April 18, 2018

Central Intelligence Agency
Information and Privacy Coordinator
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AMERICAN CIVIL LIBERTIES UNION FOUNDATION

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Re: Request Under Freedom of Information Act (Expedited Processing & Fee Waiver Requested)

To Whom It May Concern:

Obaid Ullah, in his capacity as the personal representative of Mr. Gul Rahman, and 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 relating to the United States' disposal and the current whereabouts of the body of Mr. Gul Rahman, an Afghan citizen who the United States has acknowledged died while in the custody of the U.S. Central Intelligence Agency ("CIA") in November, 2002.

I. Background

Mr. Obaid Ullah and the ACLU seek information on what agents of the United States did with the body of Mr. Gul Rahman, an Afghan citizen, following his death in CIA custody in November 2002.

Since 2010, U.S. media outlets have reported extensively on Mr. Rahman's death, describing in detail the circumstances of his death, investigations into the incident that precipitated it, and government efforts to cover it up. *See, e.g.*, Adam Goldman & Katherine Gannon, *Death Shed Light*

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[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, educates the public about civil rights and civil liberties issues across the country, directly lobbies legislators, and mobilizes the American Civil Liberties Union's members to lobby their legislators. 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.

on CIA 'Salt Pit' Near Kabul, Associated Press (Mar. 28, 2010), http://www.nbcnews.com/id/36071994/ns/us_news-security/t/death-shed-light-cia-salt-pit-near-kabul/#.WsafsS7waUk; Jane Mayer, *Who Killed Gul Rahman*, New Yorker (Mar. 31, 2010), https://www.newyorker.com/news/news-desk/who-killed-gul-rahman; CBS News/Associated Press, *Did CIA Torture Victim Once Rescue Hamid Karzai*? CBS News (Apr. 6, 2010, 1:42 pm), https://www.cbsnews.com/news/did-cia-torture-victim-once-rescue-hamid-karzai/. In 2011, then-Attorney General Eric H. Holder announced that the U.S. Department of Justice had opened a full criminal investigation into the deaths of two detainees in CIA custody, including reportedly, Mr. Rahman's. *See, e.g.*, Peter Finn & Julie Tate, *Justice Department to Investigate Deaths of Two Detainees in CIA Custody*, Wash. Post (July 1, 2011), https://www.washingtonpost.com/politics/federal-prosecutor-probes-deaths-of-2-cia-held-detainees/2011/06/30/AGsFmUsH_story.html. In August, 2012, Holder subsequently announced the closure of the investigation. *See, e.g.*, U.S. Dep't of Justice, *Statement of Attorney General Eric Holder on Closure of Investigation into the Interrogation of Certain Detainees* (Aug. 30, 2012), https://www.justice.gov/opa/pr/statement-attorney-general-eric-holder-closure-investigation-interrogation-certain-detainees. These media reports identify Mr. Rahman by name, the country in which he was first captured (Pakistan), the torture methods that were used to interrogate and kill him, and the location of the CIA-run facility (the 'Salt Pit') where Mr. Rahman was tortured to death (Afghanistan).

Much of this information was subsequently confirmed in official declassified U.S. government reports and other documents. The Executive Summary of the Senate Select Committee on Intelligence Study of the CIA's Detention and Interrogation Program, https://www.feinstein.senate.gov/public/_cache/files/7/c/7c85429a-ec38-4bb5-968f-289799bf6d0e/D87288C34A6D9FF736F9459ABCF83210.sscistudy1.pdf ("SSCI Report"), which was publicly released in December 2014, documents that CIA personnel subjected Mr. Rahman to abuses including forced nudity, sleep and food deprivation, "auditory overload," "rough treatment," and cold showers. SSCI Report at 54. The SSCI Report also explains that in the days preceding his death, Mr. Rahman had been chained to the wall of his cell, naked from the waist down, in a position that forced his lower body into continuous contact with a freezing concrete floor. *Id.* A declassified CIA autopsy report, referenced in the SSCI Report, concludes that Mr. Rahman, weakened by cold and hunger and other forms of cruel, inhuman and degrading treatment, died of hypothermia in a CIA-run facility (identified as COBALT) in November 2002. *Id.* at 54-55.

In October 2015, Mr. Rahman's family, represented by Mr. Obaid Ullah, and two survivors of the CIA's torture program filed a civil lawsuit against two-CIA contracted psychologists who designed the CIA program and helped the agency implement it, *Salim v. Mitchell and Jessen*, Case No. 2:15-cv-00286-JLQ (E.D. Wa., 2015). The CIA, in response to discovery requests in the

litigation, declassified and released numerous documents relating to Mr. Rahman's death in CIA custody, including many of the CIA cables cited in the SSCI Report, Mr. Rahman's autopsy report, and the results of two separate investigations into his death. These specific documents and the other discovery in the litigation are publicly available at *The Torture Database*, ACLU, https://www.thetorturedatabase.org. *See also* Greg Miller, Karen DeYoung & Julie Tate, *Newly Released CIA Files Expose Grim Details of Agency Interrogation Program*, Wash. Post (June 14, 2016), https://www.washingtonpost.com/world/national-security/newly-released-cia-files-expose-grim-details-of-agency-interrogation-program/2016/06/14/6d04a01e-326a-11e6-95c02a6873031302_story.html?utm_term=.64ef04709a65. Official statements publicly released by the CIA also admitted that Mr. Rahman died "in CIA custody" and that its own leadership "erred in not holding anyone formally accountable for the actions and failure of management related to the death of Gul Rahman." *See, e.g.*, Memorandum from Director, CIA, to Hon. Dianne Feinstein & Hon. Saxby Chambliss, *CIA Comments on the Senate Select Committee on Intelligence's Study of the CIA's Former Detention and Interrogation Program* at 9 ¶ 26 (Dec. 8, 2014), https://www.cia.gov/library/reports/CIAs_June2013_Response_to_the_SSCI_Study_on_the_Former_Detention_and_Interrogation_Program.pdf.

On June 13, 2016, the CIA declassified and released redacted reports of its own investigations of Mr. Rahman's death in CIA custody. The CIA posted those reports to its website. *See, e.g.*, Death Investigation – Gul Rahman, https://www.cia.gov/library/readingroom/document/6555318.

Despite this substantial public record of the circumstances of Mr. Rahman's death and official acknowledgement and accounts of Mr. Rahman's death in declassified documents, the U.S. government has never notified the family of Mr. Rahman's death or the disposition of his body, and has never publicly disclosed information about the location of his remains. The United States' continuing failure to provide this information constitutes an on-going violation of the prohibition of forced disappearance, conduct which Congress has long recognized as a gross human rights violation. *See* 22 U.S.C. §§ 2304(a)(2), 2304(d)(1) (defining "causing the disappearance of persons" as a "gross violation [...] of internationally recognized human rights).

The light shed on Mr. Rahman's death by the release of the SSCI Report, the discovery in the *Salim* lawsuit, and other official documents has generated significant and continuing media coverage. *See, e.g.*, Scott Shane, *Report Portrays a Broken C.I.A. Devoted to a Failed Approach*, N.Y. Times (Dec. 9, 2014), https://www.nytimes.com/2014/12/10/world/senate-torture-report-shows-cia-infighting-over-interrogation-program.html; Greg Miller, Adam Goldman & Julie Tate, *Senate Report on CIA Program details brutality, dishonesty*, Wash. Post (Dec. 9, 2014), https://www.washingtonpost.com/world/national-security/senate-report-on-cia-program-details-brutality-dishonesty/

2014/12/09/1075c726-7f0e-11e4-9f38-95a187e4c1f7_story.html; Ken Silverstein, *The Charmed Life of a CIA Torturer: How Fate Diverged for Matthew Zirbel, aka CIA OFFICER 1, and Gul Rahman*, Intercept (Dec. 15, 2014), https://theintercept.com/2014/12/15/charmed-life-cia-torturer/; Sheri Fink & James Risen, *Lawsuit Aims to Hold 2 Contractors Accountable for C.I.A. Torture*, N.Y. Times (Nov. 27, 2016), https://www.nytimes.com/2016/11/27/us/lawsuit-aims-to-hold-2-contractors-accountable-for-cia-torture.html; Larry Siems, *Inside the CIA's Black Site Torture Room*, Guardian (Oct. 9, 2017), https://www.theguardian.com/us-news/ng-interactive/2017/oct/09/cia-torture-black-site-enhanced-interrogation.Therefore, in addition to Mr. Rahman's family's interest in the information sought, the circumstances of Mr. Rahman's death and the disposition of his body are matters of clear public interest.

To provide Mr. Rahman's family and the American public with information on the whereabouts of Mr. Rahman's body, and to end the U.S. government's continuing violation of the prohibition of enforced disappearance, Mr. Obaid Ullah and the ACLU seek such information through this FOIA request.

II. Requested Records

Mr. Obaid Ullah and the ACLU seek the release of records—including cables, reports of investigations, legal and policy memoranda; guidance documents; instructions; directives; contracts or agreements; and memoranda of understanding—concerning the following:

(1) The United States' (or its agents') disposition of Mr. Rahman's body after his death in CIA custody in November 2002;

(2) Any and all documents referencing the location of Mr. Rahman's body; and

(3) Procedures, protocols, or guidelines to be followed in the event of a CIA detainee's death while in United States' custody, including family notification, investigation and disposition of the body.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), Mr. Obaid Ullah and the ACLU request that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, Mr. Obaid Ullah and the ACLU request 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).[2] 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. 5 U.S.C. § 552(a)(6)(E)(v)(II).[3] 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. DOJ*, 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").[4]

The ACLU regularly publishes *STAND*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 990,000 people. The ACLU also publishes regular updates and alerts via email to over 3.1 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to over 3.8 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.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,[5]

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[2] *See also* 32 C.F.R. § 286.8(e); 32 C.F.R. § 1900.34; 22 C.F.R. § 171.11(f).

[3] *See also* 32 C.F.R. § 286.8(e)(1)(i)(B); 22 C.F.R. § 171.11(f)(2); 32 C.F.R. § 1900.34(c)(2).

[4] 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).

[5] *See, e.g.*, Press Release, American Civil Liberties Union, 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, American Civil Liberties Union, 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

and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.[6]

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.[7] The ACLU also regularly publishes books, "know your rights" materials, fact sheets, and

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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-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), https://www.aclu.org/news/documents-show-fbi-monitored-bay-area-occupy-movement-insidebayareacom.

[6] *See, e.g.*, 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); 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 staff 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 Nate 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).

[7] *See, e.g.*, Hugh Handeyside, *New Documents Show This TSA Program Blamed for Profiling Is Unscientific and Unreliable — But Still It Continues* (Feb. 8, 2017, 11:45 am), https://www.aclu.org/blog/speak-freely/new-documents-show-tsa-program-blamed-profiling-unscientific-and-unreliable-still; 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, 3:15 pm), 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, 5:30 pm), https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most; Nathan Freed Wessler, *ACLU- Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015, 5:30 pm), https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida; Ashley Gorski, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014, 3:29 pm), https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333; ACLU, *ACLU Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government's "Suspicious Activity Report" Systems* (Oct. 29, 2013), https://www.aclu.org/sites/default/files/assets/eye_on_fbi_-_sars.pdf.

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, 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 requests, and further in-depth analytic and educational multi-media features.

The ACLU website includes many features on information obtained through the FOIA.[8] 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. 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,

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[8] *See, e.g.*, Nathan Freed Wessler & Dyan Cortez, *FBI Releases Details of 'Zero-Day' Exploit Decisionmaking Process* (June 26, 2015, 11:00 am), https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process; Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015, 8:00 am), https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights; *ACLU v. DOJ – FOIA Case for Records Relating to the Killing of Three U.S. Citizens*, ACLU Case Page, https://www.aclu.org/national-security/anwar-al-awlaki-foia-request; *ACLU v. Department of Defense*, ACLU Case Page, https://www.aclu.org/cases/aclu-v-department-defense; *Mapping the FBI: Uncovering Abusive Surveillance and Racial Profiling*, ACLU Case Page, https://www.aclu.org/mappingthefbi; *Bagram FOIA*, ACLU Case Page https://www.aclu.org/cases/bagram-foia; *CSRT FOIA*, ACLU Case Page, https://www.aclu.org/national-security/csrt-foia; *ACLU v. DOJ – Lawsuit to Enforce NSA Warrantless Surveillance FOIA Request*, ACLU Case Page, https://www.aclu.org/aclu-v-doj-lawsuit-enforce-nsa-warrantless-surveillance-foia-request; *Patriot FOIA*, ACLU Case Page, https://www.aclu.org/patriot-foia; *NSL Documents Released by DOD*, ACLU Case Page, https://www.aclu.org/nsl-documents-released-dod?redirect=cpredirect/32088.

detention, and interrogation.[9]

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA requests—the ACLU created an original chart that provides the public and news media with a comprehensive summary index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition, and surveillance.[10] Similarly, the ACLU produced an analysis of documents released in response to a FOIA request about the TSA's behavior detection program[11]; a summary of documents released in response to a FOIA request related to the FISA Amendments Act[12]; 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 requests[13]; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.[14]

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.

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

[10] *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.

[11] *Bad Trip: Debunking the TSA's 'Behavior Detection' Program*, ACLU (2017), https://www.aclu.org/sites/default/files/field_document/dem17-tsa_detection_report-v02.pdf.

[12] *Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010*, ACLU, https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf.

[13] *Statistics on NSL's Produced by Department of Defense*, ACLU, https://www.aclu.org/other/statistics-nsls-produced-dod.

[14] Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015, 8:00 AM), https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights.

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).[15] Specifically, the requested records relate to the United States' continuing failure to provide information on what it did with Mr. Rahman's body after his death in CIA custody and the present location of his remains. As discussed in Part I, *supra*, Mr. Rahman's enforced disappearance, and in particular the United States' failure to provide information on the whereabouts of Mr. Rahman's body are the subject of widespread public controversy and media attention.[16] The records sought relate to a matter of widespread and exceptional media interest.[17]

Indeed, the scandal associated with the CIA's former Rendition, Detention, and Interrogation program is presently a subject of urgent national attention with the nomination of Gina Haspel, currently the CIA's deputy director, to serve as Director of the Agency. Ms. Haspel reportedly played a key role in the CIA's program from its outset. *See e.g.*, Adam Goldman, *Gina Haspel, Trump's Choice for C.I.A., Played Role in Torture Program*, N.Y. Times (Mar. 13, 2018), https://www.nytimes.com/2018/03/13/us/politics/gina-haspel-cia-director-nominee-trump-torture-waterboarding.html;Karoun Demirjian, *McCain asks CIA Director nominee Haspel to explain role in post-9/11 interrogations*, Wash Post (Mar. 23, 2018), https://www.washingtonpost.com/powerpost/mccain-asks-cia-director-nominee-haspel-to-explain-her-record-tied-to-torture/2018/03/23/227e76a6-2ea2-11e8-b0b0-f706877db618_story.html?utm_term=.36c89c073689; Manu Raju, Jeremy Herb & Jenna McLaughlin, *How Gina Haspel is trying to overcome her past to become the next CIA Director*, CNN (Mar. 27, 2018, 1:41 pm), https://www.cnn.com/2018/03/27/politics/gina-haspel-cia-confirmation/index.html. The requested records will serve to inform the public about one of the most controversial aspects of the CIA's Program, at a time when Congress and the American people seek a more complete understanding of that Program.

Given the foregoing, the ACLU has satisfied the requirements for expedited processing of this Request.

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

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[15] *See also* 22 C.F.R. § 171.11(f)(2); 32 C.F.R. § 286.8(e)(1)(i)(B); 32 C.F.R. § 1900.34(c)(2).

[16] *See supra* Part I.

[17] *See id.*

primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).[18] 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, given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance. Because there is no information on what the United States did with Mr. Rahman's body after his death in CIA custody, the records sought are certain to contribute significantly to the public's understanding of this issue, and what rules and procedures are in place for similar such incidents. In addition the records will shed light on the United States' role in Mr. Rahman's continuing enforced disappearance.

Neither Mr. Obaid Ullah nor the ACLU is filing this Request to further their commercial interests. As described above, any information disclosed by Mr. Obaid Ullah and 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 are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).[19] 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)[20]; *see also Nat'l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information,

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[18] *See also* 32 C.F.R. § 286.12(l)(1); 22 C.F.R. § 171.16(a); 32 C.F.R. § 1900.13(b)(2).

[19] *See also* 32 C.F.R. § 286.12 (l)(2)(ii)(b); 22 C.F.R. §171.16 (a)(iii); 32 C.F.R. § 1900.13(i)(2).

[20] *See also* 32 C.F.R. § 286.12(b)(6); 22 C.F.R. § 171.14(b)(5)(ii)(C); 32 C.F.R. § 1900.02(h)(3).

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. DOD*, 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. DOJ*, 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. DOJ*, 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).[21]

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."[22] As was true in those instances, the ACLU meets the requirements for a fee waiver here.

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[21] 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 / 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.

[22] In June 2017, the DOS granted a fee-waiver request regarding a FOIA request for records relating to the Trump administration's plans to redefine the United States' role in the international human rights system. 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 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 May 2016, the FBI granted a fee-waiver request regarding a FOIA request issued to the DOJ for documents

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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); 32 C.F.R.§ 286.8(e)(1); 22 C.F.R. § 171.11(f)(4); 32 C.F.R. § 1900.34(c).

If the Request is denied in whole or in part, Mr. Obaid Ullah and the ACLU ask 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 requesters reserve 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:

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

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American Civil Liberties Union
125 Broad Street—18th Floor
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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).

Respectfully,

Steven M. Watt

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

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