is focused. Requestor's website also includes many features on information obtained through FOIA requests. For example, the ACLU's

average of eight buses each day at two Border Patrol stations, ICE generally used only two or three of these buses each day to transport people. The other requested buses remained in a "standby" status, which ICE paid more than twice as much for relative to the buses that ultimately transported noncitizens for removal). See Dep't of Homeland Sec., Off. of Inspector Gen., ICE Should Improve Controls Over Its Transportation Services Contracts, at 1-7 (2023), <https://www.oig.dhs.gov/sites/default/files/assets/2023-09/OIG-23-59-Sep23.pdf>.

²³ See, e.g., Charlie Savage, Maggie Haberman & Jonathan Swan, *Sweeping Raids, Giant Camps ad Mass Deportations: Inside Trump's 2025 Immigration Plans*, N.Y. Times (Nov. 11, 2023), <https://www.nytimes.com/2023/11/11/us/politics/trump-2025-immigration-agenda.html>; Philip Bump, *The Incomprehensible, Unattainable Scale of Trump's Deportation Plan*, Wash. Post (May 15, 2024), <https://www.washingtonpost.com/politics/2024/05/15/trump-immigration-deportation-plan/>.

²⁴ Ctr. for Migration Studies of N.Y., *How Trump's Mass Deportation Plan Would Hurt the United States* (Mar. 27, 2024), <https://cmsny.org/how-trump-mass-deportation-plan-would-hurt-usa/>.

²⁵ See 6 C.F.R. § 5.11(k)(1)(ii); 6 C.F.R. § 5.11(k)(3).



“Predator Drones FOIA” webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU’s FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves.²⁶ Requestor has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, in February 2017 the ACLU produced an analysis of documents released in response to a FOIA request about the TSA’s behavior detection program. Requestor plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and Requestor plans to disseminate the information disclosed as a result of this Request to the public at no cost.

C. Requestor also qualifies for a fee waiver because it is a representative of the news media and the records are not sought for commercial use.

Requestor is also entitled to a waiver of search fees on the grounds that it qualifies as “representative[s] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Requestor meets the statutory and regulatory definitions of “representative[s] of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *ACLU v. U.S. Dep’t of Just.*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).

Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor’s work and are among its primary activities. For example, the ACLU regularly publishes *ACLU Magazine* that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 950,000 households. The ACLU also publishes regular updates and alerts via email to approximately 4 million subscribers (both ACLU members and nonmembers). These updates are additionally broadcast to 4.9 million social media followers

²⁶ *See also FOIA Database Regarding the U.S. Government’s Violent Extremism Initiatives*, ACLU, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.



(members and non-members). The magazine, email, and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

Requestor also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,²⁷ and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.²⁸ Similarly, Requestor regularly publishes and disseminates reports that include a description and analysis of government documents obtained through FOIA requests.²⁹ This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

Requestor also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties. The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See* <https://www.aclu.org/multimedia>.

²⁷ *See, e.g.*, Press Release, ACLU, U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, ACLU, CIA Releases Dozens of Torture Documents in Response to ACLU Lawsuit (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, ACLU, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>.

²⁸ *See, e.g.*, Cora Currier, *TSA’s Own Files Show Doubtful Science Behind Its Behavior Screening Program*, Intercept (Feb. 8, 2017), <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program/> (quoting ACLU attorney Hugh Handeyside); ABC News, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC News (June 15, 2016), <http://abcn.ws/2jy40d3> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Surveillance*, Guardian (Mar. 17, 2016), <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler).

²⁹ *See, e.g.*, Manar Waheed, *Customs and Border Protection Violated Court Orders During the First Muslim Ban Implementation* (Jan. 24, 2018), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/customs-and-border-protection-violated-court>; Vera Eidelman, *We Sued for Records About Trump’s Muslim Bans. Here’s What We Found Out*. (Oct. 24, 2017), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/we-sued-records-about-trumps-muslim-bans-heres>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Galen Sherwin et al., ACLU, *Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (May 27, 2016), <https://www.aclu.org/report/leaving-girls-behind>.



Underscoring this point, courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to Requestor's are "representatives of the news media" as well. *See, e.g., Elec. Privacy Info. Ctr. v. U.S. Dep't of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for purposes of the FOIA); *Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *Jud. Watch, Inc. v. U.S. Dep't of Just.*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a non-profit "public interest law firm," a news media requester).³⁰

As representatives of the news media, Requestor plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use. On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a "representative of the news media."³¹ A fee waiver would fulfill Congress's legislative intent in amending FOIA.³² Additionally, on account of these factors, Requestor has not been charged fees associated with responding to FOIA requests on numerous occasions.³³

In sum, because disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the Requestor, and Requestor is a representative of the news media, Requestor is entitled to a total waiver of fees associated with this Request and should,

³⁰ Courts have found organizations to be "representatives of the news media" even though they engage in litigation and lobbying activities beyond their dissemination of information and public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 6; *Nat'l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

³¹ For example, in May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to "national security letters" issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ.

³² *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requestors.'") (citation omitted); *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) ("[FOIA's] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.") (internal quotation marks and citation omitted).

³³ For example, in August 2016, the ICE FOIA Office and DHS Privacy Office both granted fee waivers to the ACLU for a FOIA request seeking a DHS OIG super-memorandum and ICE's response to that memorandum. Similarly, in March 2016, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about selected deaths in detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office. In July 2015, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about the use of segregation in ICE detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office.



in no event, be required to pay more than reasonable standard charges for document duplication. In the event that you decide not to waive the fees, please provide us with prior notice so that we can discuss arrangements.

IV. Expedited Processing Request

Requestor requests expedited processing of this Request pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(1)(ii).

A. Requestor is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

Requestor is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). As detailed *supra*, Requestor has the ability and intention to widely disseminate the requested information through a variety of sources, including reports, newsletters, news briefings, right-to-know handbooks, and other materials, to the public at no cost. Indeed, obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor’s work and are among its primary activities. *See ACLU*, 321 F. Supp. 2d at 29 n.5 (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).³⁴ Moreover, as mentioned *supra*, Requestor intends to distribute the information obtained through this FOIA request via its website and/or other means available to it.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

The requested records are also urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, the requested records pertain to CBP’s ground transportation removal operations. As described *supra*, this is a matter of widespread media and public interest, and the requested records will inform the public concern of this activity by CBP. 5 U.S.C. § 552(a)(6)(E)(i)(I). Removal of noncitizens, including the manner by which it occurs, is a matter subject to significant public debate. As identified here, various

³⁴ Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11.



advocacy groups have expressed serious concerns regarding the lack of transparency and information available regarding CBP's bus and van transportation. This Request will shed critical light on CBP's removal processes.

This information is particularly urgent given presidential-candidate Trump's plans to implement a mass deportation system. The public, the media, and Congress are all urgently trying to understand the feasibility of this plan and the potential for enacting mass deportations in general. Understanding the feasibility of building out CBP's ground transportation to airports first requires knowing what contracts are presently in place, CBP's present capacity, and any CBP policies or practices currently in place.

Furthermore, denial of expedited disclosure of the requested records could "reasonable be expected to pose an imminent threat to the life of physical safety of an individual." 5 U.S.C. § 552(a)(6)(E)(v)(I); 6 C.F.R. § 5.5(e)(1)(i). CBP-contracted buses and vans have generated troubling reports of passenger mistreatment. As described *supra*, passengers on one bus were left bound and shackled in their seats for over 24 hours, without adequate food, water, or air conditioning.³⁵ A review of the contracts, policies, and procedures for CBP bus and van transport will enable organizations to assess the efficacy of CBP's oversight of deportation operations and to understand what precautions, if any, CBP and its contractors are obligated to take to protect the safety of passengers in CBP and CBP-contracted vehicles. Without such transparency, individuals subject to removal may continue to suffer from unsafe conditions during the removal process without adequate oversight or accountability. Given the foregoing, Requestor has satisfied the requirements for expedited processing of this Request.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi); *see also* 6 C.F.R. § 5.5(e)(3).

V. Conclusion

Thank you for your prompt attention to this Request. We look forward to your reply to this Request within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii) and 6 C.F.R. § 5.5(e)(4).

Please call me at 646-905-8907 or email me at dgalindo@aclu.org if you have any questions or wish to obtain further information about the nature of the records in which we are interested. Please furnish the applicable records via email (dgalindo@aclu.org).

³⁵ *ACLU Files Abuse Claims*, *supra* note 4.



If the records must be sent via U.S. Mail, please send to the following address:

Daniel Galindo
ACLU Immigrants' Rights Project
125 Broad Street
New York, NY 10004

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny a waiver of fees.

Sincerely,

/s/ Daniel Galindo

Daniel Galindo
American Civil Liberties Union Foundation
Immigrants' Rights Project
125 Broad Street
New York, NY 10004

Noelle Smith
American Civil Liberties Union Foundation
Immigrants' Rights Project
425 California St., 7th Floor
San Francisco, CA 94104

Exhibit E



Daniel Galindo
Senior Staff Attorney
Immigrants' Rights Project
ACLU National Legal Department

August 7, 2024

Sent via SecureRelease Portal (DHS) and FOIA.GOV (DOJ)

Department of Homeland Security
Privacy Office
2702 Martin Luther King Jr. Ave SE
Washington, DC 20528-065

Department of Justice
Office of Legal Counsel
Melissa Golden, FOIA Public Liaison
950 Pennsylvania Ave., NW, Room 5517
Washington, DC 20530-0001

**Re: FOIA Request for Legal Memoranda Related to the Mass Influx Provision
(Fee Waiver & Expedited Processing Requested)**

Dear Freedom of Information Officer:

This letter is a request for records (“Request”) made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, and the relevant implementing regulations, *see* 6 C.F.R. § 5, *et seq.*; 28 C.F.R. § 16.1, *et seq.* The Request is submitted by the American Civil Liberties Union Foundation (“ACLU” or “Requestor”). Requestor seeks the disclosure of **legal memoranda, from the period of 1995 through the present, discussing the meaning of the Mass Influx Provision, 8 U.S.C. § 1103(a)(10).**

Requestor also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A), 6 C.F.R. § 5.11(k), and 28 C.F.R. § 16.10(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E), 6 C.F.R. § 5.5(d), and 28 C.F.R. § 16.5(e). The justifications for the fee waiver and expedited processing are set out in detail below.

I. Background

Former President Donald Trump and other Republicans frequently reference the purported “mass influx” of noncitizens at the southern border.¹ This reference reflects potential plans to rely

¹ Associated Press, *Newsday* (July 19, 2024), <https://www.newsday.com/news/nation/fact-check-misinformation-trump-republican-convention-n49828> (“Trump spent much of his address discussing immigration and the mass influx of migrants into the U.S.”); House Judiciary Committee, *How the Biden Administration’s Lax Immigration Enforcement Allows Dangerous Criminal Aliens to Run Free in American Communities* (Apr. 16, 2024),



on the Mass Influx Provision of the Immigration and Nationality Act (“INA”) to attempt to authorize state and local law enforcement officers to conduct immigration enforcement. Such purported deputization would theoretically provide Trump with a substantial number of the immigration officials necessary to conduct his deportation machine. This request therefore seeks to understand how the Department of Homeland Security (“DHS”) and the Department of Justice have historically understood the authority conferred under the INA’s Mass Influx Provision.

II. Records Requested

This Request seeks, for the period from January 1, 1995 through the present:

1. Any legal memoranda from the federal government, including without limitation, the Department of Justice (“DOJ”), Department of Homeland Security (“DHS”), their components, and any preexisting agencies, discussing the meaning of the Mass Influx Provision, 8 U.S.C. § 1103(a)(10).

Please construe this as an ongoing FOIA request, so that any records that come into the possession of the agency prior to your final response to this FOIA request should also be considered within the request’s scope.

III. Fee Waiver Request

Requestor requests that any fees associated with responding to its FOIA request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), 6 C.F.R. § 5.11(k), and 28 C.F.R. § 16.10(k). Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), 6 C.F.R. § 5.11(k), and 28 C.F.R. § 16.10(k), fees should be waived or reduced if disclosure is (1) in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Disclosure in this case meets both of these tests. Requestor also requests a waiver or reduction of fees on the grounds that it qualifies as “representative[s] of the news media” and the records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(d)(1); 28 C.F.R. §§ 16.10 (c)(1)(i), (d)(1).

A. Disclosure is in the public interest as it is likely to contribute significantly to the public’s understanding of the operations and activities of government.

First, disclosure pursuant to this Request is in the public interest.

<https://shorturl.at/uvQjj> (“The data alone show the massive influx of illegal aliens into the country on a daily basis . . .”).



Former President Trump frequently refers to the supposed “mass influx” of noncitizens traveling across the southern border. This term has legal import. “In the event the Attorney General determines that an actual or imminent *mass influx* of [noncitizens] arising off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate Federal response,” U.S.C. § 1103(a)(10) permits the Attorney General to authorize state or local law enforcement officers to perform activities typically reserved for officers or employees of the Department of Homeland Security. Thus, Trump’s invocation of a “mass influx” of noncitizens likely signals his intent to, if reelected in fall of 2024, attempt to use the Mass Influx Provision to deputize state and local law enforcement officers to participate in his mass deportation scheme.

Given the intense public interest in Trump’s proposed deportation machine, the public, the media, and Congress all have a strong interest in understanding the legal foundation of a key provision the former President may try to use to staff the immigration enforcement aspect of his deportation machine. The requested records will thus contribute significantly to the public’s understanding of the U.S. immigration system and its administration under a potential Trump presidency or any future presidency.

B. Disclosure is not primarily in the commercial interest of the Requestor.

Second, Requestor is not filing this request to further a commercial interest. Requestor is a 501(c)(3) nonprofit organization and therefore has no commercial interest. Requestor intends to make any relevant information obtained through this FOIA available to the public.² Requestor publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee.

Requestor also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which Requestor is focused. Requestor’s website also includes many features on information obtained through FOIA requests. For example, the ACLU’s “Predator Drones FOIA” webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU’s FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves.³ Requestor has also published a number of charts and explanatory materials that collect, summarize,

² See 6 C.F.R. § 5.11(k)(1)(ii); 6 C.F.R. § 5.11(k)(3); 28 C.F.R. §§ 16.10(b)(6), (k)(2)(iii)(B).

³ See also *FOIA Database Regarding the U.S. Government’s Violent Extremism Initiatives*, ACLU, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.



and analyze information it has obtained through the FOIA. For example, in February 2017 the ACLU produced an analysis of documents released in response to a FOIA request about the TSA's behavior detection program. Requestor plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and Requestor plans to disseminate the information disclosed as a result of this Request to the public at no cost.

C. Requestor also qualifies for a fee waiver because it is a representative of the news media and the records are not sought for commercial use.

Requestor is also entitled to a waiver of search fees on the grounds that it qualifies as “representative[s] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II); 28 C.F.R. § 16.10(c)(1)(i). Requestor meets the statutory and regulatory definitions of “representative[s] of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); 28 C.F.R. § 16.10(b)(6); *see also Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *ACLU v. U.S. Dep't of Just.*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).

Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor's work and are among its primary activities. For example, the ACLU regularly publishes *ACLU Magazine* that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 950,000 households. The ACLU also publishes regular updates and alerts via email to approximately 4 million subscribers (both ACLU members and nonmembers). These updates are additionally broadcast to 4.9 million social media followers (members and non-members). The magazine, email, and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

Requestor also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,⁴ and ACLU attorneys are interviewed

⁴ *See, e.g.*, Press Release, ACLU, U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, ACLU, CIA Releases Dozens of Torture Documents in Response to ACLU Lawsuit (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, ACLU, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>.



frequently for news stories about documents released through ACLU FOIA requests.⁵ Similarly, Requestor regularly publishes and disseminates reports that include a description and analysis of government documents obtained through FOIA requests.⁶ This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

Requestor also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties. The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. See <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. See <https://www.aclu.org/multimedia>.

Underscoring this point, courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to Requestor’s are “representatives of the news media” as well. See, e.g., *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *Jud. Watch, Inc. v. U.S. Dep’t of Just.*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a non-profit “public interest law firm,” a news media requester).⁷

⁵ See, e.g., Cora Currier, *TSA’s Own Files Show Doubtful Science Behind Its Behavior Screening Program*, Intercept (Feb. 8, 2017), <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program/> (quoting ACLU attorney Hugh Handeyside); ABC News, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC News (June 15, 2016), <http://abcn.ws/2jy40d3> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Surveillance*, Guardian (Mar. 17, 2016), <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler).

⁶ See, e.g., Manar Waheed, *Customs and Border Protection Violated Court Orders During the First Muslim Ban Implementation* (Jan. 24, 2018), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/customs-and-border-protection-violated-court>; Vera Eidelman, *We Sued for Records About Trump’s Muslim Bans. Here’s What We Found Out.* (Oct. 24, 2017), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/we-sued-records-about-trumps-muslim-bans-heres>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Galen Sherwin et al., ACLU, *Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (May 27, 2016), <https://www.aclu.org/report/leaving-girls-behind>.

⁷ Courts have found organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information and public education activities. See, e.g., *Elec.*



As a representative of the news media, Requestor plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use. On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news media.”⁸ A fee waiver would fulfill Congress’s legislative intent in amending FOIA.⁹ Additionally, on account of these factors, Requestor has not been charged fees associated with responding to FOIA requests on numerous occasions.¹⁰

In sum, because disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the Requestor, and because Requestor is a representative of the news media, Requestor is entitled to a total waiver of fees associated with this Request and should, in no event, be required to pay more than reasonable standard charges for document duplication. In the event that you decide not to waive the fees, please provide us with prior notice so that we can discuss arrangements.

IV. Expedited Processing Request

Requestor requests expedited processing of this Request pursuant to 5 U.S.C. § 552(a)(6)(E), 6 C.F.R. § 5.5(e), and 28 C.F.R. § 16.5(e). There is a “compelling need” for these records, as defined in the statute, because the information requested is urgently needed by an organization primarily engaged in disseminating information to inform the public about an actual

Privacy Info. Ctr., 241 F. Supp. 2d at 6; *Nat’l Sec. Archive*, 880 F.2d at 1387; see also *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

⁸ For example, in May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ.

⁹ See *Jud. Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” (citation omitted)); *Citizens for Resp. & Ethics in Wash. v. U.S. Dep’t of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) (“[FOIA’s] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.” (internal quotation marks and citation omitted)).

¹⁰ For example, in August 2016, the ICE FOIA Office and DHS Privacy Office both granted fee waivers to the ACLU for a FOIA request seeking a DHS OIG super-memorandum and ICE’s response to that memorandum. Similarly, in March 2016, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about selected deaths in detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office. In July 2015, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about the use of segregation in ICE detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office.



or alleged Federal Government activity. 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(1)(ii); 28 C.F.R. § 16.5(e)(1)(ii).

A. Requestor is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

Requestor is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). As detailed *supra*, Requestor has the ability and intention to widely disseminate the requested information through a variety of sources, including reports, newsletters, news briefings, right-to-know handbooks, and other materials, to the public at no cost. Indeed, obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor’s work and are among its primary activities. *See ACLU*, 321 F. Supp. 2d at 29 n.5 (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).¹¹ Moreover, as mentioned *supra*, Requestor intends to distribute the information obtained through this FOIA request via its website and/or other means available to it.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

The requested records are also urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, the requested records pertain to a relatively unknown provision of the INA that a future administration may try to use to deploy hundreds of thousands of state and local officials to execute federal immigration law as part of a mass deportation machine. As described *supra*, this is a matter of widespread media and public interest, and the requested records will directly inform the public about these concerns. 5 U.S.C. § 552(a)(6)(E)(i)(I).

Furthermore, denial of expedited disclosure of the requested records could “reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” 5 U.S.C. § 552(a)(6)(E)(v)(I); 6 C.F.R. § 5.5(e)(1)(i); 28 C.F.R. § 16.5(e)(1)(i). Trump’s proposed use of state and local law enforcement to conduct immigration enforcement presents a serious threat of

¹¹ Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11.



harm. Local law enforcement officers involved in immigration enforcement have engaged in brutal assaults and other police misconduct.¹²

And local police involvement in immigration enforcement makes our communities less safe. It undermines police efforts “to maintain trust and open lines of communication with the public” which “results in an unwillingness to cooperate or share information.”¹³ For instance, 70% of unauthorized immigrants and 44% of Latinos reported being less likely to communicate with law enforcement if they believe officers will question their immigration status or that of people they know.¹⁴ It leads to an increased risk of racial profiling by local law enforcement and thus “increases the likelihood that people of color will stop communicating and working with their local [law enforcement agencies] to solve crimes.”¹⁵ Given the foregoing, Requestor has satisfied the requirements for expedited processing of this Request.

Lastly, the records sought in this Request should be readily accessible to the federal government, including without limitation DHS and DOJ, and easy to locate because the records pertain to a discrete issue—legal interpretations of the Mass Influx Provision—which should be easily searched for among the federal government’s recordkeeping system(s). DHS and DOJ are therefore unlikely to expend undue resources locating the records requested to fulfill this Request.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi); *see also* 6 C.F.R. § 5.5(e)(3); 28 C.F.R. § 16.5(e)(3).

¹² *See, e.g.,* Compl., *Castro-Torres v. Lignitz*, No. 1:10-cv-2636 (Aug. 23, 2010) (describing how local law enforcement officers stopped a bicyclist, questioned him about his immigration status, then brutally assaulted him, “breaking bones in his nose and left eye socket”); Anita Khashu, *The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties* (April 2009), <https://www.policinginstitute.org/wp-content/uploads/2015/06/The-Role-of-Local-Police-Narrative.pdf> (“[O]ne police official working in a jurisdiction that in the past collaborated with federal immigration officials confirmed that his agency’s prior involvement in immigration enforcement had indeed led to corruption and extortion.”).

¹³ Ctr. for Am. Progress, *The Negative Consequences of Entangling Local Policing and Immigration Enforcement* 3 (Mar. 21, 2017), <https://www.americanprogress.org/wp-content/uploads/sites/2/2017/03/LawEnforcementSanctuary-brief.pdf> (“Such efforts [to use local police for immigration enforcement] fly in the face of law enforcement best practices, particularly those of community policing.”).

¹⁴ *Id.*

¹⁵ *Id.* at 4-5.



V. Conclusion

Thank you for your prompt attention to this Request. We look forward to your reply to this Request within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii) and 6 C.F.R. § 5.5(e)(4).

Please call me at 646-905-8907 or email me at dgalindo@aclu.org if you have any questions or wish to obtain further information about the nature of the records in which we are interested. Please furnish the applicable records via email (dgalindo@aclu.org).

If the records must be sent via U.S. Mail, please send to the following address:

Daniel Galindo
ACLU Immigrants' Rights Project
125 Broad Street
New York, NY 10004

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny a waiver of fees.

Sincerely,

/s/ Daniel Galindo

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