



December 6, 2019

**SENT VIA E-MAIL (USMS.FOIA@USDOJ.GOV)**

FOIA/PA Section  
Charlotte M. Luckstone, FOIA/PA Officer  
Office of General Counsel, CG-3, 15th Fl.  
Washington, D.C. 20350  
Fax number: (703) 740-3943

**Re: FOIA Request Related to USMS Treatment of Pregnant  
Individuals**

AMERICAN CIVIL  
LIBERTIES UNION FOUNDATION

PLEASE RESPOND TO:  
NATIONAL PRISON PROJECT  
915 15TH STREET, NW  
7TH FLOOR  
WASHINGTON, DC 20005-2112  
T/202.393.4930  
F/202.393.4931  
WWW.ACLU.ORG

DAVID C. FATHI  
DIRECTOR  
ATTORNEY AT LAW\*

\*NOT ADMITTED IN DC;  
PRACTICE LIMITED TO  
FEDERAL COURTS

Dear Freedom of Information Officer:

The American Civil Liberties Union (“ACLU”) submits this Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, request for production of records (the “Request”). The ACLU also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 28 C.F.R. § 16.10(k)(1). The justification for the fee waiver is set out in detail following the Request.

**Request for Information**

The ACLU seeks any and all records that were prepared, received, transmitted, collected and/or maintained by the U.S. Marshals Service (“USMS”) that describe, refer or relate to policies, guidelines, protocols, procedures, or practices followed or used by USMS regarding identification of and care provided to pregnant people in USMS custody, including access to and payment for abortion services and policies and protocols regarding the use of restraints on pregnant people. Unless otherwise noted, we request the records specified below from January 20, 2017, to the present.

For purposes of this request, the term “records” includes but is not limited to any and all communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, spreadsheets, charts, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

For purposes of this request, the term “USMS” means the U.S. Marshals Service, and any components, subcomponents, offices, or personnel therein.

For purposes of this request, the terms “detainee”, “inmate”, and “offender” mean any individual in the custody of the USMS, including persons charged with or convicted of offenses against the United States and persons held by the USMS for any other reason.

For purposes of this request, the terms “institution” and “facility” mean any place in which a person in the custody of the USMS is detained, regardless of whether that person is held in a facility operated by the U.S. Bureau of Prisons, a non-federal jurisdiction, a private corporation, or any other individual or organization.

**Specific records requested:**

1. Any and all records listing facilities utilized by USMS and/or facilities housing one or more inmates in USMS custody, including but not limited to records detailing the standards governing each facility.
2. Any and all USMS prisoner operations Policy Directives in force at the time of the response to this request.
3. Any and all quality assurance reviews and accompanying documentation reflecting conditions and/or treatment of pregnant detainees.
4. Any and all records regarding the provision of methadone to opiate-addicted pregnant detainees under USMS Pub. 100 IV(U), including documentation in detainees’ medical records.
5. Any and all records relating to or implementing 18 U.S.C. § 4322, “Use of Restraints on Prisoners During the Period of Pregnancy, Labor, and Postpartum Recovery Prohibited,” including any and all reports provided to the Director of USMS and/or to the healthcare professional(s) responsible for the health and safety of the detainee documenting the use of restraints on any pregnant or postpartum detainee, the reasoning upon which the decision to use restraints was made, the type and length of time of the restraint, and any resulting physical effects and any materials distributed to staff and administrators employed by USMS, as well as any contractors, in connection with training to implement the law.
6. Any and all intergovernmental agreements containing updates made since December 21, 2018, to ensure compliance with requirements regarding shackling of pregnant detainees under 18 U.S.C. § 4322.

7. Any and all records documenting (i) the total number of requests for abortion from persons in USMS custody; (ii) the total number of requests for abortion from persons in USMS custody that were denied and any and all documents pertaining to those denials, including but not limited to the reasons for denying each such request; (iii) the total number of persons in USMS custody who obtained abortions; and/or (iv) the total costs expended by USMS for abortions pursuant to USMS Pub. 100 III(L).
8. Any and all records, including referral information, questionnaires, screening tools, intake assessments protocols, memoranda, supporting documentation, and/or policies used in counseling persons in USMS custody to aid them in making the decision whether to carry a pregnancy to full term or to have an elective abortion.
9. Any and all records, including policies, protocols, and memoranda, documenting the process for determining whether USMS will assume the costs associated with a detainee's decision to terminate a pregnancy pursuant to USMS Pub. 100 III(L).
10. For facilities governed by the American Correctional Association standards under 18 U.S.C. § 4013(c)(2)(C), any and all policies, procedures and protocols implementing, and documents demonstrating compliance with, ACA Standard 5-5E-4436, requiring facilities to provide access to comprehensive counseling and assistance to pregnant inmates in keeping with their expressed desires in planning whether to continue or terminate a pregnancy and, if continuing the pregnancy, whether to keep the child or give the child up for adoption.
11. Any and all records, including, but not limited to, any databases, spreadsheets, lists, and other data compilations, that reflect the following:
  - a. The total number of individuals in USMS custody identified as pregnant while in USMS custody, including any lists broken down by month and/or facility at which the detainee was housed.
  - b. The total number of individuals in USMS custody who gave birth while in USMS custody, including any lists broken down by month and/or facility at which the detainee was housed.
  - c. The total number of individuals in USMS custody who had a miscarriage while in USMS custody, including any lists broken down by month and/or facility at which the detainee was housed.

- d. The total number of individuals in USMS custody who had a terminated pregnancy while in USMS custody, including any lists broken down by month and/or facility at which the detainee was housed.

Please construe this as an ongoing FOIA request, so that any records that come within the possession of the agency prior to your final response to this FOIA Request should also be considered within the Request's scope.

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, with all metadata and load files. 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. We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. Please do not compress images or downsample the resolution, as this interferes with their legibility. To facilitate a speedy response, we ask that records responsive to this request be produced on a rolling basis. The ACLU will accept records and other information that have been redacted pursuant to the Health Insurance and Portability Accountability Act<sup>1</sup> or other statutes or regulations protecting the privacy of individual detainees.

In the event you determine that materials contain information that falls within the statutory exemptions to mandatory disclosure, we request that such information be reviewed for possible discretionary disclosure. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979). We also request that, in accordance with 5 U.S.C. § 552(b), any and all reasonably segregable portions of otherwise exempt materials be produced. To the extent the request is denied, we expect to receive notice in writing, including a description of the information withheld, the reasons for denial, and any exemptions relied upon.

### **Fee Waiver Request**

The ACLU requests that any fees associated responding to its FOIA request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k)(1). Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k)(1), fees should be waived or reduced if disclosure is (1) in the public interest because it is "likely to contribute significantly to public understanding of the operations or activities of the government" and (2) "not primarily in the commercial interest of the requester." Disclosure in this case meets both of these tests. The ACLU also requests a waiver or reduction of fees on the

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<sup>1</sup> 42 U.S.C. § 1320d-6.

grounds that the ACLU qualifies as a “representative[] of the news media” and the records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II).

1. *Disclosure is in the public interest as it is likely to contribute significantly to the public’s understanding of the operations and activities of government.*

*First*, disclosure pursuant to this Request is in the public interest. The operation of the U.S. criminal justice system and the treatment of detained women is of great concern to the public. Although women represent a minority of incarcerated people in the United States, their numbers are growing at an alarming rate. Between 1980 and 2016, the number of incarcerated women increased by over 700%.<sup>2</sup> In this time, the number of incarcerated women has grown at twice the rate of men.<sup>3</sup>

Approximately 4-5% of women admitted into prisons and jails are pregnant at intake, though data on the actual number of pregnant people in prisons and jails remains elusive.<sup>4</sup> Both the media and the public in general have shown great concern about the shackling of pregnant people and other deficiencies of pregnancy care.<sup>5</sup>

Every day, approximately 55,872 people are in the custody of the USMS.<sup>6</sup> Because individuals in USMS custody are frequently transferred to the federal Bureau of Prisons (BOP), information about women in BOP custody is applicable to women in USMS custody.<sup>7</sup>

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<sup>2</sup> *Incarcerated Women and Girls*,

<https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>.

<sup>3</sup> Wendy Sawyer, *The Gender Divide: Tracking Women’s State Prison Growth* (2018), [https://www.prisonpolicy.org/reports/women\\_overtime.html](https://www.prisonpolicy.org/reports/women_overtime.html).

<sup>4</sup> BUREAU OF JUSTICE ASSISTANCE, BEST PRACTICES IN THE USE OF RESTRAINTS WITH PREGNANT WOMEN AND GIRLS UNDER CORRECTIONAL CUSTODY 3 (2014), *available at* [https://www.nasmhpd.org/sites/default/files/Best\\_Practices\\_Use\\_of\\_Restraints\\_Pregnant\(2\).pdf](https://www.nasmhpd.org/sites/default/files/Best_Practices_Use_of_Restraints_Pregnant(2).pdf); *see also* Victoria Law, *Pregnant and Behind Bars: How the US Prison System Abuses Mothers-to-Be*, THE GUARDIAN (Oct. 20, 2015), [http://www.theguardian.com/us-news/2015/oct/20/pregnant-women-prison-system-abuse-medical-neglect?CMP=share\\_btn\\_tw](http://www.theguardian.com/us-news/2015/oct/20/pregnant-women-prison-system-abuse-medical-neglect?CMP=share_btn_tw).

<sup>5</sup> *The Drama of Pregnant Women In Prison – And The Woman On A Mission To Fix It*, <https://www.forbes.com/sites/ashoka/2018/10/25/the-drama-of-pregnant-women-in-prison-and-the-woman-on-a-mission-to-fix-it/#2f260c03948c>; <https://rewire.news/article/2018/01/24/hungry-shackled-grieving-prison-like-pregnant-people/>

<sup>6</sup> US DEPARTMENT OF JUSTICE, FACTS AND FIGURES (2019), <https://www.usmarshals.gov/duties/factsheets/facts.pdf>

<sup>7</sup> US DEPARTMENT OF JUSTICE, PRISONER OPERATIONS (2019), [https://www.usmarshals.gov/duties/factsheets/prisoner\\_ops.pdf](https://www.usmarshals.gov/duties/factsheets/prisoner_ops.pdf)

The First Step Act recently codified a long-standing administrative prohibition on using shackles on pregnant or post-partum people.<sup>8</sup> This is an important move, but public records disclosures from other states that have passed similar legislation demonstrate that official prohibitions are often circumvented;<sup>9</sup> it is important to the public to be made aware as to whether pregnant/postpartum people are being shackled notwithstanding the new legislation. Placing pregnant people in shackles or restraints can have serious health consequences, as outlined by the American College of Obstetricians and Gynecologists.<sup>10</sup>

Given the significant attention to this issue by advocacy groups, medical experts, media groups, and legislators, the requested records will contribute significantly to the public's understanding of the treatment of women in USMS custody.

2. *Disclosure is not primarily in the commercial interest of the ACLU.*

*Second*, the ACLU is not filing this request to further a commercial interest. The ACLU is a 501(c)(3) nonprofit organization and therefore has no commercial interest. The ACLU intends to make any relevant information obtained through this FOIA available to the public.<sup>11</sup> The ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, for no cost or for a nominal fee.

The ACLU also disseminates information through its heavily subscribed website, <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 website also

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<sup>8</sup> 18 USC § 4322(a).

<sup>9</sup> THE PRISON BIRTH PROJECT & PRISONERS' LEGAL SERVICES OF MASSACHUSETTS, BREAKING PROMISES: VIOLATIONS OF THE MASSACHUSETTS PREGNANCY STANDARDS & ANTI-SHACKLING LAW (2016), [http://www.plsma.org/wp-content/uploads/2016/05/Breaking-Promises\\_May2016.pdf](http://www.plsma.org/wp-content/uploads/2016/05/Breaking-Promises_May2016.pdf) (Massachusetts); Tamar Kraft-Stolar, *Reproductive Injustice: The State of Reproductive Health Care for Women in New York State Prisons* (2015), <https://static.prisonpolicy.org/scans/Reproductive-Injustice-FULL-REPORT-FINAL-2-11-15.pdf> (New York).

<sup>10</sup> *Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females*, THE AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS (reaffirmed 2016), <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-Pregnant-and-Postpartum-Incarcerated-Women-and-Adolescent-Females>.

<sup>11</sup> See 28 C.F.R. § 16.10(k)(1); 28 C.F.R. § 16.10(k)(2)(ii).

includes many features on information obtained through FOIA requests. 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.<sup>12</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, in February 2017 the ACLU produced an analysis of documents released in response to a FOIA request about the TSA's behavior detection program. The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request at no cost.

3. *The ACLU also qualifies for a fee waiver because it is representative of the news media and the records are not sought for commercial use.*

The ACLU is also entitled to a fee waiver on the grounds that the ACLU qualifies as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The ACLU meets the statutory and regulatory definitions of a "representative of the news media" because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(III);<sup>13</sup> *see also Nat'l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (holding 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); *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be "primarily engaged in disseminating information").<sup>14</sup>

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<sup>12</sup> The Torture Database, <https://www.thetorturedatabase.org> (last visited Sept. 19 2019); *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>.

<sup>13</sup> *See also* 5 C.F.R. § 2604.103; 28 C.F.R. § 16.10(b)(6); 5 C.F.R. § 294.103(c); and 41 C.F.R. § 105-60.305-1 (i).

<sup>14</sup> Other courts have found that the ACLU and organizations with similar missions engaging in information-dissemination similar to the ACLU's are "primarily engaged in disseminating

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. For example, the ACLU regularly publishes *ACLU Magazine* that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 950,000 households. The ACLU also publishes regular updates and alerts via email to approximately 4 million subscribers (both ACLU members and nonmembers). These updates are additionally broadcast to 4.9 million social media followers (members and non-members). The magazine, email, and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

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.<sup>15</sup> These reports, analysis, multi-media features, including videos and podcasts, as well as case related news and archives addressing civil rights and liberties issues are disseminated widely through various ACLU channels including the website. The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,<sup>16</sup> and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.<sup>17</sup> ACLU

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information." *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

<sup>15</sup> See e.g. *Fatal Neglect: How ICE Ignores Deaths in Detention* (2017).

<sup>16</sup> See, e.g., Press Release, ACLU, U.S. Releases Drone Strike 'Playbook' in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, ACLU, Secret Documents Describe Graphic Abuse and Admit Mistakes (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, ACLU, 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>.

<sup>17</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); 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,

national projects also regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.<sup>18</sup> This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

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. In addition, 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>. In the past year alone, the ACLU’s online articles were viewed 11.3 million times. ACLU content gets more reader engagement – shares, clicks, and likes – than sites operated by many traditional media companies. The ACLU’s social media content has 2.2 million total page “likes,” which is more than The Atlantic, ThinkProgress, and Vox. The ACLU also 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>. Therefore, when it conducts these public education and dissemination activities, the ACLU is a representative of the news media.

Underscoring this point, courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU’s are “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 5, 10-15 (D.D.C. 2003) (finding non-profit

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<https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler).

<sup>18</sup> See, e.g., Manar Waheed, *Customs and Border Protection Violated Court Orders During the First Muslim Ban Implementation* (Jan. 24, 2018, 3:45 PM), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/customs-and-border-protection-violated-court>; Vera Eidelman, *We Sued for Records About Trump’s Muslim Bans. Here’s What We Found Out.* (Oct. 24, 2017, 3:15 PM), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/we-sued-records-about-trumps-muslim-bans-heres>; 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>; Galen Sherwin, ACLU, *Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (May 27, 2016), <https://www.aclu.org/report/leaving-girls-behind>.

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 v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *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>19</sup>

As a representative of the news media, the ACLU plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use. 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>20</sup> A fee waiver would fulfill Congress’s legislative intent in amending FOIA.<sup>21</sup> Additionally, on account of these factors, the ACLU has not been charged fees associated with responding to FOIA requests on numerous occasions.<sup>22</sup>

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<sup>19</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 and public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat’l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

<sup>20</sup> For example, in May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted 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.

<sup>21</sup> *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 requestors.’”) (citation omitted); *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) (“[FOIA’s] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.”) (internal quotation marks and citation omitted).

<sup>22</sup> For example, in August 2016, the ICE FOIA Office and DHS Privacy Office both granted fee waivers to the ACLU for a FOIA request seeking a DHS OIG super-memorandum and ICE’s response to that memorandum. Similarly, in March 2016, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about selected deaths in detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office. In July 2015, the ICE Office

In sum, because disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the requester, and because the ACLU is a representative of the news media, the ACLU is entitled to a total waiver of fees associated with this Request and should, in no event, be required to pay more than reasonable standard charges for document duplication. In the event that you decide not to waive the fees, please provide me with prior notice so that we can discuss arrangements.

\* \* \*

Thank you for your consideration of this Request. If this Request is denied in whole or part, the ACLU asks that you justify all deletions by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny a waiver of fees. We look forward to your reply on this Request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I). Please furnish all responsive records to:

Lauren Kuhlik  
ACLU National Prison Project  
915 15<sup>th</sup> St. NW, 7<sup>th</sup> Floor  
Washington, DC 20005  
LKuhlik@aclu.org

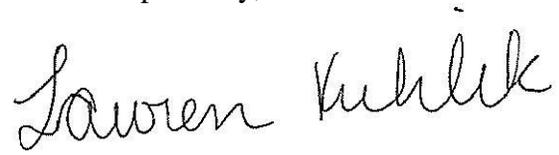
\* \* \*

Please call me at (202) 548-6618 if you have any questions or wish to obtain further information about the nature of the records in which we are interested.

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of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about the use of segregation in ICE detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office.

Respectfully,

A handwritten signature in black ink that reads "Lauren Kuhlik". The signature is written in a cursive style with a small dot above the 'i' in "Kuhlik".

Lauren Kuhlik  
American Civil Liberties Union  
National Prison Project  
915 15th St. NW, 7th Floor  
Washington, DC 20005  
lkuhlik@aclu.org

**AMERICAN CIVIL  
LIBERTIES  
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