



September 5, 2017

FOIA/PA  
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U.S. Department of Homeland Security  
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Stop – 0655  
Washington, DC 20528-0655  
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VIA ELECTRONIC MAIL

***Re: Freedom of Information Act Request / Expedited Processing Requested***

To Whom This May Concern:

This letter is a request for records (“Request”) made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the relevant implementing regulations, *see* 6 C.F.R. § 5 *et seq.* (Department of Homeland Security, Disclosure of Records and Information). The Request is submitted by the American Civil Liberties Union Foundation of Vermont, the American Civil Liberties Union of New Hampshire Foundation, and the American Civil Liberties Union of Maine Foundation (collectively, “Requesters”).

Requesters seek the disclosure of records related to U.S Immigration and Customs Enforcement (“ICE”) and U.S. Customs and Border Protection (“CBP”) enforcement operations in Vermont, New Hampshire, and Maine.

**BACKGROUND**

In the lead-up to and early days of the Trump administration, immigration enforcement in Vermont, New Hampshire, and Maine has been the subject of intense public interest.

**A. Vermont**

Just days into the Trump administration, Vermont’s attorney general announced the creation of an immigration task force to help address the anxiety and fear Vermonters were

experiencing in the face of the administration’s immigration enforcement agenda.<sup>1</sup> One month later, Vermont’s governor unveiled a bill aimed at limiting local law enforcement involvement in enforcing federal immigration law; the bill garnered tri-partisan support, was passed unanimously by the Senate and overwhelmingly by the House, and was signed into law in March.<sup>2</sup> In May, the Governor signed into law a bill requiring all Vermont law enforcement agencies to adopt a revised Fair and Impartial Policing policy that, without conflicting with federal law, strengthens existing limitations on their involvement in immigration enforcement.<sup>3</sup>

The law mandating the creation of a Fair and Impartial Policing policy was originally passed in 2014 in response to Vermont law enforcement agency collaboration with federal immigration authorities by alerting them to individuals suspected of being in the United States without authorization.<sup>4</sup> In 2013, Vermont adopted a law allowing all people to obtain drivers’ privilege cards without regard to immigration status.<sup>5</sup> Records obtained pursuant to public records requests demonstrated that Vermont Department of Motor Vehicles (“DMV”) investigators were in regular communication with ICE agents about individuals who applied for these cards—in some cases even setting up meetings under false pretenses so that ICE agents could arrest suspected unauthorized immigrants. Indeed, this very conduct was the genesis of a settlement entered into by the Vermont Human Rights Commission (“HRC”), the DMV, and ACLU-VT client Abd Rababah last summer after an HRC investigation found reasonable grounds to believe that the DMV had discriminated against Mr. Rababah.<sup>6</sup>

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<sup>1</sup> See John Walters, *With Fed Policy Unclear, Donovan Creates Immigrant Task Force*, SEVEN DAYS, Jan. 25, 2017, available at <https://www.sevendaysvt.com/OffMessage/archives/2017/01/25/walters-with-fed-policy-unclear-donovan-creates-immigrant-task-force>; Peter Hirschfeld, *Trump’s Executive Orders Create Uncertainty For Immigrants In Vermont*, VT. PUB. RADIO, Jan. 25, 2017, available at <http://digital.vpr.net/post/trumps-executive-orders-create-uncertainty-immigrants-vermont#stream/o>.

<sup>2</sup> See Bill Status, S.79, An act relating to freedom from compulsory collection of personal information, available at <http://legislature.vermont.gov/bill/status/2018/S.79>; see also Cory Dawson, *VT law counters Trump’s immigration orders*, BURLINGTON FREE PRESS, Mar. 28, 2017, available at <http://www.burlingtonfreepress.com/story/news/2017/03/28/vermont-governor-signs-law-immigration/99754604/>.

<sup>3</sup> See Elizabeth Hewitt, *House Advances Bills Promoting Racial Justice*, VTDIGGER, Apr. 12, 2017, available at <https://vtdigger.org/2017/04/12/house-advances-bills-promoting-racial-justice/>; Elizabeth Hewitt, *Senate Approves Racial Justice Oversight Board Bill*, VTDIGGER, Apr. 20, 2017, available at <https://vtdigger.org/2017/04/20/senate-approves-racial-justice-oversight-board-bill/>; Peter Hirschfeld, *Gov. Scott Signs Bill Establishing ‘Racial Justice Oversight Board*, VT. PUB. RADIO, May 31, 2017, available at <http://digital.vpr.net/post/gov-scott-signs-bill-establishing-racial-justice-oversight-board#stream/o>.

<sup>4</sup> See Emily Corwin & Kathleen Masterson, *Between VT And N.H., Police Reporting Of Unauthorized Immigrants Varies Dramatically*, Vt. Pub. Radio, Apr. 3, 2017, available at <http://digital.vpr.net/post/between-vt-and-nh-police-reporting-unauthorized-immigrants-varies-dramatically#stream/o>.

<sup>5</sup> See 23 V.S.A. § 603(e).

<sup>6</sup> See, e.g., Elizabeth Hewitt, *DMV Accused of Discrimination in Jordanian Deportation Case*, VTDIGGER, Dec. 21, 2015, available at <https://vtdigger.org/2015/12/21/dmv-discrimination-claimed-against->

Although this settlement required the DMV to adopt strict limitations on when and why its investigators would contact federal immigration authorities, records show that the DMV investigators continued to collaborate with ICE in apparent violation of those limitations, earning the ire of the legislators who passed the drivers privilege card law.<sup>7</sup>

In addition, since April of 2016, ICE and CBP have arrested at least seven prominent members of a Vermont human rights organization in what, to all appearances, is a campaign of retaliation for their outspoken advocacy for workers' human, labor, and civil rights. Migrant Justice is a community-based organization made up of Vermont dairy farm workers and their families that advocates for human rights and food justice.<sup>8</sup> One of Migrant Justice's most prominent campaigns is "Milk with Dignity," a program to improve conditions in the dairy industry through commitments from major food corporations to implement supply chain codes of conduct.<sup>9</sup> Ben & Jerry's signed a commitment to join the Milk with Dignity program in 2015, but so far has not followed through on this commitment.<sup>10</sup> On March 16, 2017, Migrant Justice announced a re-escalation of its Milk with Dignity campaign targeting Ben & Jerry's, including a multi-state speaking tour and culminating in a March for Dignity on May Day.<sup>11</sup> Two Migrant Justice leaders were arrested by ICE the next day.<sup>12</sup> On June 17, 2017, Migrant Justice organized a thirteen-mile march

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[deported-jordanian/](#); Elizabeth Hewitt, *DMV Changing Application Process After Discrimination Case*, VTDIGGER, Aug. 29, 2016, available at <https://vtdigger.org/2016/08/29/dmv-changing-application-process-discrimination-case/>; Mark Davis, *DMV Settled Jordanian National's Discrimination Complaint*, SEVEN DAYS, Aug. 30, 2016, available at <http://www.sevendaysvt.com/OffMessage/archives/2016/08/30/dmv-settles-jordanian-nationals-discrimination-complaint>.

<sup>7</sup> Paul Heintz, *Vermont DMV, State Police Play Nice With ICE*, SEVEN DAYS, Apr. 5, 2017, available at <http://m.sevendaysvt.com/vermont/vermont-dmv-state-police-play-nice-with-ice/Content?oid=4953143>; Elizabeth Hewitt, *Senate Panel Presses DMV on ICE Contacts*, VTDIGGER, Apr. 12, 2017, available at <https://vtdigger.org/2017/04/12/dmv-contact-ice-ongoing-commissioner-says/>.

<sup>8</sup> See Migrant Justice, *About Migrant Justice*, <https://migrantjustice.net/about>.

<sup>9</sup> See Migrant Justice, *Milk with Dignity!*, <https://migrantjustice.net/milk-with-dignity>.

<sup>10</sup> *Id.*

<sup>11</sup> Migrant Justice, *VT Dairy Workers Announce Northeast Milk with Dignity Speaking Tour*, Mar. 16, 2017, <https://migrantjustice.net/news/vt-dairy-workers-announce-northeast-milk-with-dignity-speaking-tour>.

<sup>12</sup> Morgan True, *ICE Detains Two More Migrant Justice Activists*, VTDIGGER, Mar. 17, 2017, available at <https://vtdigger.org/2017/03/17/ice-detains-two-migrant-justice-activists/>; Kathleen Masterson & Rebecca Sananes, *Federal Judge Releases Two Vermont Migrant Activists, Third Remains Detained*, VT. PUB. RADIO, Mar. 27, 2017, available at <http://digital.vpr.net/post/federal-judge-releases-two-vermont-migrant-activists-third-remains-detained#stream/0>; Milton J. Valencia, *Vermont activists set to post bond on immigration charges*, BOS. GLOBE, Mar. 28, 2107, available at <https://www.bostonglobe.com/metro/2017/03/27/vermont-activists-set-post-bond-immigration-charges/eIcbvNUSCoXJqI4SQDeU5I/story.html>; Sarah Betancourt, *In Boston, Federal Judge Holds One Vermont Immigrant Activist, Releases Two Others*, LATINO USA, Mar. 28, 2017, available at <http://latinousa.org/2017/03/28/boston-federal-judge-holds-vermont-immigrant-activist/>; Yara Simón, *Were These Vermont-Based Immigrants Detained by ICE as Retaliation for Their Activism?*, REMEZCLA

from the Vermont State House in Montpelier to the Ben & Jerry's factory in Waterbury, calling on the company to follow through on its two-year-old commitment to join the Milk with Dignity program.<sup>13</sup> Two active Migrant Justice members were arrested that night after they were stopped by CBP on their way home from participating in the march.<sup>14</sup>

## **B. New Hampshire**

U.S. immigration officials arrested more than 41,000 suspected undocumented individuals during the first 100 days of the Donald Trump presidency, an increase of nearly 38 percent over the same period the previous year. New Hampshire and the other 5 New England states actually experienced a larger percentage increase during the benchmark period; 610 were detained, up 58 percent from the same period the previous year. This dramatic increase has caused a high level of anxiety in New Hampshire's immigrant communities.<sup>15</sup>

These enforcement actions have had a real impact on families. In June 2017, a Mexican restaurant in New Boston was raided by ICE, including some of the restaurant's staff cooks and waiters.<sup>16</sup> And in February 2017, the Strafford County Jail, which houses immigration detainees, had an average of 106 immigration detainees each day, a 25 percent increase over the previous month.<sup>17</sup>

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(Mar. 24, 2017), <http://remezcla.com/culture/vermont-based-immigrants-detained-ice-retaliation-activism/>

<sup>13</sup> See Migrant Justice, *Farmworkers and Allies March 13 Miles to Ben & Jerry's Calling for Milk with Dignity*, June 22, 2017, available at <https://migrantjustice.net/news/farmworkers-and-allies-march-13-miles-to-ben-jerry%E2%80%99s-calling-for-milk-with-dignity>.

<sup>14</sup> Alicia Freese, *Border Patrol Arrests Two Mexican Farm Workers in Vermont*, SEVEN DAYS, June 19, 2017, available at <https://www.sevendaysvt.com/OffMessage/archives/2017/06/19/border-patrol-arrests-two-mexican-farm-workers-in-vermont>; Kathleen Masterson, *Two Vermont Dairy Workers Arrested And Handed Over To Immigration*, VT. PUB. RADIO, June 19, 2017, <http://digital.vpr.net/post/two-vermont-dairy-workers-arrested-and-handed-over-immigration#stream/o>; Tyler Dumont, *Dairy workers detained following weekend protest*, WCAX NEWS, June 19, 2017, available at <http://www.wcax.com/story/35696687/dairy-workers-detained-following-weekend-protest>; Lisa Rathke, *Immigrant farmworkers arrested after march*, Associated Press, June 20, 2017, available at <http://www.rutlandherald.com/articles/immigrant-farmworkers-arrested-after-march/>.

<sup>15</sup> Mark Hayward, *ICE Arrests of Illegal Immigrants Climb by 38 Percent*, UNION LEADER, May 17, 2017, available at <http://www.newhampshire.com/social-issues/ICE-arrests-of-illegal-immigrants-climb-38-percent-05172017>.

<sup>16</sup> Emily Corwin, *Mexican Restaurant in N.H. Shuts Down After Immigration Raid*, NHPR, June 9, 2017, available at <http://nhpr.org/post/mexican-restaurant-nh-shuts-down-after-immigration-raid#stream/o>.

<sup>17</sup> Emily Corwin, *N.H.'s Immigration Detention Facility Saw Spike in February*, NHPR, Mar. 21, 2017, available at <http://nhpr.org/post/nhs-immigration-detention-facility-saw-spike-february#stream/o>.

In response, several Granite State churches and community groups are starting to organize a response to increased enforcement efforts by ICE.<sup>18</sup> And in June 2017, religious leaders in the state hosted an interfaith prayer vigil in front of the Norris Cotton Federal Building in Manchester to show support for immigrant families who are facing the threat of deportation.<sup>19</sup>

### C. Maine

Since the inauguration of the Trump administration, Maine has seen an unprecedented increase in aggressive actions taken by government officials towards immigrants who reside in our state. Most notably, ICE officers detained Abdi Ali, a Somali asylum seeker, inside a Portland courthouse while he met privately with his court-appointed lawyer regarding a charge of operating under the influence.<sup>20</sup> The arrest was the first of its kind in Maine and has prompted an outpouring of criticism from Maine's legal community. Maine Attorney General Janet Mills spoke out publicly against the ICE action, and addressed a letter to Homeland Security and the U.S. Attorney warning that such actions would "have an unnecessary chilling effect on our efforts to obtain the cooperation of victims and our successful prosecution of crimes."<sup>21</sup> Mills further emphasized the need to avoid such a chilling effect, because "[i]n investigating matters of human trafficking, domestic violence and the like, it is critical to us that all individuals have free and open access to Maine courts, regardless of their immigration status."<sup>22</sup> Additionally, the ACLU of Maine was joined by 179 lawyers from a range of practice areas across the Maine Bar in addressing a letter to U.S. Attorney General Jeff Sessions and Homeland Security Secretary John Kelly to express the contempt felt towards ICE's actions and demand that courthouses be treated as "sensitive locations" where ICE enforcement should be avoided, and

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<sup>18</sup> Mark Hayward, *NH Churches, Community Groups Plan Response to ICE Efforts*, UNION LEADER, Apr. 04, 2017, available at <http://www.unionleader.com/social-issues/NH-churches-community-groups-plan-response-to-ICE-efforts-040520167>.

<sup>19</sup> Laura Montenegro, *NH Vigil Planned Against Deportation of "Law-Abiding" Immigrants in U.S. Illegally*, NH1, June 5, 2017, available at <http://www.nh1.com/news/nh-vigil-planned-against-deportation-of-law-abiding-immigrants-in-u-s-illegally/>.

<sup>20</sup> Danielle Waugh, *Ice Agents Make First Immigrant Arrest as Maine Courthouse*, NEW ENGLAND CABLE NEWS, Apr. 7, 2017, available at <http://www.necn.com/news/new-england/ICE-Agents-Make-First-Immigrant-Arrest-In-Maine-41867493.html>; Jennifer Mitchell & Caroline Losneck, *Immigrants fear for the future after series of ICE arrests in Maine*, BANGOR DAILY NEWS, Apr. 16, 2017, available at <http://bangordailynews.com/2017/04/16/politics/immigrants-fear-rough-waters-after-federal-agents-arrest-maine-immigrants/>.

<sup>21</sup> Judy Harrison, *Janet Mills warns ICE courthouse arrests could have a 'chilling effect' in Maine*, BANGOR DAILY NEWS, Apr. 20, 2017, available at <http://bangordailynews.com/2017/04/10/news/augusta/janet-mills-warns-ice-courthouse-arrests-could-have-a-chilling-effect-in-maine/>.

<sup>22</sup> *Id.*

emphasizing the “fundamental constitutional guarantee that all people have the right to seek redress from our system” regardless of immigration status.<sup>23</sup>

Following this incident, ICE detained Otto Morales-Caballeros, a Naples, Maine, resident who has lived in the United States for approximately 20 years. Morales-Caballeros, who was born in Guatemala, was detained “as part of the Trump administration’s move to tighten immigration enforcement.”<sup>24</sup> Morales-Caballeros was detained while on his way to work, and subsequently held at four different locations in less than three months while waiting to find out if he would be deported.<sup>25</sup> Since being deported to Guatemala, a country that Morales-Caballeros says feels foreign to him after twenty years in the United States, the press has continued to cover his case and fear and anxiety continue to cripple immigrants throughout Maine’s communities.<sup>26</sup>

Such fear and anxiety is well warranted following these two arrests in Maine, and the overall impact of the Trump administration implementing broad and far-reaching initiatives for mass deportation. Nationwide, the largest increases in deportations have been among immigrants with no criminal records or minor non-violent offenses such as Ali and Morales-Caballeros.<sup>27</sup> Meanwhile, these arrests and the Trump administration’s overarching theme of mass deportation has prompted anti-immigrant laws in Maine, fueling concerns about the safety and security of law-abiding immigrants in our communities. In May, state Senator Lawrence Lockman proposed LD366, a bill “compelling Maine cities to act as extensions of federal immigrations authorities,” essentially requiring local law enforcement officers to act as immigration officers.<sup>28</sup> The bill further proposed that any communities not cooperating,

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<sup>23</sup> American Civil Liberties Union of Maine, *Attorneys’ letter protesting ICE arrest*, available at <http://www.pressherald.com/2017/04/10/scores-of-maine-attorneys-condemn-ice-arrest-at-courthouse/document/>.

<sup>24</sup> Megan Doyle, *Undocumented Maine immigrant, in U.S. for 20 years, now close to deportation*, PORTLAND PRESS HERALD, May 10, 2017, available at <http://www.pressherald.com/2017/05/10/undocumented-maine-immigrant-in-u-s-for-20-years-now-close-to-deportation/>.

<sup>25</sup> *Id.*

<sup>26</sup> Megan Doyle, *“It’s not my world,” says Naples man deported to Guatemala*, PORTLAND PRESS HERALD, June 25, 2017, available at <http://www.pressherald.com/2017/06/25/its-not-my-world-says-naples-man-deported-to-guatemala/>.

<sup>27</sup> Maria Sacchetti, *Arrests of immigrants jump 38% in Trump’s first 100 days*, PORTLAND PRESS HERALD, May 17, 2017, available at <http://www.pressherald.com/2017/05/17/feds-ramping-up-immigrant-arrests/> (“[A]rrests of immigrants with no criminal records more than doubled [compared to the same period in 2016] to nearly 11,000, the fastest-growing category by far.”).

<sup>28</sup> Steve Mistler, *Maine House Rejects Anti-Sanctuary City Bill*, MAINE PUBLIC, May 31, 2017, available at <http://mainepublic.org/post/maine-house-rejects-anti-sanctuary-city-bill#stream/0>.



such as sanctuary cities, would lose state funds.<sup>29</sup> The bill was voted down 77-59 by the House.<sup>30</sup>

### **REQUESTERS**

The American Civil Liberties Union Foundation (“ACLU”) 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, educates the public about civil rights and civil liberties issues across the country, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes the ACLU’s members to lobby their legislators. The ACLU is dedicated to holding the government accountable to principles of due process and of the U.S. Constitution in general. The ACLU is a national, non-partisan organization of more than 1.6 million members, countless additional activists and supporters, and fifty-three affiliates nationwide. Requesters are the ACLU’s local affiliates based in Vermont, New Hampshire, and Maine, and have more than 7400, 8000, and 8000 members and supporters, respectively.

### **DEFINITIONS**

“Records”—all records or communications preserved in electronic or written form, including but 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, Facebook, Signal, Gchat, Twitter direct message, or similar form of communication), including those sent through personal devices or accounts; e-mails (including those in personal accounts); images, video, and audio, including that recorded on cell phones; voicemail messages; social-media posts; minutes or notes of meetings and phone calls; faxes; documents; data; correspondence; letters; messages; notes; contracts or agreements; memoranda of understanding; files; forms, including but not limited to I-205 forms, I-213 forms, and I-247 or I-247-related forms; logs; records; guidance; guidelines; formal and informal presentations; evaluations; audits; investigations; reviews; studies; reports; critiques; analyses; internal memoranda; legal opinions; orders; directives; instructions; training materials; criteria; standards; specifications; rules; instructions; manuals; advisories; bulletins; alerts; updates; reports; protocols; procedures; policies; or other communications.

“DHS” includes any sub-agency within the Department of Homeland Security, including Immigration and Customs Enforcement (“ICE”), Customs and Border Protection (“CBP”), and U.S. Border Patrol.

### **RECORDS REQUESTED**

Requesters seek disclosure of Records pertaining to DHS immigration enforcement actions in the state of Vermont from January 1, 2017, up to such time as an adequate search

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

for responsive Records has been conducted, including any such Records held by ICE, CBP, Border Patrol, or any other DHS component agencies, to include:

1. All Records, including but not limited to data or statistics, mentioning, referencing, relating to, or referring to any immigration enforcement action, including but not limited to any investigations, arrests, or detentions of any individual in the states of Vermont, New Hampshire, or Maine by DHS or its sub-agencies; any requests for automated license plate reader data; any boarding by DHS officials of any commercial bus or other form of public transportation to perform immigration checks; and any roadblock or checkpoint established by DHS officials.
2. All communications with, to, or from any Vermont, New Hampshire, or Maine state or local law enforcement agency—including but not limited to Departments of Motor Vehicles and Departments of Corrections—mentioning, referencing, or referring to immigration enforcement, or to the investigation, arrest, or detention of any individual, and all Records pertaining to any such communications.
3. All communications with, to, or from any Vermont, New Hampshire, or Maine state or local government official mentioning, referencing, or referring to immigration enforcement, “sanctuary” policies, detainers, or “fair and impartial policing,” or to the investigation, arrest, or detention of any individual, and all Records pertaining to any such communications.
4. All communications relating to immigration enforcement with, to, or from any Vermont, New Hampshire, or Maine businesses or business owners, including but not limited to dairy farms and other agricultural operations, and all Records pertaining to any such communications.
5. All records created, sent, received, referenced, and/or used in fulfilling and/or responding to any of the foregoing parts of this Request.

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records.

### **FORMAT OF PRODUCTION**

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that responsive documents be provided electronically in native format (i.e. Excel spreadsheets in Excel). We request that any responsive documents for which native format production is impossible be provided electronically in text-searchable, static-image format (PDF), in the best image quality in the agencies’ possession. Please provide the requested documents in the following format:

- Saved on a CD, CD-ROM, or DVD;
- Each record in a separately saved file;
- Emails should include date and time stamps and author and recipient information, including BCC and any other hidden fields, and “parent-child”



relationships should be maintained, meaning that the requester must be able to identify the attachments with emails;

- With any other metadata preserved.

## **REQUEST FOR EXPEDITED PROCESSING**

Requesters seek Track 1 expedited processing for this FOIA request pursuant to 5 U.S.C. § 552(a)(6)(E)(i) (“Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records—(I) in cases in which the person requesting the records demonstrates a compelling need . . .”). A “compelling need” exists when, “with respect to a request made by a person primarily engaged in disseminating information,” there is “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5 (d)(1)(ii).

Dissemination of information to the public about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. Specifically, the ACLU publishes a continuously updated blog, newsletters, news briefings, “Know Your Rights” documents, and other educational and informational materials that are broadly disseminated to the public.<sup>31</sup> Such material is widely available to everyone, including individuals, tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee through the ACLU’s public education department and website.

The ACLU’s national website ([www.aclu.org](http://www.aclu.org)) and the sites run by the Requester affiliates ([www.acluvt.org](http://www.acluvt.org), <https://www.aclumaine.org/>, <https://www.aclu-nh.org/>) address civil rights and civil liberties issues in depth, provide features on civil rights and civil liberties issues in the news, and contain many thousands of documents relating to the issues on which the ACLU is focused. These websites also include features highlighting information obtained through the FOIA process.<sup>32</sup>

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<sup>31</sup> See, e.g., Dan Gillmor, *In Praise of the Almost-Journalists*, SLATE, Mar. 28, 2014, available at <http://slate.me/1jg5YXx> (describing ACLU’s efforts to broadly disseminate important civil-rights-related news stories).

<sup>32</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,” <https://www.thetorturedatabase.org>, 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. See also, e.g., Targeted Killing FOIA Database, [https://www.aclu.org/foia-collection/targeted-killing-foia-database?f\[0\]=field\\_related\\_content%3A50449](https://www.aclu.org/foia-collection/targeted-killing-foia-database?f[0]=field_related_content%3A50449); FBI Releases Details of ‘Zero-Day’ Exploit Decisionmaking Process, <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; FBI Documents Reveal New Information on Baltimore Surveillance Flights, <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; ACLU v. DOJ – FOIA Case for Records Relating to Killing of Three U.S. Citizens, <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; ACLU v. Department of Defense: Accountability for Torture, <https://www.aclu.org/cases/aclu-v-department-defense>; Mapping the FBI:

In addition, the ACLU publishes a magazine at least twice a year that reports on and analyzes civil liberties-related current events; this publication is distributed to more than one million people. The ACLU also disseminates electronic civil liberties bulletins to more than 1.6 million subscribers (both ACLU members and non-members) by e-mail. Both of these newsletters often include descriptions and analyses of information obtained from the government through FOIA, as well as information about cases, governmental policies, pending legislation, abuses of constitutional rights, and polling data. *Cf. Elec. Privacy Info. Ctr. v. Dep't of Defense*, 241 F. Supp. 2d 5, 13–14 (D.D.C. 2003) (finding the Electronic Privacy Information Center to be a representative of the news media under Department of Defense regulations because it published a “bi-weekly electronic newsletter that is distributed to over 15,000 readers” about “court cases and legal challenges, government policies, legislation, civil rights, surveys and polls, legislation, privacy abuses, international issues, and trends and technological advancements”).

The ACLU also regularly publishes books, “Know Your Rights” publications, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and governmental policies that implicate civil rights and liberties. These materials are specifically designed to be educational and widely disseminated to the public. *See Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11 (finding the Electronic Privacy Information Center to be a news-media requester because of its publication and distribution of seven books on privacy, technology, and civil liberties). The ACLU further disseminates information to the public via social media platforms such as Facebook and Twitter.

Depending on the results of this request, Requesters plan to disseminate the information they receive to the public through these kinds of publications in these kinds of channels. The ACLU is therefore an organization “primarily engaged in disseminating information” within the meaning of the statute and the relevant regulations—as has been previously recognized in FOIA litigation between the ACLU and the Department of Justice. *See, e.g., ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a 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” is “primarily engaged in disseminating information” (internal citation omitted)).

There is no question that ICE immigration enforcement actions constitute federal government activity, and there is an urgent need for public transparency and information about how ICE is carrying out its activities in Vermont, New Hampshire, and Maine. Without expedited disclosure of the requested records, ICE and other DHS sub-agencies may continue to undertake enforcement actions targeting individuals, including labor organizers, in these states based on their political beliefs and activities and collaborate with local law enforcement agencies or other state or local entities in unconstitutional seizures—

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Uncovering Abusive Surveillance and Racial Profiling, <https://www.aclu.org/mappingthefbi>; Bagram FOIA, <https://www.aclu.org/cases/bagram-foia>; CSRT FOIA, <https://www.aclu.org/national-security/csrt-foia>; ACLU v. DOJ – Lawsuit to Enforce NSA Warrantless Surveillance FOIA Request, <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; PATRIOT FOIA, <https://www.aclu.org/other/patriot-foia?redirect=patriot-foia>; NSL Documents Released by DOD, <https://www.aclu.org/nsl-documents-released-dod?redirect=cpredirect/32088>.

all without Requesters being able to inform the public about these violations. As demonstrated by the many press reports cited above,<sup>33</sup> ICE's enforcement actions and collaboration with law enforcement agencies in Vermont, New Hampshire, and Maine are matters of critical importance and current exigency to residents of those states. Additional evidence of the intense public interest in these immigration enforcement actions comes from the many hundreds of people who have attended marches, rallies, and vigils in support of those detained by ICE and against ICE's tactics.<sup>34</sup> People are extremely anxious about and fearful of DHS immigration enforcement activity in Vermont, New Hampshire, and Maine, and they—and their elected officials—have an urgent need to understand how that activity is being carried out and whether and how local law enforcement agencies have participated in it. There is thus a “compelling need” for the requested records.

For all of the foregoing reasons, expedited processing of this Request is warranted and should be granted.

Requesters hereby certify that the foregoing is true and correct to the best of their knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi); 6 C.F.R. § 5.5(d)(3).

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<sup>33</sup> See *supra* nn. 1-30.

<sup>34</sup> See Mark Johnson, *Vermont Delegation, Protesters Decry Arrests of Undocumented Immigrants*, VTDIGGER, Mar. 21, 2017, available at <https://vtdigger.org/2017/03/21/vermonts-delegation-weighs-arrests-undocumented-immigrants/> (describing March 18 rally in Burlington attended by “hundreds” and March 21 rally in Montpelier attended by “[m]ore than 150 Vermonters”); Claire Halverson, *Letter: Rallying for Migrant Justice*, BRATTLEBORO REFORMER, Apr. 19, 2017, available at <http://www.reformer.com/stories/letter-rallying-for-migrant-justice.504816> (describing March 21 rally in Brattleboro attended by 200-250 people); Milton J. Valencia, *Vermont activists set to post bond on immigration charges*, BOS. GLOBE, Mar. 28, 2017, available at <https://www.bostonglobe.com/metro/2017/03/27/vermont-activists-set-post-bond-immigration-charges/eIcbvNUSCoXJqI4SQDeU5I/story.html> (describing March 28 protest attended by “hundreds of protesters” outside Boston courthouse during arrestees’ bond hearings); Elizabeth Murray & Dan D’Ambrosio, *Released Migrant Justice organizers speak out at BTV rally*, BURLINGTON FREE PRESS, Mar. 28, 2017, available at <http://www.burlingtonfreepress.com/story/news/local/2017/03/28/aclu-ice-arrests-jeff-sessions-defunding-threats-migrant-justice-rally-burlington/99704610/> (describing March 28 rally and candlelight vigil in Burlington); Masterson, *supra* note 14 (describing June 19 protests outside the facility where Hernández was being held and the ICE regional office in St. Albans, Vermont); Freese, *supra* note 14 (same); Abby Isaacs, *Dozens rally for freedom of 2 dairy farmers detained by ICE*, NBC5, June 23, 2017, available at <http://www.mynbc5.com/article/dozens-rally-for-freedom-of-2-dairy-farmers-detained-by-ice/10216427> (describing June 23 rally at Vermont State House calling for release of Peche and Hernández); Montenegro, *supra* note 19 (describing plans for an “interfaith prayer vigil Tuesday morning in front of the Norris Cotton Federal Building in Manchester to show support for immigrant families who are facing the threat of deportation”); see also Katie Jickling, *Migrant Justice Cases Spark Protest at Boston Immigration Court*, SEVEN DAYS, Mar. 27, 2017, available at <https://www.sevendaysvt.com/OffMessage/archives/2017/03/27/migrant-justice-cases-spark-protest-at-boston-immigration-court> (noting that more than 200 letters were written in support of arrestees); Johnson, *supra* (noting that “Vermont’s congressional delegation expressed “strong concerns” to federal immigration authorities over the recent arrests”); Valencia, *supra* (noting that more than 10,000 people signed a petition calling for arrestees’ release); Harrison, *supra* note 21 (describing Maine Attorney General’s letter calling on ICE to cease effecting arrests in and around courthouses); ACLU of Maine, *supra* note 23 (describing letter written by ACLU of Maine and signed by 179 Maine attorneys condemning ICE arrests at courthouses).

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

Requesters further seek a waiver of processing (search and review) fees because disclosure of these records is in the public interest and because the ACLU qualifies as a “representative of the news media.” *See* 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it 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.”); 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged “for requests by educational institutions . . . or representatives of the news media”); *id.* § 5.11(k)(1) (“Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section where a component determines, based on all available information, that the requester has demonstrated that (i) disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and (ii) disclosure of the information is not primarily in the commercial interest of the requester.”). As discussed below, federal agencies routinely grant such fee waivers for FOIA requests made by the ACLU for these reasons.

At a minimum, should a total fee waiver be denied, “fees should be limited to reasonable standard charges for document duplication” because the ACLU is 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. Disclosure of the requested records is in the public interest and is not in Requesters’ commercial interest.**

A fee waiver is appropriate if the records requested will contribute significantly to public understanding of the government’s operations or activities and the requested disclosure is not primarily in the Requesters’ commercial interest. Under 6 C.F.R. § 5.11(k)(2), the following factors are to be considered in determining whether a disclosure is in the public interest: (i) whether the subject of the requested records concerns “the operations or activities of the government”; (ii) whether the disclosure is “likely to contribute” to an understanding of government operations or activities; (iii) whether disclosure of the requested information will contribute to “public understanding,” that is, “the understanding of a reasonably broad audience of persons interested in the subject”; and (iv) whether disclosure is likely to contribute “significantly” to public understanding of government operations or activities. *See* 6 C.F.R. § 5.11(k)(2)(i)–(iv). To determine whether disclosure of the requested information is in the requester’s commercial interest, agencies consider: (i) whether the requester has a commercial interest that would be furthered by the requested disclosure; and (ii) whether the public interest is greater than any identified commercial interest in disclosure. All six of these considerations are satisfied here.

First, the records requested pertain directly to the operations and activities of the federal government (specifically, DHS and its sub-agencies, including ICE, CBP, and Border Patrol).

Second, this Request is “likely to contribute” to an understanding of government operations or activities, specifically by helping the public determine the nature and extent of

DHS immigration enforcement actions in Vermont, New Hampshire, and Maine; local law enforcement participation in those actions; and whether those actions are undertaken in a manner that comports with the U.S. Constitution and other federal laws. To the extent that agencies of the federal government are engaged in an effort to suppress the free speech of persons and organizations who advocate for fair and safe working conditions in agricultural industries, such information will be of great interest to the public. Finally, this information is not already in the public domain.

Third, disclosure of the requested information will contribute to “the understanding of a reasonably broad audience of persons interested in the subject” of how DHS is conducting immigration enforcement actions in Vermont, New Hampshire, and Maine. Among other things, Requesters intend to publish responsive records and analyze specific documents to raise public awareness of DHS activities in those states. In addition, as representatives of the news media,<sup>35</sup> Requesters are entitled to the presumption that this consideration is satisfied. § 5.11(k)(2)(iii).

Fourth, disclosure will contribute “significantly” to the public understanding of DHS activities in Vermont, New Hampshire, and Maine. As explained at length above,<sup>36</sup> immigration enforcement activity in Vermont, New Hampshire, and Maine has garnered significant and sustained public and media attention, yet much remains unknown about this critical human rights issue. To Requesters’ knowledge, the requested records are not already in the public domain. Requesters will ensure that disclosure will contribute significantly to the public understanding of these issues by reviewing and analyzing the records, and, depending on what the records reveal, synthesizing the information therein to make their import readily understandable to the public and making both the documents and the analyses publicly available on their web sites. In so doing, Requesters will help the public understand the nature and extent of ICE immigration enforcement actions in Vermont, New Hampshire, and Maine, and whether those actions are undertaken in a manner that comports with the U.S. Constitution and other federal laws. To the extent that agencies of the federal government are engaged in an effort to suppress the free speech of persons and organizations who advocate for fair and safe working conditions in agricultural industries, such information will be of great interest to the public.

Requesters have thus established, “with reasonable specificity[,] that [their] request pertains to operations of the government,” and “the informative value of a request depends not on there being certainty of what the documents will reveal, but rather on the requesting party having explained with reasonable specificity how those documents would increase public knowledge of the functions of the government.” *Citizens for Responsibility & Ethics in Wash. v. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 107–109 (D.D.C. 2006).

Fifth, disclosure of the information requested is not in the Requesters’ commercial interest. 6 C.F.R. § 5.11(k)(3)(i)–(ii). Requesters are non-profit organizations, and any information obtained as a result of this FOIA request will be made available to the public at

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<sup>35</sup> See *infra* Part C.

<sup>36</sup> See *supra* notes 1-30, 34 and accompanying text.

no cost. In addition, as representatives of the news media,<sup>37</sup> Requesters are entitled to the presumption that this consideration is satisfied. § 5.11(b)(6) (“A request for records that supports the news-dissemination function of [a representative of the news media] shall not be considered to be for a commercial use.”).

Finally, because the requested disclosure would not further *any* commercial interest of the Requesters, the disclosure is, by definition, not *primarily* in their commercial interest. In addition, because Requesters have satisfied the public interest standard and are representatives of the news media, Requesters are entitled to the presumption that this factor is satisfied. *See* 6 C.F.R. § 5.11(k)(3)(ii).

For all these reasons, the Requesters are entitled to a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k).

## **B. Requesters qualify as representatives of the news media.**

Requesters meet the statutory and regulatory definitions of a “representative of the news media” because each 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)(II) (“[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media”); *id.* § 522(a)(4)(A)(iii) (“Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it 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.”); 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged “for requests by . . . representatives of the news media”); *see also, e.g., Nat’l Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

The ACLU is a “representative of the news media” for the same reasons that it is “primarily engaged in the dissemination of information.” *See 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 FOIA purposes); *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).<sup>38</sup>

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<sup>37</sup> *See infra* Part B.

<sup>38</sup> On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. In June 2011, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006. 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

Various federal courts have held that the ACLU is a “representative of the news media.” *See, e.g., Serv. Women’s Action Network v. Dep’t of Defense*, No. 3:11CV1534 (MRK), 2012 WL 3683399, at \*3 (D. Conn. May 14, 2012); *ACLU of Wash. v. Dep’t of Justice*, No. CO9–0642RSL, 2011 WL 887731, at \*10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

For the foregoing reasons, a fee waiver or limitation should be granted. A fee waiver would also fulfill Congress’s legislative intent in amending FOIA, namely to ensure that the Act is liberally construed in favor of granting waivers for noncommercial requesters and to effectuate disclosure of documents of public importance. *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.” (internal quotation marks and citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that “disclosure, not secrecy, is the dominant objective of the Act” (quoting *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1992))).

At a minimum, should a total waiver be denied, fees should be “limited to reasonable standard charges for document duplication” because the ACLU is 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). 5 U.S.C. § 552(a)(4)(A)(ii)(II). In the event a fee waiver or reduction of costs is denied, please notify us in advance if the anticipated costs associated with this Request exceed \$100.00.

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Pursuant to the applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(d)(4).

We further expect your reply to the Request itself within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(i). If the Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material.

We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

Please furnish all responsive records to:

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granted a fee waiver to the ACLU with regard to 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 Department of Justice 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 Office of Information and Privacy in the Department of Justice—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.



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Should you need to communicate with us regarding this request, please contact me by email at the address above.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lia Ernst', with a stylized flourish at the end.

Lia Ernst  
Staff Attorney  
ACLU Foundation of Vermont