



July 17, 2007

Information Officer
 Office of Freedom of Information and Security Review
 Directorate for Executive Services and Communications
 FOIA/Privacy Branch
 1155 Defense Pentagon
 Room 2C757
 Washington, D.C. 20301-1155

**Re: REQUEST UNDER FREEDOM OF INFORMATION ACT /
 Expedited Processing Requested**

Attention:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and the implementing regulations, 32 C.F.R. § 286.1 *et seq.*, and 32 C.F.R. § 1900 *et seq.* The Request is submitted on behalf of the American Civil Liberties Union Foundation and the American Civil Liberties Union ("ACLU").¹

Requested Records

The ACLU seeks all records relating to deaths, including but not limited to suicides, attempted suicides, accidental deaths, homicides, attempted homicides, and natural deaths, since January 2002 of detainees held in U.S. custody at the U.S. Naval Base located at Guantanamo Bay, Cuba ("Guantanamo Bay").

The ACLU also seeks all records relating to the deaths of the following detainees who were being held in U.S. custody at Guantanamo Bay at the time of their deaths: Mani Shaman Turki al-Habardi al-Utaybi (Saudi, born 1976); Yassar Talal al-Zahrani (Saudi, born 1984); Ali Abdullah Ahmed or Šālah Addin Ali Ahmed al-Salamī (Yemeni, born

¹ The American Civil Liberties Union Foundation is a 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. The American Civil Liberties Union is a separate non-profit, 501(c)(4) membership organization that educates the public about 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.

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 TREASURER

1970); Abdul Rahman Maadha al-Amry or ‘Abd al-Raḥmān al-‘Amrī (Saudi, born 1973).

Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and corresponding regulations. There is a “compelling need” for these records because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged federal government activity. 5 U.S.C. § 552(a)(6)(E)(v); 32 C.F.R. § 286.4(d)(3)(ii); 32 C.F.R. § 1900.34(c)(2). In addition, the records sought relate to a “breaking news story of general public interest.” 32 C.F.R. § 286.4(d)(3)(ii)(A).

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The ACLU is “primarily engaged in disseminating information” within the meaning of the statute and regulations. 5 U.S.C. § 552(a)(6)(E)(v); 32 C.F.R. § 286.4(d)(3)(ii); 32 C.F.R. 1900.34(c)(2). Dissemination of information to the public is a critical and substantial component of the ACLU’s mission and work. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 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” (internal citation omitted)). Specifically, the ACLU publishes newsletters, news briefings, right-to-know documents, and other educational and informational materials that are broadly circulated to the public. Such material is widely available to everyone, including individuals, tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee. The ACLU also 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 website specifically includes features on information obtained through the FOIA. *See, e.g.,* www.aclu.org/torturefoia; www.aclu.org/spyfiles. The ACLU also publishes an electronic newsletter, which is distributed to subscribers by e-mail. Finally, the ACLU produces an in-depth television series on civil liberties. The ACLU plans to disseminate to the public the information gathered through the Request.²

² In addition to the national ACLU offices, there are 53 ACLU affiliate and national chapter offices located throughout the United States and Puerto Rico. These offices further disseminate ACLU material to local residents, schools, and organizations through a variety of means, including their own websites, publications, and newsletters. Further, the ACLU makes archived material available at the American Civil Liberties Union

Furthermore, the records sought directly relate to a breaking news story of general public interest that concerns actual or alleged Federal government activity; specifically, the records sought relate to deaths of detainees in U.S. custody at Guantanamo Bay. *See* 32 C.F.R. § 286.4(d)(3)(ii)(A); 32 C.F.R. 1900.34(c)(2).

The deaths of three detainees – Mani Shaman Turki al-Habardi al-Utaybi (Saudi, born 1976); Yassar Talal al-Zahrani (Saudi, born 1984); Ali Abdullah Ahmed or Şālah Addin Ali Ahmed al-Salamī (Yemeni, born 1970); – at Guantanamo Bay detention facilities on June 10, 2006, received extensive media coverage. While the U.S. government stated that the men committed suicide, others have alleged that the deaths were not suicides. *See, e.g.*, “23 Detainees Attempted Suicide in Protest at Base, Military Says,” *New York Times*, January 25, 2005; “Guantanamo suicide tries called ‘coordinated effort,’” *CNN.com*, January 24, 2005; Josh White, “Guantanamo Desperation Seen in Suicide Attempts,” *Washington Post*, November 1, 2005; Sgt. Sara Wood, “Three Guantanamo Bay Detainees Die of Apparent Suicide,” *American Forces Information Service*, June 10, 2006; “U.S. identifies dead Gitmo detainees,” *MSNBC.com*, June 11, 2006; James Risen and Tim Golden, “3 Prisoners Commit Suicide at Guantanamo,” *New York Times*, June 11, 2006; James Risen and Tim Golden, “Saudi Arabia Identifies 2 Dead Guantánamo Detainees,” *New York Times*, June 11, 2006; “3 Gitmo Suicides Identified,” *CBSNews.com*, June 11, 2006; “Guantanamo suicides a ‘PR move,’” *BBC News*, June 11, 2006; “Guantanamo suicides ‘acts of war,’” *BBC News*, June 11, 2006; David S. Cloud and Neil A. Lewis, “Prisoners’ Ruse Is Suspected at Guantánamo,” *New York Times*, June 12, 2006; “U.S. Steps Back From Gitmo Suicide Comments,” *SFGate.com*, June 12, 2006; “Gitmo Detainee Was Cleared for Transfer,” *FoxNews.com*, June 12, 2006; “Suicides fuel Guantanamo criticism,” *CNN.com*, June 12, 2006; Charlie Savage, “Criticism of Guantanamo rises; Pentagon IDs 3 who killed selves,” *Boston Globe*, June 12, 2006; Thomas E. Ricks, “Three Detainees Who Committed Suicide Are Identified,” *Washington Post*, June 12, 2006; “Pentagon IDs Gitmo detainees who committed suicide; 1 was up for transfer,” *USA Today*, June 12, 2006; David S. Cloud, “State Department Disavows Statement on Suicides,” *New York Times*, June 13, 2006; “Guantanamo inmate was to be moved,” *Al-Jazeera*, June 13, 2006; Carol J. Williams, “Outcry Over Suicides at Guantanamo,” *Los Angeles Times*, June 13, 2006; Michael Rowland, “The World Today - US official calls Guantanamo suicides a

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Archives, Public Policy Papers, Department of Rare Books and Special Collections, Princeton University Library. ACLU publications are often disseminated to relevant groups across the country, which then further distribute them to their members or to other parties.

PR tactic," *Australian Broadcasting Corporation*, June 13, 2006; Carol Rosenberg, "Rituals Conducted for Dead Detainees," *Miami Herald*, June 14, 2006; "Father queries Guantanamo suicide," *BBC News*, June 14, 2006; "Father of Gitmo suicide blames U.S.," *MSNBC.com*, June 14, 2006; "Gitmo Inmate's Family Demands Autopsy, Refutes Suicide Claim," *FoxNews.com*, June 15, 2006; Carol Rosenberg, "Detainees Unaware of Lawyers," *Miami Herald*, June 16, 2006; Carol Rosenberg, "About the Dead Guantanamo Detainees," *Miami Herald*, June 16, 2006; "U.S. sends home bodies of 3 detainees," *Australian Broadcasting Corporation*, June 17, 2006; Ahmed Al-Hajj, "Father Demands Guantanamo Suicide Probe," *Washington Post*, June 18, 2006; Khaled Almaena, "Death in Guantanamo," *Gulf News*, June 18, 2006; Samir Al-Saadi & Ali Al-Jibreel, "'Yasser's Body Bears Marks of Beating,'" *Arab News*, June 19, 2006; Miriam Al Hakeem, "Vital organs missing from repatriated body: family." *gulfnews.com*, June 21, 2006; Habib Toumi, "Ex-detainee disputes triple suicide report," *gulfnews.com*, June 25, 2006; Carol Rosenberg, "How Could Detainee Suicides be Prevented?," *Miami Herald*, June 25, 2006; Nadia Al-Sakkaf, "Gitmo detainee buried after body cross-examined," *Yemen Times*, June 25, 2006; Stevenson Jacobs, "Guantanamo Bay suicide prisoners 'showed no sign of being depressed,'" *The Independent*, June 28, 2006; Carol J. Williams, "Guantanamo Officials Say They Can't Stop All Suicides," *Los Angeles Times*, June 28, 2006; James Risen and Tim Golden, "With Autopsy Still Pending, Saudis Bury a Guantánamo Detainee," *New York Times*, June 29, 2006; Tim Golden, "The Battle for Guantanamo," *New York Times Magazine*, September 17, 2006.

The alleged suicides have also received attention from human rights and academic groups. See Mark P. Denbeaux, "June 10th Suicides at Guantanamo: Government Words and Deeds Compared," Seton Hall University School of Law, August 21, 2006, available at http://law.shu.edu/news/guantanamo_report_june_suicides_8_21_06.pdf.

Attempted suicides at Guantanamo Bay received media coverage even before the recent suicides. Prior to the June 10, 2006, alleged suicides, U.S. government officials acknowledge that up to that date forty-one suicide attempts had taken place. "Prisoner's Ruse; Death Comes to Guantanamo," *Time*, June 19, 2006. In late 2003, twenty-three detainees attempted to hang themselves within an eight day period. "23 Detainees Attempted Suicide in Protest at Base, Military Says," *New York Times*, January 25, 2005. In addition, hunger strikes, sometimes paired with force-feedings, are now a norm of the detention at Guantanamo Bay. See, e.g., Jackie Northam, "Hunger Strike Continues at Guantanamo Bay," *NPR*, September 14, 2005; Mike Mount, "Hunger strike at Guantanamo grows: Eighteen detainees being force-fed; 128 now refusing to eat," *CNN*, September 13, 2005.

The death of Abdul Rahman Maadha al-Amry or ‘Abd al-Rahmān al-‘Amrī (Saudi, born 1973) on May 5, 2007, and the general issue of death of detainees in U.S. custody at Guantanamo Bay, continue to receive extensive and unabated media coverage. See, e.g., Ben Fox, “Guantanamo Detainee Threatens Suicide,” *WTOPnews.com*, May 20, 2007; “Guantanamo detainee vows another suicide attempt,” *USA Today*, May 21, 2007; “Guantanamo Bay Detainee Commits Suicide in Cell,” *FoxNews.com*, May 30, 2007; “Guantanamo detainee dies in apparent suicide,” *USA Today*, May 30, 2007; “Saudi detainee killed self at Gitmo, military says,” *CNN.com*, May 30, 2007; “Guantanamo prisoner commits suicide, U.S. says,” *Reuters*, May 30, 2007; Michael Melia, “Guantanamo Detainee an Apparent Suicide,” *ABCNews.com*, May 30, 2007; Michael Melia, “U.S.: Dead Detainee Was of High Value,” *Associated Press*, May 31, 2007; “Guantanamo prisoner in apparent suicide,” *The Australian*, May 31, 2007; “Guantanamo Saudi ‘kills himself,’” *BBC News*, May 31, 2007; “Guantanamo detainee who died in apparent suicide was Saudi veteran, jihadist,” *International Herald Tribune*, May 31, 2007; Renee Montagne and Jackie Northam, “New Suicide at Guantanamo Bay,” *NPR*, May 31, 2007 (audio); Jane Sutton, “Guantanamo inmate found dead after apparent suicide,” *NEWS.com.au*, May 31, 2007; “Guantanamo inmate dead in suspected suicide,” *Australian Broadcasting Corporation*, May 31, 2007; William Glaberson, “Detainee Found Dead in Guantánamo Cell,” *New York Times*, May 31, 2007; Josh White, “Death of Guantanamo Detainee Is Apparent Suicide, Military Says,” *Washington Post*, May 31, 2007; Josh White, “Detainee Found Dead Trained With U.S. Forces,” *Washington Post*, June 1, 2007; Rupert Cornwell, “Guantanamo ‘suicide’ was in maximum-security cell,” *The Independent*, June 1, 2007; William Glaberson and Margot Williams, “Pentagon Files Offer Details on Detainee in Suicide,” *New York Times*, June 1, 2007; “Guantanamo ‘suicide’ inmate named,” *BBC News*, June 1, 2007; “U.S. Probing Apparent Gitmo Suicide,” *KATV.com*, June 12, 2007; “U.S. military probes Guantanamo suicide,” *USA Today*, June 13, 2007; “Military looking into suicide of Guantanamo Bay detainee,” *Star-Telegram*, June 13, 2007; Michael Sung, “US military investigating apparent suicide of Guantanamo detainee,” *Jurist*, June 14, 2007; Carol Rosenberg, “Navy still probing 2006 Guantánamo deaths,” *Miami Herald*, July 2, 2007.

The requested records are urgently needed within the meaning of the applicable regulations in order to provide the public with information about deaths of detainees in U.S. custody at Guantanamo Bay. 32 C.F.R. § 286.4(d)(3)(ii); 32 C.F.R. 1900.34(c)(2). The records requested are not sought for commercial use and the requesters plan to disseminate the information disclosed as a result of this FOIA request to the public at no cost.

Application for Waiver or Limitation of Fees

The ACLU also requests a waiver of processing fees on the grounds that disclosure of the requested records is in the public interest because it 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); 32 C.F.R. § 286.28(d); 32 C.F.R. 1900.13(b)(2).

Numerous news accounts reflect the considerable public interest in the records the ACLU seeks. *See* cited articles, *supra*. Given the ongoing and widespread media attention to this issue, the records sought in the instant Request will significantly contribute to public understanding of the detention operations and activities of the DoD. 32 C.F.R. § 286.28(d); 32 C.F.R. 1900.13(b)(2). Moreover, as stated above, disclosure is not in the ACLU's commercial interest. Any information disclosed by the ACLU as a result of this FOIA request will be made 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.'" (citation omitted)).

The ACLU requests a limitation of document reproduction fees on the grounds that the ACLU qualifies as a "representative of the news media" and the records are not sought for commercial use. Accordingly, fees associated with the processing of the Request should be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(II); 32 C.F.R. § 286.28(e)(7); 32 C.F.R. § 1900.13(i)(2).

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." *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. ACLU v. Dep't of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be "primarily engaged in disseminating information"). The ACLU is a "representative of the news media" for the same reasons it is "primarily engaged in the dissemination of information." *See Elec. Privacy Info. Ctr. v. 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 media” for purposes of FOIA).³

The ACLU also seek a waiver of duplication fees. 32 C.F.R. § 286.28(e)(7). For the reasons described above, disclosure of the information sought is in the public interest and is likely to contribute significantly to public understanding of the operations or activities of the government. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); 32 C.F.R. § 286.28(e)(7).

* * *

Pursuant to applicable statute and regulations, the ACLU expects a determination regarding expedited processing within 10 calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 32 C.F.R. § 286.4(d)(3); 32 C.F.R. 1900.34(c).

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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.

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

Jamil Dakwar, Advocacy Director, Human Rights Program
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

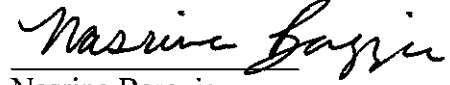
³ On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. For example, in May 2005, the United States Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU with regard to a request submitted that month regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. Also, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in August of 2004. In addition, the Office of Science and Technology Policy in the Executive Office of the President said it would waive the fees associated with a FOIA request submitted by the ACLU in August 2003. In addition, three separate agencies – the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the Office of Information and Privacy in the Department of Justice – did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.



Jamil Dakwar
Advocacy Director

Sincerely,



Nasrina Bargzie
Attorney

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