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National Office
125 Broad Street,
18th Floor
New York, NY 10004
Tel: (212) 549-2500
Fax: (212) 549-2564
aclu.org

Susan N. Herman
President

Anthony D. Romero
Executive Director

Richard Zacks
Treasurer

Department of Justice
FOIA/PA Mail Referral Unit
Room 115
LOC Building
Washington, DC 20530-0001
MRUFOIA.Requests@usdoj.gov

Federal Bureau of Investigation
David M. Hardy, Chief Record/Information Dissemination Section
Records Management Division
Department of Justice
170 Marcel Drive
Winchester, VA 22602-4843

U.S. Marshals Service
Charlotte M. Luckstone, FOIA Officer
Office of General Counsel
CG-3 15th Floor
Washington, DC 20530-0001
usms.foia@usdoj.gov

Drug Enforcement Administration
Angela Hertel, Acting Chief
Freedom of Information/Privacy Act Unit
FOI/Records Management Section
8701 Morrissette Drive
Springfield, Virginia 22152
DEA.FOIA@usdoj.gov

Department of Homeland Security
Dena Kozanas
Chief Privacy Officer/Chief FOIA Officer
Privacy Office, Mail Stop 0655
2707 Martin Luther King Jr. AVE SE
Washington, DC 20528-065

Re: Request Under Freedom of Information Act Concerning Nationwide Aerial Surveillance of George Floyd Protests (Expedited Processing & Fee Waiver Requested)

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”)¹ submit this Freedom of Information Act (“FOIA”) request (the “Request”) for records pertaining to surveillance or monitoring flights over protests in cities across the United States following the death of George Floyd.

I. Background

After George Floyd was killed by Minneapolis police officers on May 25, 2020, Americans in cities and towns across the country assembled to protest police brutality, racism, and white supremacy.² Protesters, peacefully exercising their constitutional rights, were greeted by police not only with intimidation, violence, and arrest,³ but also with a widespread, coordinated aerial surveillance campaign that spanned the entire country.⁴

¹ The American Civil Liberties Union Foundation is a 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, and educates the public about civil rights and civil liberties issues across the country. The American Civil Liberties Union is a separate non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators.

² Jiachuan Wu, Nigel Chiwaya & Savannah Smith, *Map: Protests and Rallies for George Floyd Spread Across the Country*, NBC News (June 1, 2020), <https://www.nbcnews.com/news/us-news/map-protests-rallies-george-floyd-spread-across-country-n1220976>.

³ See Adam Gabbatt, *Protests About Police Brutality Are Met With Wave of Police Brutality Across U.S.*, Guardian (June 6, 2020), <https://www.theguardian.com/us-news/2020/jun/06/police-violence-protests-us-george-floyd>; Michael Sainato, “*They Set Us Up*”: U.S. Police Arrested Over 10,000 Protesters, Many Non-Violent, Guardian (June 8, 2020), <https://www.theguardian.com/us-news/2020/jun/08/george-floyd-killing-police-arrest-non-violent-protesters>; Shaila Dewan & Mike Baker, *Facing Protests Over Use of Force, Police Respond With More Force*, N.Y. Times (May 31, 2020), <https://www.nytimes.com/2020/05/31/us/police-tactics-floyd-protests.html>; Andrew W. Lehren et al., *Floyd Protests Renew Debate About Police Use of Armored Vehicles, Other Military Gear*, NBC News (June 20, 2020), <https://www.nbcnews.com/news/us-news/floyd-protests-renew-debate-about-police-use-armored-vehicles-other-n1231288>.

⁴ See Joseph Cox, *The Military and FBI Are Flying Surveillance Planes Over Protests*, VICE News (June 3, 2020), https://www.vice.com/en_us/article/y3zvwj/military-fbi-flying-surveillance-planes-george-floyd-protesters; Pete Muntean & Gregory Wallace, *U.S. Government Spy Planes Monitored George Floyd Protests*, CNN (June 12, 2020),

The *New York Times* found that, as of June 19, 2020, the Department of Homeland Security alone had logged at least 270 hours of surveillance footage.⁵ Helicopters, airplanes, and drones usually deployed to patrol the U.S. border were quickly repurposed to patrol peaceful protests.⁶ The collected footage was ultimately channeled into a digital network, accessible by federal and local law enforcement agencies for use in future investigations, called “the Big Pipe.”⁷ Other law enforcement and military agencies, including the Federal Bureau of Investigation, the National Guard, and local police departments, also requested deployment, or independently deployed, aircraft or drones for the purpose of surveilling protests.⁸

Maps of recent flight patterns over cities engaged in protest strongly suggest that the aircraft in question are engaged in surveillance or monitoring activities, and help illustrate just how ubiquitous and invasive aerial surveillance of the George Floyd protests was:

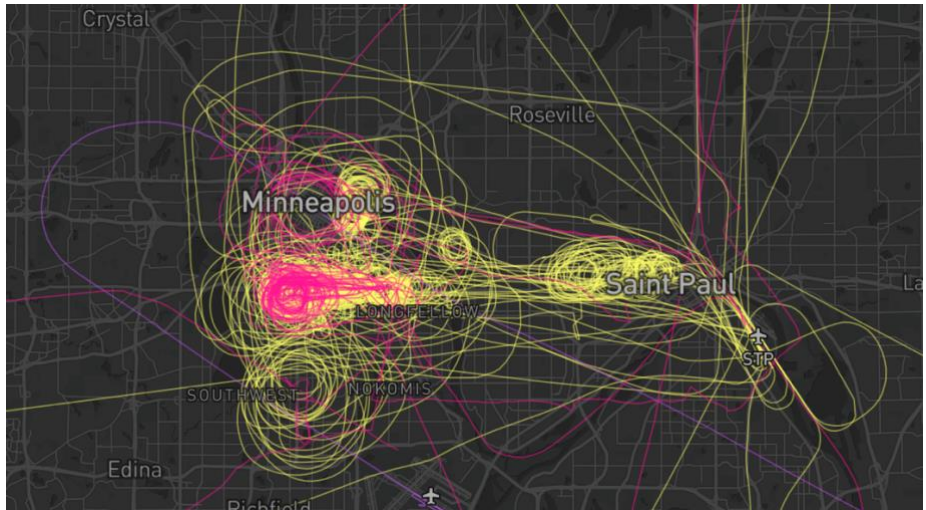
<https://www.cnn.com/2020/06/11/politics/spy-planes-george-floyd-protests/index.html>; Eric Schmitt & Thomas Gibbons-Neff, *Air Force Investigates Military Planes That Monitored Protesters*, N.Y. Times (June 18, 2020), <https://www.nytimes.com/2020/06/18/us/politics/investigation-military-surveillance-planes-george-floyd-protests.html>; Peter Aldhous, *Find the Police and Military Planes that Monitored the Protests in Your City with These Maps*, BuzzFeed News (June 2, 2020), <https://www.buzzfeednews.com/article/peteraldhous/george-floyd-protests-police-military-planes>.

⁵ Zolan Kanno-Youngs, *U.S. Watched George Floyd Protests in 15 Cities Using Aerial Surveillance*, N.Y. Times (June 19, 2020), <https://www.nytimes.com/2020/06/19/us/politics/george-floyd-protests-surveillance.html>.

⁶ *Id.*

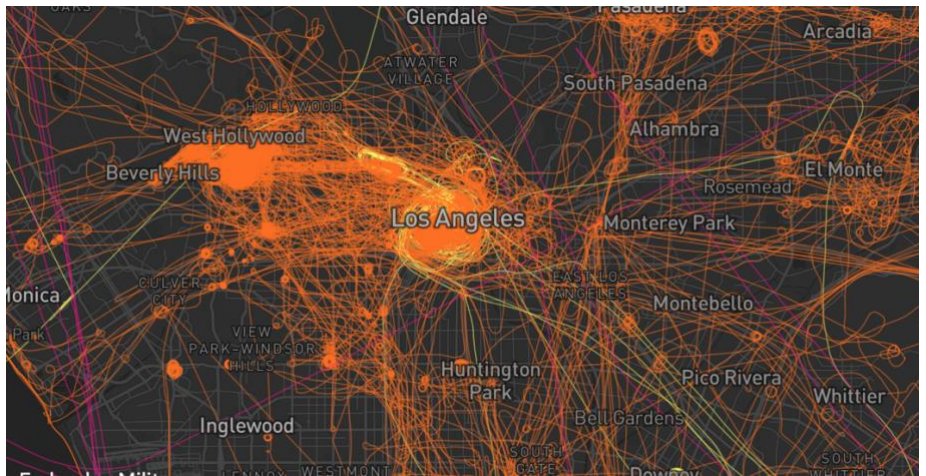
⁷ *Id.*

⁸ See, e.g., Schmitt, *supra* note 4.; Jared Whitlock, *Multiple San Diego County Police Agencies Are Monitoring Protests with Drones*, Voice of San Diego (June 8, 2020), <https://www.voiceofsandiego.org/topics/public-safety/multiple-san-diego-county-police-agencies-are-monitoring-protests-with-drones/>; Jeff Parrott, *As Predator Drones Fly Over U.S. Cities, Dems Push Back On Protest Surveillance*, Deseret News (June 10, 2020), <https://www.deseret.com/indepth/2020/6/10/21270766/protest-george-floyd-border-patrol-drone-surveillance-national-guard-helicopter-black-hawk>.

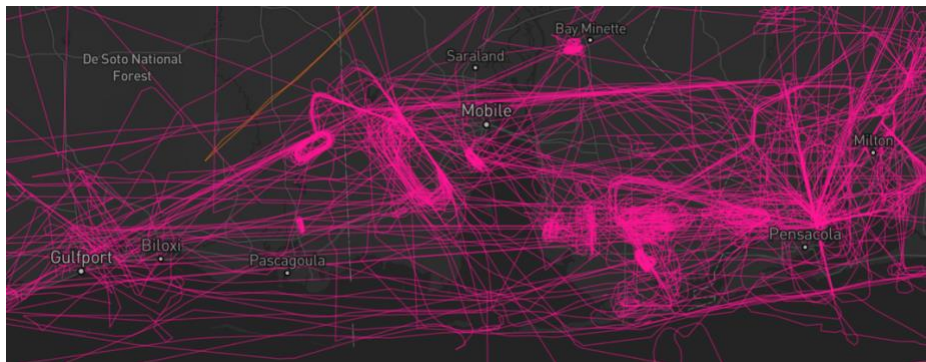


Flight-tracking map over Minneapolis and Saint Paul, Minnesota.⁹

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Flight-tracking map over Los Angeles, California.¹⁰



Flight-tracking map over Mobile, Milton, and Pensacola, Alabama.¹¹

⁹ Aldhous, *supra* note 4.

¹⁰ *Id.*

¹¹ *Id.*

These aircraft likely collected vast amounts of surveillance footage, which, in combination with other surveillance tools (including face recognition, license plate readers, and fake cell towers), has the capacity to reveal deeply personal information.¹²

Collected footage aside, the very existence of visible circling airplanes, helicopters, and drones over a city as protestors march with signs, confront police, mourn, pray, and travel to and from their homes and places of worship is chilling. The chilling effects of surveillance on protected First Amendment activities are well-documented.¹³

The ACLU is hereby seeking records to provide the American public with information about the military's and law enforcement's invasive—and potentially unconstitutional—use of airplanes, helicopters, and drones to surveil protestors.

II. Requested Records

As described in detail below, the ACLU seeks records regarding the deployment of airplanes, helicopters, and drones by local, state, and federal law enforcement agencies, as well as by military agencies anywhere in the United States, from May 25, 2020, to present. The request encompasses instances in which such deployment was contracted out to a private company. A non-exhaustive, exemplary list of aircraft engaged in such flights (all between May 29, 2020 and May 31, 2020)¹⁴ about which we expect to receive records follows. This list is for reference only, and does not purport to constitute a complete list of aircraft or surveillance flights about which this request seeks records.

City	Operator	Model	Registration #
Atlanta, GA	Army	Eurocopter UH-72A	12-72230
Atlanta, GA	Atlanta Police Department	2001 MD Helicopters, Inc. 369E	N369PD
Atlanta, GA	Georgia Department of Public Safety	Bell 407	N925SP

¹² See Faine Greenwood, *Can a Police Drone Recognize Your Face?*, Slate (July 8, 2020), <https://slate.com/technology/2020/07/police-drone-facial-recognition.html>; Cox, *supra* note 4.

¹³ See Jay Stanley & Catherine Crump, *Protecting Privacy From Aerial Surveillance: Recommendations for Government Use of Drone Aircraft*, ACLU, 11 (2011), <https://www.aclu.org/files/assets/protectingprivacyfromaerialsurveillance.pdf>.

¹⁴ This flight information comes from BuzzFeed reporting and mapping. See Aldhous, *supra* note 4.

Boston, MA	Massachusetts State Police	2011 Eurocopter Deutschland GMBH EC 135 T2+	N824AH
Danbury, CT	Silver Creek Aviation Services (likely requested by Drug Enforcement Administration)	Cessna 206H	N238D
Dayton, OH	Butler County	2007 Robinson Helicopter Company R44 II	N3010X
Detroit, MI	City of Detroit	Bell OH58A	N514PD
Detroit, MI	State of Michigan	Bell 407 GX	N312ST
Enid, OK	Air Force	Hawker Beechcraft T-6A Texan II	06-3832
Houston, TX	Harris County Sheriff's Office	Bell OH-58A	N915SD
Houston, TX	Texas Department of Public Safety	2012 Cessna 208	N215TX
Kansas City, MO	Board of Police Commissioners	2012 MD Helicopters, Inc. 369E	N692PD
Kansas City, MO	Missouri State Highway Patrol	2006 Bell 407	N93MP
Lake Charles, LA	Calcasieu Parish Sheriff's Office	2009 Cessna T206H	N52285
Las Vegas, NV	Las Vega Metropolitan Police Department	MD Helicopters 369FF	N530JL
Louisville, KY	Kentucky State Police	Bell UH-1H	N45SP
Louisville, KY	Louisville Metro Police Department	2001 MD Helicopters, Inc. 500N	N520AP
Miami, FL	Department of Homeland Security	----	N811H
Miami, FL	Florida Highway Patrol	2006 Cessna 182T	N25HP
Miami, FL	Miami Dade Police Department	2008 American Eurocopter, LLC. AS350B3	N806MP
Minneapolis, MN	Minnesota National Guard	Sikorsky HH-60M Black Hawk	13-20633
Minneapolis, MN	State of Minnesota	1996 Bell 206-L4	N119SP
Mobile, AL	Navy	Raytheon T-6B Texan II	166237
New York, NY	New York City Police Department	Bell Helicopter Textron Canada 429	N920PD
Oakland, CA	California Highway Patrol	Airbus Helicopters Squirrel AS 350 B3	N981HP
Oakland, CA	City of Oakland	369E	N510PD
Omaha, NE	Nebraska State Patrol	2005 Bell 407	N575NE
Omaha, NE	Omaha Police Department	2008 Bell Helicopter Textron 206B	N176PD
Philadelphia, PA	City of Philadelphia	Airbus Helicopters, Inc. AS350B2	N297PD
Philadelphia, PA	Pennsylvania State Police	2014 Bell Helicopter Textron Canada 407	N8724ST
Portland, OR	Portland Police Bureau	Cessna 172N	N739MR
Salt Lake City, UT	Army	Eurocopter UH-72A Lakota	12-72261
Santa Fe, NM	New Mexico State Police Aircraft Section	----	N607SP
Washington, DC	Air Force	Boeing VC-25A	82-8000
Washington, DC	Department of the Interior	Bell 412 EP	N11PP
Washington, DC	Metropolitan Police Department	2001 Eurocopter AS 350 B3	N911DC
Wilmington, DE	State of Delaware	Bell Helicopter Textron Canada 429	N2SP

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In particular, the ACLU seeks the release of the following records:

(1) All records (including directives, contracts, agreements, communications, and flight logs) regarding, listing, logging, or describing surveillance or monitoring flights over any city conducted, contracted, or requested by any local, state, or federal agency in the United States from May 25, 2020, to the present;

(2) All records regarding surveillance or monitoring equipment carried on such flights, including its capabilities and description of the data gathered by it;

(3) All records regarding any proposal, approval, or authorization to conduct or engage others to conduct surveillance or monitoring flights over American cities from May 25, 2020 to present;

(4) All surveillance footage (including, but not limited to, photographs, videos, and electronic footage) collected during surveillance or monitoring flights over American cities from May 25, 2020, to present.

(5) All records (dated January 1, 2016 or later) regarding policies, practices, and procedures for conducting or contracting surveillance or monitoring flights and for storing, accessing, analyzing, sharing, and otherwise interacting with records collected during such flights (including photographs, videos, and electronic surveillance records), including, but not limited to, documents that describe:

- (a) the legal justification and factual showing required before a surveillance flight is authorized;
- (b) the purpose for which collected data may or may not be accessed; and
- (c) who may access the collected data, what procedures they must go through to access the data, and who may authorize access;

(6) All contracts, agreements, and communications with private companies to conduct surveillance or monitoring flights over American cities, to operate surveillance or monitoring equipment installed on aircraft conducting such flights, or to store, analyze, or transmit data or information collected during such flights;

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the ACLU requests that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, the ACLU requests that the records be provided electronically in a text-searchable,

static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

III. Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).¹⁵ 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).

A. *The ACLU 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. *See id.*¹⁶ Obtaining information about government activity, analyzing that information, and widely publishing and disseminating it to the press and public are critical and substantial components of the ACLU's work and are among its primary activities. *See ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (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”).¹⁷

The ACLU regularly publishes *STAND*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 900,000 people. The ACLU also publishes regular updates and alerts via email to over 4.3 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to over 5.5 million social media followers. The magazine as well as the email and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

¹⁵ *See also* Federal Aviation Administration Freedom of Information Act Program (FOIA), Order 1270.1A § 14(d) (hereinafter FAA Order 1270.1A § 14(d)); 28 C.F.R. § 16.5(e)(1)(ii); 6 C.F.R. § 5.5(e).

¹⁶ *See also* FAA Order 1270.1A § 14(d); 28 C.F.R. § 16.5(e)(1)(ii); 6 C.F.R. § 5.5(e)(1)(ii).

¹⁷ 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 v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

The ACLU 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

¹⁸ See, e.g., Press Release, ACLU, Federal Court Permanently Blocks Billions of Dollars in Border Wall Construction (June 28, 2019), <https://www.aclu.org/press-releases/federal-court-permanently-blocks-billions-dollars-border-wall-construction>; Press Release, ACLU, New Documents Reveal NSA Improperly Collected Americans' Call Records Yet Again (June 26, 2019), <https://www.aclu.org/press-releases/new-documents-reveal-nsa-improperly-collected-americans-call-records-yet-again>; Press Release, ACLU, ACLU and Center for Media Justice Sue FBI for Records on Surveillance of Black Activists (Mar. 21, 2019), <https://www.aclu.org/press-releases/aclu-and-center-media-justice-sue-fbi-records-surveillance-black-activists>; Press Release, ACLU, ACLU, Privacy International Demand Government Disclose Nature and Extent of Hacking Activities (Dec. 21, 2018), <https://www.aclu.org/press-releases/aclu-privacy-international-demand-government-disclose-nature-and-extent-hacking>; Press Release, ACLU, New Documents Reveal Government Plans to Spy on Keystone XL Protesters (Sept. 4, 2018), <https://www.aclu.org/news/new-documents-reveal-government-plans-spy-keystone-xl-protesters>; Press Release, ACLU, ACLU Obtains Documents Showing Widespread Abuse of Child Immigrants in U.S. Custody (May 22, 2018), <https://www.aclu.org/news/aclu-obtains-documents-showing-widespread-abuse-child-immigrants-us-custody>; Press Release, ACLU, ACLU Demands CIA Records on Campaign Supporting Haspel Nomination (May 4, 2018), <https://www.aclu.org/news/aclu-demands-cia-records-campaign-supporting-haspel-nomination>; Press Release, ACLU, Advocates File FOIA Request For ICE Documents on Detention of Pregnant Women (May 3, 2018), <https://www.aclu.org/news/advocates-file-foia-request-ice-documents-detention-pregnant-women>; Press Release, ACLU, Civil Rights Organizations Demand Police Reform Documents from Justice Department (Jan. 4, 2018), <https://www.aclu.org/news/civil-rights-organizations-demand-police-reform-documents-justice-department>; Press Release, ACLU, ACLU Files Lawsuits Demanding Local Documents on Implementation of Muslim Ban (Apr. 12, 2017), <https://www.aclu.org/news/aclu-files-lawsuits-demanding-local-documents-implementation-trump-muslim-ban>; 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, Secret Documents Describe Graphic Abuse and Admit Mistakes (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, ACLU, ACLU Sues for Bureau of Prisons Documents on Approval of CIA Torture Site (Apr. 14 2016), <https://www.aclu.org/news/aclu-sues-bureau-prisons-documents-approval-cia-torture-site>.

¹⁹ See, e.g., Charlie Savage, *N.S.A. Gathered Domestic Calling Records It Had No Authority to Collect*, N.Y. Times, June 26, 2019, <https://www.nytimes.com/2019/06/26/us/telecom-nsa-domestic-calling-records.html> (quoting ACLU attorney Patrick Toomey); Rachel Frazin, *ACLU Sues FBI Over Black Activist Surveillance Records*, Hill, Mar. 21, 2019, <https://thehill.com/policy/national-security/fbi/435143-fbi-sued-over-black-activist-surveillance-records> (quoting ACLU attorney Nusrat Choudhury); Cora Currier, *TSA's Own Files Show Doubtful Science Behind Its Behavioral Screen 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); Larry Neumeister, *Judge Scolds Government over Iraq Detainee Abuse Pictures*, The Associated Press, Jan. 18, 2017, <https://www.apnews.com/865c32eebf4d457499c017eb837b34dc>

Similarly, the ACLU publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government 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. ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.²⁰ 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>. The ACLU also publishes, analyzes, and disseminates information through its heavily

(quoting ACLU project director Hina Shamsi); Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, <http://wapo.st/2jy62cW> (quoting former ACLU deputy legal director Jameel Jaffer); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC, June 15, 2016, <http://abcn.ws/2jy40d3> (quoting ACLU attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Device*, Guardian, Mar. 17, 2016, <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nathan Freed Wessler); David Welna, *Government Suspected of Wanting CIA Torture Report to Remain Secret*, NPR, Dec. 9, 2015, <http://n.pr/2jy2p71> (quoting ACLU project director Hina Shamsi).

²⁰ See, e.g., ACLU, *Bad Trip: Debunking the TSA’s ‘Behavior Detection’ Program* (2017), https://www.aclu.org/sites/default/files/field_document/dem17-tsa_detection_report-v02.pdf; 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>; Brett Max Kaufman, *Details Abound in Drone ‘Playbook’ – Except for the Ones That Really Matter Most* (Aug. 8, 2016), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; ACLU, *Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (2016), <https://www.aclu.org/report/leaving-girls-behind>; Nathan Freed Wessler, *ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; Ashley Gorski, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>.

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's website also serves as a clearinghouse for news about ACLU cases, including analysis about case developments and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.²¹

The ACLU website includes many features on information obtained through the FOIA. The ACLU maintains an online "Torture Database," a compilation of over 100,000 pages of FOIA documents that allows researchers and the public to conduct sophisticated searches of its contents relating to government policies on rendition, detention, and interrogation.²² The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the

²¹ See, e.g., *ACLU v. ODNI*—FOIA Lawsuit Seeking Records About Government Surveillance Under the USA Freedom Act, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-odni-foia-lawsuit-seeking-records-about-government-surveillance-under-usa-freedom-act>; *ACLU v. DOJ*—FOIA Lawsuit Seeking Information on Federal Agencies' Surveillance of Social Media, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-doj-foia-lawsuit-seeking-information-federal-agencies-surveillance-social-media>; *ACLU v. DOJ*—FOIA Case for Records Relating to Targeted Killing Law, Policy, and Casualties, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-doj-foia-case-records-relating-targeted-killing-law-policy-and-casualties>; Executive Order 12,333—FOIA Lawsuit, ACLU Case Page, <https://www.aclu.org/cases/executive-order-12333-foia-lawsuit>; ACLU Motions Requesting Public Access to FISA Court Rulings on Government Surveillance, ACLU Case Page, <https://www.aclu.org/cases/aclu-motions-requesting-public-access-fisa-court-rulings-government-surveillance>; *ACLU v. DOJ*—FOIA Lawsuit Demanding OLC Opinion "Common Commercial Service Agreements, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-doj-foia-lawsuit-demanding-olc-opinion-common-commercial-service-agreements>; FOIA Request for Justice Department Policy Memos on GPS Location Tracking, ACLU Case Page, <https://www.aclu.org/cases/foia-request-justice-department-policy-memos-gps-location-tracking>; Florida Stingray FOIA, ACLU Case Page, <https://www.aclu.org/cases/florida-stingray-foia>; Nathan Freed Wessler, *ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida*, (Feb. 22, 2015) <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida?redirect=blog/national-security-technology-and-liberty/aclu-obtained-documents-reveal-breadth-secretive-sting>.

²² *The Torture Database*, ACLU Database, <https://www.thetorturedatabase.org>; *see also Countering Violent Extremism FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

FOIA.²³

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 Requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

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

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).²⁴ Specifically, they pertain to aerial surveillance of the George Floyd protests. As discussed in Part I, *supra*, law enforcement and military surveillance of these protests is the subject of widespread public controversy and media attention.²⁵ The records sought relate to a matter of widespread and exceptional media interest in aerial surveillance, especially when deployed in the context of civil protest.²⁶

Further underscoring the urgency of informing the public about law enforcement use of aerial surveillance at issue in this Request is the strong media interest in what little has been revealed publicly about that conduct. Indeed, officials have released sparse information about the surveillance campaign; the majority of information currently has been assembled by using crowd-sourced databases, eyewitness observations, and inference.²⁷ Given this media interest and the lack of public information about the basis and need for records regarding law enforcement deployment of airplanes, helicopters, and drones to surveil protestors at issue, there is an urgent need to inform the public about law enforcement use of aerial surveillance. Expedited processing is therefore appropriate under 5 U.S.C. § 552(a)(6)(E)

²³ *Index of Bush-Era OLC Memoranda Relating to Interrogation, Detention, Rendition and/or Surveillance*, ACLU (Mar. 5, 2009), https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf; *Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010*, ACLU (Nov. 29, 2010), https://www.aclu.org/files/pdfs/natsec/faafoia_20101129/20101129Summary.pdf; *Statistics on NSL's Produced by Department of Defense*, ACLU, https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf.

²⁴ *See also* FAA Order 1270.1A § 14(d); 28 C.F.R. § 16.5(e)(1)(ii); 6 C.F.R. § 5.5(e)(1)(ii).

²⁵ *See supra* notes 4–5, 8.

²⁶ *See id.*

²⁷ *See id.*

and the FAA, FBI, and DHS implementing regulations.²⁸

IV. Application for Waiver or Limitation of Fees

The ACLU requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).²⁹ The ACLU also requests 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).

- A. *The Request is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the ACLU.*

As discussed above, this Request concerns law enforcement and military surveillance of George Floyd protests across the country. Little information is publicly available regarding the deployment of airplanes, helicopters, and drones to surveil protestors at issue in this Request, so the records sought are certain to contribute significantly to the public’s understanding of the coordinated aerial surveillance campaign.

The ACLU is not filing this Request to further its commercial interest. As described above, any information disclosed by the ACLU as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *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 requesters.” (quotation marks omitted)).

- B. *The ACLU is a representative of the news media and the records are not sought for commercial use.*

The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a “representative of the news media” and the records

²⁸ See also FAA Order 1270.1A § 14(d); 28 C.F.R. § 16.5(e)(1)(ii); 6 C.F.R. § 5.5(e)(1)(ii).

²⁹ See also FAA Order 1270.1A § 14(d); 28 C.F.R. § 16.10(k)(2); 6 C.F.R. § 5.11(k)(1).

are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).³⁰ 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)³¹; *see also Nat’l Sec. Archive v. 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); *Serv. Women’s Action Network v. Dep’t of Defense*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. Dep’t of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington 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”); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU is therefore a “representative of the news media” for the same reasons it is “primarily engaged in the dissemination of information.”

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU’s to be “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.*, 241 F. Supp. 2d at 10–15 (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*, 880 F.2d at 1387; *Judicial Watch, Inc. v. 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).³²

On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news

³⁰ *See also* FAA Order 1270.1A § 14(d); 28 C.F.R. § 16.10(k)(2)(ii)–(iii); 6 C.F.R. § 5.11(k)(2)(iii).

³¹ *See also* FAA Order 1270.1A § 14(d); 28 C.F.R. § 16.10(b)(6); 6 C.F.R. § 5.11(b)(6).

³² 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 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.

media.”³³ As was true in those instances, the ACLU meets the requirements for a fee waiver here.

* * *

Pursuant to applicable statutes and regulations, the ACLU expects a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii); FAA Order 1270.1A § 14(d); 28 C.F.R. § 16.5(e)(4); 6 C.F.R. § 5.5(e)(4).

If the Request is denied in whole or in part, the ACLU asks that you justify all deletions by reference to specific exemptions to FOIA. The ACLU expects the release of all segregable portions of otherwise exempt material. The ACLU reserves the right to appeal a decision to withhold any information or deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

Brett Max Kaufman
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, New York 10004
T: 212.549.2500
F: 212.549.2654
bkaufman@aclu.org

³³ The ACLU regularly receives FOIA fee waivers from federal agencies. For example, in June 2018, the U.S. Citizenship and Immigration Services granted a fee-waiver request regarding a FOIA request for documents relating to the use of social media surveillance. In August 2017, CBP granted a fee-waiver request regarding a FOIA request for records relating to a muster sent by CBP in April 2017. In June 2017, the Department of Defense granted a fee-waiver request regarding a FOIA request for records pertaining to the authorities approved by President Trump in March 2017 which allowed U.S. involvement in Somalia. In June 2017, the Department of Defense, the CIA, and the Office of Inspector General granted fee-waiver requests regarding a FOIA request for records pertaining to U.S. involvement in the torture of detainees in prisons in Yemen, Eritrea, and aboard Yemeni or Emirati naval vessels. In May 2017, CBP granted a fee-waiver request regarding a FOIA request for documents related to electronic device searches at the border. In April 2017, the CIA and the Department of State granted fee-waiver requests in relation to a FOIA request for records related to the legal authority for the use of military force in Syria. In March 2017, the Department of Defense Office of Inspector General, the CIA, and the Department of State granted fee-waiver requests regarding a FOIA request for documents related to the January 29, 2017 raid in al Ghayil, Yemen. In June 2016, the Office of the Director of National Intelligence granted a fee-waiver request regarding a FOIA request related to policies and communications with social media companies’ removal of “extremist” content. In May 2016, the FBI granted a fee-waiver request regarding a FOIA request issued to the Department of Justice for documents related to Countering Violent Extremism Programs.

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).

Sincerely,



Brett Max Kaufman
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, New York 10004
T: 212.549.2500
F: 212.549.2654
bkaufman@aclu.org

**AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION**