

# Exhibit C



September 17, 2019

**VIA EMAIL TO: [GILDFOIAAppeals@ice.dhs.gov](mailto:GILDFOIAAppeals@ice.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, D.C. 20536-5900

**Re: Appeal of ICE FOIA Case Number 2019-ICFO-51663**

Dear Office of Legal Advisor personnel:

We are writing to appeal the denial of the FOIA response in the above-referenced case. On August 7, 2019, we filed a FOIA request for copies of all Form I-213s (“Record of Deportable/Inadmissible Alien”) prepared by any agent or employee under the supervision of the Philadelphia Field Office, including all suboffices, between January 1, 2017 and the present. Exhibit A. On August 27, 2019, we received a response stating the request would be denied because the information involved multiple third parties and we did not provide “a release, death certificate, or public justification for release” and claiming that the information contained in the requested records is protected by the Privacy Act and sections (b)(6) and (b)(7)(C) of the Freedom of Information Act, 5 U.S.C. § 552. Exhibit B.

The privacy provisions of both Acts are not absolute and must be weighed against the public interest in disclosure of the requested information. This response ignores the clear public justification provided in the original request. We explained that we are seeking information on ICE enforcement in this jurisdiction following multiple reports that ICE officers violated constitutional standards during enforcement operations. We included citations to the sources of information we relied upon in drafting the request. In addition to this broader background, our request stated: “very little public information is available about ICE enforcement actions in this jurisdiction, such as whether enforcement was carried out in the home or workplace, the basis for the action, whether the officers possessed a warrant for the action, etc. This information is frequently recorded in the narrative portion of the Form I-213 (“Record of Deportable/Inadmissible Alien) prepared by the arresting officers for each individual placed in removal proceedings.”

We are cognizant of the privacy interests at stake when requesting information relating to third parties, however we maintain that the public interest in this information outweighs the interest in

privacy. U.S. DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 762 (1989); Ferri v. Bell, 645 F.2d 1213, 1217 (3d Cir. 1981). In evaluating whether the public interest in disclosure outweighs the privacy interest, the adjudicator should evaluate the purpose of the request and whether disclosure will aid the public's understanding of the agency's performance of its duties. Union Leader Corp. v. U.S. Dep't of Homeland Sec., 749 F.3d 45, 54 (1st Cir. 2014). While information that sheds little or no light on an agency's operations may be withheld, an agency cannot deprive a requestor of "the citizens' right to be informed about what their government is up to" solely in the name of privacy. U.S. DOJ v. Reporters at 773. Instead, it must be disclosed consistent with FOIA's purpose, which is "to pierce the veil of administrative secrecy and to open an agency action to the light of public scrutiny." Dep't of Air Force v. Rose, 425 U.S. 352, 361 (1976).

Federal courts have repeatedly ordered government agencies to provide documents, including I-213 forms, that contained individual identifying information or information related to enforcement actions when the public interest in that information outweighed privacy concerns. Union Leader Corp. at 56 (finding that the attenuated privacy interests of the individuals on the I-213s was outweighed by public interest and ordering release of I-213s with names); Families for Freedom v. U.S. Customs & Border Prot., 797 F. Supp. 2d 375, 395 (S.D.N.Y. 2011) (ordering defendants to release I-213s without redacting the charge codes for arrests that occurred over a 5 year period); Hernandez v. U.S. Customs & Border Prot. Agency, No. 10-4602, 2012 U.S. Dist. LEXIS 14290, at \*9-10 (E.D. La. Feb. 6, 2012) (describing how ICE produced a "collection of I-213 forms describing the arrest of 62 individuals"). Indeed, ICE has provided I-213s pursuant to FOIA requests that sought all I-213s for a particular time period and location and which did not include privacy waivers for each individual. See e.g., Georgia Latino Alliance for Human Rights et al. v. DHS et al., 1:12-cv-03702-RWS (N.D. GA) (agreeing through stipulations to provide, among other things, I-213 data in a spreadsheet and I-213 narratives that spanned nearly 7 years); Michigan Immigrant Rights Center et al. v. DHS, 2:16-cv-14192-MAG (E.D. MI) (agreeing through stipulated order to provide I-213s over a span of 5 years).

While we do not concede to particular redactions at this time, the denial fails to explain why redaction of purportedly protected information pursuant to 5 U.S.C.S. § 552(b) is not possible. Under the statute, any "reasonably segregable" portion of a record should be provided to the requestor. We did not specifically request any identifying information about individuals protected by the privacy provisions of FOIA or the Privacy Act. Our request is clearly seeking information on ICE enforcement actions in this jurisdiction. The denial does not state why redaction of private information would not have fulfilled the agency's obligations to protect such information while also meeting the agency's mandate to provide information to the public.

As the government agency bears the burden of justifying the denial of a request under FOIA and has failed to do so, we respectfully appeal the denial.

Respectfully submitted,

/s/ Vanessa L. Stine

Vanessa Stine

Immigrants' Rights Attorney

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/s/ Caitlin Barry

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**Exhibit A**

FOIA Request 2019-ICFO-51663 (August 7, 2019)



August 7, 2019

**VIA EMAIL AND CERTIFIED MAIL**

U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5009  
Washington, D.C. 20536-5009  
Email: [ICE-FOIA@dhs.gov](mailto:ICE-FOIA@dhs.gov)

**Re: Freedom of Information Act Request – Expedited Processing and Fee Waiver Request**

Dear FOIA Officer:

This is a request (“Request”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. *See also* 6 C.F.R. pt. 5 (implementing regulations of Department of Homeland Security); and 28 C.F.R. pt. 16 (implementing regulations of the Department of Justice). The Request is submitted by the Farmworker Legal Aid Clinic (“FLAC”) and the American Civil Liberties Union of Pennsylvania (“ACLU”) (collectively, the “Requesters”). The Requesters also request expedited processing, under 6 C.F.R. § 5.5(e), and 5 U.S.C. § 552(a)(6)(E) and a fee waiver, under U.S.C. § 552(a)(4)(A)(iii) and 5 U.S.C. § 552(a)(4)(A)(ii)(II).

**BACKGROUND**

Civil immigration enforcement under the Trump administration has sharply increased. Pursuant to an Executive Order, enforcement priorities were expanded so extensively that, while they did not purport to eliminate all enforcement priorities, it effectively did.<sup>1</sup> This order, coupled with the DHS memorandum that rescinded prior guidelines authorizing immigration agents to exercise discretion and not detain or seek removal in particular circumstances, led to an increase in immigration enforcement.<sup>2</sup>

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<sup>1</sup> Exec. Order No. 13768, No. 18, Reg. 8799 (Jan. 25, 2017), <https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states>; *see also*, *The End of Immigration Enforcement Priorities Under the Trump Administration*, American Immigration Council (March 2018), <https://exchange.americanimmigrationcouncil.org/research/immigration-enforcement-priorities-under-trump-administration>

<sup>2</sup> Memorandum from John Kelly, *Enforcement of the Immigration Laws to Serve the National Interest* (February 20, 2017), [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf)

In Pennsylvania, ICE has carried out the highest percentage of arrests per undocumented immigrant in any state.<sup>3</sup> The aggressive tactics of the Philadelphia Field Office have been reported on by local and national news outlets.<sup>4</sup> One report by ProPublica highlighted how, “[ICE] occasionally stepped over the legal line themselves.”<sup>5</sup> Despite this reporting, very little public information is available about details of the ICE enforcement actions in this jurisdiction, including whether enforcement was carried out in the home or workplace, the basis for the action, and whether the officers possessed a warrant for the action. This information is frequently recorded in the narrative portion of the Form I-213 (“Record of Deportable/Inadmissible Alien), which is prepared by the arresting officers for each individual placed in removal proceedings.

## RECORDS REQUESTED

Requesters seek the release of copies of all Form I-213s (“Record of Deportable/Inadmissible Alien”) prepared by any agent or employee under the supervision of the Philadelphia Field Office, including all suboffices, between January 1, 2017 and the present.

If this Request is denied in whole or in part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, deny an expedited processing, or deny a waiver of fees. Pursuant to applicable regulations and statutes, we will anticipate your determination on our expedited processing request within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I). We further expect your reply to the Request itself within 20 days. 5 U.S.C. § 552(a)(6)(A)(i).

## REQUEST FOR EXPEDITED PROCESSING

The Requesters seek Track 1 expedited processing for this FOIA Request, which qualifies for expedited treatment pursuant to 6 C.F.R. § 5.5(e) and 5 U.S.C. § 552(a)(6)(E)(i) (“Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedite processing of requests for records --- (1) in cases in which the person requesting the records demonstrates a compelling need . . .”).

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

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<sup>3</sup> TRAC Immigration, “Ten-Fold Difference in Odds of ICE Enforcement Depending Upon Where You Live, April 11, 2019, <https://trac.syr.edu/immigration/reports/555/>

<sup>4</sup> *See e.g.* Deborah Sontag & Dale Russakoff, *In Pennsylvania, It’s Open Season on Undocumented Immigrants*, ProPublica (April 12, 2018), <https://www.propublica.org/article/pennsylvania-ice-undocumented-immigrants-immigration-enforcement>; Brian X. McCrone, *ICE Targets Van Full of Workers in Reading, Berks County, Detaining Numerous Undocumented Immigrants*, NBC10 (April 7, 2017) <https://www.nbcphiladelphia.com/news/local/ICE-Targets-Vans-Full-of-Workers-in-Reading-Berks-County-Detaining-Numerous-Undocumented-Workers-418677453.html> Michael Matza, *248 foreign nationals apprehended in Pa., Del., N.J., W.Va., in two-week sweep by ICE*, Philadelphia Inquirer (March 13, 2017), <https://www.inquirer.com/philly/news/248-foreign-nationals-apprehended-in-Pa-Del-W-Va-in-two-week-sweep-by-ICE.html>

<sup>5</sup> Deborah Sontag & Dale Russakoff, *In Pennsylvania, It’s Open Season on Undocumented Immigrants*, ProPublica (April 12, 2018), <https://www.propublica.org/article/pennsylvania-ice-undocumented-immigrants-immigration-enforcement>

concerning actual or alleged Federal Government activity.” 5 U.S.C. §552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(1)(ii). Here, the ACLU is an organization “primarily engaged in disseminating information,” and there is an urgent need to inform the public regarding ICE’s apprehension of individuals.

**A. The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.**

The ACLU and its affiliates are “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(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 ACLU to be “primarily engaged in disseminating information” because it “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”).<sup>6</sup>

The ACLU regularly publishes *STAND*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 620,000 people. The ACLU also publishes regular updates and alerts via email to approximately 2.1 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to 1.5 million social media followers (members and non-members). The magazine as well as the email and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,<sup>7</sup> and ACLU attorneys are also

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<sup>6</sup> Courts have found that the ACLU and organizations with similar missions 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).

<sup>7</sup> The ACLU of Pennsylvania released 38 press releases about its actions in 2018. *See, e.g., ACLU of Pennsylvania, Legal Advocates Challenge Pennsylvania Department of Corrections’ New Procedures for Legal Mail* (Oct. 30, 2018), <https://www.aclupa.org/news/2018/10/30/legal-advocates-challenge-pennsylvania-department-correction>; *see also* Press Release, ACLU of Pennsylvania, *ACLU Of Pennsylvania Seeks Records About FBI Collection Of Racial And Ethnic Data*, (July 27, 2010), <https://www.aclupa.org/news/2010/07/27/aclu-of-pennsylvania-seeks-records-about-fbi-collection-of-racial-and-ethnic-data>; 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-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>.



interviewed frequently for news stories about documents released through ACLU FOIA requests.<sup>8</sup>

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.<sup>9</sup> The ACLU also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU, including the ACLU of Pennsylvania, publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted.<sup>10</sup> The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, photo essays, and interactive features.<sup>11</sup> Both the national ACLU and the ACLU of Pennsylvania publish, analyze, and disseminate information through their heavily visited websites. *See* [www.aclupa.org](http://www.aclupa.org) and [www.aclu.org](http://www.aclu.org). The websites address civil rights and civil liberties issues in depth, provide features on civil rights and civil liberties issues in the news, and contain many thousands of documents relating to the issues on which the ACLU is focused. The websites also serve as a

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<sup>8</sup> *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/nationalsecurity/newly-declassified-document-sheds-light-on-how-president-approves-drone-strikes/2016/08/06/f424fe50-5be0-11e6-831d-0324760ca856\\_story.html](https://www.washingtonpost.com/world/nationalsecurity/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-detentionprogram/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).

<sup>9</sup> *See, e.g.*, Hugh Handeyside, *New Documents Show This TSA Program Blamed for Profiling Is Unscientific and Unreliable — But Still It Continues* (Feb. 8, 2017, 11:45 AM), <https://www.aclu.org/blog/speak-freely/new-documents-show-tsa-program-blamed-profilingunscientific-and-unreliable-still>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisonscovered-its-visit-cias-torture>; Brett Max Kaufman, *Details Abound in Drone ‘Playbook’ – Except for the Ones That Really Matter Most* (Aug. 8, 2016, 5:30 PM), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; Nathan Freed Wessler, *ACLU Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015, 5:30 PM), <https://www.aclu.org/blog/free-future/aclu-obtaineddocuments-reveal-breadth-secretive-stingray-use-florida>; Ashley Gorski, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014, 3:29 PM), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executiveorder-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](https://www.aclu.org/sites/default/files/assets/eye_on_fbi_-_sars.pdf).

<sup>10</sup> *See e.g.*, <https://blog.aclupa.org/>, which was viewed over 3,500 times in the last 6 months; *see also* <https://medium.com/@ACLUPA>, which was viewed over 11,000 times in the last 6 months

<sup>11</sup> *See* <https://www.aclu.org/multimedia>.

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.

Both websites include many features on information obtained through the FOIA. For example, the ACLU of Pennsylvania released FOIA results from their request for correspondence between local law enforcement agencies in Pennsylvania and Immigration and Customs Enforcement (ICE) about participation in the 287(g) program.<sup>12</sup> The ACLU website includes many features on information obtained through the FOIA.<sup>13</sup>

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA requests—the ACLU created an original chart that provides the public and news media with a comprehensive summary index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition, and surveillance.<sup>14</sup>

Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act<sup>15</sup>; a chart of original statistics about the Defense Department's use of National Security Letters based on its own analysis of records obtained through FOIA requests<sup>16</sup>; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.<sup>17</sup>

The Requesters plan 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.

*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). Specifically, the requested records relate

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<sup>12</sup> <https://www.aclupa.org/our-work/legal/legaldocket/open-records-request-re-local-law-enforcement-interest-immigration-enforcement>

<sup>13</sup> *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/nsl-documents-released-dod?redirect=cpreirect/32088>.

<sup>14</sup> [https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos\\_2009\\_0305.pdf](https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf).

<sup>15</sup> <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

<sup>16</sup> [https://www.aclu.org/sites/default/files/field\\_document/nsl\\_stats.pdf](https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf).

<sup>17</sup> <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

to the federal government's aggressive immigration enforcement tactics. As discussed above, despite press coverage on the Philadelphia Field Office's immigration operations, little information is available to the public regarding the nature and extent of enforcement.

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

**B. The records sought are urgently needed to inform the public about actual or alleged government activity.**

There exists a clear "urgency to inform the public concerning actual or alleged Federal Government activity." *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, the requested records will be used to inform the public about ICE's reasons for apprehending individuals, location of apprehensions, whether ICE possessed a warrant, and participation by local law enforcement. The information will also be used to inform the public about any patterns of racial or ethical profiling, as targeting individuals because of their appearance, language, or beliefs is a civil rights abuse. Additionally, the information will be used to inform the public about any agreements or cooperation between ICE and local law enforcement agencies in Pennsylvania. This is an issue of national importance that is rapidly developing and there are open questions about the legality of some ICE actions. The uncertainty has led to concerns about unlawful detention. The ACLU plays an important role in informing and providing context to the public and the press about civil rights matters.

Additionally, the urgency goes beyond the general public's interest in government transparency—it responds to ongoing serious concerns from Congress and the public, and will answer specific questions that have very recently been raised regarding immigration enforcement and human rights progress. This is particularly important given the current debate on immigration reform, and ongoing debates over local and state law enforcement's cooperation with federal immigration enforcement.

**REQUEST FOR A WAIVER OR LIMITATION OF SEARCH AND REVIEW FEES**

Requesters seek 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). Requesters also seek a waiver of search fees on the grounds that Requester 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 or FLAC.**

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 factors is satisfied here.

First, the records requested pertain directly to the operations and activities of the federal government, specifically ICE.

Second, this Request is “likely to contribute” to an understanding of government operations or activities, specifically by helping the public understand ICE’s immigration enforcement practices. The public also has an interest in knowing the number of people have been apprehended arrested, and/or detained in enforcement operations. The public also has an interest in learning how individuals were apprehended, including whether it occurred through a ruse. The issue of immigration enforcement actions has generated significant attention from advocates, policy makers, and the general public, as indicated by media coverage of the issue.

Third, the disclosure of the requested information will contribute to “the understanding of a reasonably broad audience of persons interest in the subject” of why and how individuals are apprehended by ICE. Among other things the ACLU and FLAC intends to develop responsive reports or analyses regarding ICE’s apprehension practices.

Finally, disclosure will contribute “significantly” to the public’s understanding of ICE’s apprehension practices. As noted, issues surrounding ICE apprehension have garnered significant and sustained public and media attention, yet much remains unknown about the specific arrests here in Pennsylvania.

The Requesters are not filing this Request to further a commercial interest and the information disclosed through this request will not be used for commercial purposes. FLAC is a law school clinical program that provides free legal representation to low wage immigrant workers. The ACLU has a longstanding practice of disseminating information obtained through FOIA at no cost to further the public’s understanding of immigration laws and policy. For example, in 2016, the ACLU used documents obtained through FOIA requests to ICE, together with documents that the National Immigrant Justice Center (NIJC) obtained through FOIA, to publish a joint report with Detention Watch Network entitled *Fatal Neglect: How ICE Ignores Deaths in Detention*.<sup>18</sup> This report described how ICE’s inadequate responses to its internal death review findings contributed to ongoing substandard medical care in detention, and has received significant public and congressional attention.

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”

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<sup>18</sup> ACLU, Detention Watch Network & NIJC, *Fatal Neglect: How ICE Ignores Deaths in Detention* (2016), available at <https://www.aclu.org/report/fatal-neglect-how-ice-ignores-death-detention>.

(internal quotation marks omitted)). *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) (“[FOIA’s] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers”) (internal quotation marks and citation omitted)). On account of these factors, Requesters have not been charged fees associated with responding to FOIA requests on numerous occasions.<sup>19</sup>

**B. Requester ACLU is a representative of the news media and the records are not sought for commercial use.**

The Requesters also seek 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). Specifically, 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 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

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<sup>19</sup> The following are recent examples of requests for which agencies did not charge the ACLU fees associated with responding to a FOIA request: In August 2016, the ICE FOIA Office and DHS Privacy Office both granted fee waivers to the ACLU for a FOIA request seeking a DHS OIG super-memorandum and ICE’s response to that memorandum. In March 2016, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about selected deaths in detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office. In July 2015, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about the use of segregation in ICE detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office. In April 2013, the National Security Division of the Department of Justice granted a fee waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the Department of Justice granted a fee waiver request regarding a FOIA request for documents related to national security letters issued under the Electronic Communications Privacy Act. 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 November 2010, the Federal Emergency Management Agency (FEMA) granted a fee waiver to the ACLU for a FOIA request seeking documents concerning the FEMA-funded rebuilding of Orleans Parish Prison following Hurricane Katrina. 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 2010, U.S. Immigration and Customs Enforcement (ICE) granted a fee waiver to the ACLU for a FOIA request seeking documents concerning the deaths of detainees in ICE 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 2006.



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).<sup>20</sup>

On account of these factors, fees associated with responding to FOIA requests are regularly waived for us as a “representative of the news media.”<sup>21</sup>

\* \* \*

Pursuant to 6 C.F.R. § 5.5(d)(3), the Requesters certify that the information provided above as the basis for requesting expedited processing and fee waiver is true to the best of their knowledge and belief.

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<sup>20</sup> 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.

<sup>21</sup> In May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted 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 the fee waiver request related to the same FOIA request issued to the DOJ. In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists. Likewise, in December 2008, the DOJ 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 on 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 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.

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

Vanessa Stine  
ACLU of Pennsylvania  
P.O. Box 60173  
Philadelphia, PA 19102

If you have any questions regarding the processing of this request, please contact us by email or phone at the addresses listed above. Thank you in advance for your prompt assistance.

Respectfully submitted,

/s/ Vanessa L. Stine

Vanessa Stine  
Immigrants' Rights Attorney  
**AMERICAN CIVIL LIBERTIES UNION  
OF PENNSYLVANIA**  
P.O. Box 60173  
Philadelphia, PA 19102  
Tel: (215) 592-1513, ext. 145  
[vsstine@aclupa.org](mailto:vsstine@aclupa.org)

/s/ Caitlin Barry

Caitlin Barry  
Director, Farmworker Legal Aid  
Clinic  
**VILLANOVA UNIVERSITY CHARLES  
WIDGER SCHOOL OF LAW**  
299 N. Spring Mill Road  
Villanova, PA 19085  
Tel: 610-519-3216  
[caitlin.barry@law.villanova.edu](mailto:caitlin.barry@law.villanova.edu)

**Exhibit B**

Denial of FOIA Request 2019-ICFO-51663 (August 27, 2019)



U.S. Department of Homeland Security  
500 12<sup>th</sup> St., SW  
Washington, D.C. 20536



U.S. Immigration  
and Customs  
Enforcement

August 27, 2019

Vanessa Stine  
ACLU PA  
P.O. Box 60173  
Philadelphia, PA 19102

**RE: ICE FOIA Case Number 2019-ICFO-51663**

Dear Ms. Stine:

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated August 07, 2019, for seeking the release of copies of all Form I-213s (“Record of Deportable/Inadmissible Alien”) prepared by any agent or employee under the supervision of the Philadelphia Field Office, including all suboffices, between January 1, 2017 and the present.

You have requested records concerning multiple third parties. Records pertaining to a third party generally cannot be released absent express authorization and consent of the third party, proof that the subject of your request is deceased, or a clear demonstration that the public interest in disclosure outweighs the personal privacy interest and that significant public benefit would result from the disclosure of the requested records. Since you have not furnished a release, death certificate, or public justification for release, release of the requested records concerning a third party would result in an unwarranted invasion of personal privacy in violation of the Privacy Act, 5 U.S.C. § 552a. In addition, third-party records are also generally exempt from disclosure pursuant to sections (b)(6) and (b)(7)(C) of the Freedom of Information Act, 5 U.S.C. § 552.

Should you obtain the written authorization and consent from the third parties for release of their I-213s, please submit a new request for the documents accompanied by the written authorization and consent. A form is enclosed to assist you in providing us with the required authorization and consent. The authorization must be notarized or signed under penalty of perjury pursuant to 18 U.S. C. § 1001. Please send any such new request with the requisite authorization and consent to: ICE Freedom of Information Office, 500 12<sup>th</sup> Street, S.W., Stop 5009 Washington, D.C. 20536-5009.

If you are not satisfied with the response to this request, you have the right to appeal our determination. Should you wish to do so, you must send your appeal and a copy of the original response letter, within 90 days of the date of the letter following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. You may submit your appeal electronically at [GILDFOIAAppeals@ice.dhs.gov](mailto:GILDFOIAAppeals@ice.dhs.gov) or via regular mail to:

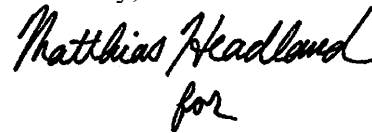
U.S. Immigration and Customs Enforcement  
Office of the Principal Legal Advisor  
U.S. Department of Homeland Security  
500 12th Street,, S.W., Mail Stop 5900  
Washington, D.C. 20536-5900

Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

Provisions of the FOIA and Privacy Act allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.<sup>1</sup>

If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office and refer to FOIA case number **2019-ICFO-51663**. You may send an e-mail to [ice-foia@ice.dhs.gov](mailto:ice-foia@ice.dhs.gov), call toll free (866) 633-1182, or you may contact our FOIA Public Liaison, Fernando Pineiro, in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

Handwritten signature of Matthias Headland in black ink.

for  
Catrina M. Pavlik-Keenan  
FOIA Officer

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<sup>1</sup> 6 CFR § 5.11(d)(4).

**AFFIRMATION/DECLARATION**

This is to affirm that

I, \_\_\_\_\_,  
(PRINT FULL NAME)

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

\_\_\_\_\_

my date of birth is: \_\_\_\_\_, and

my place of birth was: \_\_\_\_\_.

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 \_\_\_\_\_ access to my records.  
(PRINT FULL NAME)

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

\_\_\_\_\_ at the following address:  
(PRINT FULL NAME)

\_\_\_\_\_

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

Executed on \_\_\_\_\_.  
(DATE)

\_\_\_\_\_  
(SIGNATURE OF AFFIRMANT/DECLARANT).

**PLEASE RETURN TO: U.S. Department of Homeland Security  
Immigration and Customs Enforcement  
500 12<sup>th</sup> Street, SW, Stop 5009, Washington, DC 20536-5009  
Via Facsimile: 203-732-4265  
Via email: ice-foia@dhs.gov**