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Lynn Parker Dupree
Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. Ave SE
Washington, DC 20528-065

Office of Intelligence and Analysis, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. Ave SE
Washington, DC 20528-065

Office for Civil Rights and Civil Liberties, Mail Stop 0190
Department of Homeland Security
2707 Martin Luther King Jr. Ave SE
Washington, DC 20528-065



Re: Freedom of Information Act Request (Expedited Processing Requested)

To Whom it May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”)¹ submit this Freedom of Information Act request (the “Request”). The Request seeks records pertaining to Department of Homeland Security (“DHS”) initiatives intended to address domestic violent extremism, including the establishment of the Center for Prevention Programs and Partnerships (“CP3”) and a domestic terrorism branch within the Office of Intelligence and Analysis (“I&A”). The Request also seeks information regarding how these initiatives impact civil rights and civil liberties and whether and how civil liberties, rights, and privacy are safeguarded.

I. Background

DHS announced the establishment of the Center for Prevention Programs and Partnerships on May 11, 2021.² According to Secretary Mayorkas, CP3

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.

² See Press Release, Department of Homeland Security, DHS Creates New Center for Prevention Programs and Partnerships and Additional Efforts to Comprehensively Combat Domestic Violent Extremism (May 11, 2021), <https://www.dhs.gov/news/2021/05/11/dhs-creates-new-center-prevention-programs-and-partnerships-and-additional-efforts>.



replaces the Office for Targeted Violence and Terrorism Prevention (“TVTP”) and focuses on “threat assessments” intended to detect “risk factors for radicalization to violence.”³ In the same statement, DHS also announced the creation of a new domestic terrorism branch within the Office of Intelligence and Analysis (“I&A”) that would leverage the National Network of Fusion Centers to produce “timely intelligence needed to combat threats posed by domestic terrorism and targeted violence.”⁴

These initiatives are part of broader DHS programming related to domestic violent extremism, including violent white supremacy. In January 2021, DHS issued the first National Terrorism Advisory System Bulletin focused domestically.⁵ DHS Secretary Mayorkas also designated combating domestic violent extremism as a priority area for Federal Emergency Management Agency grant programs, requiring state, local, tribal, and territorial governments to spend at least \$77 million of DHS grant awards towards this cause.⁶ DHS described this effort as a “whole-of-society” approach, including collaboration across every level of government, the private sector, non-governmental organizations, and communities.⁷

Since this announcement, DHS has released very little information about CP3 and the new I&A domestic terrorism branch. DHS only added “targeted violence” to its prevention objectives in 2019, and sought to formulate a definition of “targeted violence” by October 1, 2020.⁸ And while DHS states that both CP3 and the new I&A domestic terrorism branch are intended to address domestic terrorism and targeted violence, DHS has not publicly released information regarding how it defines those phenomena. Similarly, while CP3 claims to coordinate extensively with the DHS Office for Civil Rights and Civil Liberties (“CRCL”) in its prevention mission,⁹ the public has no information about CRCL’s role, how its input factors into CP3’s work, and whether and how civil liberties, rights, and privacy are safeguarded.

The lack of publicly available information regarding CP3 and the I&A

³ Department of Homeland Security, *Center for Prevention Programs and Partnerships Overview* (Feb. 28, 2022), <https://www.dhs.gov/sites/default/files/2022-02/The%20Center%20for%20Prevention%20Programs%20and%20Partnerships.pdf>.

⁴ *See id.*

⁵ *See e.g., id.*; Department of Homeland Security, *National Terrorism Advisory System Bulletin* (Jan. 27, 2021), https://www.dhs.gov/sites/default/files/ntas/alerts/21_0127_ntas-bulletin.pdf.

⁶ *See supra* note 2.

⁷ *Id.*

⁸ Department of Homeland Security, *Strategic Framework for Countering Terrorism and Targeted Violence Public Action Plan* (Sept. 2020), https://www.dhs.gov/sites/default/files/publications/cttv_action_plan.pdf (“2020 DHS Strategic Framework”).

⁹ *See supra* note 3.



domestic terrorism branch is particularly concerning given DHS's history of using flawed counterterrorism frameworks that disproportionately impact communities of color and immigrants. By viewing American communities through a threat-based security lens, these programs have targeted and harmed Black and Brown people, particularly Muslims, as well as other marginalized communities. For example, the Countering Violent Extremism program created under the Obama administration utilized a deeply flawed approach that called on social service providers and community members to identify potentially "extremist" individuals based on vague and broad criteria that encompassed lawful speech and association.¹⁰ The Trump administration also adopted this model in creating the TVTP Office, raising the same acute concerns for communities of color and immigrants.¹¹ CP3 comes in the shadow of these harmful and ineffective programs and appears to use similar frameworks and methods such as "threat assessments" intended to detect "risk factors for radicalization to violence," without clear guidelines, definitions, or safeguards to protect civil rights and civil liberties.¹²

I&A's domestic terrorism branch raises similar concerns, including because it focuses on information sharing through the National Network of Fusion Centers. Established after the September 11, 2001 attacks to facilitate information sharing between federal, state, and local law enforcement agencies, fusion centers are notorious for targeting communities of color and tracking First Amendment-protected activity.¹³ For example, in recent years, DHS has used fusion centers to monitor protesters at Standing Rock, those protesting the Trump administration's family separation and border policies, and Black Lives Matter activists.¹⁴ In 2012, the Senate Subcommittee on Investigations issued a report that was sharply critical of fusion centers and cast serious doubt on their effectiveness.¹⁵

¹⁰ See Murtaza Hussain, *Federal 'Countering Violent Extremism' Grants Focus on Minority Communities – Including in Schools*, Intercept, (Jun. 15, 2018), <https://theintercept.com/2018/06/15/cve-grants-muslim-surveillance-brennan-center/>.

¹¹ See Press Release, DHS, Acting Secretary McAleenan Announces Establishment of DHS Office for Targeted Violence and Terrorism Prevention (Apr. 19, 2019), <https://www.dhs.gov/news/2019/04/19/acting-secretary-mcaleenan-announces-establishment-dhs-office-targeted-violence-and>.

¹² Department of Homeland Security, *Center for Prevention Programs and Partnerships Overview* (Feb. 28, 2022), <https://www.dhs.gov/sites/default/files/2022-02/The%20Center%20for%20Prevention%20Programs%20and%20Partnerships.pdf>.

¹³ American Civil Liberties Union, *What's Wrong with Fusion Centers* (2008), <https://bit.ly/3dRTeHo>.

¹⁴ See Alleen Brown, Will Parrish & Alice Speri, *Standing Rock Documents Expose Inner Workings of "Surveillance-Industrial Complex"*, Intercept, June 3, 2017, <https://bit.ly/37hqoxu>; Ryan Devereaux, *Homeland Security Used a Private Intelligence Firm to Monitor Family Separation Protests*, Intercept, Apr. 29, 2019, <https://bit.ly/30vPgQH>; George Joseph, *Exclusive: Feds Regularly Monitored Black Lives Matter Since Ferguson*, Intercept, July 24, 2015, <https://bit.ly/30tOkMT>.

¹⁵ See United States Senate Permanent Subcommittee on Investigations Committee on Homeland Security and Governmental Affairs, *Federal Support for and Involvement in State and Local*



Furthermore, DHS created both CP3 and the new I&A domestic terrorism branch amid reports that the agency launched a strategy to identify domestic threats based on social media activity.¹⁶ Indeed, looking for real or perceived threats on the internet has become a major component of DHS activities.¹⁷ Yet, DHS has not released comprehensive information about what these efforts entail and how they are, or will be, implemented while safeguarding First Amendment-protected speech, beliefs, and activity.

Given the potential impacts CP3 and the I&A domestic terrorism branch will have on the civil rights, liberties, and privacy of communities of color, immigrants, and other marginalized communities that have already experienced harm under predecessor models, it is imperative that the public gain a greater understanding about the policies, practices, methods, and goals of both CP3 and the new I&A domestic terrorism branch.

II. Records Requested

1. All policies, guidelines, formal or informal guidance, advisories, directives, presentations, and memoranda concerning:
 - a. Specific conduct, behaviors, ideologies, theories, beliefs, opinions, and/or “risk factors” purportedly associated with targeted violence;
 - b. Behavioral threat assessment and management tools to address radicalization to violence;
 - c. How CP3 or I&A respond when an individual is identified as at risk of conducting targeted violence;
 - d. How CP3 or I&A determines which stakeholders to engage with;
 - e. How grant applications are evaluated and awarded; and

Fusion Centers (2012), <https://www.hsgac.senate.gov/download/?id=49139e81-1dd7-4788-a3bb-d6e7d97dde04>.

¹⁶ *Coalition Letter to Secretary Mayorkas Urging and End to Biased Profiling and Seeking Privacy-Protecting Surveillance Reforms*, (Sept. 15, 2021), ACLU, <https://www.aclu.org/letter/coalition-letter-secretary-mayorkas-urging-end-biased-profiling-and-seeking-privacy>; Ken Dilanian, *DHS Launches Warning System to Find Domestic Terrorism Threats on Public Social Media*, (May 10, 2021), NBC, <https://www.nbcnews.com/politics/national-security/dhs-launches-warning-system-find-domestic-terrorism-threats-public-social-n1266707>.

¹⁷ See *id.*; Domestic Violent Extremism in America, Hearing Before the Senate Comm. on Appropriations, 117th Cong. (2021) 6 (written testimony of Alejandro N. Mayorkas, secretary of homeland security, Department of Homeland Security, May 12, 2021), <https://www.appropriations.senate.gov/imo/media/doc/DHS%20Secretary%20Mayorkas%20Testimony%205.12.21.pdf>.



- f. The role and involvement of federal, state, and local law enforcement agencies in CP3 programs and activities.
2. Materials developed by DHS Science and Technology Directorate (“S&T”) and I&A’s National Threat Evaluation and Reporting (“NTER”) Program that characterize threats, identify opportunities for prevention, and evaluate terrorism and targeted violence prevention programs and interventions;
3. Input and guidance from CRCL regarding CP3 programs and activities, including any incorporation of civil rights, liberties, and privacy safeguards;
4. The online training course “Countering Terrorists Exploitation of Social Media and the Internet”;
5. Records concerning the definitions of the following terms:
 - a. “Targeted violence”
 - b. “Whole of society”
 - c. “Behavioral threat assessment”
 - d. “Radicalization” and/or “Radicalizing to violence”
 - e. “Domestic terrorism”
 - f. “Foreign Terrorist” and/or “Foreign Terrorism”
 - g. “Violent white supremacy”
 - h. “Homegrown violent extremism
6. Training materials pertaining to “targeted violence,” “prevention activities,” “behavioral threat assessments,” and “early-risk factors” leading to “radicalization to violence.”

Where a document contains information that falls into one or more of the categories described above, we seek the entirety of that document. If processing the entirety of a given document would be unusually burdensome, we ask that you give us an opportunity to narrow our request. Please disclose all segregable portions of otherwise exempt records. *See* 5 U.S.C. § 552(b).

We request that responsive electronic records be provided electronically in their native file format. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and in separate, Bates-stamped files.

III. Request for Expedited Processing



The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).¹⁸ 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 is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).¹⁹ 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 Am. Civil Liberties Union 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”).²⁰

The ACLU regularly publishes the *ACLU* 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 4.8 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to over 5.9 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,²¹ and

¹⁸ *See also* 6 C.F.R. § 5.5(e).

¹⁹ *See also id.* § 5.5(e)(1)(ii).

²⁰ 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. DOD*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

²¹ *See, e.g.*, Press Release, Documents Obtained by ACLU Reveal Border Patrol Agents Were Authorized to Use Deadly Force at George Floyd’s Burial (Oct. 1, 2020), <https://www.aclu.org/press-releases/documents-obtained-aclu-reveal-border-patrol-agents-were-authorized-use-deadly-force>; Press Release, New Documents Reveal NSA Improperly Collected Americans’ Call Records Yet Again (Jun. 26, 2019), <https://www.aclu.org/press-releases/new-documents-reveal-nsa-improperly-collected-americans-call-records-yet-again>; 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>

ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.²²

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.²³ The ACLU also



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>.

²² See, e.g., Melissa del Bosque, *Secretive CBP Counterterrorism Teams Interrogated 180,000 U.S. Citizens Over Two-Year Period*, Intercept, <https://theintercept.com/2021/09/04/cbp-border-tactical-terrorism-response-teams/> (quoting ACLU attorneys Scarlet Kim and Hugh Handeyside); Tami Abdollah, *Documents Show NSA Again Improperly Collected Call Records*, Associated Press, <https://apnews.com/article/c87c6b215d22436699dbc57ce6dda63d> (quoting ACLU attorney Patrick Toomey); Sep. 4, 2021, 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); 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 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://n.pr/2jy2p71> (quoting ACLU project director Hina Shamsi).

²³ 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->



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>. 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, 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.²⁴

The ACLU website includes many features on information obtained

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>.

²⁴ *See, e.g., 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>.



through the FOIA. The ACLU maintains an online “CVE FOIA Database,” a compilation of FOIA documents produced in response to a FOIA lawsuit for information related to the federal government’s “Countering Violent Extremism” programs, and the “Social Media Surveillance FOIA Database,” a compilation of records related to the use of social media surveillance by federal agencies for the purpose of conducting extreme vetting.²⁵ The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA.²⁶

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.

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). Specifically, the records relate to DHS’s creation of two new entities intended to monitor and prevent targeted violence and domestic terrorism. As explained in Part I, *supra*, CP3 and the I&A domestic terrorism branch appear to rely on terrorism frameworks and prevention activities that have long targeted communities of color, but little information is available to the public about how they will implement their respective mandates and the potential consequences they will have on marginalized communities.

Law enforcement practices are the subject of widespread and sustained public and media interest.²⁷ This is especially so now that advances in technology

²⁵ *Countering Violent Extremism FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/cve-foia-documents>; *Social Media Surveillance FOIA Database*, ACLU Database, <https://www.aclu.org/foia-collection/social-media-surveillance-foia-database>; *see also 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>.

²⁶ *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/faafoia_20101129/20101129Summary.pdf; *Statistics on NSL’s Produced by Department of Defense*, ACLU, https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf.

²⁷ *See, e.g.,* Zack Budryk, *FBI Monitoring Nonviolent Immigration Protestors at Border: Report*, Hill, Sept. 4, 2019, <https://thehill.com/homenews/administration/459962-fbi-monitoring-non-violent-immigration-protesters-at-border-report>; Byron Tau & Sadie Gurman, *Legal Constraints Hobble FBI’s Fight Against Domestic Terror*, Wall Street J., Aug. 22, 2019, <https://www.wsj.com/articles/legal-constraints-hobble-fbis-fight-against-domestic-terror-11566478801>.



and sprawling information-sharing infrastructures have made it even easier for the government to monitor and investigate those it deems to be a threat.²⁸ Recent reporting shows that law enforcement agencies, including DHS, have partnered with private corporations to monitor activists and continue profiling people of color.²⁹ In fact, DHS's CP3 announcement came immediately after it launched a social media warning system apparently intended to detect domestic terrorism threats.³⁰ Concurrently, there has been a rise in white supremacist violence and hate crimes that have targeted racial and religious minorities, and the government's overall failure to address this form of ideological violence has generated sustained public and media interest.³¹ The TVTP Office, which CP3 replaces, sparked criticism from communities of color for replicating failed counterterrorism frameworks.³² The creation of CP3 has prompted similar reactions and concerns from affected communities.³³ Without more information, members of the public cannot understand the scope, activities, and effects of key DHS terrorism-prevention entities. The public thus urgently needs information about the activities, programs, and goals of these relatively new DHS entities.

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

²⁸ See, e.g., Will Parrish & Sam Levin, *'Treating Protest as Terrorism': US Plans Crackdown on Keystone XL Activists*, Guardian, Sept. 20, 2018, <https://www.theguardian.com/environment/2018/sep/20/keystone-pipeline-protest-activism-crackdown-standing-rock>; Will Parrish & Jason Wilson, *Revealed: Anti-Terror Center Helped Police Track Environmental Activists*, Guardian, Oct. 2, 2019, <https://www.theguardian.com/us-news/2019/oct/02/oregon-pipelines-protests-monitoring-police-anti-terror-unit>.

²⁹ See, e.g., McKenzie Funk, *How ICE Picks its Targets in the Surveillance Age*, N.Y. Times, N.Y. Times Mag., Oct. 2, 2019, <https://www.nytimes.com/2019/10/02/magazine/ice-surveillance-deportation.html>; April Glasser, *Palantir Said It Had Nothing to Do With ICE Deportations. New Documents Seem to Tell a Different Story.*, Slate, May 2, 2019, <https://slate.com/technology/2019/05/documents-reveal-palantir-software-is-used-for-ice-deportations.html>.

³⁰ See Ken Dilanian, *DHS Launches Warning System to Find Domestic Terrorism Threats on Public Social Media*, NBC News, May 10, 2021, <https://www.nbcnews.com/politics/national-security/dhs-launches-warning-system-find-domestic-terrorism-threats-public-social-n1266707>.

³¹ See, e.g., Sam Adler-Bell, *More Government Power Is the Wrong Way to Fight White Supremacy*, New Republic, Aug. 7, 2019, <https://newrepublic.com/article/154700/fbi-domestic-white-terrorism-el-paso-expansion-security-state>; Elisha Fieldstadt & Ken Dilanian, *White Nationalism-Fueled Violence Is on the Rise, but FBI Is Slow to Call it Domestic Terrorism*, NBC News, Aug. 5, 2019, <https://www.nbcnews.com/news/us-news/white-nationalism-fueled-violence-rise-fbi-slow-call-it-domestic-n1039206>.

³² Alex Ruppenthal & Asraa Mustufa, *As Trump Relaunches Countering Violent Extremism, Records on Past Illinois Program Reveal Links to FBI, Law Enforcement*, Chicago Reporter, Aug. 14, 2020, <https://www.chicagoreporter.com/as-trump-relaunches-countering-violent-extremism-records-on-past-illinois-program-reveal-links-to-fbi-law-enforcement/>.

³³ Betsy Woodruff Swan, *DHS Stands Up Domestic Terror Intelligence Team*, Politico, May 11, 2021, <https://www.politico.com/news/2021/05/11/dhs-domestic-terror-intelligence-487145>.



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).³⁴ 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, credible media and other investigative accounts underscore the substantial public interest in the records sought through this Request. Given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance. Because limited information about the DHS’s Center for Prevention Programs and Partnerships and the I&A domestic terrorism branch is publicly available, the records sought are certain to contribute significantly to the public’s understanding of the scope of the new office’s mandate and activities.

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). 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)³⁵; *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,

³⁴ *See also* 6 C.F.R. § 5.11(b).

³⁵ *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); *Am. Civil Liberties Union 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”); *Am. Civil Liberties Union*, 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. Internal Revenue Servs.*, 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).³⁶

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.”³⁷ As was true in those instances, the ACLU meets the requirements for a fee waiver here.

³⁶ 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.

³⁷ 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, Customs and Border Protection (“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 January 29, 2017 raid in al Ghayil, Yemen. In June 2016, the Office of the Director of National Intelligence granted a fee-waiver

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Pursuant to applicable statute and regulations, the ACLU expects a determination regarding expedited processing within ten calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(e)(4).

If the request is denied in whole or in part, the ACLU asks that you justify all withholdings by reference to specific exemptions to the FOIA. The ACLU also expects the release of all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b).

Please send all correspondence and records relating to this request to:



Sana Mayat
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
smayat@aclu.org
nspfoia@aclu.org

I affirm that the foregoing information provided in support of the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,
/s/ Sana Mayat
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10004
smayat@aclu.org
nspfoia@aclu.org

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.