



March 9, 2019

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
Via e-mail: ICE-FOIA@dhs.gov

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, DC 20536-5900

Re: FOIA Request Regarding Jilmar Ramos-Gomez, Detentions and Deportations of Citizens and Persons Lawfully Present in the United States, and ICE Policies and Procedures Regarding People with Disabilities

Dear FOIA Coordinator:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 522, and related Department of Homeland Security ("DHS") implementing regulations, see 6 C.F.R. § 5 (Department of Homeland Security, Disclosure of Records and Information). The Request is submitted by the American Civil Liberties Union of Michigan, the American Civil Liberties Union Fund of Michigan (hereinafter "ACLU")¹ and the Michigan Immigrant Rights Center ("MIRC").

¹ The American Civil Liberties Union is a nationwide, non-profit, non-partisan organization dedicated to protecting civil liberties and human rights in the United States. It is the largest civil liberties organization in the country, with offices in 50 states, and over 500,000 members. The American Civil Liberties Union Fund of Michigan and the American Civil Liberties Union of Michigan are the state affiliate organizations. The two organizations are separate, but integrated. The ACLU Fund of Michigan is a 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases and educates the public about civil rights and civil liberties issues. The ACLU of Michigan is a 26 U.S.C. § 501(c)(4) organization that provides analyses of pending and proposed legislation, engages in legislative advocacy, and mobilizes the American Civil Liberties Union's members to lobby their legislators. For the purposes of this request, the term "ACLU" is used to mean the ACLU Fund of Michigan and the ACLU of Michigan.

Requesters seek disclosure of records related to U.S. Immigration and Customs Enforcement's (ICE's) wrongful arrest and detention of Jilmar Ramos-Gomez, a U.S. citizen and decorated Marine combat veteran. Requestors also seek information related to other United States citizens and lawfully present immigrants who have been arrested, detained or deported by ICE, as well as information related to ICE's policies and procedures with respect to people with mental health issues or disabilities.

BACKGROUND

On January 14, 2019 and January 23, 2019, our organizations submitted FOIA requests seeking records related to the arrest and detention of Jilmar Ramos-Gomez, as well as records related to the detention and deportation of citizens and others lawfully present in the U.S., and records related to the treatment of people with disabilities. ICE denied our requests on February 15, 2019, although it is not completely clear if that denial encompassed the January 14, 2019 FOIA. See 2019-ICFO-26672. In addition, we submitted FOIA requests to the Calhoun County Jail and the Kent County Sheriff's Department for records related to Mr. Ramos-Gomez. Those agencies denied our requests in whole or in part based on assertions that the requested records belonged to ICE.

To avoid any ambiguity about what is being requested, any attempts to circumvent disclosure of records that ICE contends belong to ICE but that are in the possession of third parties (e.g. Kent County Sheriff's Department, Calhoun County Jail), or any confusion about which records can be released to the Michigan Immigrant Rights Center and which to the ACLU, we are submitting a reissued Freedom of Information Act request incorporating our prior requests. This reissued FOIA also includes some additional requests based on additional information we have obtained about ICE's action towards Mr. Ramos-Gomez. A signed release from Mr. Ramos-Gomez is attached.

RECORDS REQUESTED

For the purposes of this Request, "Records" are collectively defined to include, but are not limited to: systems communications, text communications between phones or other electronic devices (including, but not limited to, communications sent via SMS or other text, Blackberry Messenger, iMessage, WhatsApp, Signal, Gchat, Facebook Messenger or Twitter direct message); e-mails; images and photographs; voicemail messages; social-media posts, messages or communications; instructions; directives; guidance documents; formal and informal presentations; training documents; bulletins; alerts; updates; advisories; reports; legal and policy memoranda; contracts or agreements; memoranda of understanding; minutes or notes of meetings, interviews, phone calls or other communications; and video and audio recordings.

For purposes of this Request, "ICE" means U.S. Immigration and Customs Enforcement, and includes all employees, officers, agents, contractors and employees of contractors, and facilities or employees of facilities that detain immigrants for ICE.

This request specifically covers not only records in the physical possession of ICE, but all records in the possession of any other entity (including but not limited to the Grand Rapids

Police Department, the City of Grand Rapids, the Kent County Sheriff's Department, the Kent County Correctional Facility, Kent County, the Calhoun County Sheriff's Department, the Calhoun County Correctional Facility and Calhoun County) that ICE asserts are records belonging to ICE or that ICE asserts are covered by 8 CFR § 236.6 and the Privacy Act of 1975, 5 U.S.C. § 552a, related Executive Orders, or any other law or regulation barring disclosure by a local law enforcement agency of records ICE claims as its own.

This request also specifically covers records contained in the Criminal Arrest Records and Immigration Enforcement Records (CARIER) system of records, the Enforcement Integrated Database (EID), the ENFORCE/EARM system, or any comparable system.

We request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of our Request be conducted. With respect to the Category A records, given the expedited timeline on which the relevant events and interpretations occurred, this includes the personal email accounts and work phones of all employees and former employees who may have sent or received emails or text messages regarding the subject matter of this Request, as well as all institutional, shared, group, duty, task force, and all other joint and/or multi-user email accounts and work phones which may have been utilized by each such employee or former employee. Additionally, for each relevant email account identified, all storage areas must be searched, including the inbox "folder" (and all subfolders therein), sent folder, deleted folder, and all relevant archive files.

If any records responsive or potentially responsive to the Request have been destroyed, our Request includes, but is not limited to, any and all records relating or referring to the destruction of those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

As required by the relevant case law, the agency should follow any leads it discovers during the conduct of its searches and should perform additional searches when said leads indicate that records may be located in another system. Failure to follow clear leads is a violation of FOIA.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, we 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.

Pursuant to the Freedom of Information Act, we accordingly request the following:

A. Records Related to Jilmar Ramos-Gomez

Mr. Ramos-Gomez's identifying information is as follows:

- Full Name: Jilmar Benigno Ramos-Gomez
- Date of Birth: 7/10/1991
- Place of Birth: Grand Rapids, MI

- SSN: [REDACTED]
- Other name iterations: Jilmar Ramos-Gomez, Jilmar Ramos, Jilmar Gomez

We request:

- All records in ICE's custody or control that relate to Jilmar Ramos-Gomez.
- All records that relate to Jilmar Ramos-Gomez, whether or not in ICE's possession, in which ICE claims an interest or which ICE asserts may not be disclosed by other entities based on laws or regulations regarding the disclosure of ICE records.

This request specifically includes but is not limited to:

- All records created by, reviewed by, received by, or in the custody or control of ICE agents Derek Klifman and Matthew Lopez related to Jilmar Ramos-Gomez, including records from both their personal or ICE devices and from their personal or ICE email, or social media accounts.
- All records related to interviews of, communications with, or interactions with Mr. Ramos-Gomez by ICE. This specifically includes all audio or video recordings, notes, reports, or other records related to the interview conducted by ICE on November 23, 2018; the transfer of Mr. Ramos-Gomez from Kent County to ICE custody on December 14, 2019; and the intake/booking of Mr. Ramos-Gomez into the Calhoun County Correctional Facility on December 14, 2019.
- All records related to any steps that ICE, including ICE agents Derek Klifman and Matthew Lopez, took that recognized, accounted for or accommodated Mr. Ramos-Gomez's disabilities.
- All communications within ICE or between ICE and other persons or entities regarding Jilmar Ramos-Gomez. This specifically includes all communications and drafts of communications with the media or regarding responses to the media.
- All records of communication between ICE and the Grand Rapids Police Department or City of Grand Rapids concerning Mr. Ramos-Gomez.
- All records in your custody or control, or in which you claim an interest, related to the City of Grand Rapids' or the Grand Rapids Police Department's interactions with Mr. Ramos-Gomez, including any records related to his arrest and custody; any property inventories; any photographs; and any video footage or audio recording of his arrest, interview, or interrogation.
- All records of communications between the Federal Bureau of Investigation (FBI) and ICE concerning Mr. Ramos-Gomez.
- All records in your custody or control, or in which you claim an interest, of communications between the FBI and the Grand Rapids Police Department, City of Grand Rapids, Kent County Sheriff's Department, Kent County Jail, Calhoun County Sheriff's Department or Calhoun County Jail concerning Mr. Ramos-Gomez.
- All records of communications between ICE and Kent County, the Kent County Sheriff's Department, the Kent County Correctional Facility, Calhoun County, the Calhoun County Sheriff's Department or the Calhoun County Correctional Facility concerning Mr. Ramos-Gomez.

- All records in your custody or control, or in which you claim an interest, related to Mr. Ramos-Gomez's detention at the Kent County Correctional Facility or the Calhoun County Correctional Facility, including detainers, warrants, booking records, intake records, personal property records, custody and disciplinary records, release or court orders, medical and mental health records, and including, but not limited to, forms I-247 (all versions), I-200, I-203 or I-203A and I-205.
- All records of communications between ICE and Kent County, the Kent County Sheriff's Department, and the Kent County Correctional Facility regarding the Kent County Sheriff's Department's change in policy (announced on January 18, 2019) to require judicial warrants in order to hold inmates for ICE.
- All records pertaining to the transfer of Mr. Ramos-Gomez from the custody of the Kent County Sheriff to the custody of Immigration and Customs Enforcement in December 2018.
- All audio recordings, video recordings or other records in your custody or control, or in which you claim an interest, showing interactions between Jilmar Ramos-Gomez and officers, employees, contractors, or other inmates at the Kent County Correctional Facility or the Calhoun County Correctional Facility.
- All records related to the Office of Professional Responsibility investigation conducted with respect to Mr. Ramos-Gomez.
- All records related to communications between ICE and any entity (including but not limited to the FBI, the Grand Rapids Police Department, City of Grand Rapids, Kent County Sheriff's Department, Kent County Jail, Kent County, Calhoun County Sheriff's Department, Calhoun County Jail or Calhoun County) regarding what records in the possession of those entities may or may not be released in response to FOIA requests, subpoenas, court orders, or other requests.
- Any other records related to Mr. Ramos-Gomez.

B. Records Related to U.S. Citizens and Lawfully Present Persons Detained or Deported by ICE

- All records showing the number of U.S. citizens, lawful permanent residents and other legally present persons that ICE has removed from the United States in the last four years.
- All records showing the number of U.S. citizens, lawful permanent residents and other legally present persons that ICE has detained by ICE in the last four years.
- All records showing the number of U.S. citizens, lawful permanent residents and other legally present persons for whom ICE has issued detainers in the last four years.
- All records showing the number of U.S. citizens, lawful permanent residents and other legally present persons who have been detained by local law enforcement based on ICE detainers in the last four years.
- All records describing the steps ICE is taking to ensure that U.S. citizens, lawful permanent residents and other legally present persons are not detained or deported. The specifically includes, but is not limited to, policies, procedures, and training materials.

C. Records Related to ICE's Policies and Procedures Related to People With Mental Health Issues or Disabilities

- All records describing the steps ICE is taking to address the unique needs of individuals with mental health issues or disabilities whom ICE officers encounter during investigations. The specifically includes, but is not limited to, policies, procedures, and training materials.
- All records pertaining to screening instruments used by ICE to determine if a person that is arrested or detained by ICE may have a mental illness.
- All records pertaining to contracts with private entities to provide mental health services while an individual is detained in ICE custody at the Calhoun County Jail.

We ask that you prioritize the processing of Category A records.

REQUEST FOR EXPEDITED PROCESSING

Requestors seek 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 organizations primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

A “compelling need” can be demonstrated “with respect to a request made by a person primarily engaged in disseminating information,” by an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(d)(1)(ii). Here, the ACLU and MIRC are “person[s] primarily engaged in disseminating information,” and there is an urgent need to inform the public regarding the arrest and detention of Mr. Ramos-Gomez. His case has received nation-wide attention, and the public is demanding answers to what occurred. *See* Exhibit A, List of Selected News Coverage Regarding Jilmar Ramos-Gomez.

Mr. Ramos-Gomez’s case raises urgent questions about how many other U.S. citizens, lawful permanent residents and other lawfully present person ICE has detained and sought to deport, as well as urgent questions about ICE’s policies and procedures to ensure it properly identifies individuals with disabilities and respects those individuals’ unique needs. The public and policy makers need more information so that steps can immediately be taken to ensure that what happened to Mr. Ramos-Gomez never happens again.

ICE was able to rapidly issue a statement about the case on January 16, 2019, the same day as the news of ICE’s wrongful arrest of Mr. Ramos-Gomez became public. If ICE can act so quickly when it is in ICE’s self-interest to respond to an urgent issue, ICE has itself recognized the “urgency to inform the public,” and must rapidly release not just a self-serving statement, but also the underlying records about its conduct. We also note that ICE also rapidly denied our earlier FOIA request, responding on February 15, 2019 to our January 23, 2019 FOIA, again

² *See also* 6 C.F.R. § 5.5(e)(1).

demonstrating that ICE can act quickly on a matter of grave public concern when it believes doing so is in its own self-interest.

With respect to the ACLU, dissemination of information to the public about actual or alleged government activity is a critical and substantial component of the ACLU's mission and work. The ACLU seeks to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country. The ACLU has a particular commitment to ensuring that fundamental constitutional protections of due process and equal protection are extended to every person, regardless of citizenship or immigration status, and that government respects the civil and human rights of all people. Educating the public is a central to this work. Specifically, the ACLU publishes blogs, newsletters, reports, fact sheets, news briefings, "Know Your Rights" documents, and other educational and informational materials that are designed to educate the public about civil liberties issues and governmental policies that implicate civil rights and liberties. These ACLU publications often include descriptions and analyses of information obtained from the government through FOIA, as well as information about cases, governmental policies, pending legislation, abuses of constitutional rights, and polling data. *Cf. Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5, 13–14 (D.D.C. 2003) (finding the Electronic Privacy Information Center to be a representative of the news media under Department of Defense regulations because it published a "bi-weekly electronic newsletter that is distributed to over 15,000 readers" about "court cases and legal challenges, government policies, legislation, civil rights, surveys and polls, legislation, privacy abuses, international issues, and trends and technological advancements.").

The website of the ACLU of Michigan (www.aclumich.org) addresses civil rights and civil liberties issues in depth, provides information on civil rights and civil liberties issues in the news, and contains a large volume of documents relating to the issues on which the ACLU is focused, including immigration. The websites of the National ACLU and other state ACLU affiliates similarly feature information obtained through the FOIA process.³ The ACLU further disseminates information to the public via social media platforms such as Facebook, Twitter and Instagram.

ACLU materials are specifically designed to be educational and are widely disseminated to the public.⁴ These materials are widely available to everyone, including individuals, tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee through the ACLU's public education department and websites. *See Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11 (finding the Electronic Privacy Information Center to be a news-media

³ See, e.g., THE TORTURE DATABASE, <http://www.thetorturedatabase.org> (last visited May 12, 2015); MAPPING THE FBI, <http://www.aclu.org/mappingthefbi> (last visited Mar. 16, 2015); see also, e.g., Press Release, ACLU of San Diego & Imperial Counties, CBP Releases Report, New Training Handbook (May 22, 2014), <http://www.aclusandiego.org/radio-silence-border-patrol-use-force-policies-leads-lawsuit/>.

⁴ See, e.g., Dan Gillmor, In Praise of the Almost-Journalists, *Slate* (Mar. 28, 2014, 12:29 PM), <http://slate.me/1jg5YXx> (describing national ACLU's efforts to broadly disseminate important civil rights-related news stories).

requester because of its publication and distribution of seven books on privacy, technology, and civil liberties).

Similarly, MIRC, which is a legal resource center for Michigan's immigrant communities, is heavily engaged in disseminating information. MIRC disseminates information about topics affecting immigrants and refugees via a variety of media including its website, social media, and an email newsletter service. The MIRC website (michiganimmigrant.org) provides extensive information on immigration-related issues. The website includes a library of materials used by community advocates. It includes a database of documents previously obtained through FOIA from Immigration and Customs Enforcement.⁵ MIRC's Facebook page has over 10,000 followers.

Depending on the results of this Request, the ACLU and MIRC plan to disseminate the information they receive among the public through these kinds of publications in these kinds of channels. The ACLU and MIRC are therefore organizations "primarily engaged in disseminating information" within the meaning of the statute and the relevant regulations. Indeed, the fact that that ACLU meets these criteria has previously been recognized in FOIA litigation between the ACLU and the Department of Justice. *See, e.g., American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a 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" is "primarily engaged in disseminating information" (internal citation omitted)).

For all of the foregoing reasons, expedited processing of this Request is warranted and should be granted. Requesters hereby certify that the foregoing is true and correct to the best of their knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi); 6 C.F.R. § 5.5(d)(3).

REQUEST FOR A WAIVER OR LIMITATION OF SEARCH AND REVIEW FEES

The Requesters seek a full waiver of all fees because disclosure of the requested records is in the public interest." See 5 U.S.C. § 552(a)(4)(A)(iii) ("Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) 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.").

At a minimum, should a total fee waiver be denied, Requesters seek a waiver of all processing (search and review) fees because the ACLU and MIRC qualify as "representatives of the news media," and because the records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("fees should be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution; or a representative of the news media"); 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged "for requests by educational institutions . . . or representatives of the news media"); *id.* § 5.11(k)(1) ("Records responsive to a request will be

⁵ "ICE Training Documents", available at www.michiganimmigrant.org/resources/library.

furnished without charge or at a charge reduced below that established under paragraph (c) of this section where a component determines, based on all available information, that the requester has demonstrated that (i) disclosure of the requested 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 (ii) disclosure of the information is not primarily in the commercial interest of the requester.”). As discussed below, federal agencies routinely grant such fee waivers for FOIA requests made by the ACLU and similar organizations for these reasons.

A. Release of the requested records is in the public interest.

The records requested will contribute significantly to public understanding of the government’s operations or activities. Under 6 C.F.R. § 5.11(k)(2), the following factors are to be considered in determining whether a disclosure is in the public interest: (i) whether the subject of the requested records concerns “the operations or activities of the government”; (ii) whether the disclosure is “likely to contribute” to an understanding of government operations or activities; (iii) whether disclosure of the requested information will contribute to “public understanding,” that is, “the understanding of a reasonably broad audience of persons interested in the subject”; and (iv) whether disclosure is likely to contribute “significantly” to public understanding of government operations or activities. *See* 6 C.F.R. § 5.11(k)(2)(i)–(iv). Each of these considerations is satisfied here.

First, the records requested pertain directly to the operations and activities of the federal government, namely (a) ICE’s arrest and detention of a U.S. citizen, Jilmar Ramos-Gomez; (b) the deportation and detention of other U.S. citizens and persons lawfully present in the U.S.; and (c) ICE’s treatment of people with disabilities. Second, this Request is “likely to contribute” to an understanding of government operations or activities, specifically by helping the public understand how it was possible for ICE to arrest and attempt to deport a U.S. citizen, how often similar situations occur, and whether changes to ICE’s policies and procedures, including those related to people with disabilities, are necessary to prevent such situations. Third, disclosure of the requested information will contribute to “the understanding of a reasonably broad audience of persons interested in the subject” not only of the specific incident at issue here, but the broader problems of wrongful detentions/deportations and treatment of people with disabilities. Finally, disclosure will contribute “significantly” to the public’s understanding of these issues, as the ACLU and MIRC intend to publish responsive records and develop reports or analyses based on the documents obtained.

The Requesters have thus established, “with reasonable specificity[,] that [their] request pertains to operations of the government,” and “the informative value of a request depends not on there being certainty of what the documents will reveal, but rather on the requesting party having explained with reasonable specificity how those documents would increase public knowledge of the functions of the government.” *Citizens for Responsibility and Ethics in Washington v. Department of Health and Human Services*, 481 F. Supp. 2d 99, 107–109 (D.D.C. 2006).

B. The ACLU and MIRC qualify as representatives of the news media.

At a minimum, should a total fee waiver be denied, “fees should be limited to reasonable standard charges for document duplication” because the ACLU and MIRC are “representative[s] 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 and MIRC both meet the statutory and regulatory definitions of a “representative of the news media” because each 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. 522(a)(4)(A)(ii); 6 C.F.R. § 5.11 (b)(6); *see also Nat’l Security Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that “gathers information from a variety of sources,” 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). The ACLU and MIRC are “representatives of the news media” for the same reasons that they are “primarily engaged in the dissemination of information.” *See Electronic Privacy Information Center*, 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 FOIA purposes); *ACLU v. Department of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”).⁶ Courts have found

⁶ On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. For example, in May 2012, the Bureau of Prisons granted a fee waiver to the ACLU for a FOIA request seeking documents concerning isolated confinement of prisoners in BOP custody. In March 2012, the Department of Justice Criminal Division granted a fee waiver to the ACLU for a FOIA request seeking records about the government’s access to the contents of individuals’ private electronic communications. In June 2011, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU with regard to 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 Department of Justice did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004.

other organizations whose mission, function, publishing, and public education activities are similar in kind to the Requesters to be “representatives of the news media.” See, e.g., *Judicial Watch, Inc. v. Dep’t of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester). Indeed various federal courts have specifically held that the ACLU is a “representative of the news media.” See, e.g., *Service Women’s Action Network v. Department of Defense*, 888 F. Supp. 2d 282, 287–88 (D. Conn. 2012) (holding that that the national ACLU and ACLU of Connecticut are “representatives of the news media”); *American Civil Liberties Union of Washington v. Department of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), reconsidered in part on other grounds, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

C. Disclosure of the information requested is not in the commercial interest of the Requesters.

Disclosure of the information requested is not in the commercial interest of the ACLU or MIRC.

For the foregoing reasons, a fee waiver or limitation should be granted. A fee waiver would also fulfill Congress’s legislative intent in amending FOIA, namely to ensure that the Act is liberally construed in favor of granting waivers for noncommercial requesters and to effectuate disclosure of documents of public importance. 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.” (internal quotation marks and citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that “disclosure, not secrecy, is the dominant objective of the Act,” quoting *Department of Air Force v. Rose*, 425 U.S. 352, 361 (1991)).

Should a total waiver be denied, fees should be “limited to reasonable standard charges for document duplication,” as the Requesters are non-profit institutions and educational researchers seeking such records not for a commercial purpose, but rather to disclose such records through the news media, and put them to use for research purposes. 5 U.S.C. § 552(a)(4)(A)(ii)(II). While it is permissible to charge document duplication fees to educational institutions and representatives of the news media, Requesters are seeking documents in an electronic format. Hence there should be no, or at most, negligible document duplication costs.

If a fee waiver is denied, the Requesters are prepared to pay fees up to \$200.00. We ask that you inform us first if fees in excess of \$200.00 may be charged, though we reserve the right to appeal a denial of fee waivers.

The Requesters certify that the above information is true and correct to the best of the Requesters’ knowledge. 6 C.F.R. § 5.5(d)(3).

Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the Office of Information and Privacy in the Department of Justice—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

Pursuant to the applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) days. See 5 U.S.C. § 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(d)(4). We further expect your reply to the Request itself within twenty (20) days, as required under 5 U.S.C. § 552(a)(6)(A)(i). If the Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material. In addition, we request that you provide an estimated date on which you will complete the processing of this request. 5 U.S.C. § 552(a)(7)(B). We reserve the right to appeal a decision to withhold any information.

Please furnish the requested records electronically to all of the following:

Miriam Aukerman
Tel: 616-301-0930
maukerman@aclumich.org
American Civil Liberties Union of Michigan
1514 Wealthy Street, Suite 260
Grand Rapids, MI 49506

Hillary Scholten
Tel: 616 439 1778
hscholten@michiganimmigrant.org
Michigan Immigrant Rights Center
1550 East Beltline Ave SE, Suite 375
Grand Rapids, MI 49506

Should you need to communicate with us regarding this Request, please contact us by email or phone at the addresses listed above.

Thank you in advance for your prompt assistance.

Preservation Notice

Please further be advised that this letter serves as a notice that all of the records requested above, and any other records relevant to the arrest and detention of Jilmar Ramos-Gomez, must be preserved, whether or not they are produced in response to this FOIA request.

Sincerely,

Miriam Aukerman (MA)
Miriam Aukerman
ACLU of Michigan

Hillary Scholten (MA)
Hillary Scholten
Michigan Immigrant Rights Center

Exhibit A: Selected Media Coverage of Jilmar Ramos-Gomez

**SELECTED MEDIA COVERAGE OF JILMAR RAMOS-GOMEZ
ONGOING MEDIA COVERAGE OF JILMAR RAMOS-GOMEZ'S CASE**

Jan. 16, 2019

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Freedom of Information Act Office

U.S. Department of Homeland Security
500 12th St SW, Stop 5009
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

AFFIRMATION/DECLARATION

This is to affirm that

I, Jilmar Ramos-Gonzalez
(PRINT FULL NAME)

request access to records maintained by the Immigration and Customs
Enforcement which pertain to me. My present address is:

1943 Greenfield Ave SW, Wyoming, MI 49519

my date of birth is: 7/10/1991, and

my place of birth was: GRAND RAPIDS, MICHIGAN

I understand that any knowingly or willfully seeking or obtaining access to records about
another person under false pretenses is punishable by a fine of up to \$5,000. I also
understand that any applicable fees must be paid by me.

I hereby authorize ACLU - Miriam Aukerman
MIRC - Hillary Scholten access to my records.
(PRINT FULL NAME)

I request that any located and disclosable records be forwarded to the following individual:

Miriam Aukerman (ACLU); Hillary Scholten at the following address:
(PRINT FULL NAME) (MIRC)

1514 Wealthy, Suite 200, Grand Rapids, Michigan 49506

I hereby declare or certify under penalty of perjury that the foregoing is true and correct.

Executed on 3-4-2019
(DATE)

[Signature]
(SIGNATURE OF AFFIRMANT/DECLARANT).

PLEASE RETURN TO: U.S. Department of Homeland Security
Immigration and Customs Enforcement
500 12th Street, SW, Stop 5009, Washington, DC 20536-5009
Via Facsimile: 202-732-4265;
Via email: icc-foia@dhs.gov