

March 30, 2023

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street SW, Stop 5009
Washington, DC 20536-5009
Email: ICE-FOIA@dhs.gov

Senior Director of FOIA Operations
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655
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**RE: FOIA Request, Electronic Legal Research Media to
Immigration and Customs Enforcement (ICE)**

FEE WAIVER REQUESTED

SUBMITTED VIA EMAIL AND U.S.P.S.

Dear Freedom of Information Act Officer:

The American Civil Liberties Union (ACLU) submits this Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, **request for records related to electronic legal research media** provided by Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) to people held in ICE detention facilities. The ACLU also requests a fee waiver, pursuant to 5 U.S.C. § 552 (a)(4)(A)(iii). The justification for the fee waiver is set out in detail following the request.

I. Background

On a daily basis, ICE detains over 24,000 people in detention centers nationwide.¹ On average, only 14 percent of people detained in ICE custody are represented by an attorney in their immigration proceedings.² Although immigrants have a right to counsel in immigration proceedings, courts have not yet recognized a right to government-appointed counsel as there is in the criminal legal system.³ Without legal counsel, detained people are left to argue their cases against government lawyers, with limited knowledge of the immigration laws. For this reason, access to legal resources, including a law library, is even more critical in the absence of counsel.

ICE detention standards require facilities to ensure detainees access to comprehensive legal materials, including an electronic law library, to protect their



rights. Facilities have a responsibility to provide a “properly equipped law library” which may be available in electronic format.⁴ Because paper versions of legal materials are now optional and all facilities must have an electronic version, either on a CD-ROM or external hard drive, we request the electronic version of legal materials distributed to detention facilities for use by detained people in facility law libraries.

ICE holds immigrants at approximately 200 detention facilities in the United States, all of which are subject to the agency’s detention standards.⁵ A detention facility may be operated by National Detention Standards (NDS), 2008 Performance-Based National Detention Standards (PBNDS 2008), Performance-Based National Detention Standards 2011 revised in 2016 (PBNDS 2011), ICE National Detention Standards 2019 (NDS 2019), or Family Residential Standards revised in 2020 (FRS 2020). The five standards generally require detention centers to provide detainees access to law libraries for at least five hours per week, equipped with computers, printers, and photocopiers.⁶ Detention facilities provide electronically available law library materials, which “may include CD-ROMs or External Hard Drives developed by legal research vendors utilized by ICE.”⁷ Facilities governed by PBNDS 2011 that utilize electronic law libraries are required to provide the materials listed in “Appendix 6.3.A: List of Legal Reference Materials for Detention Facilities.”⁸ ICE’s detention standards require facilities to update, maintain, inspect, and replace the required legal materials on a routine basis.⁹

In light of the significant number of detained people without representation, the requested records will inform the public of the quality and availability of legal materials available to people held in ICE detention facilities. Insufficient information is publicly available regarding the issue in this Request, so the records sought are certain to contribute significantly to the public’s understanding of ICE’s provision of electronic legal materials in detention facilities.

Definitions

For purposes of this request, the terms listed below are defined as follows:

“DETENTION STANDARDS” means applicable standards to establish consistent conditions of confinement, program operations, and management expectations, and which prescribe expected outcomes and expected practices required to achieve them at ICE detention facilities, including the National Detention Standards (NDS),¹⁰ 2008 Performance-Based National Detention Standards (PBNDS 2008),¹¹ Performance-Based National Detention Standards 2011 revised in 2016 (PBNDS 2011),¹² National Detention Standards 2019 (NDS 2019),¹³ or Family Residential Standards, revised in 2020 (FRS 2020).¹⁴



“ELECTRONIC LAW LIBRARY” means all required and optional electronic legal research media, utilized and/or distributed by ICE to detention facility law libraries. Electronic law library materials may include, but are not limited to, materials available on CD-ROMs or External Hard Drives, materials developed by legal research vendors such as Lexis Nexis, and/or materials listed in “Appendix 6.3.A: List of Legal Reference Materials for Detention Facilities” and “Appendix 6.3.B: Optional Legal Reference Materials.”

“SUPPORTING MATERIALS” means any usage guides, instructions on the basic use of the system, any accompanying written training or reference materials, and/or any other supporting materials supplied by ICE to immigration detention facilities.

“DHS” means the Department of Homeland Security, and any components, subcomponents, offices, or personnel therein.

“DOCUMENTS” has the same scope used in Rule 34(a)(1) of the Federal Rules of Civil Procedure and shall encompass every writing or record of every type and description and every tangible thing that is or has been in the possession, custody, or control of the federal agency or agencies that are the subject of this request and their employees, to which they have access, or of which they have knowledge, including, but not limited to, newspaper articles, magazine articles, news articles, correspondence, letters, contracts, files, electronic mail, memoranda, stenographic notes, handwritten notes, drafts, studies, publications, books, pamphlets, catalogs, purchase orders, receipts, advertisements, direct mail solicitations, point-of-sale and point-of-purchase materials, notebooks, diaries, models, devices, pictures, photographs, films, audiotapes, videotapes, computer records, voice recordings, maps, reports, surveys, minutes, data compilations, and statistical compilations, regardless of whether a particular DOCUMENT is privileged or confidential, and regardless of the form of storage (including, but not limited to, paper, microfiche, magnetic tape, magnetic disk (hard disk or floppy disk), CD-ROM, DVD, optical disk, or electronic storage device).

“ICE” means Immigration and Customs Enforcement, and any components, subcomponents, offices, or personnel therein.

“IMMIGRATION DETENTION FACILITY” means Service Processing Centers, Contract Detention Facilities, Family Residential Facilities, Intergovernmental Service Agreement (IGSA) Facilities, Dedicated Intergovernmental Service Agreement (DIGSA) Facilities, Intergovernmental Agreement (IGA) Facilities, and any other facilities where individuals may be held in ICE custody for 72 hours or more.

“THIRD-PARTY CONTRACTOR” means any entity that provides services or personnel to immigration detention facilities.

Requested Records

The ACLU seeks the release of the following records, dated March 30, 2023, to the present. Please construe this as an ongoing FOIA request, so that any records that come into the possession of the agency prior to your final response to this FOIA request should also be considered within the request's scope.

1. Electronic Law Library materials provided at any Immigration Detention Facility;
2. All supporting materials related to Electronic Law Library materials provided at or to any ICE Detention Facility;
3. Any document related to software requirements for use of Electronic Law Library materials.



With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the ACLU requests that responsive records be provided via mail in their **native file format**, including CD-ROMs or External Hard Drives as described in, for example, FRS 2020, PBNDS 2011 – Revisions 2016, and NDS 2019.¹⁵

Notably, the Electronic Freedom of Information Act Amendments of 1996 requires federal agencies to “provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format” and to “make reasonable effort to search for the records in electronic form or format.” 5 U.S.C. § 552(a)(3)(B) and (C); *see also* Pub.L. No. 104-231 (HR 3802). The requested electronic records are reasonably and readily reproducible, as ICE reproduces these materials CD-ROM or external hard drives for distribution to immigration detention facilities. *TPS, Inc. v. U.S. Dept. of Defense*, 330 F.3d 1191, 1192 (9th. Cir. 2003); *see also Scudder v. Cent. Intel. Agency*, 25 F. Supp. 3d 19, 36 (D.D.C. 2014) (noting that “whenever agency already maintains a record in more than one form or format, the requester can choose the one in which it will be disclosed”).

Fee Waiver Request

The ACLU requests that any fees associated responding to its FOIA request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), fees should be waived or reduced if disclosure is (1) in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Disclosure in this case meets both of these tests. The ACLU also requests a waiver or reduction of fees on the grounds that the ACLU qualifies as a “representative[] of the news media” and the records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II).

1. *Disclosure is in the public interest as it is likely to contribute*

significantly to the public's understanding of access to legal resources in detention centers and its impact on immigration court proceedings and backlog.

ICE Detention Standards require that detainees are provided at least five hours of access per week to a detention facility law library.¹⁶ The quality of legal materials provided to detained people in ICE custody, particularly those without counsel, may often determine the outcome of a legal case.

The issue of legal access in ICE detention centers has garnered significant public interest. Congress has expressed concern about access to counsel issues and has directed ICE to facilitate the improved communication between pro bono providers and detained people.¹⁷ For example, Congress recently authorized an appropriation of ten million dollars to the Department of Homeland Security to improve legal resources at ICE detention centers, including improved law libraries and legal materials.¹⁸

Concern over access to legal resources and protecting constitutional rights of detained people remains an ongoing problem. In 2017, the Southern Poverty Law Center, sent a letter to ICE officials highlighting detainees' lack of regular meaningful access to law libraries and a violation of due process rights.¹⁹ An October 29, 2021 letter to ICE from a coalition of 88 immigrants' rights advocates lists the multiple barriers faced by counsel to have effective communication with their clients which hinders the constitutional rights of detained people.²⁰ The barriers listed in that letter are still persistent based on a recent research report on barriers to access to counsel published by the ACLU.²¹

Given the ongoing barriers to legal access and representation, the need for a better understanding of ICE detention electronic law library materials is a significant public interest. These materials represent possibly the only and last resort for a majority of detained people to exercise their legal rights. Insufficient information is publicly available regarding the issue in this Request, so the records sought are certain to contribute significantly to the public's understanding of the available legal resources to detained people that ensure their right to due process and increase court efficiency.

2. Disclosure is not primarily in the commercial interest of the ACLU.

Second, the ACLU is not filing this request to further a commercial interest. The ACLU is a 501(c)(3) nonprofit organization and therefore has no commercial interest. The ACLU intends to make any relevant information obtained through this FOIA available to the public. *See* 6 C.F.R. § 5.11(k)(1)(ii). The ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee.



The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU website also includes many features on information obtained through FOIA requests. For example, the ACLU's "Predator Drones FOIA" webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves.



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, in February 2017 the ACLU produced an analysis of documents released in response to a FOIA request about the TSA's behavior detection program. The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the ACLU plans to disseminate the information disclosed as a result of this Request to the public at no cost.

1. *The ACLU also qualifies for a fee waiver because it is representative of the news media and the records are not sought for commercial use.*

The ACLU is also entitled to a waiver of search fees on the grounds that the ACLU qualifies as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The ACLU meets the statutory and regulatory definitions of a "representative of the news media" because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also 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); *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "primarily engaged in disseminating information").

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. For example, the ACLU regularly publishes *ACLU Magazine* that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 950,000 households. The ACLU



also publishes regular updates and alerts via email to approximately four million subscribers (both ACLU members and nonmembers). These updates are additionally broadcast to 5.9 million social media followers (members and nonmembers). The magazine, email, and social-media alerts often include descriptions and analysis of information obtained through our FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news, and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests. Similarly, ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained 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.

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 publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. See <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. See <https://www.aclu.org/multimedia>.

Underscoring this point, courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU’s are “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. v. U.S. Dep’t of Defense*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (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 v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *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).²²

As a representative of the news media, the ACLU plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use. On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news media.” A fee waiver would fulfill Congress’s legislative intent in amending FOIA.²³ Additionally, on account of these factors, the ACLU has not been charged fees associated with responding to FOIA requests on numerous occasions.²⁴



In sum, because disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the requester, and because the ACLU is a representative of the news media, the ACLU is entitled to a total waiver of fees associated with this Request and should, in no event, be required to pay more than reasonable standard charges for document duplication. In the event that you decide not to waive the fees, please provide me with prior notice so that we can discuss arrangements.

* * * * *

Thank you for your prompt attention to this Request. We look forward to your reply to this Request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(i), or a written notice of an additional ten (10) business days if there is an unusual circumstance pursuant to 5 U.S.C. § 552(a)(6)(B)(i).

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny a waiver of fees.

Please call Marisol Dominguez-Ruiz at 202-393-4930 or email at mdominguez-ruiz@aclu.org if you have any questions or wish to obtain further information about the nature of the records in which we are interested. Please furnish the applicable records via email (mdominguez-ruiz@aclu.org).

If the records must be sent via U.S. Mail, please send to the following address. Our offices are not fully reopened due to the pandemic; if any responsive records are sent by U.S. Mail, please call or email:

Marisol Dominguez-Ruiz
ACLU National Prison Project
39 Drumm St.
San Francisco, CA 94111

Sincerely yours,

A handwritten signature in black ink, appearing to read "Marisol Dominguez-Ruiz".

Marisol Dominguez-Ruiz
Justice Catalyst Fellow
ACLU National Prison Project

A handwritten signature in black ink, appearing to read "Eunice Cho".

Eunice Cho
Sr. Staff Attorney
ACLU National Prison Project



¹ See Transactional Records Access Clearinghouse (TRAC), Syracuse University, *Immigration: Quick Facts*, <https://trac.syr.edu/immigration/quickfacts/> (last updated Feb. 26, 2023).

² See American Immigration Council, *Special Report: Access to Counsel in Immigration Court*, 4-5 (Sept. 2016) [access to counsel in immigration court.pdf](https://www.americanimmigrationcouncil.org/publications/special-report-access-to-counsel-in-immigration-court) ([americanimmigrationcouncil.org](https://www.americanimmigrationcouncil.org)).

³ See 8 U.S.C.A. § 1362 (provides the right to counsel in any removal proceedings before an immigration judge); U.S.C.A. § 1229a(b)(4)(A) (providing that an “alien shall have the privilege of being represented, at no expense to the Government, by counsel” in removal proceedings); see also *Tawadrus v. Ashcroft*, 364 F.3d 1099, 1103 (9th Cir. 2004) (court points to Congress’s recognition of right to counsel in removal proceedings grounded in “the Fifth Amendment guarantee of due process”).

⁴ See ICE, National Detention Standards 2000, *Access to Legal Material*, 1-2 (Sept. 20, 2000), <https://www.ice.gov/doclib/dro/detention-standards/pdf/legal.pdf> (“facility shall provide a law library” which “shall contain the materials listed in Attachment A [“List of Legal Reference Materials for Detention Facilities”]”) [hereinafter “ICE, *NDS 2000*”]; ICE, Performance-Based National Detention Standards, *Law Libraries and Legal Material*, 2-4 (Dec. 2, 2008), <https://www.ice.gov/doclib/dro/detention-standards/pdf/law-libraries-and-legal-material.pdf> (“facility shall provide a properly equipped law library” and “may substitute the Lexis/Nexis publications on CDROM [hereinafter “ICE, *PBND 2008*”]”; ICE, Performance-Based National Detention Standards 2011, 6.3 *Law Libraries and Legal Material*, 422-23 (Revised Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/6-3.pdf> (“facility shall provide a properly equipped law library” and “[r]egardless of whether paper versions are provided, facilities must make available in the law library any electronic media provided by ICE/ERO...may include CD-ROMs OR External Hard Drives.”) [hereinafter “ICE, *PBND 2011*”]; ICE, National Detention Standards 2019, *Standard 6.3 Law Libraries and Legal Materials*, 185-86 (Revised 2019), <https://www.ice.gov/doclib/detention-standards/2019/6-3.pdf> (“facility shall provide a law library” and “ICE/ERO shall provide each facility an electronic version of required ICE/ERO law library reference materials”) [hereinafter “ICE, *NDS 2019*”]; ICE, Family Residential Standards, 6.3 *Law Libraries and Legal Material*, 3 (revised 2020), <https://www.ice.gov/doclib/frs/2020/6.3-LawLibrariesLegalMaterial.pdf> (“Centers may make available in the law library the LexisNexis CD-ROM (or the ICE/ERO-approved equivalent) provided by ICE/ERO containing the required publications”) [hereinafter, “ICE, *FRS 2020*”].

⁵ See, ICE, ERO Custody Management Division, *List of ICE Dedicated and Non-Dedicated Facilities*, <https://www.ice.gov/doclib/facilityinspections/dedicatedNonDedicatedFacilityList.xlsx> (last updated Oct. 11, 2022).

⁶ See ICE, *NDS 2000*, *supra* note 4, at 1,3 (“[t]he law library shall provide an adequate number of typewriters and/or computers” and detainees “shall be permitted to use the law library for a minimum of five (5) hours per week”); ICE, *PBND 2008*, *supra* note 4, at 3 (“[t]he law library shall provide an adequate number of computers with printers, access to one or more photocopiers” and detainees “shall be permitted to use the law library for a minimum of five hours per week”); ICE, *PBND 2011*, *supra* note 4, at 423 (“[t]he law library shall have an adequate number of computers and printers” and detainees “shall be permitted to use the law library for a minimum of five hours per week”); ICE, *NDS 2019*, *supra* note 4, at 185-86 (the law library must be equipped with an adequate number of computers, a printer, a copier, and other writing supplies and each detainee must have access to use the law library for a minimum of five hours per week); ICE, *FRS 2020*, *supra* note 4, at 3 (the law library “will have an adequate number of computers, printers” and “[e]ach resident will be permitted to use the law library for a minimum of 10 hours per week”).

⁷ See ICE, *PBND 2011*, *supra* note 4, at 423.

⁸ See ICE, *PBND 2011*, *supra* note 4, at 423 (“[e]ach law library shall contain the materials listed in “Appendix 6.3.A.: List of Legal Reference Materials for Detention Facilities); ICE, *Legal Access in Detention At A Glance*, 2 (Aug. 2021), <https://www.ice.gov/doclib/detention/LegalAccessAtAGlance.pdf> (citing ICE, *PBND 2011* Appendix 6.3.A. for list of legal materials available in law library).

⁹ See ICE, *NDS 2000*, *supra* note 4, at 3 (requires the facility to “designate an employee with responsibility for updating legal materials, inspecting them weekly, maintaining them in good



condition, and replacing them promptly as needed"); ICE, *PBNDS 2008*, *supra* note 4, at 3 (requires "a facility law library coordinator to be responsible for updating legal materials, inspecting them weekly, maintaining them in good condition and replacing them promptly as needed"); ICE, *PBNDS 2011*, *supra* note 4, at 424 ("a facility law library coordinator to be responsible for inspecting legal materials weekly, updating them, maintaining them in good condition and replacing them promptly as needed"); ICE, *NDS 2019*, *supra* note 4, at 186 ("ICE/ERO will provide updated electronic materials to facilities on a regular basis" and an employee is responsible for "updating legal materials, inspecting them weekly, maintaining them in good condition, and replacing them promptly as needed"); ICE, *FRS 2020*, *supra* note 4, at 4 (a "Center Law Library Coordinator" is "responsible for inspecting legal materials weekly, updating them, maintaining them in good condition, and replacing them promptly as needed").

¹⁰ See ICE, *2000 National Detention Standards for Non-Dedicated Facilities*, <https://www.ice.gov/detain/detention-management/2000>.

¹¹ See ICE, *2008 Operations Manual ICE Performance-Based National Detention Standards*, <https://www.ice.gov/detain/detention-management/2008>.

¹² See ICE, *Performance-Based National Detention Standards 2011* (revised Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

¹³ See ICE, *National Detention Standards for Non-Dedicated Facilities* (revised 2019), <https://www.ice.gov/doclib/detention-standards/2019/nds2019.pdf>.

¹⁴ See ICE, *Family Residential Standards* (revised 2020), <https://www.ice.gov/doclib/frs/2020/2020family-residential-standards.pdf>.

¹⁵ See also 5 U.S.C. § 552(a)(3)(C) (requiring the agency to make reasonable efforts to search for the records in electronic form or format).

¹⁶ See *supra* note 6.

¹⁷ See H.R. Rep. No. 116-458, at 9 (2021) and H.R. Rep. No. 11-9, at 480 (2019).

¹⁸ See 168 Cong. Rec. 198-11, S8562 (daily ed. Dec. 20, 2022) (explanatory statement by Mr. Leahy, Chair of the Sen. Comm. On Appropriations, regarding H.R. 2617, Consolidated Appropriations Act, 2023).

¹⁹ See Letter from Eunice Cho, Staff Attorney at Southern Poverty Law Center, and Ericka Curran, Clinical Professor at Florida Coastal School of Law, to ICE and Folkston ICE Processing Center (Aug. 22, 2017), [folkston law library letter 2017-8-22.pdf \(splcenter.org\)](https://www.splcenter.org/folkston-law-library-letter-2017-8-22.pdf).

²⁰ See ACLU, *Coalition Letter to DHS and ICE on Access to Counsel in Immigration Detention* (Oct. 29, 2021), <https://www.aclu.org/letter/coalition-letter-dhs-and-ice-access-counsel-immigration-detention>.

²¹ See Aditi Shah and Eunice Hyunhye Cho, ACLU Research Report, *No Fighting Chance: ICE's Denial of Access to Counsel in U.S. Immigration Detention Centers* (2022), <https://www.aclu.org/report/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-centers>.

²² 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 and public education activities. See, e.g., *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 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.

²³ 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 requestors.'") (citation omitted); *Citizens for Responsibility & Ethics in Washington v. U.S. Dep't. 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).

²⁴ For example, 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. Similarly, 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.

