



August 7, 2017

Laurie Day  
Chief, Initial Request Staff  
Office of Information Policy  
Department of Justice  
Suite 11050  
1425 New York Avenue, N.W.  
Washington, DC 20530-0001

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION  
IMMIGRANTS'  
RIGHTS PROJECT

RE: Request Under Freedom of Information Act  
(Expedited Processing & Fee Waiver / Limitation  
Requested)

**Dear Ms. Day:**

PLEASE RESPOND TO:  
NATIONAL OFFICE  
125 BROAD STREET, 18TH  
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The American Civil Liberties Union Foundation (“ACLU”) submits this Freedom of Information Act (“FOIA”) request for records. *See* 5 U.S.C. § 552 et seq.. This is a request for records related to communications between state attorney general offices and the U.S. Department of Justice Office of the Attorney General (“OAG”) regarding the Deferred Action for Childhood Arrivals (“DACA”) program.

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## **I. Background**

The DACA program is a critical lifeline for nearly 800,000 young immigrants who came to this country as children and know the United States as their home. DACA provides individuals permission to live and work in the country on a renewable, two-year basis.<sup>1</sup> Since its creation five years ago, DACA has enabled hundreds of thousands of young men and women nationwide to attend school, support their families, buy homes, begin careers, contribute to their communities, and pursue their dreams.

OFFICERS AND  
DIRECTORS  
SUSAN N. HERMAN  
PRESIDENT

ANTHONY D. ROMERO  
EXECUTIVE DIRECTOR

On June 29, 2017, the Attorneys General of the States of Texas, Alabama, Arkansas, Idaho, Kansas, Louisiana, Nebraska, South Carolina, Tennessee, and West Virginia, along with the Governor of Idaho (hereinafter, “the States”), sent a letter to U.S. Attorney General Jeff Sessions, requesting that the Secretary of Homeland Security “phase out the DACA program by rescinding the June 15, 2012 DACA memorandum and ordering that the

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<sup>1</sup> *See generally*, USCIS, Consideration of Deferred Action for Childhood Arrivals (DACA), <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>.

Executive Branch will not renew or issue any new DACA or Expanded DACA permits in the future.”<sup>2</sup> Should the Secretary not rescind the program by September 5, 2017, the States intend to seek to amend the complaint in *Texas v. United States*, No. 1:14-cv-254 (S.D. Tex.) to challenge the lawfulness of the DACA program.

The United States has repeatedly—and successfully—defended the legal validity of the DACA program. Indeed, every legal challenge to the DACA program has failed.<sup>3</sup> As the United States has argued in several cases,<sup>4</sup> DACA is a lawful exercise of the enforcement discretion that Congress delegated to the Executive Branch. The Secretary of Homeland Security’s authority to grant deferred action derives from the Immigration and Nationality Act (“INA”), which charges the Secretary with “the administration and enforcement” of the country’s immigration laws.<sup>5</sup> The United States has defended the Executive’s authority to establish national immigration enforcement policies and priorities as central to implementing—rather than violating—its constitutional obligation to “take Care that the Laws be faithfully executed.”<sup>6</sup> Thus, any refusal by the Sessions Justice Department to defend the DACA program would require a complete reversal of the United States’ own consistent legal positions.

However, it remains unclear whether the United States will maintain its defense of the DACA program. Attorney General Sessions has opposed the DACA program since its inception, testifying before the Senate Judiciary Committee in January 2017 that DACA is “very questionable, in my opinion, constitutionally.”<sup>7</sup> Responding to the States’ June 2017 letter, Attorney General Sessions remarked: “I like that states and localities are holding the federal government to account and expecting us to do our responsibility to the state and locals, and that’s to enforce the law.”<sup>8</sup> Former DHS Secretary John Kelly reportedly told members of Congress earlier this month that “he can’t

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<sup>2</sup> Letter from Ken Paxton, Attorney General of Texas, et. al. to the Hon. Jeff Sessions, Attorney General of the United States, June 29, 2017, *available at* [https://www.texasattorneygeneral.gov/files/epress/DACA\\_letter\\_6\\_29\\_2017.pdf](https://www.texasattorneygeneral.gov/files/epress/DACA_letter_6_29_2017.pdf)

<sup>3</sup> *See Arpaio v. Obama*, 797 F.3d 11 (D.C. Cir. 2015) (affirming order dismissing suit for lack of standing); *Crane v. Johnson*, 783 F.3d 244 (5th Cir. 2015) (same).

<sup>4</sup> *See, e.g.*, Amicus Br. of the United States at 22-27, *Ariz. Dream Act Coalition v. Brewer*, No. 15-15307 (9th Cir. filed Aug. 28, 2015); Br. of the United States at 46-50, *Arpaio v. Obama*, No. 14-5325 (D.C. Cir. filed Mar. 2, 2015).

<sup>5</sup> 8 U.S.C. § 1103(a)(1); *see also id.* § 1103(a)(3).

<sup>6</sup> U.S. Const. art. II, § 3.

<sup>7</sup> Seung Min Kim & Josh Gerstein, *Sessions denies racism charges as Dems hold their fire*, POLITICO.com (Jan. 10, 2017), <http://www.politico.com/story/2017/01/jeff-sessions-confirmation-hearing-233394>.

<sup>8</sup> Fox News, Fox & Friends, June 30, 2017, *available at* <https://www.youtube.com/watch?v=X0T9ZVH4lfk&feature=youtu.be>.

guarantee that the administration would defend [the DACA program] in court.”<sup>9</sup> These statements raise serious questions regarding the United States’ commitment to defending the legality of DACA program against the States’ threatened litigation, as well as questions about possible communications regarding the *Texas* litigation between the States and members of the Trump administration.

## II. Records Requested

The ACLU requests all records<sup>10</sup> related to communications between employees of the Offices of the Attorney General of the States of Texas, Alabama, Arkansas, Idaho, Kansas, Louisiana, Nebraska, South Carolina, Tennessee, and West Virginia, as well as the Office of the Governor of Idaho (“the States”), and employees of the U.S. Department of Justice Office of the Attorney General regarding the DACA program. We specifically request records related communications between January 20, 2017 to the date of the response to this request, including but not limited to the States’ plans to challenge the legality of the DACA program in *Texas v. United States*, No. 1:14-cv-254 (S.D. Tex.).

The ACLU also requests all records related to communications between employees of the Offices of the Attorney General of the States of Texas, Alabama, Arkansas, Idaho, Kansas, Louisiana, Nebraska, South Carolina, Tennessee, and West Virginia, as well as the Office of the Governor of Idaho (“the States”), and members of the Trump administration transition team regarding the DACA program to the date of the response to this request, including but not limited to the States’ plans to challenge the legality of the DACA program in *Texas v. United States*, No. 1:14-cv-254 (S.D. Tex.).

## III. Application for Expedited Processing

The ACLU requests expedited processing. *See* 5 U.S.C. § 552(a)(6)(E). There is a “compelling need” for these records because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating

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<sup>9</sup> Ted Hesson, *Kelly Won’t Commit to Defending DACA in Court*, POLITICO.com (July 12, 2017), <http://www.politico.com/story/2017/07/12/john-kelly-daca-legal-challenge-240470>.

<sup>10</sup> For the purposes of this request, “Records” are collectively defined to include, but are not limited to: text communications between phones or other electronic devices (including, but not limited to, communications sent via SMS or other text, Blackberry Messenger, iMessage, WhatsApp, Signal, Gchat, or Twitter direct message); e-mails; images, video, and audio recorded on cell phones; voicemail messages; social-media posts; instructions; directives; guidance documents; formal and informal presentations; training documents; bulletins; alerts; updates; advisories; reports; legal and policy memoranda; contracts or agreements; minutes or notes of meetings and phone calls; and memoranda of understanding.

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

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). The requested records seek to inform the public about communications between OAG employees and the States regarding their threatened legal challenge to the DACA program. There is a compelling and urgent need to inform the public about the views and actions of OAG employees regarding this legal challenge, given the DACA program’s importance to immigrant communities and the U.S. economy, and the questions regarding the administration’s commitment to defending the program’s legality.

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

The ACLU is “primarily engaged in disseminating information” within the meaning of the FOIA. 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 among the ACLU’s primary activities. *See ACLU v. U.S. 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”).<sup>11</sup>

The ACLU regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,<sup>12</sup> and ACLU

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<sup>11</sup> Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU 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>12</sup> *See, e.g.,* 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->

attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.<sup>13</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>14</sup>

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The ACLU publishes several widely-read blogs 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

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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>.

<sup>13</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/national-security/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/national-security/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-detention-program/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>14</sup> See, e.g., ACLU, *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-prisons-covered-its-visit-cias-torture>; ACLU, *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>; ACLU, *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-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; ACLU, *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-executive-order-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).

liberties news through multi-media 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](http://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, 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.

The ACLU website includes many features on information obtained through the FOIA.<sup>15</sup> 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. Similarly, 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 FOIA documents relating to government policies on rendition, detention, and interrogation.<sup>16</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,

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<sup>15</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=cpreldirect/32088>.

<sup>16</sup> <https://www.thetorturedatabase.org>. *See also* <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

and surveillance.<sup>17</sup> Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act<sup>18</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>19</sup>; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.<sup>20</sup>

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 requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

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

#### **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 primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). 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.*

There is substantial public interest in the records sought through this Request. Given the ongoing and widespread media attention to the States' threatened legal challenge to the DACA program and the administration's commitment to defending the program, the records sought will significantly contribute to public understanding of an issue of profound public importance.

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

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<sup>17</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>18</sup> <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

<sup>19</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>20</sup> <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

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.” (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). 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 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>21</sup>

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.”<sup>22</sup> As was true in those instances, the ACLU meets the requirements for a fee waiver here.

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Pursuant to applicable statutes and regulations, the ACLU expects a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii).

If the Request is denied in whole or in part, the ACLU asks that you justify all deletions by reference to specific FOIA exemptions. The ACLU expects the release of all segregable portions of otherwise exempt material. The ACLU

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<sup>21</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>22</sup> In May 2016, the FBI granted a fee-waiver request regarding a FOIA request issued 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 a 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 Department of Justice 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 for 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.

reserves 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:

Michael Tan  
ACLU Immigrants' Rights Project  
125 Broad Street—18th Floor  
New York, New York 10004  
T: 347-714-0740  
mtan@aclu.org

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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).

Respectfully,



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Michael Tan  
ACLU Immigrants' Rights Project  
125 Broad Street—18th Floor  
New York, New York 10004  
T: 347-714-0740  
mtan@aclu.org