



May 13, 2015

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U.S. Department of Education
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ATTN: FOIA Public Liaison

AMERICAN CIVIL LIBERTIES
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Re: Request Under Freedom of Information Act/Expedited Processing 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 for records pertaining to plans, policies, and practices related to “countering violent extremism” (“CVE”) programs.²

In 2011, the White House released a Strategic Implementation Plan with the “overarching goal of preventing violent extremists and their supporters from inspiring, radicalizing, financing, or recruiting individuals or groups in the United States to commit acts of violence.”³ The plan describes federal support for “community-led efforts to build resilience to violent extremism” and “preventative programming,” and it identifies three “areas of priority action”:

- (1) enhancing Federal engagement with and support to local communities that may be targeted by violent extremists;
- (2) building government and law enforcement expertise for preventing violent extremism; and
- (3) countering violent extremist propaganda while promoting our ideals.⁴

The plan tasks the Department of Homeland Security, the Department of Justice, the FBI, the National Counterterrorism Center, the State Department, and the Departments of Education and Health and Human Services, among others, with executing CVE programs.

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, educates the public about the civil rights and civil liberties implications of pending and proposed state and federal legislation, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union is a separate non-profit, 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 The ACLU submits this request pursuant to the FOIA, 5 U.S.C. § 552 and the implementing regulations of the Department of Homeland Security (“DHS”), 6 C.F.R. § 5.1 *et seq.*, the Department of Justice, 28 C.F.R. § 16.1 *et seq.*, the Department of State, 22 C.F.R. § 171.1 *et seq.*, the Office of the Director of National Intelligence, 32 C.F.R. § 1700.1, the Department of Health and Human Services, 45 C.F.R. § 5.1 *et seq.*, and the Department of Education, 34 C.F.R. § 5.1 *et seq.*

³ Office of the President, Strategic Implementation Plan for Empowering Local Partners to Prevent Violent Extremism in the United States, Dec. 2011 at 1-2, <http://www.whitehouse.gov/sites/default/files/sip-final.pdf>. The Strategic Implementation Plan defines “violent extremists” as “individuals who support or commit ideologically motivated violence to further political goals.” *Id.* at 1 n.1.

⁴ *Id.* at 2, 7, 10.

In September 2014, Attorney General Eric Holder announced a CVE pilot program, the stated intent of which is to “bring together community representatives, public safety officials, religious leaders, and United States Attorneys to improve local engagement; to counter violent extremism; and—ultimately—to build a broad network of community partnerships to keep our nation safe.”⁵ The pilot program was initially implemented in Boston, Minneapolis, and Los Angeles.⁶

In addition to overseeing the launch of the pilot program, the White House convened a three-day summit on Countering Violent Extremism in February 2015. The summit focused on “the drivers and indicators of radicalization and recruitment to violence”; methods of “directly addressing and countering violent extremist recruitment narratives”; and “empowering community efforts to disrupt the radicalization process.”⁷ The Administration announced that it would be seeking \$15 million in appropriated funding for “community-led” CVE efforts, and that it had already awarded nearly \$3.5 million in grants through the National Institute of Justice “to address domestic radicalization to violent extremism.”⁸

Despite the release of the Strategic Implementation Plan, the announcement of the pilot program, and the convening of the White House summit, neither the White House nor the agencies involved with CVE programs have released even basic information on the CVE programs at issue, including the policies that govern them, which agencies are eligible to receive funding (and have received funding) under the programs, the specific methods agencies are to use in implementing the programs, or research or assessments the agencies have used to justify the need for the programs. Nor has the Administration made public its plans for expansion of current CVE efforts or information on whether and how it will measure the success of CVE programs. The public therefore remains uninformed about all but the broadest outlines of a series of programs that the White House describes as of “critical importance.”⁹

What little has been revealed about the government’s CVE programs raises serious questions about the potential effects of the programs on the communities that are the focus of the programs, particularly American Muslim communities. CVE programs task community members with

⁵ Press Release, Attorney General Holder Announces Pilot Program to Counter Violent Extremists, Sept. 15, 2014, <http://goo.gl/1TlzfC>.

⁶ A New Approach to Countering Violent Extremism: Sharing Expertise and Empowering Local Communities, FBI Law Enforcement Bulletin, Oct. 7, 2014, <http://goo.gl/0mDawM>.

⁷ The White House, Fact Sheet: The White House Summit on Countering Violent Extremism, Feb. 18, 2015, <http://goo.gl/X1bnHk>.

⁸ *Id.*

⁹ Strategic Implementation Plan, *supra* note 2, at 3.

monitoring and reporting on the beliefs, associations, and expressive activities of other community members, thereby engendering the same results as surveillance and monitoring by the government itself: fear, distrust, and self-censorship within the very communities the programs are ostensibly intended to engage. Law enforcement agencies have used past “community outreach” efforts for intelligence gathering and watchlisting purposes¹⁰—a pattern of conduct that heightens community members’ skepticism about current CVE efforts.

CVE programs also cast suspicion on First Amendment-protected activities such as religious worship, political activism, or expression of ideological beliefs. By framing such activities as potential indicators or predictors of violence, CVE programs appear to encourage law enforcement and government agencies to target individuals based on such activities or use them as a basis for other action. Not only would such action be constitutionally suspect, but it also would be baseless: empirical studies show that religious observance or adherence to “radical” ideas do not predict one’s propensity toward violence.¹¹ While some CVE-related materials acknowledge the complex and variegated forces that give rise to violence,¹² others appear to embrace the notion that “radicalization” occurs along a fixed trajectory with specific, identifiable markers¹³—a notion that has been thoroughly discredited.¹⁴

Additionally, by focusing primarily on Muslim and Arab-American communities, CVE programs stigmatize those communities as inherently suspect. Although the Strategic Implementation Plan seeks to “prevent all forms of violent extremism,” the primary target of CVE efforts to date has been Muslim communities.¹⁵ This focus on Muslims and Arab-Americans reinforces the corrosive and misleading notion that those communities are associated with terrorism and violence—a result that is at odds with CVE

¹⁰ See, e.g., American Civil Liberties Union, *ACLU Eye on the FBI Alert – Community Outreach as Intelligence Gathering*, Dec. 1, 2011, <http://goo.gl/5CvuPm>.

¹¹ See Faiza Patel, *Rethinking Radicalization*, Brennan Center for Justice, Mar. 8, 2011, <https://www.brennancenter.org/publication/rethinking-radicalization>.

¹² See, e.g., Department of Homeland Security, *The Complexity of Violent Extremism*, <http://www.dhs.gov/topic/countering-violent-extremism>.

¹³ See, e.g., FBI Law Enforcement Bulletin, *supra* note 6 (stating that “countering extremist views can take place at any time during the behavioral progression leading up to a violent act,” and that “[t]he FBI and its partners must either recognize when an individual exhibits radicalized behavior or take preemptive action during mobilization and subsequent execution of their intended plans”).

¹⁴ See Patel, *supra* note 11.

¹⁵ Strategic Implementation Plan, *supra* note 2, at 2; see also Office of the President, *Empowering Local Partners to Prevent Violent Extremism in the United States*, Aug. 2011, www.whitehouse.gov/sites/default/files/empowering_local_partners.pdf (“Communities – especially Muslim American communities whose children, families and neighbors are being targeted for recruitment by al-Qa’ida – are often best positioned to take the lead because they know their communities best.”).

programs' professed intent to "support and help empower American communities."¹⁶ The extent to which CVE efforts will maintain this singular focus on American Muslim communities, as opposed to the reduction of violence in communities overall, is a question of vital import to affected communities.

A coalition of 27 civil rights and community organizations sent a letter to Deputy National Security Adviser Lisa Monaco in December 2014 setting forth these issues and concerns.¹⁷ The organizations have received no response to date.

Given the paucity of information on the government's CVE programs, and given the potential impacts of those programs on targeted communities—particularly American Muslim communities—it is imperative that the public gain a greater understanding of the policies, practices, methods, and outcomes associated with such programs. The ACLU therefore urgently seeks information on CVE programs through this FOIA request.

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Requested Records

1. Policies, guidance, protocols, advisories, directives, and/or memoranda pertaining to:
 - a. Programs for sharing information and/or analytic products within and between government entities, and/or between government and non-governmental entities, regarding those at risk of engaging in violent extremism.
 - b. Actions law enforcement agencies can or should take with respect to those at risk of engaging in violent extremism.
 - c. Actions that other state or local agencies, including but not limited to schools and social workers, can or should take with respect to those at risk of engaging in violent extremism.
 - d. Specific ideologies, beliefs, theories, and/or opinions purportedly associated with violent extremism.
 - e. "Preoperational" or other "indicators"¹⁸ of violent extremism.
 - f. What constitutes violent extremist propaganda and methods for countering it.

¹⁶ *See id.*

¹⁷ Letter to the Hon. Lisa O. Monaco, Dec. 18, 2014, <http://goo.gl/WTKpjW>.

¹⁸ Strategic Implementation Plan, *supra* note 2, at 13.

g. Any other policies or guidance characterized as CVE-related.

2. Records concerning analyses, assessments, case studies, literature, and/or research that serve as the basis for programs related to individuals at risk of engaging in violent extremism, including but not limited to records reflecting assessments of “violent extremist radicalization”¹⁹ and “the radicalization process.”²⁰
3. Records concerning communications with state, local, tribal, or other federal agencies and officers regarding programs related to individuals at risk of engaging in violent extremism, including the pilot programs implemented in Boston, Los Angeles, and Minneapolis.
4. Records concerning communications with foreign governments and/or officers of foreign governments regarding programs related to individuals at risk of engaging in violent extremism, best practices, recommendations, and/or “lessons learned.”²¹
5. Training materials for programs related to individuals at risk of engaging in violent extremism at any governmental level, including materials related to initial, continuing, and recurring training.²²
6. Records concerning the National Counterterrorism Center’s Community Awareness Briefing.²³
7. Records concerning the Federal Bureau of Investigation’s CVE Model.²⁴
8. Records concerning the Community Resilience Exercise program.
9. Records concerning any criteria utilized by the federal government, whether or not previously published, describing which agencies are eligible to receive funding pursuant to any program related to individuals at risk of engaging in violent extremism, including but not limited to the \$3.5 million dollars awarded through the National Institute of Justice, *see supra* note 8.
10. Records regarding the recipients of any funding for any program related to individuals at risk of engaging in violent extremism, including but not limited to the \$3.5 million dollars awarded through

¹⁹ *Id.* at 12.

²⁰ White House Fact Sheet, *supra* note 7.

²¹ Strategic Implementation Plan, *supra* note 2, at 13.

²² *See id.* at 17-18.

²³ *Id.* at 19.

²⁴ FBI Law Enforcement Bulletin, *supra* note 6.

the National Institute of Justice, *see supra* note 8, including their identities, the amounts they received, and the programs they committed to undertake pursuant to that funding.

Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).²⁵ Expedited processing is warranted because the ACLU is an organization primarily engaged in disseminating information, and this request seeks records in order urgently to inform the public about actual or alleged federal government activity. 5 U.S.C. § 552(a)(6)(E)(v).²⁶

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute and regulations. *See id.* 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 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 and quotation marks omitted)).²⁷

The ACLU regularly publishes a newsletter that reports on and analyzes civil liberties-related current events. The newsletter is disseminated to approximately 450,000 people. The ACLU also publishes a bi-weekly electronic newsletter, which is distributed to subscribers (both ACLU members and non-members) by e-mail. The electronic newsletter is disseminated to approximately 300,000 people. Both of these newsletters often include descriptions and analysis of information obtained through FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news.²⁸

²⁵ *See also* 6 C.F.R. § 5.5(d); 28 C.F.R. § 16.5(d); 22 C.F.R. § 171.12(b); 32 C.F.R. § 1700.12; 34 C.F.R. § 5.21(i)(2).

²⁶ *See also* 6 C.F.R. § 5.5(d)(1)(ii); 28 C.F.R. § 16.5(d)(ii); 22 C.F.R. § 171.12(b)(2); 32 C.F.R. § 1700.12(c)(2); 34 C.F.R. § 5.21(i)(2)(i)(A).

²⁷ Courts have found that other organizations with missions similar to the ACLU and 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) (Leadership Conference on Civil Rights); *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d at 30 n.5; *EPIC v. Dep’t of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003) (Electronic Privacy Information Center).

²⁸ *See, e.g.,* Press Release, American Civil Liberties Union, *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->

and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.²⁹

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. Since 2011 alone, ACLU national projects have published and disseminated dozens of reports, many of which include a description and analysis of government documents obtained through FOIA requests.³⁰ The ACLU also regularly

running-aclu-lawsuit; Press Release, American Civil Liberties Union, *Justice Department White Paper Details Rationale for Targeted Killing of Americans*, Feb. 4, 2013, <https://www.aclu.org/national-security/justice-department-white-paper-details-rationale-targeted-killing-americans>; Press Release, American Civil Liberties Union, *Documents Show FBI Monitored Bay Area Occupy Movement*, Sept. 14, 2012; Press Release, American Civil Liberties Union, *FOIA Documents Show FBI Using "Mosque Outreach" for Intelligence Gathering*, Mar. 27, 2012, <http://www.aclu.org/national-security/foia-documents-show-fbi-using-mosque-outreach-intelligence-gathering>; Press Release, American Civil Liberties Union, *FOIA Documents Show FBI Illegally Collecting Intelligence Under Guise of "Community Outreach"*, Dec. 1, 2011, <https://www.aclu.org/news/foia-documents-show-fbi-illegally-collecting-intelligence-under-guise-community-outreach>; Press Release, American Civil Liberties Union, *FOIA Documents from FBI Show Unconstitutional Racial Profiling*, Oct. 20, 2011, <http://www.aclu.org/national-security/foia-documents-fbi-show-unconstitutional-racial-profiling>; Press Release, American Civil Liberties Union, *Documents Obtained by ACLU Show Sexual Abuse of Immigration Detainees is Widespread National Problem*, Oct. 19, 2011, <http://www.aclu.org/immigrants-rights-prisoners-rights-prisoners-rights/documents-obtained-aclu-show-sexual-abuse>; Press Release, American Civil Liberties Union, *ACLU Lawsuit Seeks Information from FBI on Nationwide System for Collecting "Suspicious Activity" Information*, Aug. 25, 2011, <https://www.aclu.org/national-security/aclu-lawsuit-seeks-information-fbi-nationwide-system-collecting-suspicious>; Press Release, American Civil Liberties Union, *New Evidence of Abuse at Bagram Underscores Need for Full Disclosure About Prison, Says ACLU*, June 24, 2009, <http://www.aclu.org/national-security/new-evidence-abuse-bagram-underscores-need-full-disclosure-about-prison-says-aclu>.

²⁹ See, e.g., Brad Knickerbocker, *ACLU: FBI Guilty of "Industrial Scale" Racial Profiling*, *The Christian Science Monitor*, Oct. 21, 2011, <http://bit.ly/1IyfhAb>); Joshua E.S. Phillips, *Inside the Detainee Abuse Task Force*, *The Nation*, May 30, 2011, <http://bit.ly/skUHD1> (quoting ACLU staff attorney Alexander Abdo); Scott Shane & Benjamin Weiser, *Dossier Shows Push for More Attacks After 9/11*, *N.Y. Times*, Apr. 25, 2011, <http://nyti.ms/ty47ZA> (quoting ACLU project director Hina Shamsi); Eric Lichtblau, *Court Revives Lawsuit Over Government Surveillance*, *N.Y. Times*, Mar. 21, 2011, <http://nyti.ms/tgFpkd> (quoting ACLU deputy legal director Jameel Jaffer).

³⁰ See, e.g., ACLU, *Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government's "Suspicious Activity Report" Systems* (Oct. 2013), available at <https://www.aclu.org/aclu-eye-fbi-documents-reveal-lack-privacy-safeguards-and-guidance-governments-suspicious-activity-0>; ACLU, *Unleashed and Unaccountable: The FBI's Unchecked Abuse of Authority* (Sept. 2013), available at <https://www.aclu.org/unleashed-and-unaccountable-fbis-unchecked-abuse-authority>; ACLU, *Victims of Complacency: The Ongoing Trafficking and Abuse of Third Country Nationals by Government Contractors* (June 2012), available at https://www.aclu.org/files/assets/hrp_traffickingreport_web_0.pdf; Human Rights Watch and ACLU, *Deportation by Default:*

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 <http://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 <http://www.aclu.org/multimedia/>. 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’s website also serves as a clearinghouse for news about ACLU cases, as well as 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, and further in-depth analytic and educational multi-media features.

In the national security arena alone, the ACLU website includes many features on information obtained through the FOIA.³¹ 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.

Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System (July 2010), available at https://www.aclu.org/files/assets/usdeportation0710_0.pdf; Reclaiming Patriotism: A Call to Reconsider the Patriot Act (March 2009), available at https://www.aclu.org/files/pdfs/safefree/patriot_report_20090310.pdf; ACLU, The Excluded: Ideological Exclusion and the War on Ideas (Oct. 2007), available at http://www.aclu.org/pdfs/safefree/the_excluded_report.pdf; ACLU, History Repeated: The Dangers of Domestic Spying by Federal Law Enforcement (May 2007), available at http://www.aclu.org/images/asset_upload_file893_29902.pdf; ACLU, No Real Threat: The Pentagon’s Secret Database on Peaceful Protest (Jan. 2007), available at <https://www.aclu.org/report/no-real-threat-pentagons-secret-database-peaceful-protest>; ACLU, Unpatriotic Acts: The FBI’s Power to Rifle Through Your Records and Personal Belongings Without Telling You (July 2003), available at http://www.aclu.org/FilesPDFs/spies_report.pdf.

³¹ See, e.g., <http://www.aclu.org/national-security/predator-drone-foia>; <http://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <https://www.aclu.org/cases/aclu-v-department-defense>; <http://www.aclu.org/mappingthefbi>; <https://www.aclu.org/cases/bagram-foia>; <https://www.aclu.org/national-security/csrt-foia>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; <https://www.aclu.org/patriot-foia>; <http://www.aclu.org/spyfiles>; <http://www.aclu.org/safefree/nationalsecurityletters/32140res20071011.html>; <https://www.aclu.org/national-security/ideological-exclusion>.

Similarly, 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 FOIA documents relating to government policies on rendition, detention, and interrogation.³²

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA—the ACLU created an original chart that provides the public and news media with a comprehensive summary of index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition and surveillance.³³ Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act,³⁴ and a chart of original statistics about the Defense Department’s use of National Security Letters based on its own analysis of records obtained through FOIA.³⁵

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.

Furthermore, the records sought are urgently needed to inform the public about this controversial federal government activity. The records sought pertain to the scope and implementation of the government’s CVE programs, which implicate core discrimination, privacy, and constitutional concerns, but the public knows little about the basis for the programs, the policies that govern them, and the extent to which they disproportionately target and impact minority and religious communities. Such information is of significant and urgent value not only to such communities, but to any American who could be affected by the implementation of CVE programs. Without disclosure of the records sought, members of the public will remain in the dark about CVE programs and will not be able to assess for themselves whether the programs are necessary, effective, or subject to sufficient limits and oversight.

Further underscoring the urgency of informing the public about the CVE programs is the strong and sustained media interest that has been devoted to what little has been revealed publicly about the programs. *See e.g.*,

³² <http://www.torturedatabase.org>. *See also* <https://www.aclu.org/national-security/aclu-v-department-defense>.

³³ https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf.

³⁴ <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

³⁵ The chart is available at https://www.aclu.org/files/safefree/nationalsecurityletters/released/nsl_stats.pdf.

Tamara Audi, *U.S. Muslim Community Divided Over White House Outreach Plan*, Wall. St. J. (Apr. 20, 2015), <http://goo.gl/eKM50M>; Tami Abdollah & Philip Marcelo, *Where US Sees Terror Prevention, Some Muslims See Profiling*, Wash. Post (Apr. 20, 2015), <http://goo.gl/7P9RRQ>; Belen Fernandez, *The Pseudoscience of Countering Violent Extremism*, Aljazeera America (Apr. 17, 2015), <http://goo.gl/xvuMhA>; Dan Murphy, *Questioning the 'Root Causes' Approach to Countering Violent Extremism*, Christian Science Monitor (Feb. 23, 2015), <http://goo.gl/StcYAi>; Tom Gjelten, *More Muslim Groups Voice Willingness to Combat Extremism in Their Faith*, NPR.com (Feb. 20, 2015), <http://goo.gl/CQQosM>; Audie Cornish, *Critic: Extremism Summit Focused Too Narrowly on Muslims*, NPR.com (Feb. 19, 2015), <http://goo.gl/Kn4wZi>; Humera Khan, *Why Countering Extremism Fails*, Foreign Aff. (Feb. 18, 2015), <http://goo.gl/D297Mx>; Allison Sherry, *Minnesota Officials, Imams Talk Up Community Outreach at White House*, Minneapolis Star Tribune (Feb. 18, 2015), <http://goo.gl/ESju4z>; Eric Schmitt, *U.S. Intensifies Effort to Blunt ISIS' Message*, N.Y. Times (Feb. 16, 2015), <http://goo.gl/UvZael>; Maya Rhodan, *White House Prepares for Summit on Countering Violent Extremism*, Time (Feb. 16, 2015), <http://ti.me/1v7ksl4>; Juliet Eilperin, *Trying to Counter Extremism at Home, U.S. Faces a Risk: Sowing More Mistrust*, Wash. Post (Feb. 16, 2015), <http://goo.gl/ZB4zx2>; Spencer Ackerman, *Anti-Terrorism Summit Reinforces "Fear and Hate" Towards Muslims, Critics Warn*, The Guardian (Feb. 13, 2015), <http://goo.gl/1VzxT8>; Murtaza Hussain, Cora Currier & Jana Winter, *Is Your Child a Terrorist? U.S. Government Questionnaire Rates Families at Risk for Extremism*, The Intercept (Feb. 9, 2015), <http://goo.gl/xFMJmD>; Stephanie Condon, *Can the White House Win the "Battle of Ideas" Against Extremists?*, CBS News (Jan. 14, 2015), <http://goo.gl/FuSoLI>; Spencer Ackerman & Noah Shachtman, *Muslim Rappers, "Google Ideas": Inside the Flawed U.S. Campaign to Fight Militant Memes*, Wired (Oct. 9, 2012), <http://wrd.cm/1F7KvKF>; Eric Schmitt, *U.S. is Trying to Counter ISIS' Efforts to Lure Alienated Young Muslims*, N.Y. Times (Oct. 4, 2014), <http://goo.gl/ZJgaMH>; Shelley Murphy, *Federal Initiative in Boston Aims to Counter Extremism*, Boston Globe (Oct. 4, 2014), <http://goo.gl/49b7fj>; Shelley Murphy, *Boston to Host Anti-Extremist Pilot Program*, Boston Globe (Sept. 24, 2014), <http://goo.gl/s5BBt0>; Brian Bennett, Joel Rubin & Victoria Kim, *L.A. Chosen for Pilot Program on Dissuading Militant Recruits*, L.A. Times (Sept. 22, 2014), <http://goo.gl/FT7bq0>.

Given what little has been revealed to the public about the government's CVE programs, this media interest makes clear that there is an urgent need to inform the public about this federal government activity. Accordingly, expedited processing is appropriate in this case under 5 U.S.C. § 552(a)(6)(E) and the agencies' respective implementing regulations.

III. Application for Waiver or Limitation of Fees

We request 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.” See 5 U.S.C. § 552(a)(4)(A)(iii).³⁶

As discussed above, news accounts underscore the substantial public interest in the records we seek. Given the ongoing and widespread media attention to this issue, the records sought in the instant Request will significantly contribute to public understanding of an issue to which the government is devoting increasing attention. Little information about the government’s CVE programs is publicly available, so the records sought are certain to contribute significantly to the public’s understanding of, *inter alia*, the policies that government agencies have adopted regarding CVE efforts, the specific measures that government agencies are taking to counter what they perceive as violent extremism, and the extent to which such programs are infringing on the civil rights and/or liberties of Americans.

Such disclosure is not in the ACLU’s 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.’”) (citation omitted).

We also request 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. See 6 C.F.R. § 5.11(d)(1). 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); 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); *Service Women’s Action Network v. Dep’t of Def.*, 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

³⁶ See also 6 C.F.R. § 5.11(d); 28 C.F.R. § 16.11(d); 22 C.F.R. § 171.17; 32 C.F.R. § 1700.6(b); 45 C.F.R. § 5.45; 34 C.F.R. § 5.33.

Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. U.S. 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 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 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., Elec. Privacy Info. Ctr. v. 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 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).³⁷

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.”³⁸ As was true in those instances, the ACLU meets the requirements for a fee waiver here.

³⁷ Courts have founds these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information/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.

³⁸ In April 2013, the National Security Division of the Department of Justice (“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. In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists. Likewise, in December 2008, the Department of Justice granted the ACLU a fee waiver with respect to the same request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006. In May 2005, the U.S. 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

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Pursuant to the applicable regulations and statute, we expect the determination regarding expedited processing within 10 calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I).

If the Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to 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.

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

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Hugh Handeyside
National Security Project
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004

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

Sincerely,



Hugh Handeyside
National Security Project
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2500
Fax: (212) 549-2654

States passports. In March 2005, the Department of State granted a fee waiver to the ACLU on a request 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. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The DOJ did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the DOJ Office of Information and Privacy—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.