

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN CIVIL LIBERTIES UNION
IMMIGRANTS' RIGHTS PROJECT,

Plaintiff,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT,

Defendant.

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiff American Civil Liberties Union Immigrants' Rights Project ("Plaintiff" or "ACLU"), brings this action pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and seeks disclosure of records held by the United States Immigration and Customs Enforcement agency ("ICE"), a branch of the Department of Homeland Security ("DHS"). Plaintiff seeks to enforce the public's right to information regarding Defendant's immigration removals, detentions, and apprehensions. *See* Request Under Freedom of Information Act (Expedited Processing & Fee Waiver/Limitation Requested) (the "FOIA Request"), a true and correct copy of the FOIA Request is annexed hereto as Exhibit A.

2. The information sought is of significant value to the public. Plaintiff seeks information about removals, detentions, apprehensions, risk classification assessments, and bond management information system data. *Id.* This data will help Plaintiff monitor the Trump administration's unprecedented use of immigration detention and its sweeping changes to immigration enforcement in communities inside the U.S.

3. ICE's failure to respond to Plaintiff's FOIA Request and turn over requested records violates the FOIA and impedes Plaintiff's efforts to educate the public regarding how ICE enforces federal immigration laws and to determine whether ICE's current practices comply with applicable laws, regulations, and constitutional requirements. Currently, there is no comparable source of information or analysis of enforcement and immigration detainee data available to the public. The requested information would increase the public's understanding about how ICE is targeting immigrants for detention and removal; how it is treating immigration detainees; and how the public's tax dollars are being spent with respect to such immigration matters. Thus, the requested information will significantly contribute to the public's understanding of government operations and activities.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. § 1331, and 28 U.S.C. § 1346.

5. Venue in this district is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391 because Plaintiff has its principal place of business in New York, New York.

THE PARTIES

6. Plaintiff ACLU is a non-partisan non-profit that works to defend and preserve individual rights and liberties guaranteed to all people in the United States by the Constitution. The ACLU Immigrants' Rights Project is a project of the ACLU that focuses on defending immigrants' rights in the United States and informing the public about immigration enforcement practices of the U.S. federal government.

THE FOIA REQUEST

7. On October 3, 2018, Plaintiff submitted the FOIA Request, seeking five categories of “spreadsheet data along with any explanatory notes needed to make the data intelligible” on: (1) “removals that occurred between 2003 and the date of this request or any later date;” (2) “all detentions with book-in dates from 2003 to the date of this request or any later date;” (3) “data tracking ICE arrests/apprehensions;” (4) “ICE risk classification assessments;” and (5) “data tracking transactions related to immigration bonds, including their setting, payment, cancellation and breach.”

8. The FOIA Request in large part seeks records that Defendants have previously disclosed under the FOIA. First, the FOIA Request seeks an updated version of the removal data already provided to the New York Times in response to request 14-03290, which detailed removals that occurred between 2003 and 2013. (*Id.* at 1-2.) The information would include all “removals that occurred between 2003 and the date of this request or any later date.” *Id.* The FOIA Request included a list of thirty-six (36) fields related to removal data that, upon information and belief, were included in Defendant’s response to the New York Times’ request and asked that Defendant produce the same fields or, if the fields had since changed, equivalent current fields. (*Id.* at 2.) On information and belief, these items remain in ICE databases and have previously been released to the public.

9. Second, the FOIA Request seeks a longer-term set of updated detention data than the data released to the Human Rights Watch as part of request 15-06191. (*Id.* at 3.) The information would include “all detentions with book-in dates from 2003 to the date of this request or any later date.” (*Id.*) The FOIA Request included a list of thirty (30) fields related to detention data that were included in Defendant’s response to the Human Rights Watch’s

request and asked that Defendant produce the same fields or, if the fields had since changed, equivalent current fields. (*Id.* at 3-4.) On information and belief, these items remain in ICE databases and have previously been released to the public.

10. Third, the FOIA Request seeks apprehension data about ICE arrests and apprehensions. (*Id.* at 4.) Specifically, Plaintiff requested that Defendant release five (5) fields of apprehension data, including: (1) unique identifiers; (2) dates of arrest; (3) types of arrests; (4) identifier data for each arresting officer; and (5) resolution of arrests (e.g., release, detention, release on alternative to detention). (*Id.*) On information and belief, ICE maintains this data and has released it to third parties in the past.

11. Fourth, the FOIA Request seeks “data tracking ICE risk classification assessments . . . [including] all electronic database information concerning individuals’ Risk Classification Assessments (“RCAs”) conducted by ICE during the relevant time period.” (*Id.*) The request for RCA data includes: “all database information concerning the results of the RCA, including the date on which it was conducted, its status and result, any determinations concerning danger, flight risk, or other relevant factors, any information concerning the recommendation of the RCA algorithm, the field officer, and the supervisor, and any numerical or other scores produced.” (*Id.* at 4.) On information and belief, ICE maintains this data and has released it to third parties in the past.

12. Fifth, the FOIA Request seeks “data tracking transactions related to immigration bonds, including their setting, payment, cancellation and breach.” *Id.* The Burlington Finance Center maintains this information as “part of the Bond Management Information System database.” *Id.* On information and belief, ICE maintains and operates the Bond Management System database.

13. Plaintiff asked ICE for a waiver of document search, review, and duplication fees because “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and [because it] is not primarily in the commercial interest of the requester.” (*Id.* at 9 (citations omitted).) *See* 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k). Additionally, Plaintiff’s request for a waiver of search fees emphasized that Plaintiff qualifies as a “representative of the news media” within the meaning of the FOIA. (Ex. A, at 9.) *See* 5 U.S.C. § 552(a)(4)(A)(ii); 6 C.F.R. § 5.11(k).

14. Plaintiff requested expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(v)(II) and 6 C.F.R. § 5.5(e)(1) because of a compelling and urgent need for these records “to inform the public concerning actual or alleged Federal Government Activity.”

15. Through the FOIA Request, Plaintiff seeks records to help inform the public about the government’s current enforcement policies. Plaintiff has a compelling and urgent need for these records because it seeks to inform the public about new governmental directives regarding removals, detentions, apprehensions, risk classification assessments, and bond management. The aims of increasing detention, eliminating the “catch and release” policy, increasing removals of noncitizens without criminal records, and expanding the use of detainers alter long-standing policies adopted by the Obama administration.¹ This shift in

¹ *See* Tal Kopan & Catherine E. Shoichet, *Key Points in Trump’s Immigration Executive Orders*, CNN (Jan. 26, 2017), <https://www.cnn.com/2017/01/25/politics/donald-trump-immigration-executive-orders/index.html>; Dara Lind, *The Wall Is The Least Aggressive of Trump’s Executive Actions on Immigration*, VOX (Jan. 25, 2018), <https://www.vox.com/2017/1/25/14378474/trump-immigration-order-wall-deport-sanctuary>; *see also* Maria Sacchetti, *ICE Immigration Arrests of Noncriminals Double Under Trump*, WASHINGTON POST (Apr. 16, 2017).

established policies and its attendant effect on immigrants' fundamental liberty interests warrants prompt and immediate review of its bases, interpretation, and implementation.

16. On October 25, 2018, Defendant ICE sent Plaintiff a request for clarification regarding Plaintiff's FOIA Request. Defendant ICE stated that Plaintiff's written request was too broad in scope and advised Plaintiff that most data is saved for a maximum of seven (7) years. Plaintiff responded promptly to the request for additional information and sent ICE a response the same day on October 25, 2018. True and correct copies of Defendant's request for clarification and Plaintiff's response thereto are annexed hereto as Exhibit B.

17. In that response, Plaintiff stated that its understanding was that ICE maintains such electronic data for more than seven (7) years. However, Plaintiff agreed to limit the scope of its request to completions from 7 years before the date of ICE's response to Plaintiff's request. (*See Ex. B.*)

18. After Plaintiff submitted the additional information ICE requested on October 25, 2018, Plaintiff did not receive any response from ICE to the FOIA Request.

19. It has been over 9 months since Plaintiff submitted the supplemental information requested by ICE, but Plaintiff has received no response from ICE and no rejection of the FOIA Request.

20. Plaintiff has exhausted its administrative remedies under 5 U.S.C. § 552, under which ICE has, at most, 20 business days to make a "determination" on Plaintiff's request. *See* 5 U.S.C. § 552(a)(6)(C)(i); *id.* at § 552(a)(6)(A)(i); *id.* at § 552(a)(3); *see also Coleman v. Drug Enforcement Admin.*, 714 F.3d 816, 823 (4th Cir. 2013) ("[I]f an agency does not respond to a request within twenty working days after receiving it, the requester may typically commence litigation.").

21. Defendant failed to respond to Plaintiff's request by November 23, 2018, which was twenty working days after Plaintiff's response to ICE's request for additional information on October 25, 2018, and no exception to the twenty-day response requirement applies here. Thus, Plaintiff has exhausted its administrative remedies.

22. Therefore, Defendant has violated the applicable statutory time limit for the FOIA Request and wrongfully failed to release responsive data and records to Plaintiff.

23. Accordingly, Plaintiff is entitled to file this lawsuit, pursuant to 5 U.S.C. § 552, and seeks enforcement of FOIA by this Court.

FIRST CLAIM

Violation of Freedom of Information Act, 5 U.S.C. § 552, and 6 C.F.R. § 5.6(c) Promulgated Thereunder, for Failure to Timely Disclose Responsive Agency Records

24. Plaintiff repeats, alleges, and incorporates by reference the allegations in paragraphs 1 through 23 as though fully set forth herein.

25. Defendant's unlawful withholding of documents responsive to Plaintiff's FOIA Request violates 5 U.S.C. § 552(a)(3)(A) and 5 U.S.C. § 552(a)(6)(A), as well as 6 C.F.R. § 5.6(c), promulgated thereunder.

26. Defendant is obligated under 5 U.S.C. § 552(a)(3) to produce records responsive to Plaintiff's FOIA Request.

27. Defendant was required to respond to Plaintiff's FOIA Request within 20 business days under 5 U.S.C. § 552(a)(6)(A) and 6 C.F.R. § 5.6(c), promulgated thereunder.

28. No basis exists for Defendant's failure to provide a response to Plaintiff's request. Plaintiff has exhausted its administrative remedies by virtue of Defendant's failure to respond to the FOIA Request.

SECOND CLAIM

**Violation of Freedom of Information Act, 5 U.S.C. § 552,
for Failure to Timely Conduct an Adequate Search of Agency Records**

29. Plaintiff repeats, alleges, and incorporates by reference the allegations in paragraphs 1 through 28 as though fully set forth herein.

30. Plaintiff's FOIA Request seeks records from October 25, 2011 through to present day.

31. Defendant has failed to produce or reproduce any responsive records.

32. ICE is obligated under 5 U.S.C. § 552(a)(3)(C) to conduct a reasonable search for and to produce records responsive to Plaintiff's FOIA Request. Plaintiff has a legal right to obtain such records, and no legal basis exists for ICE's failure to conduct a reasonable search for records through the present date.

33. Defendant's failure to conduct a reasonable search for records responsive to Plaintiff's FOIA Request violates 5 U.S.C. §§ 552(a)(3)(C) and (a)(6)(A), as well as 6 C.F.R. § 5.6(c), promulgated thereunder.

THIRD CLAIM

**Violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(1) & (2),
for Failure to Timely Respond to the Request for Agency Records**

34. Plaintiff repeats, alleges, and incorporates by reference the allegations in paragraphs 1 through 33 as though fully set forth herein.

35. Defendant's failure to timely respond to Plaintiff's FOIA Request for agency records constitutes agency action unlawfully withheld and unreasonably delayed in violation of the Administrative Procedure Act, 5 U.S.C. § 706(1).

36. Additionally, Defendant's failure to timely respond is arbitrary, capricious, an abuse of discretion, and not in accordance with law in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that judgment be entered in its favor and against Defendant and that the Court:

- (a) Declare unlawful Defendant's refusal to disclose the records requested;
- (b) Declare that Defendant's failure to make a determination with respect to Plaintiff's FOIA Request within the statutory time limit and Defendant's failure to disclose responsive records violates the FOIA;
- (c) Declare that Defendant's failure to timely respond to Plaintiff's request for agency records violates the Administrative Procedure Act;
- (d) Compel Defendant and any of Defendant's departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of Defendant to conduct a full, adequate, and expeditious search for records responsive to Plaintiff's FOIA Request and to produce any and all such records to Plaintiff;
- (d) Enjoin Defendant, and any of their departments, components, other organizational structures, agents, or other persons acting by, through, for or on behalf of Defendant from withholding non-exempt records responsive to Plaintiff's FOIA Request and order them to promptly produce the same without redaction;
- (e) Award Plaintiff its reasonable attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E)(i); and
- (f) Grant any such other or further relief as the Court deems just and equitable.

Dated: New York, New York
July 29, 2019

Respectfully submitted,

/s/ George A. Zimmerman
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EXHIBIT A

October 3, 2018

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

**RE: Request Under Freedom of Information Act
(Expedited Processing & Fee Waiver / Limitation Requested)**

Dear Freedom of Information Officer:

The American Civil Liberties Union Foundation (“ACLU”) submits this Freedom of Information Act (“FOIA”) request for digital records. *See* 5 U.S.C. § 552 et seq.; 6 C.F.R. § 5 et seq. This is a request for spreadsheet data on U.S. Immigration and Customs Enforcement (“ICE”) initial apprehensions, risk classification assessments, detentions, and removals. The ACLU also requests expedited processing and a fee waiver or fee limitation in connection with this Request. Producing the records will not be burdensome, and none of the records are exempt from disclosure. Should any portion of this request appear burdensome, the requestor would welcome the opportunity discuss ways of narrowing the request to reduce the burden.

I. Records Requested

This request seeks electronic spreadsheet data along with any explanatory notes needed to make the data intelligible. “Electronic spreadsheet data” means data in a spreadsheet format (such as .xls, .csv, or another standard electronic format) with a row in the spreadsheet for each individual or case. In removal data, this means one row for each removal. In detention data, this means one row for each detention period. In apprehension data, this means one row for every apprehension. In the risk classification data, this means a row for each assessment. In every case, alien numbers (“A-numbers”) should be replaced with unique identifiers, and unique identifiers should also be provided for each unit of observation (e.g. allowing a single person to be tracked across more than one detention period, and a single detention period to be tracked across transfers to multiple detention centers).

Please provide data that is current as of the date that ICE provides its final response to this request.

A. Removal Data

This part of the request seeks an updated version of the information provided to the New York Times in response to request 14-03290, which included information on removals that occurred between 2003 and 2013. This request seeks a rerun/extract of that data for removals that occurred between 2003 and the date of this request or any later date. Below are listed the fields provided in response to that request and also sought here. If the names of these fields have changed, this request is for the equivalent current fields.

Departed Date
Port of Departure
Departed to Country
Case Status
Gender
Country of Birth
Country of Citizenship
Age at Removal
Birth Date
LPR (Yes/No)
Entry Date
Entry Status
Most Serious Criminal Conviction
Most Serious Criminal Conviction Charge Date
Most Serious Criminal Conviction Status
Most Serious Criminal Conviction Code
Most Serious Criminal Conviction Conviction Date
RC Threat Level
Aggravated Felon (Yes/No)
Processing Disposition Code
Case Category
Removal Program & Program Code
Case Category Time of Arrest
Latest Arrest Program & Program Code
Latest Arrest Apprehension Date
Final Order Yes No
Final Order Date
Final Order Yes No
Final Order Date
Prior Removal Reinstatement
Prior Removal Reinstatement Date
Final Charge Code
Final Charge Section
Prior Removal
Most Recent Prior Departed Date

Unique Id (Note that this should correspond to A-numbers and match the unique identifier provided in the detainers and removals data: an individual's case ID should be the same in both spreadsheets.)

B. Detention Data

This part of the request seeks a longer-term set of data that was released to Human Rights Watch as part of request 15-06191. The data should include all detentions with book-in dates from 2003 to the date of this request or any later date. It should include the following columns/fields (or their equivalents if the names have changed):

Unique ID (Note that this should correspond to A-numbers and match the unique identifier provided in the detention and detainers data: an individual's case ID should be the same in both spreadsheets.)

Detention ID (Note that one individual may have more than one unique Detention ID; each detention ID should have the same initial book-in date and final book-out date.)

Current Order of Detentions

Initial Book In Date

Current Book In date

Current Detention Facility

Current Book Out Date

Current Release Reason

Final Book Out Date

Final Release Reason

Religion

Gender

Marital Status

Age at Initial Book In

Ethnicity

Entry Status

Aggravated Felon (Yes/No)

Latest Bond Posted Date Case

Latest Bond Posted Amount Case

Case Status

Case Category

Final Order (Yes/No)

Final Order Date

Rc Threat Level

Final Charge

Departed Date

Departed To

Initial Bond Set Amount
Initial Bond Set Date (Custody A&D)
Initial Custody Determination

C. Apprehension Data

This part of the request seeks data tracking ICE arrests/apprehensions. This should include (not exclusively):

- A unique identifier (**Note that this should correspond to A-numbers and match the unique identifier provided in detention, removals, and RCA data: an individual's case ID should be the same in all spreadsheets.**)
- Date of Arrest
- Type of arrest (e.g. from local jail, at large)
- Identifier for arresting officer
- Resolution of arrest (e.g. release, detention, release on alternative to detention, etc.)

D. Risk Classification Assessment Data

This part of the request seeks data tracking ICE risk classification assessments. This should include all electronic database information concerning individuals' Risk Classification Assessments ("RCAs") conducted by ICE during the relevant time period. That means all information entered by officers into the RCA, including, for example, criminal history information. This should also include all database information concerning the results of the RCA, including the date on which it was conducted, its status and result, any determinations concerning danger, flight risk, or other relevant factors, any information concerning the recommendation of the RCA algorithm, the field officer, and the supervisor, and any numerical or other scores produced. In addition, this information should include unique identifiers of the same type requested for each other source of data.

E. Bond Management Information System Data

This part of the request seeks data tracking transactions related to immigration bonds, including their setting, payment, cancellation and breach. The database information sought is part of the Bond Management Information System database maintained by the Burlington Finance Center. The requested data should include (not exclusively) the amount of each transaction, a description of that transaction, the relevant dates, dates and content of any database information related to forms filed (e.g. I-323, I-391),

names of individuals or companies serving as obligors. In addition, this information should include unique identifiers of the same type requested for each other source of data.

II. Application for Expedited Processing

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). *See also* 6 C.F.R. § 5.5(e)(1). There is a “compelling need” for these records 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 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); 6 C.F.R. § 5.5(e)(1)(ii). The requested records seek to inform the public about the government’s current enforcement policies. There is a compelling and urgent need to inform the public about new directives regarding detention, detainers, and removals. The aims of increasing detention, eliminating the “catch and release” policy, increasing removals of noncitizens without criminal records, and expanding the use of detainers alter long-standing policies adopted by prior administrations.¹ This shift in established policies and its attendant effect on liberty interests warrant prompt and immediate review of its bases, interpretation, and implementation.

ICE has previously released anonymized, individual-level spreadsheet data on removals, immigration detention, and detainer requests. These records have played an important role in informing the public about ICE’s activities. For example, the New York Times has relied on records of removals in its

¹ See, e.g., Tal Kopen and Catherine E. Schoichet, *Key Points in Trump’s Immigration Executive Orders*, CNN, Jan. 26, 2017, available at <http://www.cnn.com/2017/01/25/politics/donald-trump-immigration-executive-orders/> (comparing Executive Order’s detention provisions to previous policy); Dara Lind, *The Wall Is The Least Aggressive Of Trump’s Executive Actions on Immigration*, Vox, Jan. 25, 2018, available at <http://www.vox.com/2017/1/25/14378474/trump-immigration-order-wall-deport-sanctuary> (describing the Executive Order’s detention policies as among “the biggest single-day changes to immigration policy in recent memory”); Maria Sacchetti, *ICE immigration arrests of noncriminals double under Trump*, Washington Post, Apr. 16, 2017, available at https://www.washingtonpost.com/local/immigration-arrests-of-noncriminals-double-under-trump/2017/04/16/98a2f1e2-2096-11e7-be2a-3a1fb24d4671_story.html?utm_term=.151496df9b13.

coverage of trends in removals. *See, e.g.*, Ginger Thompson & Sarah Cohen, *More Deportations Follow Minor Crimes, Records Show*, April 6, 2014, <https://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html>. Human Rights Watch has relied on detention data from ICE to track transfers between detention centers. *See, e.g.*, Human Rights Watch, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States*, December 2, 2009, <https://www.hrw.org/report/2009/12/02/locked-far-away/transfer-immigrants-remote-detention-centers-united-states>. And the Transactional Records Access Clearinghouse has relied on information about detainer requests to publish reports and offer an interactive online tool allowing users to search the data. *See* <http://trac.syr.edu/phptools/immigration/detain/>.

B. 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 FOIA. 5 U.S.C. § 552(a)(6)(E)(v)(II). *See also* 6 C.F.R. § 5.5(e)(1)(ii). 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. U.S. 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”).²

The ACLU regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,³ and

² 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. U.S. Dep’t of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

³ *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 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->

ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.⁴

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.⁵

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>.

⁴ See, e.g., Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, https://www.washingtonpost.com/world/national-security/newly-declassified-document-sheds-light-on-how-president-approves-drone-strikes/2016/08/06/f424fe50-5be0-11e6-831d-0324760ca856_story.html (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://abcnews.go.com/US/newly-released-cia-documents-reveal-torture-detention-program/story?id=39873389> (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://www.npr.org/2015/12/09/459026249/cia-torture-report-may-remain-secret> (quoting ACLU project director Hina Shamsi).

⁵ See, e.g., ACLU, *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>; ACLU, *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>; ACLU, *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>; ACLU, *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.

The ACLU publishes several widely-read blogs 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.⁶ 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, detention, and interrogation.⁷

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the

⁶ *See, e.g.,* <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <https://www.aclu.org/cases/aclu-v-department-defense>; <https://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>; <https://www.aclu.org/nsi-documents-released-dod?redirect=cpredirect/32088>.

⁷ <https://www.thetorturedatabase.org>. *See also* <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

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.⁸ Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act⁹; 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 requests¹⁰; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.¹¹

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.

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

III. 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). *See also* 6 C.F.R. § 5.11(k). 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.

⁸ https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf.

⁹ <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

¹⁰ https://www.aclu.org/sites/default/files/field_document/nsi_stats.pdf.

¹¹ <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

As discussed above, news accounts underscore the substantial public interest in the records sought through this request. 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. Especially because little specific information has been made public about how ICE plans to enforce the removal, detention, and detainer policies, the records sought are certain to contribute significantly to the public's understanding of these issues.

The ACLU is not filing this request to further its commercial interest. As described above, any information disclosed by the ACLU as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending the 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). 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); *see also* 6 C.F.R. § 5.11(b)(6); *Nat'l Sec. Archive v. U.S. 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. U.S. 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. 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*, 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. U.S. 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).¹²

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.”¹³ As was true in those instances, the ACLU meets the requirements for a fee waiver here.

¹² 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.

¹³ In May 2016, the FBI granted a fee-waiver request regarding a FOIA request issued to the DOJ for documents 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 a 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. 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. 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 States passports. In March 2005, the Department of State granted a fee waiver to the ACLU for 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

* * *

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 deletions by reference to specific FOIA exemptions. The ACLU expects the release of all segregable portions of otherwise exempt material. The ACLU reserves the right to appeal a decision to withhold any information or deny a waiver of fees.

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

David Hausman
ACLU Immigrants' Rights Project
125 Broad Street—18th Floor
New York, New York 10004
T: 212.549.2549
dhausman@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).

Sincerely,

/s David Hausman
David Hausman
ACLU Immigrants' Rights Project
125 Broad Street—18th Floor
New York, New York 10004
T: 212.549.2549
dhausman@aclu.org

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.

EXHIBIT B

From: David Hausman
Sent: Thursday, October 25, 2018 12:47 PM
To: ice-foia@dhs.gov
Subject: RE: ICE Clarification Request FOIA Number 2019-ICFO-10844

Dear ICE FOIA Officer:

Although it remains our understanding that ICE maintains all of the requested electronic database for more than 7 years—if it destroyed such data, it would have no way of tracking cases from before that period—we nonetheless agree to limit the scope of our request to completions from the seven years before the date of the response to our request.

Best,

David Hausman

From: ice-foia@dhs.gov [<mailto:ice-foia@dhs.gov>]
Sent: Thursday, October 25, 2018 12:22 PM
To: David Hausman
Subject: ICE Clarification Request FOIA Number 2019-ICFO-10844

October 25, 2018

DAVID HAUSMAN
ACLU IMMIGRANTS' RIGHTS PROJECT
125 BROAD ST
18TH FLOOR
NEW YORK, NY 10004

RE: ICE FOIA Case Number 2019-ICFO-10844

This e-mail is in regards to your October 03, 2018 ICE FOIA request for all records pertaining to an updated spreadsheet on removals, immigration detention, and detainer requests. See request for further details..

In conducting a search for responsive records, the ICE FOIA office has determined that further clarification is needed regarding your request. Your request as written is too broad in scope. Be advised that most data is saved for a maximum of 7 years. Please provide the ICE FOIA office with a response as soon as possible to avoid any further delay in the processing of your request. If a response is not received within 30 days, your request will be administratively closed.

Sincerely,

ICE FOIA