



June 23, 2017

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**Re: Request Under Freedom of Information Act  
(Expedited Processing & Fee Waiver Requested)**

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”)<sup>1</sup> submit this Freedom of Information Act (“FOIA”) request (the “Request”) for records pertaining to (1) U.S. involvement in the torture and/or cruel, inhuman or degrading treatment of detainees in prisons in Yemen, in an Emirati base in Eritrea, and aboard Yemeni

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<sup>1</sup> The American Civil Liberties Union Foundation is a 26 U.S.C. § 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about civil rights and civil liberties issues across the country, directly lobbies legislators, and mobilizes the American Civil Liberties Union’s members to lobby their legislators. The American Civil Liberties Union is a separate non-profit, 26 U.S.C. § 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators.

or Emirati naval vessels; and (2) U.S. investigations concerning torture in these prisons and aboard these vessels.

## **I. Background**

On June 21, 2017, the Associated Press (“AP”) published an investigative report that raised serious concerns about the United States’ involvement in the torture and/or cruel, inhuman, or degrading treatment of detainees detained and interrogated overseas by Emirati and Yemeni forces.<sup>2</sup> The report describes a network of secret prisons in southern Yemen where abuse and torture are routine, and into which nearly 2,000 people have disappeared. These prisons—inside military bases, ports, an airport, private villas and a nightclub—are run by the United Arab Emirates or by UAE-trained Yemeni personnel. Several U.S. defense officials confirmed to the AP that U.S. forces have: participated in interrogations of detainees held by these U.S. allies in Yemen; provided questions to be asked during interrogations; and, received transcripts and videos of interrogations from Emirati allies.<sup>3</sup>

The AP report details horrific conditions and routine torture in the UAE-run prisons. In one main prison complex at Riyan airport in Mukalla, men were reportedly flogged with wires, beaten, sexually assaulted, and tied to a rotating stake and spun in a circle of fire. Detainees also described being crammed into shipping containers smeared with feces and blindfolded for weeks at a time. A member of a Yemeni security force organized by the UAE reported that American forces were at times only yards away from the ongoing torture.<sup>4</sup>

American defense officials confirmed to the AP that U.S. senior military leaders were aware of allegations of torture at the prisons in Yemen and had investigated them, but were satisfied that there had not been any abuse when U.S. forces were present.<sup>5</sup>

Nevertheless, there are significant serious questions about the extent of the United States’ involvement in the detention and torture and/or cruel, inhuman or degrading treatment of detainees held and interrogated by the UAE or by UAE-trained Yemeni personnel. Yemeni Brig. Gen. Farag Salem al-Bahsani, commander of the Mukalla-based 2nd Military District, told the AP that the United States had sent authorities a list of “most wanted” men—including many who were later detained. In addition, according to multiple

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<sup>2</sup> Maggie Michael, *In Yemen’s Secret Prisons, UAE Tortures and US Interrogates*, AP, (June 22, 2017), <https://apnews.com/4925f7f0fa654853bd6f2f57174179fe>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

senior Yemeni officials, U.S. officials themselves conducted interrogations of detainees on ships off the coast of Yemen. Senior U.S. defense officials denied to the AP that the military interrogates Yemenis on any ships, and the CIA stated that it had no comment on these specific claims.<sup>6</sup>

The AP report, carried by news outlets throughout the nation,<sup>7</sup> has sparked further, widespread media coverage, and has raised serious public concerns about the legality, morality, and policy implications of U.S. involvement in its allies' torture and/or cruel, inhuman or degrading treatment of detainees.<sup>8</sup> Legal experts have underscored that U.S. complicity in torture inflicted by another party would violate international law and could qualify as a war crime.<sup>9</sup>

Until now, the United States' role in the interrogation and detention of detainees in Yemen or on allies' naval ships has largely been kept secret. As a result, the American public remains ill-informed about the legal basis for, and

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<sup>6</sup> *Id.* The AP report cites Yemen Interior Minister Hussein Arab explaining that some detainees have been taken to a UAE base in Eritrea.

<sup>7</sup> See, e.g., Associated Press, 'You Can Hear the Screams': Inside Yemen's Secret Prisons, N.Y. Times, June 22, 2017, <https://www.nytimes.com/aponline/2017/06/22/world/middleeast/ap-ml-yemen-torture-sites.html>; Maggie Michael, *The US is still helping to run 'black site' prisons where detainees are allegedly abused and tortured*, Business Insider, June 22, 2017, <http://read.bi/2sull4y>; Maggie Michael, *In Yemen's secret prisons, United Arab Emirates tortures and U.S. interrogates*, Chicago Trib, June 22, 2017, <http://fw.to/A8mJ8yF>; Maggie Michael, *In Yemen's secret prisons, UAE tortures and US interrogates*, Pittsburgh Post-Gazette, June 22, 2017, <http://www.post-gazette.com/news/world/2017/06/22/Yemen-secret-prisons-UAE-torture-US-interrogates/stories/201706220134>; Maggie Michael, *In Yemen's secret prisons, UAE tortures and US interrogates*, Seattle Times, June 21, 2017, <http://www.seattletimes.com/nation-world/us-interrogates-detainees-in-yemen-prisons-rife-with-torture/> (updated June 21, 2017); Maggie Michael, *US Interrogates Detainees in Yemen Prisons Rife With Torture*, NBC News, June 22, 2017, <http://www.nbc.com/news/national-international/US-Interrogates-Detainees-Yemen-Prisons-Torture-430101203.html>.

<sup>8</sup> See, e.g., Luke Hartig, *Reported Emirati Abuse of Detainees and the Perils of U.S. Partnerships*, Just Security, (June 22, 2017, 9:26 AM), <https://www.justsecurity.org/42459/reported-emirati-abuses-detainees-perils-u-s-partnerships/>; Rachel Bercovitz, *Today's Headlines and Commentary*, Lawfare, (June 22, 2017, 11:54 AM), <https://www.lawfareblog.com/todays-headlines-and-commentary-1336>; Kareem Fahim, *Beatings, shocks and 'the grill': Reports allege torture in secret prisons run by United Arab Emirates in Yemen*, Wash. Post, June 22, 2017, [http://wapo.st/2rZpP5b?tid=ss\\_tw&utm\\_term=.eff25e493371](http://wapo.st/2rZpP5b?tid=ss_tw&utm_term=.eff25e493371).

<sup>9</sup> *Id.*; see also Steve Vladeck, *The Potential Legal Implications for the U.S. in the AP's Disturbing UAE Torture Scoop*, Just Security, (June 22, 2017, 8:01 AM) <https://www.justsecurity.org/42428/u-s-law-implications-aps-disturbing-uae-torture-scoop/>.

even the most basic facts about, the government's involvement in these interrogations and detentions—including its potential complicity in torture or cruel, inhuman, or degrading treatment. To provide the American public with much-needed information about the United States' possible connection to the torture or cruel, inhuman, or degrading treatment of detainees held by the UAE or UAE-trained Yemeni personnel, and to ensure meaningful public access to and debate about U.S. government proxy interrogation and detention practices, the ACLU seeks the following information through this FOIA request.

## **II. Requested Records**

The ACLU seeks the release of any and all records pertaining to:

- (1) U.S. involvement in the torture, and/or cruel, inhuman, or degrading treatment, detention, and interrogation of individuals held at facilities in Yemen—including prisons located inside military bases, ports, airports, private villas, and nightclubs; at an Emirati base in Eritrea; and aboard any naval vessel controlled or operated by Yemeni or Emirati personnel.<sup>10</sup> This request includes but is not limited to:
  - a. Guidelines, policies, procedures, directives, or legal analysis related to the role of U.S. personnel in the detention and interrogation of individuals held by Emirati or Yemeni personnel;
  - b. Records related to coordination between the United States, the United Arab Emirates, or Yemeni allies in these detentions and interrogations, including any agreements, accords, contracts, correspondence, or memoranda of understanding;
  - c. Records related to questions provided by U.S. personnel to Emirati or Yemeni interrogators;
  - d. Records sent to U.S. personnel by Emirati or Yemeni personnel concerning detentions, interrogations, detention conditions, and methods used, including transcripts and videos of interrogations, and answers to questions provided by U.S. personnel;
  - e. Records related to interrogations conducted by U.S. personnel at these facilities and aboard these vessels;

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<sup>10</sup> For the purposes of this Request, “personnel” include military, intelligence, and law enforcement personnel, as well as contractors.

- f. Records related to the locations of these facilities and vessels; the number and identities of individuals detained in these facilities and vessels; and the treatment of, and conditions of confinement for, individuals detained and/or interrogated in these facilities and vessels;
  - g. Records related to U.S. requests for or designation of individuals for arrest, detention, or interrogation by Yemeni or Emirati personnel, including whether those individuals were arrested, detained, or interrogated by Yemeni or Emirati personnel;
  - h. Records related to the transfer of individuals by U.S. personnel for arrest, detention, or interrogation by Yemeni or Emirati personnel; and
  - i. Records related to U.S. training of Yemeni or Emirati personnel engaged in detention or interrogation.
- (2) U.S. investigations concerning allegations of torture and/or cruel, inhuman, or degrading treatment of individuals detained and interrogated at facilities in Yemen; at an Emirati base in Eritrea; and aboard any naval vessel controlled or operated by Yemeni or Emirati personnel.

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

### **III. Application for Expedited Processing**

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).<sup>11</sup> There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

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

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<sup>11</sup> *See also* 32 C.F.R. § 1900.34 [CIA]; 32 C.F.R. § 286.8(e) [DOD]; 28 C.F.R. § 16.5(e) [DOJ]; 22 C.F.R. § 171.11(f) [DOS].

*government activity.*

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>12</sup> Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. DOJ*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).<sup>13</sup>

The ACLU regularly publishes *STAND*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 620,000 people. The ACLU also publishes regular updates and alerts via email to over 2.6 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to over 3.2 million social media followers. The magazine as well as the email and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,<sup>14</sup> and ACLU attorneys are interviewed frequently for news stories about

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<sup>12</sup> *See also* 32 C.F.R. § 1900.34(c)(2) [CIA]; 32 C.F.R. § 286.8(e)(1)(i)(B) [DOD]; 28 C.F.R. § 16.5(e)(1)(ii) [DOJ]; 22 C.F.R. § 171.11(f)(2) [DOS].

<sup>13</sup> Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

<sup>14</sup> *See, e.g.,* Press Release, American Civil Liberties Union, U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, Secret Documents Describe Graphic Abuse and Admit Mistakes (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>; Press Release, American Civil Liberties Union, Justice Department White Paper Details Rationale for Targeted Killing of Americans (Feb. 4, 2013), <https://www.aclu.org/national-security/justice-department-white-paper-details-rationale-targeted-killing-americans>; Press Release, American Civil Liberties Union, Documents Show FBI Monitored Bay Area Occupy Movement (Sept. 14, 2012), <https://www.aclu.org/news/documents-show-fbi-monitored-bay-area-occupy-movement-insidebayareacom>.

documents released through ACLU FOIA requests.<sup>15</sup>

Similarly, the ACLU publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.<sup>16</sup> The ACLU also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. See <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. See <https://www.aclu.org/multimedia>. The ACLU also publishes, analyzes, and

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<sup>15</sup> See, e.g., Cora Currier, *TSA’s Own Files Show Doubtful Science Behind Its Behavioral Screen Program*, Intercept, Feb. 8, 2017, <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program/> (quoting ACLU attorney Hugh Handeyside); Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, <http://wapo.st/2jy62cW> (quoting former ACLU deputy legal director Jameel Jaffer); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC, June 15, 2016, <http://abcn.ws/2jy40d3> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Device*, Guardian, Mar. 17, 2016, <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler); David Welna, *Government Suspected of Wanting CIA Torture Report to Remain Secret*, NPR, Dec. 9, 2015, <http://n.pr/2jy2p71> (quoting ACLU project director Hina Shamsi).

<sup>16</sup> See, e.g., Hugh Handeyside, *New Documents Show This TSA Program Blamed for Profiling Is Unscientific and Unreliable — But Still It Continues* (Feb. 8, 2017, 11:45 AM), <https://www.aclu.org/blog/speak-freely/new-documents-show-tsa-program-blamed-profiling-unscientific-and-unreliable-still>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Brett Max Kaufman, *Details Abound in Drone ‘Playbook’ — Except for the Ones That Really Matter Most* (Aug. 8, 2016, 5:30 PM), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; Nathan Freed Wessler, *ACLU- Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015, 5:30 PM), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; Ashley Gorski, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014, 3:29 PM), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>; ACLU, *ACLU Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government’s “Suspicious Activity Report” Systems* (Oct. 29, 2013), [https://www.aclu.org/sites/default/files/assets/eye\\_on\\_fbi\\_-\\_sars.pdf](https://www.aclu.org/sites/default/files/assets/eye_on_fbi_-_sars.pdf).

disseminates information through its heavily visited website, [www.aclu.org](http://www.aclu.org). The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU's website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.

The ACLU website includes many features on information obtained through the FOIA.<sup>17</sup> For example, the ACLU's "Predator Drones FOIA" webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves. Similarly, the ACLU maintains an online "Torture Database," a compilation of over 100,000 pages of FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.<sup>18</sup>

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, through compilation and analysis of

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<sup>17</sup> See, e.g., Nathan Freed Wessler & Dyan Cortez, *FBI Releases Details of 'Zero-Day' Exploit Decisionmaking Process* (June 26, 2015, 11:00 AM), <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015, 8:00 AM), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; *ACLU v. DOJ – FOIA Case for Records Relating to the Killing of Three U.S. Citizens*, ACLU Case Page, <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; *ACLU v. Department of Defense*, ACLU Case Page, <https://www.aclu.org/cases/aclu-v-department-defense>; *Mapping the FBI: Uncovering Abusive Surveillance and Racial Profiling*, ACLU Case Page, <https://www.aclu.org/mappingthefbi>; *Bagram FOIA*, ACLU Case Page <https://www.aclu.org/cases/bagram-foia>; *CSRT FOIA*, ACLU Case Page, <https://www.aclu.org/national-security/csrt-foia>; *ACLU v. DOJ – Lawsuit to Enforce NSA Warrantless Surveillance FOIA Request*, ACLU Case Page, <https://www.aclu.org/aclu-v-doj-lawsuit-enforce-nsa-warrantless-surveillance-foia-request>; *Patriot FOIA*, ACLU Case Page, <https://www.aclu.org/patriot-foia>; *NSL Documents Released by DOD*, ACLU Case Page, <https://www.aclu.org/nsl-documents-released-dod?redirect=cpreirect/32088>.

<sup>18</sup> *The Torture Database*, ACLU, <https://www.thetorturedatabase.org>; see also *Countering Violent Extremism FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

information gathered from various sources—including information obtained from the government through FOIA requests—the ACLU created an original chart that provides the public and news media with a comprehensive summary index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition, and surveillance.<sup>19</sup> Similarly, the ACLU produced an analysis of documents released in response to a FOIA request about the TSA’s behavior detection program<sup>20</sup>; a summary of documents released in response to a FOIA request related to the FISA Amendments Act<sup>21</sup>; a chart of original statistics about the Defense Department’s use of National Security Letters based on its own analysis of records obtained through FOIA requests<sup>22</sup>; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.<sup>23</sup>

The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

*B. The records sought are urgently needed to inform the public about actual or alleged government activity.*

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>24</sup> Specifically, the requested records relate to the United States’ role in the torture and/or cruel, inhuman or degrading treatment, detention, and interrogation of individuals in Yemen, in Eritrea, and aboard naval vessels, as well as any U.S. investigations into such practices. As discussed in Part I, *supra*, U.S. involvement with and complicity in torture, cruel, inhuman, or degrading treatment, of individuals detained and interrogated by its allies abroad is the subject of widespread public

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<sup>19</sup> *Index of Bush-Era OLC Memoranda Relating to Interrogation, Detention, Rendition and/or Surveillance*, ACLU (Mar. 5, 2009), [https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos\\_2009\\_0305.pdf](https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf).

<sup>20</sup> *Bad Trip: Debunking the TSA’s ‘Behavior Detection’ Program*, ACLU (2017), [https://www.aclu.org/sites/default/files/field\\_document/dem17-tsa\\_detection\\_report-v02.pdf](https://www.aclu.org/sites/default/files/field_document/dem17-tsa_detection_report-v02.pdf).

<sup>21</sup> *Summary of FISA Amendments Act FOIA Documents Released on November 29, 2010*, ACLU, <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

<sup>22</sup> *Statistics on NSL’s Produced by Department of Defense*, ACLU, <https://www.aclu.org/other/statistics-nsls-produced-dod>.

<sup>23</sup> Nathan Freed Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights* (Oct. 30, 2015, 8:00 AM), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

<sup>24</sup> *See also* 32 C.F.R. § 1900.34(c)(2) [CIA]; 32 C.F.R. § 286.8(e)(1)(i)(B) [DOD]; 28 C.F.R. § 16.5(e)(1)(ii) [DOJ]; 22 C.F.R. § 171.11(f)(2) [DOS].

controversy and media attention.<sup>25</sup> Thus, the records sought relate to a matter of widespread and exceptional media interest.<sup>26</sup>

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

#### **IV. Application for Waiver or Limitation of Fees**

The ACLU requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).<sup>27</sup> The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

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

As discussed above, the AP’s reporting and other media accounts underscore the substantial public interest in the records sought through this Request. Given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance. Because little specific information is publicly available about U.S. involvement in the torture and/or cruel, inhuman, or degrading treatment of individuals detained and interrogated by the UAE or Yemeni officials, the records sought are certain to contribute significantly to the public’s understanding of the United States’ role in such practices.

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

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<sup>25</sup> *See supra* notes 7, 8, and 9.

<sup>26</sup> *See id.*

<sup>27</sup> *See also* 32 C.F.R. § 1900.13(b)(2) [CIA]; 32 C.F.R. § 286.12(l)(1) [DOD]; 28 C.F.R. § 16.10(k)(2) [DOJ]; 22 C.F.R. § 171.16(a) [DOS].

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

The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).<sup>28</sup> The ACLU meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III)<sup>29</sup>; *see also Nat’l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *Serv. Women’s Action Network v. DOD*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. DOJ*, No. C09–0642RSL, 2011 WL 887731, at \*10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU is therefore a “representative of the news media” for the same reasons it is “primarily engaged in the dissemination of information.”

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU’s to be “representatives of the news media” as well. *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 10–15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).<sup>30</sup>

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<sup>28</sup> *See also* 32 C.F.R. § 1900.13(b)(2) [CIA]; 32 C.F.R. § 286.12(b)(6) [DOD]; 28 C.F.R. § 16.10(b)(6) [DOJ]; 22 C.F.R. § 171.14(b)(5)(ii)(C) [DOS].

<sup>29</sup> *See also* 32 C.F.R. § 1900.13(i)(2) [CIA]; 32 C.F.R. § 286.12 (l)(2)(ii)(b) [DOD]; 28 C.F.R. § 16.10(k)(2)(ii)–(iii) [DOJ]; 22 C.F.R. § 171.16 (a)(iii) [DOS].

<sup>30</sup> Courts have found these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information/public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5;

On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news media.”<sup>31</sup> As was true in those instances, the ACLU meets the requirements for a fee waiver here.

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Pursuant to applicable statutes and regulations, the ACLU expects a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii); 32 C.F.R. § 1900.34(c) [CIA]; 32 C.F.R. § 286.8(e)(1) [DOD]; 28 C.F.R. § 16.5(e)(4) [DOJ]; 22 C.F.R. § 171.11(f)(4) [DOS].

If the Request is denied in whole or in part, the ACLU asks that you justify all deletions by reference to specific exemptions to FOIA. The ACLU expects the release of all segregable portions of otherwise exempt material. The ACLU reserves the right to appeal a decision to withhold any information or deny a waiver of fees.

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

Ashley Gorski  
Staff Attorney, National Security Project  
American Civil Liberties Union Foundation  
125 Broad Street—18th Floor  
New York, New York 10004

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*Nat'l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53–54.

<sup>31</sup> In May 2017, CBP granted a fee-waiver request regarding a FOIA request for documents related to electronic device searches at the border. In April 2017, the CIA and the Department of State granted fee-waiver requests in relation to a FOIA request for records related to the legal authority for the use of military force in Syria. In March 2017, the Department of Defense Office of Inspector General, the CIA, and the Department of State granted fee-waiver requests regarding a FOIA request for documents related to the January 29, 2017 raid in al Ghayil, Yemen. In May 2016, the FBI granted a fee-waiver request regarding a FOIA request issued to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ. In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists.

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

Respectfully,



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AMERICAN CIVIL LIBERTIES  
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