

August 21, 2020



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Re: Request Under Freedom of Information Act / Expedited Processing and 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 request (the "Request"). The Request seeks records pertaining to processing of naturalization applications by U.S. Citizenship & Immigration Services ("USCIS") for military service members and specifically USCIS implementation of the October 13, 2017 Department of Defense ("DoD") memorandum regarding certification of honorable service.

I. Background

Immigrants have served in the U.S. military since the beginning of this nation's history.² Incentivizing immigrants to join the military by offering an expedited path to citizenship has long gone hand-in-hand with recruitment efforts. The Immigration and Nationality Act ("INA") currently provides such a path for

¹The 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.

²See Jie Zong & Jeanne Batalova, *Immigrant Veterans in the United States*, Migration Policy Inst. (May 16, 2019), <https://www.migrationpolicy.org/article/immigrant-veteransunited-states>.

non-citizens serving in the U.S. military. Since 2001, nearly 130,000 noncitizens have naturalized through this expedited process.³

The INA provides for two different expedited naturalization processes: (1) military service during “peacetime,” 8 USC § 1439; and (2) military service during designated “periods of hostilities,” *id.* at § 1440. On July 3, 2002, President George W. Bush issued Executive Order 13269, which designated the period “beginning on September 11, 2001” as a period of “hostilities.”⁴ Thus, the expedited naturalization process currently applicable to non-citizens is that set forth in 8 USC § 1440.⁵

8 USC § 1440 waives certain naturalization requirements—such as minimum age, resident deportability, physical residence requirement, and an application fee—that civilians must satisfy.

Complementing the INA, Congress enacted the Military Personnel Citizenship Processing Act (“MPCPA”) on October 9, 2008. The MPCPA requires USCIS to adjudicate service member naturalization applications within six months in order to better comply with the INA’s requirement that the naturalization process be expeditious for service members. *See* Pub. L. No. 110-382, 122 Stat. 4087 (2008).

USCIS Form N-426

In an effort to improve processing of service member naturalization applications, USCIS and DoD coordinate efforts. DoD plays a ministerial role in assisting USCIS. Specifically, DoD must certify that an applicant “served honorably” as a member of the Selected Reserve or in an active-duty status in the military. *See* 8 U.S.C. § 1440(a). To do so, DoD uses USCIS Form N-426, which is “a duly authenticated certification from the executive department under

³*See* U.S. Dep’t. of Homeland Sec., Yearbook of Immigration Statistics, tbl. 20 (2018), <https://www.dhs.gov/immigration-statistics/yearbook/2017/table20>.

⁴Expedited Naturalization of Aliens and Noncitizen Nationals Serving in an Active-Duty Status During the War on Terrorism, 67 FR 45,287 (July 3, 2002).

⁵“Any person who, while an alien or a noncitizen national of the United States, **has served honorably as a member of the Selected Reserve of the Ready Reserve or in an active-duty status in the military, air, or naval forces of the United States** during [a period of hostilities], and who, if separated from such service, was separated under honorable conditions, **may be naturalized as provided in this section** if (1) at the time of enlistment, reenlistment, extension of enlistment, or induction such person shall have been in the United States . . . or (2) at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence.” 8 U.S.C. § 1440(a) (emphasis added).

which the applicant served or is serving, which [] state[s] whether the applicant served honorably” during a designated period of hostilities. *Id.* at § 1440(b)(3). DoD ensures that the USCIS protocol of completing the Form N-426 is implemented correctly within the military branches. Upon receiving a certified Form N-426, the service member submits their application to USCIS for processing and adjudication.

October 2017 DoD Memo

On October 13, 2017, DoD issued a memorandum regarding Form N-426 certification for non-citizen service members (“N-426 Memo”).⁶ The Memo creates additional requirements and results in a lengthier process to obtain a certified N-426. Of particular relevance, the N-426 Memo requires that (1) the Form N-426 be certified by an officer of pay grade O-6 or higher, and (2) service members in the active components serve for at least 180 days and Selected Reservists serve for one year and complete basic training before receiving a certified N-426. Prior to October 13, 2017, service members were eligible for a certified N-426 after just one day of qualifying service.⁷ The N-426 Memo has delayed noncitizen service members’ ability to obtain an N-426 and apply for expedited naturalization under 8 U.S.C. § 1440.⁸

The impact of the N-426 Memo on USCIS adjudication of service member naturalization applications is unclear. The public does not know whether, and the extent to which, USCIS is responding to the N-426 Memo when processing service member naturalization applications. The agency has stated that the N-426 Memo will be incorporated in its review process, but has provided little additional information.⁹

The new requirements set forth in the N-426 Memo may be leading to delays in processing naturalization applications, as well as denials predicated on the

⁶Office of the Under Secretary of Defense, Certification of Honorable Service for Members of the Selected Reserve of the Ready Reserve and Members of the Active Components of the Military or Naval Forces for Purposes of Naturalization, U.S. Dep’t of Defense (Oct. 13, 2017), <https://dod.defense.gov/Portals/1/Documents/pubs/Naturalization-Honorable-Service-Certification.pdf>.

⁷*See Kirwa v. Dep’t of Def.*, 285 F. Supp. 3d 21, 28 (D.D.C. 2017).

⁸*See Zachary R. New, Ending Citizenship for Service in the Forever Wars*, Yale L. J. Forum 552, 559-61 (Feb. 11, 2020), https://www.yalelawjournal.org/pdf/New_EndingCitizenshipforServiceintheForeverWars_j1s9v5q3.pdf.

⁹U.S. Citizenship & Immigration Serv.’s, Facebook (Mar. 6, 2018), <https://www.facebook.com/uscis/posts/1841865105824701>.

Memo. In fiscal year 2017, 7,360 service members were naturalized and USCIS denied one out of ten applications. Within one year of the issuance of the N-426 Memo, only 4,135 applications were submitted and USCIS denied one out of every seven applications.¹⁰ These steep statistical differences demonstrate significant changes in submission and adjudication of service member naturalization applications and have prompted members of Congress to inquire about the N-426 Memo and its impact on expedited naturalization service members.¹¹

The ACLU submits this FOIA request to provide the public with information about USCIS's response to DoD's N-426 Memo, including the processing of service member naturalization applications and the extent to which the Memo plays a role in adjudication.

II. Requested Records

1. All USCIS policies, guidance, procedures, directives, instructions, advisories, bulletins, memoranda, training materials, and/or emails created on or after October 13, 2017 relating to naturalization of service members.
2. All USCIS policies, guidance, procedures, directives, instructions, advisories, bulletins, memoranda, training materials, and/or emails created on or after October 13, 2017 relating to the N-426 Memo.
3. Records sufficient to show service member naturalization applications pending since October 2017.
4. Records sufficient to show service member naturalization applications placed on hold since October 2017 due to an incomplete Form N-426.

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.

¹⁰*Naturalizations in the Military: A Recent Decline*, Nat'l Immigration Forum (July 11, 2019), <https://immigrationforum.org/article/naturalizations-in-the-military-a-recent-decline-2/>.

¹¹Rep. Gil Cisneros, Cisneros Leads Letter to DOD and DHS on Non-Citizen Servicemembers Seeking Naturalization with Escobar and Carbajal (Sept. 12, 2019), <https://bit.ly/3aMm7nz>; Sen. Tammy Duckworth, Duckworth Leads Bipartisan Request for GAO Review of Military Naturalization Process (Jan. 23, 2020), <https://bit.ly/3kLMcIc>.

III. Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).¹² There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by organizations 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.*¹³ 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 their 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”).¹⁴

The ACLU regularly publishes *STAND*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to 980,000 people. The ACLU also publishes regular updates and alerts via email to 3.9 million subscribers (both ACLU members and non- members). These updates are additionally broadcast to 4.8 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.

¹²*See also* 6 C.F.R. § 5.5(e).

¹³*See also* 6 C.F.R. § 5.5(e)(1)(ii).

¹⁴Courts 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,¹⁵ and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.¹⁶

¹⁵Press 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>.

¹⁶*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> (quoting ACLU project director Hina Shamsi).

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.¹⁷ 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 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

¹⁷*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>.

action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.¹⁸

The ACLU website includes many features on information obtained through the FOIA. For example, 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.¹⁹ The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA.²⁰

¹⁸*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>.

¹⁹The 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>.

²⁰Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010, ACLU (Nov. 29, 2010), <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>; Index of Bush-Era OLC Memoranda Relating to Interrogation, Detention, Rendition and/or Surveillance, ACLU (Mar. 5, 2009),

The records requested are not sought for commercial use and the ACLU plans to analyze, publish, and 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).²¹ Specifically, the public has a right to know about the extent to which the N-426 Memo plays a role in the USCIS’s adjudication of service member naturalization applications. Moreover, as discussed in Part I, *supra*, these new requirements to certify the Form N-426 have impeded the naturalization process for service members, and numerous media outlets have covered this issue.²² The ACLU has therefore satisfied the requirements for expedited processing of this Request.

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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).²³ The ACLU also requests a waiver of search fees on the grounds that each organization qualifies as a “representative of the news media” and neither organization seeks the records for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf; Statistics on NSL’s Produced by Department of Defense, ACLU, https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf.

²¹*See also* 6 C.F.R. § 5.5(e)(1)(ii).

²²*See, e.g.*, Tara Copp, Naturalizations drop 65 percent for service members seeking citizenship after Mattis memo, *Military Times* (May 3, 2018), <https://www.militarytimes.com/news/your-military/2018/05/03/naturalizations-drop-65-percent-for-service-members-seeking-citizenship-after-mattis-memo/>; Monti Zimmerman, Why block citizenship to immigrants who defend America?, *The Hill* (March 10, 2019), <https://thehill.com/opinion/national-security/432749-why-block-citizenship-to-immigrants-who-defend-america>.

²³*See also* 6 C.F.R. §5.11(k)(1).

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, little information is publicly available regarding the impact of the N-426 Memo on USCIS processing of naturalization applications by service members. The N-426 Memo has been subject to widespread media and public interest since its implementation.²⁴ The records sought are therefore certain to contribute significantly to the public's understanding of the DOD impact of the N-426 Memo on service members' naturalization process.

The ACLU is not filing this Request to further its respective commercial interest. As described above, 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." (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 basis that the ACLU qualifies as a "representative of the news media" and neither organization seeks the records for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).²⁵ 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)²⁶; *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

²⁴See *supra* note 22.

²⁵See also 6 C.F.R. § 5.11(k)(2)(iii).

²⁶See also 6 C.F.R. § 5.11(b)(6).

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 therefore is a “representative of the news media” for the same reasons that 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,” to be a news media requester).²⁷ As was true in those instances, the ACLU meets the requirements for a fee waiver here.

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* * *

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); 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 denials 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.

²⁷Courts 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.

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

Scarlet Kim
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, New York 10004
T: 212.549.2500
F: 212.549.2654
scarletk@aclu.org

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).

**AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION**

Sincerely,

/s/ Noor Zafar
Noor Zafar
Scarlet Kim
Courteney Leinonen
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