



March 29, 2021

Office of Information Programs and Services (IPS)
A/GIS/IPS/RL
U.S. Department of State, State Annex 2 (SA-2)
515 22nd Street, NW
Washington, DC 20522-8100
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RE: FOIA Request to the U.S. Department of State Regarding U.S. Aid to the Palestinian Authority and the Taylor Force Act

To Whom it May Concern:

This letter is a request (“Request”) in accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the corresponding department/agency implementing regulations.

The Request is made by the American Center for Law and Justice (“ACLJ”)¹ on behalf of its members. The ACLJ respectfully seeks a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks records pertaining to the U.S. Department of State’s knowledge and efforts surrounding the breaking story that the Biden Administration is pursuing increasing U.S. aid to the Palestinian Authority in spite of the limitations imposed by the Taylor Force Act.

Background

Pursuant to State Department FOIA regulation 22 C.F.R. § 171.4(b), this Background addresses “the subject, timeframe, names of any individuals involved, a contract number (if applicable), and reasons why the requester believes the Department may have records on the subject of the request.” 22 C.F.R. § 171.4(b).

¹The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.

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Former Secretary of State Mike Pompeo, now Senior Counsel for Global Affairs at the ACLJ, wrote:

The Biden Administration has signaled its desire to resume aid to the Palestinian Authority (PA) as a way to jumpstart the moribund Israeli-Palestinian “peace process.” The obstacle to peace, however, is not the absence of U.S. assistance but the PA’s incentivizing of terrorism. The bipartisan Taylor Force Act blocks U.S. funding for the PA until it changes this behavior. There is no indication that it has, making any resumption of U.S. taxpayer aid a contravention of this important law and a further hindrance to peace.²

Further, according to Secretary Pompeo:

To address this despicable system, Congress passed the Taylor Force Act (TFA) – a bill the ACLJ has long supported – cutting off U.S. aid to the PA until the pay-for-slay bureaucracy is dismantled and the laws governing it are repealed. The logic is simple: since money is fungible, aid that supplants the governance responsibilities of the PA frees up PA money to reward terrorists.

The Taylor Force Act corrected a profoundly immoral policy that had American taxpayer funds being laundered unwittingly through PA accounts to incentivize murder. The bill also offered a simple litmus test of the PA’s seriousness about making peace: If the PA cannot revoke the laws and infrastructure conferring special treatment for terrorists, then the PA itself remains an obstacle to the “peace process.”³

“The State Department maintains any resumption in aid will be done in compliance with the law, which does include exemptions for humanitarian assistance.”⁴ More specifically, “[a] State Department official said the new administration would ‘fully comply with U.S. law, including the Taylor Force Act,’ when it resumes U.S. aid to the Palestinians but did not outline any specific projects or causes that might receive funding. U.S. aid will be spent on economic development projects and humanitarian causes, the official said.”⁵ As is reflected in media reports, members of

²Mike Pompeo, Sander Gerber & Stuart Force, *Is the Biden Administration Planning on Violating the Taylor Force Act, as the PA Continues Its Despicable Anti-Israel, Anti-America Pay-for-Slay Policy?*, ACLJ.org (Mar. 10, 2021), <https://aclj.org/israel/is-the-biden-administration-planning-on-violating-the-taylor-force-act-as-the-pa-continues-its-despicable-anti-israel-anti-america-pay-for-slay-policy>.

³ *Id.*

⁴ Adam Kredo, *Biden Admin Will Have to Thread Needle as it Resumes Palestinian Aid*, WASH. FREE BEACON (Jan. 28, 2021), <https://freebeacon.com/biden-administration/biden-admin-will-have-to-thread-needle-as-it-resumes-palestinian-aid/>.

⁵ *Id.*

Congress are signaling that they will closely monitor the Biden Administration and the State Department to ensure the Administration complies with the Taylor Force Act.⁶

According to a report by *The Washington Free Beacon* earlier this month:

The Biden administration will resume U.S. taxpayer aid to the Palestinians, even though the Palestinian government continues to use this money to pay convicted terrorists and their families.

State Department spokesman Ned Price confirmed this week that the administration will reverse a decision by former President Donald Trump to cut off American aid to the Palestinian government and United Nations organizations that provide services in the region. The United States now intends “to provide assistance that will benefit all Palestinians, including [Palestinian] refugees,” Price said.⁷

The Washington Examiner reported that,

new reports coupled with recent confirmation from the State Department indicate that the Biden administration intends to find a workaround to the current law by reopening funding channels to the Palestinian Authority, even as the PA increases payouts to terrorists. Just recently, the families of two Palestinians, who killed five members of the Fogel family while asleep in their beds, were gifted an increase in monthly payments.⁸

The Washington Free Beacon also reported on a report it obtained confirming facts it had previously covered:

⁶ See *id.* (“Rep. Mike Gallagher (R., Wis.) told the *Free Beacon* the Taylor Force Act is vital to ensuring that American taxpayer dollars do not fund terrorists and their families. ‘In the absence of change, it is insane that we would unilaterally resume this assistance and in so doing, risk being complicit in these horrific actions,’ Gallagher said.”); Adam Kredo, *Palestinians Funneled Hundreds of Millions to Terrorists, State Dept Report Reveals*, WASH. FREE BEACON (Mar. 22, 2021), <https://freebeacon.com/national-security/palestinians-funneled-hundreds-millions-terrorists-state-dept-report-reveals/> (“Congress correctly and overwhelmingly passed the Taylor Force Act to limit assistance to areas controlled by the Palestinian Authority, because the Palestinian Authority just shifts fungible resources to pay terrorists,” the spokesman said. “Sen. Cruz is concerned that in the rush to elevate the Palestinians and downgrade the U.S.-Israel relationship, the Biden administration is looking for ways to circumvent the restrictions on American taxpayer dollars going to those areas in ways that will benefit the Palestinian Authority.”).

⁷ Adam Kredo, *Biden Admin to Restart Palestinian Aid as Payments to Terrorists Flow*, WASH. FREE BEACON (Mar. 4, 2021), <https://freebeacon.com/national-security/biden-admin-to-restart-palestinian-aid-as-payments-to-terrorists-flow/>.

⁸ Sandra Parker, *The Biden administration must enforce the Taylor Force Act*, WASH. EXAMINER (Mar. 25, 2021), <https://www.washingtonexaminer.com/opinion/op-eds/the-biden-administration-must-enforce-the-taylor-force-act>.

The Biden administration privately confirmed to Congress last week that the Palestinian Authority has continued to use international aid money to reward terrorists but said the finding won't impact its plans to restart funding.

In a non-public State Department report obtained by the Washington Free Beacon, the administration said the Palestinians spent at least \$151 million in 2019 on its "pay-to-slay" program, in which international aid dollars are spent to support imprisoned terrorists and their families. Financial statements further indicate that at least \$191 million was spent on "deceased Palestinians referred to as 'martyrs.'" Despite this practice, which violates U.S. law and prompted the Trump administration to freeze aid to the Palestinians, the "Biden-Harris Administration has made clear its intent to restart assistance to the Palestinians in the West Bank and Gaza," according to the report.

It remains unclear how the Biden administration will restart American aid without violating a 2018 bipartisan law known as the Taylor Force Act, which prohibits the U.S. government from resuming Palestinian aid until the payments to terrorists are stopped.⁹

As reported by The Jerusalem Post:

The Palestinian Authority is attempting to conceal its "pay-for-slay" stipends to terrorists by creating thousands of new civil and security service positions, according to a report by the NGO Palestinian Media Watch.

Palestinians released from Israeli prisons will be provided with special jobs within the PA. These 7,500 positions can only be held by those imprisoned by Israel, notably those who were convicted for terrorism offenses. By holding these special positions, the stipends will be disguised as paychecks, PMW alleged. The concealed stipends would frustrate interference by Israel, the US or the EU.¹⁰

Questions arise over whether the Department of State is considering these reports as it reportedly pushes toward restoring aid to the Palestinian Authority even while possibly circumventing the Taylor Force Act. "The Palestinian Authority (PA) has been meeting with American, European and Israeli government representatives to end-run both the American Taylor Force Act (anti-'pay

⁹ Adam Kredo, *Palestinians Funneled Hundreds of Millions to Terrorists, State Dept Report Reveals*, WASH. FREE BEACON (Mar. 22, 2021), <https://freebeacon.com/national-security/palestinians-funneled-hundreds-millions-terrorists-state-dept-report-reveals/>.

¹⁰ Michael Starr, *Palestinian Authority attempting to Conceal Terrorist Stipends – Report*, THE JERUSALEM POST (Mar. 19, 2021), <https://www.jpost.com/middle-east/palestinian-authority-attempting-to-conceal-terrorist-stipends-report-662546>.

for slay’) and the Israeli law prohibiting financial transfers to the Palestinians in the amount the PA remunerates terrorist ‘salaries.’ Why are Western governments having this discussion?”¹¹

These stories continues to receive significant and increasing news coverage on major networks and outlets.

PLO Mission in Washington, DC

Writing on ACLJ.org, Secretary Pompeo also spoke on the story that the Biden Administration is considering allowing the PLO to reopen its mission in Washington: “The Administration also appears set to endorse and empower the PA by giving it preemptive rewards, such as re-opening the PLO mission in Washington, D.C., the office that directly administers the pay-for-slay program.”¹²

As reported by Reuters and *The Jerusalem Post*, “US President Joe Biden's plan to work to reopen the Palestinians' diplomatic mission in Washington could be held up over a law that exposes Palestinian officials to US anti-terror lawsuits, officials and advisers to the Palestinians say.”¹³ Further, “Speaking to the United Nations Security Council” in January, “Acting US envoy Richard Mills said Washington ‘intended to take steps to reopen diplomatic missions that were closed for the last US administration,’ without giving a timeline.”¹⁴ And, “There are also questions about how Biden will fulfill a pledge to resume economic aid to the Palestinians. The Taylor Force Act, passed by Congress in 2018, restricts some aid until the Palestinians end payments to people jailed by Israel over violent crimes, among other conditions.”¹⁵

Records Requested

For purposes of this Request, the term “record” means “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g.,

¹¹ Shoshana Bryen, ‘*Money Laundering*’ for Terrorists | *Opinion*, NEWSWEEK (Mar. 24, 2021), <https://www.newsweek.com/money-laundering-terrorists-opinion-1577960>.

¹² Mike Pompeo, Sander Gerber & Stuart Force, *Is the Biden Administration Planning on Violating the Taylor Force Act, as the PA Continues Its Despicable Anti-Israel, Anti-America Pay-for-Slay Policy?*, ACLJ.org (Mar. 10, 2021), <https://aclj.org/israel/is-the-biden-administration-planning-on-violating-the-taylor-force-act-as-the-pa-continues-its-despicable-anti-israel-anti-america-pay-for-slay-policy>.

¹³ Reuters, *Biden Pledge to Reopen PLO Mission in Washington Faces Legal Hurdles*, THE JERUSALEM POST (Jan. 29, 2021), <https://www.jpost.com/arab-israeli-conflict/biden-pledge-to-reopen-plo-mission-in-washington-faces-legal-hurdles-657159>.

¹⁴ *Id.*

¹⁵ *Id.*

electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government or private account or server, consistent with the holdings of *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016) (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the term “briefing” includes, but is not limited to, any in-person meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person.

For purposes of this Request, the term “DOS official” includes, but is not limited to, any person who is (1) employed by or on behalf of the DOS, any Mission of the United States, or any Delegation of the United States, in any capacity; (2) contracted for services by or on behalf of the DOS, any Mission of the United States, or any Delegation of the United States, in any capacity; (3) appointed by the President of the United States to serve in any capacity at or within the DOS, any Mission of the United States, or any Delegation of the United States; or (4) any such person’s staff, agent or employee; all without regard to the component, bureau, or office in which that person serves.

For purposes of this Request, all sources, documents, letters, reports, briefings, articles and press releases cited in this Request are incorporated by reference as if fully set forth herein.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is November 1, 2021, to the date this request is processed.

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, ACLJ hereby requests that the DOS produce the following:

1. **All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DOS official referencing, connected to, or regarding in any way U.S. aid or funds of any kind being given to the Palestinian Authority,** including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.
2. **All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DOS official referencing, connected to, or regarding in any way the Taylor Force Act,** including but not limited to any record located on

backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

3. **All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DOS official referencing, connected to, or regarding in any way the issue of allowing the PLO mission to reopen in the United States**, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

4. **For purposes of this Request only, the timeframe of records requested herein is November 8, 2016, to the date this request is processed: All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DOS official from former Secretary of State John Kerry or any person acting on his behalf, referencing, connected to, or regarding in any way the U.S. funding or aid to the Palestinian Authority, the Taylor Force Act, or allowing the PLO mission to reopen in the United States**, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

CONCLUSION

If this Request is denied in whole or in part, the ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions and provide any judicially required explanatory information, including but not limited to, a *Vaughn* Index.

Moreover, as explained in an accompanying memorandum, the ACLJ is entitled to a waiver of all fees associated with this Request. The ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director
Benjamin P. Sisney, Senior Litigation Counsel
American Center for Law and Justice
Washington, D.C.
(202) [REDACTED]; (202) [REDACTED] (fax)



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

Jordan Sekulow
Executive Director

Benjamin P. Sisney
Senior Litigation Counsel



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**RE: FOIA Request to the U.S. Department of State Regarding U.S. Aid to the
Palestinian Authority and the Taylor Force Act**

MEMORANDUM IN SUPPORT OF REQUESTED FEE WAIVER AND EXPEDITED PROCESSING

The American Center for Law and Justice (“ACLJ”) respectfully submits this Memorandum for fee waiver and expedited processing in support of its Freedom of Information Act Request (“FOIA”) request to the U.S. Department of State (“DOS”).

I. FEE WAIVER REQUEST

The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ’s mission is to educate, promulgate, conciliate, and where necessary, litigate, to ensure that those rights are protected under the law. The ACLJ regularly monitors governmental activity with respect to governmental accountability. The ACLJ and its globally affiliated organizations are committed to ensuring the ongoing viability of freedom and liberty in the United States and around the world. By focusing on U.S. constitutional law and international law, the ACLJ and its affiliated organizations are dedicated to the concept that freedom and liberty are universal, God-given, and inalienable rights that must be protected. Additionally, the ACLJ and its affiliated organizations support training law students from around the world in order to protect religious liberty and safeguard human rights and dignity.

The ACLJ requests a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii). Under this section, fees may be waived or reduced if the requester falls within a category established under § (a)(4)(A)(ii), which includes a “representative of the news media,” § (a)(4)(A)(ii)(II), and if “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 is not primarily in the commercial interest of the requester,” § (a)(4)(A)(iii). The ACLJ qualifies for a fee waiver as a “representative of the news media,” § (a)(4)(A)(ii)(II), and because the information sought is “not for a commercial purpose,” § (a)(4)(A)(iii). Moreover, the ACLJ intends to widely

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disseminate the information obtained to the public because as explained in detail *infra*, “it is likely to contribute significantly to the public understanding of the operations or activities of the government,” § (a)(4)(A)(iii), agency, and actors mentioned in the FOIA request.

A. The ACLJ Qualifies as a News Media Representative.

The ACLJ qualifies as a “representative of the news media,” as defined under 5 U.S.C. § 552(a)(4)(A)(ii), because the ACLJ, for the purposes explained above, “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.” *Id.* The ACLJ’s audience is generally comprised of those interested in our mission and legal activities as described above. The ACLJ reaches a vast audience through a variety of media outlets, including the Internet (World Wide Web page, www.aclj.org), radio, television, press releases, and direct mailings to our supporters.

For example, the ACLJ’s Internet site received an average of 822,000 unique visitors per month in 2015, with 22,000,000 page views. Our current email list holds 1,050,000 active names (actual list size is 2,340,690). In 2015, the ACLJ sent 278,000,000 emails.

The ACLJ’s radio audience consists of more than 1,150,000 estimated daily listeners on 873 radio stations nationwide, including SiriusXM satellite radio. Additionally, the ACLJ hosts a weekly television program, *Sekulow*, broadcast on eight networks: Cornerstone Television, Daystar Television Network, AngelOne, KAZQ, TBN, VTN, The Walk TV, and HisChannel. *See* <http://aclj.org/radio-tv/schedule> (listing schedule).

The ACLJ also disseminates news and information to over 1,000,000 addresses on its mailing lists.

Moreover, our Chief Counsel, Jay Sekulow, has regularly appeared on various news and talk show programs to discuss the issues and events important to the ACLJ and its audiences. These include shows on FOX News, MSNBC, CNN, ABC, CBS, and NBC. In addition to television programs, Jay Sekulow has also appeared on national radio broadcasts. Beyond broadcast outlets, Jay Sekulow’s comments appear regularly in the nation’s top newspapers, in print and online editions, including but not limited to the Wall Street Journal, New York Times, Washington Times, Washington Post, L.A. Times, and USA Today. His comments also appear in major national newswire services that include, but are not limited to, Associated Press, Reuters, and Bloomberg.

B. The ACLJ’s FOIA Request Meets Standards Set Forth Under DOS Regulations Promulgated Under FOIA.

Under 22 C.F.R. § 171.17(a), the DOS will reduce or waive fees normally charged for processing FOIA requests,

where it is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the

requester.

Id. The DOS, in making its determination, considers the following four factors under section 171.17(a)(1) regarding “whether 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”:

- (i) The subject of the request, i.e., whether the subject of the requested records concerns the operations or activities of the government;
- (ii) The informative value of the information to be disclosed, i.e., whether the disclosure is likely to contribute to an understanding of government operations or activities;
- (iii) The contribution to an understanding of the subject by the general public likely to result from disclosure, i.e., whether disclosure of the requested information will contribute to public understanding, including whether the requester has expertise in the subject area as well as the intention and ability to disseminate the information to the public; and
- (iv) The significance of the contribution to public understanding, i.e., whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

§ 171.17(a)(1)(i)-(iv).

The DOS, in making its determination, considers the following two factors under section 171.17(a)(2) regarding “whether disclosure of the information is not primarily in the commercial interest of the requester”:

- (i) The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,
- (ii) The primary interest in disclosure, i.e., whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

§ 171.17(a)(2)(i)-(ii).

As the U.S. Court of Appeals for the D.C. Circuit has noted, “Congress amended FOIA to ensure that it is ‘liberally construed in favor of waivers for noncommercial requesters.’” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (citing *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 CONG. REC. 27, 190 (1986) (Sen. Leahy))).

The ACLJ’s FOIA request meets the DOS’s factors as listed above, qualifying the ACLJ for a waiver of fees, as set forth below.

§ 171.17(a)(I)(i): The subject of the request concerns the operations or activities of the government.

The ACLJ has requested information and records concerning the facts reported in a series of breaking news stories about the Biden Administration taking action to resume or increase U.S. funding to the Palestinian Authority (PA) and to allow the PLO to reopen a mission in Washington, DC – all in spite of the bipartisan Taylor Force Act. The Request seeks all records indicating what DOS officials knew and what efforts were made concerning the facts as reported in these stories. Within this request, all participation in such DOS briefings, meetings and communications by the DOS and any of its personnel, and all other DOS actions related thereto, are relevant to shed light on identifiable activities of the government.

§ 171.17(a)(I)(ii): The requested information has significant informative value and disclosure is likely to contribute to an understanding of government operations or activities.

The ACLJ's request will contribute and provide meaningful understanding of United States Government operations or activities undertaken by and within the DOS. The Request will reveal records indicating what DOS officials knew and what efforts they made regarding the reported facts of these stories. The request will also reveal what involvement, if any, any other agency or governmental officials have had in these efforts. This information will allow the American public to hold its government officials accountable if it is discovered that DOS officials violated relevant law, regulations or ethics rules or agreements, or advanced policy inconsistent with that desired by the American public.

§ 171.17(a)(I)(iii): Disclosure of the requested information will significantly contribute to an understanding of the subject by the general public, and the requester has expertise in the subject area as well as the intention and ability to disseminate the information to the public.

Releasing the requested information to the ACLJ will contribute “significantly” to the public's understanding of United States Government operations and activities. The ACLJ has researched and litigated to uphold governmental transparency and accountability. The ACLJ is qualified to analyze and assess the adequacy or propriety of DOS officials' actions in this regard.

The ACLJ intends to release the information, once analyzed and assessed, to the public through its numerous media outlets. Those outlets include but are not limited to its Internet website (www.aclj.org), email list, radio programs, television programs, press releases, and regular mailing list, as described above. The ACLJ has been disseminating relevant information concerning fundamental and constitutional freedoms and governmental accountability since its founding in 1990, and has since then expanded its work and notoriety on an international level, achieving credibility in a wide range of media outlets, as described above.

§ 171.17(a)(1)(iv): Disclosure of the requested information will contribute significantly to public understanding of government operations or activities.

Releasing the information described above will significantly contribute to the public's understanding through ACLJ review and assessment of the materials and information, and subsequent dissemination of the information to the public. Such review, assessment, and dissemination will help the public understand what DOS officials knew and what they did in connection with the facts as reported in the breaking news story.

§ 171.17(a)(2)(i): The requester has no commercial interest that would be furthered by the requested disclosure.

The ACLJ has no commercial interest in the information sought or its dissemination thereof. The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The information sought by the ACLJ is in furtherance of its not-for-profit mission statement.

§ 171.17(a)(2)(ii): The requester's primary and in fact, only, interest in disclosure of the requested information is non-commercial.

Again, the ACLJ has no commercial interest in the information sought or its dissemination thereof. Rather, its interest is purely to further its not-for-profit mission. Therefore, its interest cannot be founded "primarily" in a commercial interest. This is especially so because the ACLJ cannot operate for a commercial purpose under its grant of 501(c)(3) tax-exempt status.

For these reasons, the ACLJ is entitled to a fee waiver.

II. EXPEDITED PROCESSING REQUEST

The ACLJ seeks expedited processing of its request under 5 U.S.C. § 552(a)(6)(E), and the DOS's attendant regulation, 22 C.F.R. § 171.12(b). As defined by statute, a "compelling need" is one

- (I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
- (II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

5 U.S.C. § 552(a)(6)(E)(v). The DOS's regulation provides the nearly identical definition when defining a "compelling need" with regard to section II above, under 28 C.F.R. 171.12(b)(2), stating that "news media requesters," such as the ACLJ, "normally qualify":

(2) The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. *News media requesters would normally qualify*; however, other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public, not just a particular segment or group.

(i) Urgently needed. The information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. Information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the breaking nature of the story.

(ii) Actual or alleged Federal Government activity. The information concerns some actions taken, contemplated, or alleged by or about the government of the United States, or one of its components or agencies, including the Congress.

Id. (emphasis added).

Pursuant to both 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. 171.12(b)(2), the ACLJ is “primarily engaged in disseminating information.” As detailed above under Section I(A) concerning the requester’s qualification as a news media representative:

- (1) The ACLJ reaches a vast audience through a variety of media outlets, including the Internet (World Wide Web page, www.aclj.org), radio, television, press releases, and direct mailings to our supporters.
- (2) The ACLJ’s Internet site received an average of 822,000 unique visitors per month in 2015, with 22,000,000 page views. Our current email list holds 1,050,000 active names (actual list size is 2,340,690). In 2015, the ACLJ sent 278,000,000 emails.
- (3) The ACLJ’s radio audience consists of more than 1,150,000 estimated daily listeners on 873 radio stations nationwide, including SiriusXM satellite radio. Additionally, the ACLJ hosts a weekly television program, *Sekulow*, broadcast on eight networks: Cornerstone Television, Daystar Television Network, AngelOne, KAZQ, TBN, VTN, The Walk TV, and HisChannel. See <http://aclj.org/radio-tv/schedule> (listing schedule).
- (4) The ACLJ also disseminates news and information to over 1,000,000 addresses on its mailing lists. In 2015, the ACLJ sent 15,000,000 pieces of mail.
- (5) ACLJ Chief Counsel, Jay Sekulow, has regularly appeared on various news and talk show programs to discuss the issues and events important to the ACLJ and its audiences. These include shows on FOX News, MSNBC, CNN, ABC, CBS, and NBC. In addition to television programs, Jay Sekulow has also appeared on national radio broadcasts. Beyond broadcast outlets, Jay Sekulow’s comments appear regularly in the nation’s top newspapers, in print and online editions,

including but not limited to the Wall Street Journal, New York Times, Washington Times, Washington Post, L.A. Times, and USA Today. His comments also appear in major national newswire services that include, but are not limited to, Associated Press, Reuters, and Bloomberg.

The District Court for the District of Columbia found that a non-profit public interest group, not unlike the ACLJ, qualified as “representative of the news media” where the group disseminated an electronic newsletter and published books. *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003).

The ACLJ’s FOIA request qualifies as compelling under the second statutory definition stated above as well as under the DOS’s regulations, because it has an urgency to inform the public about United States government activity in connection with the alarming facts revealed in the breaking news stories about the Biden Administration’s efforts to resume or increase U.S. taxpayer-funded aid to the PA and to allow the PLO to reopen its mission in Washington – all in spite of the Taylor Force Act. “The information has a particular value that will be lost if not disseminated quickly,” 28 C.F.R. 171.12(b)(2)(i), because these issues are currently being reported and are currently before the public. As one district court recently explained, the required “compelling need” and “urgency to inform” are determined by three factors:

- (1) [W]hether the request concerns a matter of current exigency to the American public;
- (2) whether the consequences of delaying a response would compromise a significant recognized interest; and
- (3) whether the request concerns federal government activity.

ACLU v. United States DOJ, 321 F. Supp. 2d 24, 29 (D.D.C. 2004) (citing *Al-Fayed v. CIA*, 254 F.3d 300, 310 (2002)).

Such is the case presented by the ACLJ’s FOIA request. The ACLJ’s request is based upon an urgency to inform the American public because a delay in review of the information would compromise the integrity of United States government officials and actors with respect to a reported story gaining significant coverage (as evidenced by the voluminous reporting of media organizations). As mentioned in the ACLJ’s request, which is incorporated by reference as if fully set forth herein, the press is currently and actively reporting on these very issues. **All news media stories identified in the ACLJ’s Request are incorporated by reference as if fully set forth herein.**

Without the immediate release of the information requested, the American public will remain in the dark with respect to its own government’s actions concerning the Biden Administration’s efforts to resume or increase U.S. taxpayer-funded aid to the PA in apparent contradiction to (or violation of) the Taylor Force Act, as well as consideration of allowing the PLO to reopen its mission in Washington, and who was involved in the surrounding discussions; and thus cannot hold their government officials accountable. Moreover, a delay in releasing the information prolongs justice and serves only to further

embarrass the United States internationally, and confuse the public, as delay likely indicates an attempt to cover up embarrassing or unpopular actions, or negligence, or to shift or avoid blame or culpability. An expedited response will allow the DOS to swiftly disprove the harmful and damaging allegations and negative publicity currently dominating media reports. Thus, governmental accountability in honoring obligations and commitments, justice, and integrity serve as significant public interests at stake. The requested documents must be released *now* so that the American people can decide if the government's decisions were acceptable and its response is adequate.

Accordingly, the ACLJ respectfully submits a request for waiver of fees and expedited processing of its contemporaneously submitted FOIA request.

III. CERTIFICATION

In satisfaction of certification requirements under 5 U.S.C. § 552(a)(6)(E)(vi) and corresponding regulations, the ACLJ incorporates by reference herein all relevant facts and information as stated in the ACLJ's FOIA request in support thereof and certifies that the information provided and stated herein is true and correct to the best of the undersigned's knowledge and belief.

Respectfully submitted,



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Executive Director



Benjamin P. Sisney
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