



April 17, 2025

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**Re: Request Under Freedom of Information Act  
Expedited Processing & Fee Waiver/Limitation Requested**

To Whom It May Concern:

This letter is a request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, as well as the relevant implementing regulations, for records related to detention for more than four hours of adults, families, children, and U.S. citizens at any of the four land border crossings between Michigan and Canada, including but not limited to within a building in the Customs and Border Protection (CBP) footprint at or near (1) the Ambassador Bridge; (2) the Detroit-Windsor Tunnel, (3) the Blue Water Bridge; and (4) the Sault Ste. Marie International Bridge. For purposes of this request, the terms “Detention” and “Detentions” shall mean any detention by the Department of Homeland Security (DHS) for more than four hours at or near any of the four land border crossings listed above.

### **RECORDS REQUESTED**

The American Civil Liberties Union of Michigan (ACLU) and the Michigan Immigrant Rights Center (MIRC) (collectively the “Requestors”) request all records in any format related to the Detentions. This request covers the time frame from January 20, 2025, until the final date of production. The request specifically includes:

1. All policies, procedures, guidance, directives, instructions, forms, or legal authority that DHS has relied on or used during the Detentions related to:

- a. Processing or holding families.
  - b. Processing or holding children.
  - c. Processing or holding of individuals who are pregnant, post-partum or nursing.
  - d. Processing or holding a non-citizen family member who is with a U.S. citizen child.
  - e. Processing or holding U.S. citizens.
  - f. Processing or holding any person for a prolonged period at a port of entry facility, including processing or holding any person in a facility that is not designed to hold people for prolonged periods.
  - g. The health and safety of adults, families, children, and pregnant/nursing/post-partum individuals, including provision of food, sleeping facilities, sanitary care (toilets, bathing facilities, sanitary items, etc.), medical care, exercise, and children/infant care (diapers, sanitary items, child-appropriate foods, toys, etc.).
  - h. The separation of children from other family members.
  - i. Requests for asylum, including credible fear screenings and application of the Safe Third Country Agreement.
  - j. Access to counsel for people who are detained.
  - k. Consular notification procedures.
  - l. How family members or counsel can determine if a person is detained by CBP.
2. All records related to the Detentions containing information about:
    - a. The number of (i) adults, (ii) families, (iii) children, and (iv) U.S. citizens who have been detained for more than four hours, and any information about persons detained (e.g. age, citizenship).
    - b. The length of detention for (i) adults, (ii) families, (iii) children, and (iv) U.S. citizens.
    - c. Of those detained, the number of (i) persons seeking to enter from Canada, (ii) persons seeking to enter Canada but denied entry by Canada and returned to the U.S., (iii) persons who inadvertently entered the border crossing area without intending to leave the United States, and (iv) other.
    - d. What happened to people held during the Detentions after they left CBP custody (e.g. release on supervision, sent to Immigration and Customs Enforcement detention facility, expedited removal, etc.).
  3. All records any person held by CBP/DHS during the Detentions including but not limited to any and all records related to their custody; custody deliberations; I-213, Record of Deportable/Inadmissible Alien; and all documents that peopled detained during the Detentions reviewed and/or signed.

For purpose of this request, the terms “record” or “records” should be understood to include any record available under FOIA, the Privacy Act, and implementing regulations.

### **REQUEST FOR EXPEDITED PROCESSING**

Requestors seek expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).<sup>1</sup> There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]”

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<sup>1</sup> See also 6 C.F.R. § 5.5(e)(1).

needed by organizations 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 “compelling need” can be demonstrated “with respect to a request made by a person primarily engaged in disseminating information,” by an “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). Here, the ACLU and MIRC are “person[s] primarily engaged in disseminating information.” Given rapidly changing immigration policy, there is an urgent need to inform the public regarding the activities of CBP and DHS. Detention at the northern border—which has garnered national media attention<sup>2</sup>—raises urgent questions about how CBP and DHS are treating individuals, families, children, and U.S. citizens held in detention.

With respect to the ACLU, 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. The ACLU seeks to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country. The ACLU has a particular commitment to ensuring that fundamental constitutional protections of due process and equal protection are extended to every person, regardless of citizenship or immigration status, and that government respects the civil and human rights of all people. Educating the public is central to this work. Specifically, the ACLU publishes blogs, newsletters, reports, fact sheets, news briefings, “Know Your Rights” documents, and other educational and informational materials that are designed to educate the public about civil liberties issues and governmental policies that implicate civil rights and liberties. These ACLU publications 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. Electronic Privacy Information Center v. Department 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 website of the ACLU of Michigan ([www.aclumich.org](http://www.aclumich.org)) addresses civil rights and civil liberties issues in depth, provides information on civil rights and civil liberties issues in the news, and contains a large volume of documents relating to the issues on which the ACLU is focused, including immigration. The websites of the National ACLU and other state ACLU affiliates

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<sup>2</sup> Jasmine Garsd, “‘Felt like a kidnapping’: Wrong turn leads to 5-day detention ordeal,” National Public Radio, March 26, 2025, available at: <https://www.npr.org/2025/03/26/nx-s1-5335524/wrong-turn-bridge-detention-ordeal>.

similarly feature information obtained through the FOIA process.<sup>3</sup> The ACLU further disseminates information to the public via social media platforms such as Facebook, X, Bluesky and Instagram.

ACLU materials are specifically designed to be educational and are widely disseminated to the public.<sup>4</sup> These materials are 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 websites. *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).

Similarly, MIRC, which is a legal resource center for Michigan's immigrant communities, is heavily engaged in disseminating information. MIRC disseminates information about topics affecting immigrants and refugees via a variety of media including its website, social media, and an email newsletter service. The MIRC website ([michiganimmigrant.org](http://michiganimmigrant.org)) provides extensive information on immigration-related issues. The website includes a library of materials used by community advocates. It includes a database of documents previously obtained through FOIA from Immigration and Customs Enforcement.<sup>5</sup> MIRC's Facebook page has several thousand followers.

Depending on the results of this Request, the ACLU and MIRC plan to disseminate the information they receive among the public through these kinds of publications in these kinds of channels. The ACLU and MIRC are therefore organizations "primarily engaged in disseminating information" within the meaning of the statute and the relevant regulations. Indeed, the fact that the ACLU meets these criteria has previously been recognized in FOIA litigation between the ACLU and the Department of Justice. *See, e.g., American Civil Liberties Union v. Department 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)).

For all of the foregoing reasons, expedited processing of this Request is warranted and should be granted. Requesters hereby certify that the foregoing is true and correct to the best of their knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi); 6 C.F.R. § 5.5(d)(3).

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<sup>3</sup> See, e.g., THE TORTURE DATABASE, <http://www.thetorturedatabase.org> (last visited May 12, 2015); MAPPING THE FBI, <http://www.aclu.org/mappingthefbi> (last visited Mar. 16, 2015); see also, e.g., Press Release, ACLU of San Diego & Imperial Counties, CBP Releases Report, New Training Handbook (May 22, 2014), <http://www.aclusandiego.org/radio-silence-border-patrol-use-force-policies-leads-lawsuit/>.

<sup>4</sup> See, e.g., Dan Gillmor, In Praise of the Almost-Journalists, *Slate* (Mar. 28, 2014, 12:29 PM), <http://slate.me/1jg5YXx> (describing national ACLU's efforts to broadly disseminate important civil rights-related news stories).

<sup>5</sup> "ICE Training Documents", available at [www.michiganimmigrant.org/resources/library](http://www.michiganimmigrant.org/resources/library).

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

The Requesters seek a full waiver of all fees because disclosure of the requested records is in the public interest.” 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.”).

At a minimum, should a total fee waiver be denied, Requesters seek a waiver of all processing (search and review) fees because the ACLU and MIRC qualify as “representatives of the news media,” and because the records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“fees should be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution; or a representative of the news media”); 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.”). Federal agencies routinely grant such fee waivers for FOIA requests made by the ACLU and similar organizations for these reasons.

### **A. Release of the requested records is in the public interest.**

The records requested will contribute significantly to public understanding of the government’s operations or activities. 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). Each of these considerations is satisfied here.

First, the records requested pertain directly to the operations and activities of the federal government, namely CBP/DHS treatment of individuals, families and children in detention. Second, this Request is “likely to contribute” to an understanding of government operations or activities, specifically by helping the public understand how CBP and DHS operate when detaining individuals, families and children at the border. Third, disclosure of the requested information will contribute to “the understanding of a reasonably broad audience of persons interested in the subject” not only of the specific incident at issue here, but the broader problems of border

detentions. Finally, disclosure will contribute “significantly” to the public’s understanding of these issues, as the ACLU and MIRC intend to publish responsive records and develop reports or analyses based on the records obtained.

The 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 and Ethics in Washington v. Department of Health and Human Services*, 481 F. Supp. 2d 99, 107–109 (D.D.C. 2006).

#### **B. The ACLU and MIRC qualify as representatives of the news media.**

At a minimum, should a total fee waiver be denied, “fees should be limited to reasonable standard charges for document duplication” because the ACLU and MIRC are “representative[s] 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 and MIRC both 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. 522(a)(4)(A)(ii); 6 C.F.R. § 5.11 (b)(6); *see also Nat’l Security Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that “gathers information from a variety of sources,” 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). The ACLU and MIRC are “representatives of the news media” for the same reasons that they are “primarily engaged in the dissemination of information.” *See Electronic Privacy Information Center*, 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. Department of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”).

Courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the Requesters to be “representatives of the news media.” *See, e.g., Judicial Watch, Inc. v. Dep’t of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester). Indeed, various federal courts have specifically held that the ACLU is a “representative of the news media.” *See, e.g., Service Women’s Action Network v. Department of Defense*, 888 F. Supp. 2d 282, 287–88 (D. Conn. 2012) (holding that that the national ACLU and ACLU of Connecticut are “representatives of the news media”); *American Civil Liberties Union of Washington v. Department 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).

**C. Disclosure of the information requested is not in the commercial interest of the Requesters.**

Disclosure of the information requested is not in the commercial interest of the ACLU or MIRC.

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 *Department of Air Force v. Rose*, 425 U.S. 352, 361 (1991)).

Should a total waiver be denied, fees should be "limited to reasonable standard charges for document duplication," as the Requesters are non-profit institutions and educational researchers seeking such records not for a commercial purpose, but rather to disclose such records through the news media, and put them to use for research purposes. 5 U.S.C. § 552(a)(4)(A)(ii)(II). While it is permissible to charge document duplication fees to educational institutions and representatives of the news media, Requesters are seeking documents in an electronic format. Hence there should be no, or at most, negligible document duplication costs.

If a fee waiver is denied, the Requesters are prepared to pay fees up to \$200.00. We ask that you inform us first if fees in excess of \$200.00 may be charged, though we reserve the right to appeal a denial of fee waivers.

The Requesters certify that the above information is true and correct to the best of the Requesters' knowledge. 6 C.F.R. § 5.5(d)(3).

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Pursuant to the applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) 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) 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. In addition, we request that you provide an estimated date on which you will complete the processing of this request. 5 U.S.C. § 552(a)(7)(B). We reserve the right to appeal a decision to withhold any information.

Please furnish the requested records electronically to Miriam Aukerman at [maukerman@aclumich.org](mailto:maukerman@aclumich.org). Should you need to communicate with us regarding this Request, please also contact Ms. Aukerman.

Thank you in advance for your prompt assistance.

Sincerely

/s/ Miriam J. Aukerman

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