

March 9, 2022



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**Re: Request Under Freedom of Information Act for Records Regarding Bulk Collection of Wire Transfer Records Using 19 U.S.C. § 1509 Summonses
(Expedited Processing & Fee Waiver Requested)**

To Whom It May Concern:

The American Civil Liberties Union, the American Civil Liberties Union Foundation (together, the “ACLU”), the American Civil Liberties Union of Arizona (“ACLU of Arizona”), the American Civil Liberties Union of New Mexico (“ACLU of New Mexico”) and the American Civil Liberties Union Foundation of Texas (“ACLU Foundation of Texas”)¹ (collectively, “Requesters”) submit this Freedom of Information Act (“FOIA”) request (the “Request”) for records held by the Phoenix Field Office of Homeland Security Investigations (“HSI”) pertaining to the the use of customs summonses issued

¹ The American Civil Liberties Union Foundation 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 across the country. The American Civil Liberties Union is a separate non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The ACLU of Arizona, ACLU of New Mexico, and ACLU Foundation of Texas are separately incorporated state affiliates of the ACLU.

under 19 U.S.C. § 1509 to make bulk requests for money transfer records from wire transfer companies such as Western Union and Maxitransfers.

I. Background

On March 8, 2022, Senator Ron Wyden sent a letter to the Department of Homeland Security (“DHS”) Inspector General revealing that DHS, through the Phoenix Field Office of Immigration and Customs Enforcement, Homeland Security Investigations (the “Phoenix Field Office”) has been misusing a customs summons statute to request bulk records of money transfers made or received by people in four southwestern states.² Using summonses issued under the purported authority of 19 U.S.C. § 1509, the Phoenix Field Office directed two wire transfer companies, Western Union and Maxitransfers Corporation (“Maxi”), to turn over all records of wire transfers exceeding \$500 made to or from the states of Arizona, California, New Mexico and Texas. Western Union and Maxi were reportedly directed to provide the records to the Transaction Record Analysis Center (“TRAC”), a nonprofit organization established by the Arizona Attorney General in connection with a now-expired legal settlement with Western Union. TRAC has provided access to its stored data to “hundreds of federal, state, and local law enforcement agencies, who are able to query and use this data without any kind of court supervision.”³ TRAC’s database also reportedly includes millions of records provided by other wire transfer companies without any legal process whatsoever.

HSI’s use of the summonses raises serious questions about compliance with § 1509 and the Fourth Amendment, and the collection of these records disproportionately impacts members of poor, minority, and immigrant communities who often do not have access to banking services and therefore rely on wire transfer companies to send and receive money. The public currently lacks information on how the HSI program was started, who authorized it, how the data has been used, and the coordination between HSI and the Arizona Attorney General’s Office. This Request seeks records to provide the public with critical information that will inform debate by lawmakers and members of the public over the lawfulness of HSI’s activities.

² Senator Ron Wyden, Letter to the Honorable Joseph V. Cuffari, Inspector General of the Department Homeland Security (“Wyden Letter”) 1 (Mar. 8, 2022), available at https://www.wyden.senate.gov/imo/media/doc/DHS%20IG%20ICE_HSI%20data%20complaint%20final.pdf; see also Michelle Hackman & Dustin Volz, *Secret Surveillance Program Collects Americans’ Money-Transfer Data, Senator Says*, The Wall Street Journal (Mar. 8, 2022), <https://www.wsj.com/articles/secret-surveillance-program-collects-americans-money-transfer-data-senator-says-11646737201>; Hamed Aleaziz, *ICE Conducted Sweeping Surveillance Of Money Transfers Sent To And From The US, A Senator Says*, BuzzFeed News (Mar. 8, 2022), <https://www.buzzfeednews.com/article/hamedaleaziz/ice-western-union-records-wyden>.

³ Wyden Letter at 2.

II. Requested Records

The Requesters seek the release of the following records in the possession of the Phoenix Field Office:

1. Copies of any legal process, including summonses issued under 19 U.S.C. § 1509, issued to Western Union and Maxitransfers Corporation (“Maxi”) from January 1, 2019 to the present directing those companies to provide records regarding all wire or money transfers to or from Arizona, California, New Mexico, Texas, or Mexico (the “bulk records”) to HSI, the Arizona Attorney General, or the Transaction Record Analysis Center (“TRAC”). According to Senator Wyden’s March 8, 2022 letter, HSI has issued a total of eight such summonses, each seeking six months’ worth of prospective data;
2. From January 1, 2018 to the present, all communications with Western Union, Maxi, or any other money transfer or wire transfer company concerning the provision of bulk records regarding wire or money transfers to HSI or TRAC;
3. From January 1, 2018 to the present, all communications with the office of the Arizona Attorney General concerning:
 - a. TRAC;
 - b. Summonses issued to, other requests made to, or data received from Western Union or Maxi;
 - c. Requests to or data received from other wire transfer or money transfer companies; and
 - d. The expiration of the settlement agreement in *State of Arizona v. Western Union Financial Services, Inc.*, No. CV 2010-00507 (Maricopa County Superior Court);
4. From January 1, 2018 to the present, all communications with employees or agents of TRAC;
5. All records containing discussion or analysis of the legality of issuing the summonses described in Item 1, above;
6. All records concerning other federal, state, and local agencies, or other components of DHS, that have had access to data held by TRAC, including bulk records regarding wire or money transfer records; and
7. All records concerning the use or querying of data held by TRAC, including bulk records regarding wire or money transfer records, for vetting or immigration purposes.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), please provide the responsive electronic records electronically in their native file format, if possible. Alternatively, the records should be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and in separate, Bates-stamped files.

III. Application for Expedited Processing

The Requesters seek expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

A. *The 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. *See id.* Obtaining information about government activity, analyzing that information, and widely publishing and disseminating it to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).

The ACLU regularly publishes *ACLU Magazine*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 900,000 people. The ACLU also publishes regular updates and alerts via email to over 4.3 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to over 5.5 million social media followers. 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,⁴ and

⁴ *See, e.g.*, Press Release, ACLU, Federal Court Permanently Blocks Billions of Dollars in Border Wall Construction (June 28, 2019), <https://www.aclu.org/press-releases/federal-court-permanently-blocks-billions-dollars-border-wall-construction>; Press Release, ACLU, New Documents Reveal NSA Improperly Collected Americans’ Call Records Yet Again (June 26, 2019), <https://www.aclu.org/press-releases/new-documents-reveal-nsa-improperly-collected->

ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.⁵

americans-call-records-yet-again; Press Release, ACLU, ACLU and Center for Media Justice Sue FBI for Records on Surveillance of Black Activists (Mar. 21, 2019), <https://www.aclu.org/press-releases/aclu-and-center-media-justice-sue-fbi-records-surveillance-black-activists>; Press Release, ACLU, ACLU, Privacy International Demand Government Disclose Nature and Extent of Hacking Activities (Dec. 21, 2018), <https://www.aclu.org/press-releases/aclu-privacy-international-demand-government-disclose-nature-and-extent-hacking>; Press Release, ACLU, New Documents Reveal Government Plans to Spy on Keystone XL Protesters (Sept. 4, 2018), <https://www.aclu.org/news/new-documents-reveal-government-plans-spy-keystone-xl-protesters>; Press Release, ACLU, ACLU Obtains Documents Showing Widespread Abuse of Child Immigrants in U.S. Custody (May 22, 2018), <https://www.aclu.org/news/aclu-obtains-documents-showing-widespread-abuse-child-immigrants-us-custody>; Press Release, ACLU, ACLU Demands CIA Records on Campaign Supporting Haspel Nomination (May 4, 2018), <https://www.aclu.org/news/aclu-demands-cia-records-campaign-supporting-haspel-nomination>; Press Release, ACLU, Advocates File FOIA Request For ICE Documents on Detention of Pregnant Women (May 3, 2018), <https://www.aclu.org/news/advocates-file-foia-request-ice-documents-detention-pregnant-women>; Press Release, ACLU, Civil Rights Organizations Demand Police Reform Documents from Justice Department (Jan. 4, 2018), <https://www.aclu.org/news/civil-rights-organizations-demand-police-reform-documents-justice-department>; Press Release, ACLU, ACLU Files Lawsuits Demanding Local Documents on Implementation of Muslim Ban (Apr. 12, 2017), <https://www.aclu.org/news/aclu-files-lawsuits-demanding-local-documents-implementation-trump-muslim-ban>; Press Release, ACLU, 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, ACLU, 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, ACLU, ACLU Sues for Bureau of Prisons Documents on Approval of CIA Torture Site (Apr. 14 2016), <https://www.aclu.org/news/aclu-sues-bureau-prisons-documents-approval-cia-torture-site>.

⁵ See, e.g., Charlie Savage, *N.S.A. Gathered Domestic Calling Records It Had No Authority to Collect*, N.Y. Times, June 26, 2019, <https://www.nytimes.com/2019/06/26/us/telecom-nsa-domestic-calling-records.html> (quoting ACLU attorney Patrick Toomey); Rachel Frazin, *ACLU Sues FBI Over Black Activist Surveillance Records*, Hill, Mar. 21, 2019, <https://thehill.com/policy/national-security/fbi/435143-fbi-sued-over-black-activist-surveillance-records> (quoting ACLU attorney Nusrat Choudhury); Cora Currier, *TSA’s Own Files Show Doubtful Science Behind Its Behavioral Screen Program*, Intercept, Feb. 8, 2017, <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program> (quoting ACLU attorney Hugh Handeyside); Larry Neumeister, *Judge Scolds Government over Iraq Detainee Abuse Pictures*, The Associated Press, Jan. 18, 2017, <https://www.apnews.com/865c32eebf4d457499c017eb837b34dc> (quoting ACLU project director Hina Shamsi); Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, <http://wapo.st/2jy62cW> (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://abcn.ws/2jy40d3> (quoting ACLU 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 Nathan Freed Wessler); David Welna, *Government Suspected of Wanting CIA Torture Report to Remain Secret*, NPR, Dec. 9, 2015, <http://n.pr/2jy2p71> (quoting ACLU project director Hina Shamsi).

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.⁶ 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 multimedia projects, including videos, podcasts, and interactive features. *See* <https://www.aclu.org/multimedia>. The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU’s website also serves as a clearinghouse for news about ACLU cases, including 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

⁶ *See, e.g.*, ACLU, *Bad Trip: Debunking the TSA’s ‘Behavior Detection’ Program* (2017), https://www.aclu.org/sites/default/files/field_document/dem17-tsa_detection_report-v02.pdf; 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), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Brett Max Kaufman, *Details Abound in Drone ‘Playbook’ – Except for the Ones That Really Matter Most* (Aug. 8, 2016), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; ACLU, *Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (2016), <https://www.aclu.org/report/leaving-girls-behind>; Nathan Freed Wessler, *ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; Ashley Gorski, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>.

multi-media features.⁷

The ACLU website includes many features on information obtained through the FOIA. For example, the ACLU maintains an online “Torture Database,” a compilation of over 100,000 pages of FOIA documents that allows researchers and the public to conduct sophisticated searches of its contents relating to government policies on rendition, detention, and interrogation.⁸ The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA.⁹

The Arizona, New Mexico, and Texas affiliates of the ACLU engage in similar activities, and are therefore likewise “primarily engaged in disseminating information” within the meaning of the FOIA.

The Requesters plan to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought

⁷ See, e.g., *ACLU v. ODNI*—FOIA Lawsuit Seeking Records About Government Surveillance Under the USA Freedom Act, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-odni-foia-lawsuit-seeking-records-about-government-surveillance-under-usa-freedom-act>; *ACLU v. DOJ*—FOIA Lawsuit Seeking Information on Federal Agencies’ Surveillance of Social Media, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-doj-foia-lawsuit-seeking-information-federal-agencies-surveillance-social-media>; *ACLU v. DOJ*—FOIA Case for Records Relating to Targeted Killing Law, Policy, and Casualties, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-doj-foia-case-records-relating-targeted-killing-law-policy-and-casualties>; Executive Order 12,333—FOIA Lawsuit, ACLU Case Page, <https://www.aclu.org/cases/executive-order-12333-foia-lawsuit>; ACLU Motions Requesting Public Access to FISA Court Rulings on Government Surveillance, ACLU Case Page, <https://www.aclu.org/cases/aclu-motions-requesting-public-access-fisa-court-rulings-government-surveillance>; *ACLU v. DOJ*—FOIA Lawsuit Demanding OLC Opinion “Common Commercial Service Agreements, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-doj-foia-lawsuit-demanding-olc-opinion-common-commercial-service-agreements>; FOIA Request for Justice Department Policy Memos on GPS Location Tracking, ACLU Case Page, <https://www.aclu.org/cases/foia-request-justice-department-policy-memos-gps-location-tracking>; Florida Stingray FOIA, ACLU Case Page, <https://www.aclu.org/cases/florida-stingray-foia>; Nathan Freed Wessler, *ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida*, (Feb. 22, 2015) <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida?redirect=blog/national-security-technology-and-liberty/aclu-obtained-documents-reveal-breadth-secretive-sting>.

⁸ *The Torture Database*, ACLU Database, <https://www.thetorturedatabase.org>; see also *Countering Violent Extremism FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

⁹ *Index of Bush-Era OLC Memoranda Relating to Interrogation, Detention, Rendition and/or Surveillance*, ACLU (Mar. 5, 2009), https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf; *Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010*, ACLU (Nov. 29, 2010), <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>; *Statistics on NSL’s Produced by Department of Defense*, ACLU, https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf.

for commercial use and the Requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

B. 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).¹⁰ Specifically, they pertain to bulk collection of Americans’ sensitive personal financial data. As discussed in Part I, *supra*, law enforcement’s unfettered access to millions of wire transfer records is the subject of significant public controversy and media attention.¹¹ The records sought relate to a matter of widespread and exceptional media interest in abusive use of administrative subpoenas and similar legal process to collect Americans’ transactional records in bulk.

Further underscoring the urgency of informing the public about the information at issue in this Request are the gaps in public knowledge about this program. The letter sent by Senator Wyden to the DHS Inspector General provides important information about DHS’s practices, but the public lacks insight into their full scope, function, and legality. Given this media interest and the limited public information about details surrounding the bulk collection of money transfer records by HSI, there is an urgent need to inform the public. Debate over this program in Congress, the public, and the press is happening *now*, and information is needed on an expedited basis in order to inform that debate. Expedited processing is, therefore, appropriate under 5 U.S.C. § 552(a)(6)(E) and DHS’s implementing regulations.¹²

IV. Application for Waiver or Limitation of Fees

The ACLU requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not

¹⁰ *See also* 6 C.F.R. § 5.5(e)(1)(ii).

¹¹ *See supra* note 2; *see also* Stacy Cowley, *Homeland Security Dept. Gathered Millions of Money Transfer Records, Senator Says*, N.Y. Times (Mar. 3, 2022), <https://www.nytimes.com/2022/03/08/business/homeland-security-data-collection.html>; Mack DeGeurin, *ACLU and Sen. Ron Wyden Blast DHS for ‘Unconstitutional’ Surveillance of Money Transfers*, Gizmodo (Mar. 8, 2022), <https://gizmodo.com/dhs-engaged-in-massive-bulk-surveillance-campaign-monit-1848622771>; Chris Mills Rodrigo, *DHS Collecting Money Transfer Data Without a Warrant, Senator Says*, The Hill (Mar. 8, 2022), <https://thehill.com/policy/technology/597358-dhs-collecting-money-transfer-data-without-a-warrant-senator-says>.

¹² *See also* 6 C.F.R. § 5.5(e)(1)(ii).

primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).¹³ The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

A. *The Request is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the ACLU.*

As discussed above, this Request concerns law enforcement requests issued to Western Union or Maxi seeking bulk data about wire transfers to and from Arizona, California, New Mexico and Texas that exceeded \$500. Little information is publicly available regarding the mass collection of financial data at issue in this Request, so the records sought are certain to contribute significantly to the public’s understanding of this surveillance program.

The ACLU is not filing this Request to further its commercial interest. As described above, any information disclosed by the ACLU as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress’s legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (quotation marks omitted)).

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

The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).¹⁴ 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)¹⁵; *see also Nat’l Sec. Archive v. 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. Dep’t of Defense*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU,

¹³ *See also* 6 C.F.R. § 5.11(k)(1).

¹⁴ *See also* 6 C.F.R. § 5.11(k)(2)(iii).

¹⁵ *See also* 6 C.F.R. § 5.11(b)(6).

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. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU is therefore a “representative of the news media” for the same reasons it is “primarily engaged in the dissemination of information.”

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU's to be “representatives of the news media” as well. *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 10–15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat'l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. 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).¹⁶

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.”¹⁷ As was true in those instances, the ACLU meets the requirements for a fee waiver here.

¹⁶ 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 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.

¹⁷ The ACLU regularly receives FOIA fee waivers from federal agencies. For example, in June 2018, the U.S. Citizenship and Immigration Services granted a fee-waiver request regarding a FOIA request for documents relating to the use of social media surveillance. In August 2017, CBP granted a fee-waiver request regarding a FOIA request for records relating to a muster sent by CBP in April 2017. In June 2017, the Department of Defense granted a fee-waiver request regarding a FOIA request for records pertaining to the authorities approved by President Trump in March 2017 which allowed U.S. involvement in Somalia. In June 2017, the Department of Defense, the CIA, and the Office of Inspector General granted fee-waiver requests regarding a FOIA request for records pertaining to U.S. involvement in the torture of detainees in prisons in Yemen, Eritrea, and aboard Yemeni or Emirati naval vessels. In May 2017, CBP granted a fee-waiver request regarding a FOIA request for documents related to electronic device searches at the border. In April 2017, the CIA and the Department of State granted fee-waiver requests in relation to a FOIA request for records related to the legal authority for the use of military force in Syria. In March 2017, the Department of Defense Office of Inspector General, the CIA, and the Department of State granted fee-waiver requests regarding a FOIA request for documents related to the

* * *

Pursuant to applicable statutes and regulations, the Requesters expect a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii); 6 C.F.R. § 5.5(e)(4).

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

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

**AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION**

Nathan Freed Wessler
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Please transmit the responsive records via email if possible.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Sincerely,



Nathan Freed Wessler
Patrick Toomey
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January 29, 2017 raid in al Ghayil, Yemen. In June 2016, the Office of the Director of National Intelligence granted a fee-waiver request regarding a FOIA request related to policies and communications with social media companies' removal of "extremist" content. In May 2016, the FBI granted a fee-waiver request regarding a FOIA request issued to the Department of Justice for documents related to Countering Violent Extremism Programs.



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/s/ Maria Martinez Sanchez

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