February 1, 2018

Privacy Office
Attn: FOIA Appeals
U.S. Department of Homeland Security
245 Murray Lane, SW, Mail Stop 0655
Washington, D.C. 20528-0655

Re: FOIA Appeal
Request 2017-HQFO-01317
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

To whom it may concern:

Pursuant to 5 U.S.C. § 552(a)(6) and 6 C.F.R. § 5.8(a)(1), this letter appeals the September 27, 2017, response of U.S. Department of Homeland Security ("DHS") to Freedom of Information Act ("FOIA") request No. 2017-HQFO-01317. Copies of the original request and related correspondence are attached to this letter. As required by 6 C.F.R. § 5.8(a)(1), this appeal is postmarked within 90 working days of DHS's response and is therefore timely.

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") submitted the FOIA request on September 5, 2017, via electronic mail. *See* Ex. A ("FOIA Request"). This FOIA Request sought records from January 1, 2017, up to such time as an adequate search is performed, pertaining to DHS and its components' immigration enforcement actions in the states of Vermont, New Hampshire, and Maine including, in summary: (1) records, including but not limited to data and statistics, relating to any immigration enforcement action in the three states; (2) communications with any of state or local law enforcement agency relating to immigration enforcement; (3) communications with any state or local government official relating to immigration enforcement or certain specified terms; (4) communications relating to immigration enforcement with businesses or business owners; and (5) records related to the processing of the FOIA Request. Please see the attached FOIA Request for a detailed description of the requested records. *See* Ex. A, at p. 8.

On September 15, 2017, Requesters received by email a letter from the DHS FOIA office acknowledging receipt of the Request, denying the request for expedited treatment, conditionally

granting the request for a fee waiver, invoking the statutory ten-day extension for unusual circumstances in 6 C.F.R. § 5.5(c), indicating that items 2-5 of the Request had been transferred to Immigration and Customs Enforcement ("ICE"), and stating that the appropriate component(s) of DHS had been queried with respect to item 1. *See* Ex. B.

On September 27, 2017, Requesters received a notice purporting to be a "final response" from DHS via email stating that a search of the Office of Policy (PLCY) Office of Immigration Statistics resulted in one page of responsive records, which was produced without exemption or redaction. *See* Ex. C. Requesters appeal DHS's response as inadequate because DHS has failed to meet its burden to show that it fully responded to the request or adequately searched for responsive documents. *See* 6 C.F.R. § 5.8(a)(1).

The FOIA Request contained five separate parts. As noted above, DHS indicated that it had transferred parts 2-5 of our Request to ICE. DHS gave no explanation for its apparent determination that all responsive documents would be in ICE's possession alone. At minimum, responsive records are almost certainly within the possession of Customs and Border Protection ("CBP"), particularly but not exclusively as it relates to item 2 of the Request. In addition, DHS failed to produce the records created in fulfilling this request, including any correspondence with ICE or the Office of Immigration Statistics.

DHS also failed to demonstrate that it conducted an adequate search in response to the one item in the FOIA Request to which it did respond. "An agency fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents." *Valencia-Lucena v. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (citation and internal quotation marks omitted). "'[T]he issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate.'" 21 F. Supp. 3d 60, 70 (D.D.C. 2014) (quoting *Weisberg v. Dep't of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)). An "agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested." *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990).

DHS searched only within the Office of Immigration Statistics and produced a single page of statistics, despite the fact that the Request for records relating to any immigration enforcement action in Vermont, New Hampshire, or Maine made clear that it was "not limited to data or statistics." DHS has not discharged its obligation to "demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents." *Valencia-Lucena*, 180 F.3d at 325. Its search was plainly inadequate; indeed, the one record DHS did produce reflects dozens of immigration enforcement actions in these states since January 1, 2017, yet DHS produced no records whatsoever related to these actions.

In addition, although there have been multiple reports of DHS officials boarding commercial buses to conduct immigration checks, DHS produced no records whatsoever reflecting those activities. And we know from a recent report by the Vermont Department of Public Safety that DHS components made multiple requests in 2017 to query the automated license plate reader ("ALPR") system in Vermont alone, but, again, DHS produced no records

reflecting those activities.[1] These records plainly fall within the request for records relating to *any* immigration enforcement action, but Item 1 of the Request specifically requested records related to bus boardings and requests for ALPR data.

DHS must reevaluate what offices, databases, and files it chose to search, conduct a thorough search within each office, and disclose responsive records it subsequently finds.

Requesters respectfully request that DHS conduct an adequate search and disclose all responsive records in an expeditious manner. In the event that DHS reaches an adverse determination regarding the FOIA Request or this appeal, Requesters request a complete list of documents covered by the FOIA Request and a specific indication of and a justification of any records withheld.

Requesters expect a response to this appeal within 20 working days, as required by 5 U.S.C. § 552(a)(6)(A)(ii).

Please contact Lia Ernst, by email at lernst@acluvt.org or phone at (802) 223-6304, on behalf of Requesters if you require any further information or if you have any questions related to this matter.

Sincerely,

Lia Ernst
Staff Attorney
ACLU Foundation of Vermont

[1] *See* Vermont Dep't of Public Safety, Division of State Police, *2017 Annual Report to the Vermont Senate and House Committees on Judiciary and Transportation as required by: 23 V.S.A. § 1607 AUTOMATED LICENSE PLATE READER SYSTEMS*, p. 17, available at https://legislature.vermont.gov/assets/Legislative-Reports/2017-ALPR-Report.pdf.

Exhibit A
FOIA Request

lernst@acluvt.org

From: lernst@acluvt.org
Sent: Tuesday, September 05, 2017 13:37
To: 'foia@dhs.gov'; 'US DHS Privacy Office'
Subject: FOIA request
Attachments: 2017-09-05 DHS FOIA request ACLU VT NH ME.pdf

To whom it may concern:

Please find attached a FOIA request on behalf of the ACLU Foundation of Vermont, the ACLU of Maine Foundation, and the ACLU of NH Foundation.

We look forward to receiving your response.

Sincerely,

Lia Ernst
Staff Attorney
ACLU of Vermont
P.O. Box 277
Montpelier, VT 05601
802-223-6304 x112

September 5, 2017

FOIA/PA
The Privacy Office
U.S. Department of Homeland Security
245 Murray Drive SW
Stop – 0655
Washington, DC 20528-0655
Email: foia@dhs.gov; foia@hq.dhs.gov
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.[1] 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.[2] 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.[3]

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.[4] In 2013, Vermont adopted a law allowing all people to obtain drivers' privilege cards without regard to immigration status.[5] 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.[6]

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[1] *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/0.

[2] *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/.

[3] *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/0.

[4] *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/0.

[5] *See* 23 V.S.A. § 603(e).

[6] *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.[7]

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.[8] 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.[9] 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.[10] 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.[11] Two Migrant Justice leaders were arrested by ICE the next day.[12] 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.

[7] 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/.

[8] *See* Migrant Justice, *About Migrant Justice*, https://migrantjustice.net/about.

[9] *See* Migrant Justice, *Milk with Dignity!*, https://migrantjustice.net/milk-with-dignity.

[10] *Id.*

[11] 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.

[12] 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.[13] Two active Migrant Justice members were arrested that night after they were stopped by CBP on their way home from participating in the march.[14]

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.[15]

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.[16] 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.[17]

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

[13] *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.

[14] 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/0; 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/.

[15] 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.

[16] 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/0.

[17] 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/0.

In response, several Granite State churches and community groups are starting to organize a response to increased enforcement efforts by ICE.[18] 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.[19]

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.[20] 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."[21] 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."[22] 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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[18] 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.

[19] 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/.

[20] 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/.

[21] 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/.

[22] *Id.*

emphasizing the "fundamental constitutional guarantee that all people have the right to seek redress from our system" regardless of immigration status.[23]

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."[24] 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.[25] 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.[26]

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.[27] 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.[28] The bill further proposed that any communities not cooperating,

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[23] 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/.

[24] 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/.

[25] *Id.*

[26] 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/.

[27] 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.").

[28] 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.[29] The bill was voted down 77-59 by the House.[30]

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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[29] *Id.*

[30] *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.[31] 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) and the sites run by the Requester affiliates (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.[32]

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[31] *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).

[32] 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; 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—

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,[33] 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.[34] 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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[33] *See supra* nn. 1-30.

[34] *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,[35] 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,[36] 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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[35] *See infra* Part C.

[36] *See supra* notes 1-30, 34 and accompanying text.

no cost. In addition, as representatives of the news media,[37] 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").[38]

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[37] *See infra* Part B.

[38] 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. C09–0642RSL, 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.

Lia Ernst
ACLU Foundation of Vermont
PO Box 277
Montpelier, VT 05601
lernst@acluvt.org
(802) 223-6304

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,

Lia Ernst
Staff Attorney
ACLU Foundation of Vermont

Exhibit B
September 15, 2017, Correspondence from DHS

lernst@acluvt.org

From: foia@hq.dhs.gov
Sent: Friday, September 15, 2017 11:04
To: lernst@acluvt.org
Subject: Department of Homeland Security FOIA 2017-HQFO-01317 Acknowledgment
Attachments: Ack - Conditional Grant - Fee Waiver (Other Non-Commercial)1.Docx

Good Morning,

Attached is our acknowledgment of your DHS FOIA request. If you need to contact this office again concerning your request, please provide the DHS reference number. This will enable us to quickly retrieve the information you are seeking and reduce our response time. This office can be reached at 866-431-0486.

Regards,

DHS Privacy Office
Disclosure & FOIA Program
STOP 0655
Department of Homeland Security
245 Murray Drive, SW
Washington, DC 20528-0655
Telephone: 1-866-431-0486 or 202-343-1743
Fax: 202-343-4011
Visit our FOIA website

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

Privacy Office, Mail Stop 0655

September 15, 2017

SENT VIA E-MAIL TO: lernst@acluvt.org

Lia Ernst
Staff Attorney
ACLU Foundation of Vermont
PO Box 277
Montpelier, VT 05601

Re: **2017-HQFO-01317**

Dear Ms. Ernst:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated September 05, 2017, and to your request for expedited handling and a waiver of all assessable FOIA fees. Our office received your request on September 05, 2017. Specifically, you requested records pertaining to DHS immigration enforcement actions in the state of Vermont from January 1, 2017, up to such time as an adequate search 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.

Your request for expedited treatment is hereby denied.

Under the DHS FOIA regulations, expedited processing of a FOIA request is warranted if the request involves "circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," 6 C.F.R. Part 5 § 5.5(e)(1)(i); "an urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information," 6 C.F.R. Part 5 § 5.5(e)(1)(ii); "the loss of substantial due process rights," 6 C.F.R. Part 5 § 5.5(e)(1)(iii); or "a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence," 6 C.F.R. Part 5 § 5.5(e)(1)(iv). Requesters seeking expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct pursuant to 6 C.F.R. Part 5 § 5.5(e)(3).

Your request for expedited processing is denied because you do not qualify under any category pursuant to 6 C.F.R. Part 5 § 5.5(e)(1). You have not established that lack of expedited treatment in this case will pose an imminent threat to the life or physical safety of an individual. You have not established the loss of substantial due process rights. While you may be primarily engaged in the dissemination of information, you have not detailed with specificity why you feel there is an urgency to inform the public about the subject matter of the request. Qualifying urgency would need to exceed the public's right to know about government activity generally. You also did not offer sufficient supporting evidence of an interest of the public greater than the public's general interest in the subject matter of the request. Finally, you did not establish this is a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

You have requested a fee waiver. The DHS FOIA regulations at 6 C.F.R. Part 5 § 5.11(k) set forth six factors DHS must evaluate to determine whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations or activities of the government," (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities, (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons, (4) Whether the contribution to public understanding of government operations or activities will be "significant," (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure, and (6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Upon review of the subject matter of your request, and an evaluation of the six factors identified above, DHS has determined that it will conditionally grant your request for a fee waiver. The fee waiver determination will be based upon a sampling of the responsive documents received from the various DHS program offices as a result of the searches conducted in response to your FOIA request. DHS will, pursuant to DHS FOIA regulations applicable to non-commercial requesters, provide two hours of search time and process the first 100 pages at no charge to you. If upon

review of these documents, DHS determines that the disclosure of the information contained in those documents does not meet the factors permitting DHS to waive the fees, then DHS will at that time either deny your request for a fee waiver entirely, or will allow for a percentage reduction in the amount of the fees corresponding to the amount of relevant material found that meets the factors allowing for a fee waiver. In either case, DHS will promptly notify you of its final decision regarding your request for a fee waiver and provide you with the responsive records as required by applicable law.

In the event that your fee waiver is denied, and you determine that you still want the records, provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester you will be charged for any search time and duplication beyond the free two hours and 100 pages mentioned in the previous paragraph. You will be charged 10 cents per page for duplication and search time at the per quarter-hour rate ($4.00 for clerical personnel, $7.00 for professional personnel, $10.25 for managerial personnel) of the searcher. In the event that your fee waiver is denied, we will construe the submission of your request as an agreement to pay up to $25.00. This office will contact you before accruing any additional fees.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. Part 5 § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances under 6 C.F.R. Part 5 § 5.5(c). As your request seeks documents that will require a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request pursuant to 6 C.F.R. Part 5 § 5.5(c). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

We have queried the appropriate component(s) of DHS for responsive records for item 1 of your request. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the analysts in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Our office transferred your request to ICE for items 2-5 of your request. Their contact information is:

Freedom of Information Act Office
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009
FOIA Officer: Catrina Pavlik-Keenan
FOIA Requester Service Center Contact: Fernando Pineiro
Phone: 866-633-1182
Fax: 202-732-4265
E-mail: ice-foia@dhs.gov
ICE Website

Your request has been assigned reference number **2017-HQFO-01317**. Please refer to this identifier in any future correspondence. The status of your FOIA request is now available online and can be accessed at: https://www.dhs.gov/foia-status, by using this FOIA request number. Status information is updated daily. Alternatively, you can download the DHS eFOIA Mobile App, the free app is available for all Apple and Android devices. With the DHS eFOIA Mobile App, you can submit FOIA requests or check the status of requests, access all of the content on the FOIA website, and receive updates anyplace, anytime.

If you have any questions, or would like to discuss this matter, please feel free to contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

/s/

Maura Busch
FOIA Program Specialist

Exhibit C
September 27, 2017, Correspondence from DHS

lernst@acluvt.org

From: foia@hq.dhs.gov
Sent: Wednesday, September 27, 2017 13:19
To: lernst@acluvt.org
Subject: Department of Homeland Security FOIA 2017-HQFO-01317 Final Response
Attachments: 2017-HQFO-01317.zip

Good Morning,

Attached is our final response to your request. If you need to contact this office again concerning your request, please provide the DHS reference number. This will enable us to quickly retrieve the information you are seeking and reduce our response time. This office can be reached at 866-431-0486.

Regards,

DHS Privacy Office
Disclosure & FOIA Program
STOP 0655
Department of Homeland Security
245 Murray Drive, SW
Washington, DC 20528-0655
Telephone: 1-866-431-0486 or 202-343-1743
Fax: 202-343-4011
Visit our FOIA website

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

September 27, 2017

SENT VIA E-MAIL TO: lernst@acluvt.org

Lia Ernst
Staff Attorney
ACLU Foundation of Vermont
PO Box 277
Montpelier, VT 05601

Re: **2017-HQFO-01317**

Dear Ms. Ernst:

This is the electronic final response to your September 5, 2017, Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS) for records pertaining to DHS immigration enforcement actions in the state of Vermont from January 1, 2017, up to such time as an adequate search 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; and 5. All records created, sent, received, referenced, and/or used in fulfilling and/or responding to any of the foregoing parts of this request. This office received your request on September 5, 2017.

In responding to a FOIA request, DHS will search for responsive documents in its control on the date the search began. We began our search for records for item one of your request on September 15, 2017. A search of the Office of Policy (PLCY) Office of Immigration Statistics for documents responsive to your request produced one page of responsive records. In our letter to you dated September 15, 2017, we advised that we transferred items 2 through 5 of your request to ICE for review and direct response to you.

We are granting your request under FOIA, 5 U.S.C. § 552, and DHS FOIA regulations at 6 C.F.R. Part 5. After carefully reviewing the responsive document, I determined that it is appropriate for public release. The document is enclosed in its entirety; DHS has claimed no deletions or exemptions.

Provisions of FOIA allow DHS to charge for processing fees, up to $25, unless you seek a waiver of fees. In this instance, because the cost is below the $25 minimum, there is no charge.

If you need any further assistance or would like to discuss any aspect of your request, please contact the analyst below who processed your request and refer to **2017-HQFO-01317**. You may send an e-mail to foia@hq.dhs.gov, call 202-343-1743 or toll free 1-866-431-0486, or you may contact our FOIA Public Liaison in the same manner.

Sincerely,
/s/

Maura Busch
Government Information Specialist

Enclosure(s): one excel sheet

ICE Arrests, BP Apprehensions, and OFO Inadmissible Actions Table

Comparison of January 1 - June 30th, 2017 and January 1 - June 30th, 2016 Time Period

Event		Area of Responsibility*		State						Total
		BOSTON**		ME		NH		VT		
		Fiscal Year		Fiscal Year		Fiscal Year		Fiscal Year		
		2016	2017	2016	2017	2016	2017	2016	2017	
USBP Apprehension	No Removal or Return Record	-	-	2	3	-	-	12	19	36
	Removed or Returned	-	-	7	4	-	-	13	6	30
ICE Arrest	No Removal or Return Record	570	1,211	-	1	-	3	-	1	1,786
	Removed or Returned	361	325	-	-	-	-	-	-	686
Determination of Inadmissibility	No Removal or Return Record	-	-	548	316	-	-	248	85	1,197
	Removed or Returned	-	-	281	359	24	9	264	483	1,420
Total		931	1,536	838	683	24	12	537	594	5,155

NOTE: None of these individuals had a book in or book out record

*ERO-ICE Apprehensions are noted by Area of Responsibilities which cannot be broken down into states

**Boston Area of Responsibility includes Maine, New Hampshire and Vermont