JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
ACLU OF VIRGINIA, ACLU OF MARYLAND, ACLU OF PENNSYLVANIA, ACLU OF DELAWARE

(b) County of Residence of First Listed Plaintiff Richmond City
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Hunton & Williams
951 E. Byrd St.
Richmond, Va. 23229 (804) 788-8200

DEFENDANTS
U.S. DEPARTMENT OF HOMELAND SECURITY and U.S. CUSTOMS AND BORDER PROTECTION

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*
Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☒ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq.

Brief description of cause:
FOIA Action relating to DHS and CBP's failure to comply

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE
April 12, 2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

AMERICAN CIVIL LIBERTIES UNION OF VIRGINIA, AMERICAN CIVIL LIBERTIES UNION OF MARYLAND, AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA, and AMERICAN CIVIL LIBERTIES UNION OF DELAWARE, Plaintiffs, v. U.S. DEPARTMENT OF HOMELAND SECURITY and U.S. CUSTOMS AND BORDER PROTECTION, Defendants.	Case No. _____ **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATION OF THE FREEDOM OF INFORMATION ACT, 5 U.S.C. § 552 et seq.**

INTRODUCTION

1. The American Civil Liberties Union of Virginia, American Civil Liberties Union of Maryland, American Civil Liberties Union of Pennsylvania, and American Civil Liberties Union of Delaware (collectively, "Plaintiffs" or "ACLU") bring this action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, as amended, to obtain injunctive and other appropriate relief requiring Defendants U.S. Department of Homeland Security ("DHS") and U.S. Customs and Border Protection ("CBP") (collectively, "Defendants") to respond to a FOIA request sent by Plaintiffs on February 2, 2017 ("Request"), and to promptly disclose the requested records.

2. The Request seeks records concerning CBP's local implementation of President Trump's January 27, 2017 Executive Order titled "Protecting the Nation From Foreign Terrorist Entry Into the United States," Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017) ("Executive Order No. 1"), as well as any other judicial order or executive directive issued regarding Executive Order No. 1, including President Trump's March 6, 2017 Executive Order,

identically titled, Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017) ("Executive Order No. 2") (collectively, "Executive Orders"). A true and correct copy of the Request is attached as **Exhibit A**.

3. Specifically, the Request seeks records concerning CBP's local implementation of the Executive Orders at sites within the purview of CBP's Baltimore Field Office. These include Washington Dulles International Airport, Baltimore Washington International Airport, and Philadelphia International Airport, and Pittsburgh International Airport ("Local International Airports") and Baltimore, Philadelphia, Pittsburgh, Port of Washington-Dulles and Wilmington ("Port of Entry Offices").

4. Among other things, the Executive Orders purport to halt refugee admissions and bar entrants from several predominantly Muslim countries from entering the United States.

5. Defendants' implementation of the Executive Orders has been the subject of significant public concern, as reflected by mass protests around the country, substantial news coverage, and numerous lawsuits filed following the President's signing of each Executive Order.

6. Over the weekend of January 27–29, 2017, at least five lawsuits resulted in emergency court orders enjoining implementation of various sections of Executive Order No. 1.[1] On March 15, 2017, a district court enjoined implementation of Sections 2 and 6 of Executive Order No. 2.[2]

7. News reports described Defendants' implementation of the Executive Orders as "chaotic" and "total[ly] lack[ing] . . . clarity and direction."[3]

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[1] *Vayeghan v. Kelly*, No. CV 17-0702, 2017 WL 396531 (C.D. Cal. Jan. 29, 2017); *Tootkaboni v. Trump*, No. 17-CV-10154, 2017 WL 386550 (D. Mass. Jan. 29, 2017); *Doe v. Trump*, No. C17-126, 2017 WL 388532 (W.D. Wash. Jan. 28, 2017); *Aziz v. Trump*, No. 1:17-CV-116, 2017 WL 386549 (E.D. Va. Jan. 28, 2017); *Darweesh v. Trump*, No. 17 CIV. 480 (AMD), 2017 WL 388504 (E.D.N.Y. Jan. 28, 2017).

[2] *Hawai'i v. Trump*, No. CV 17-00050 DKW-KSC, 2017 WL 1011673 (D. Haw. Mar. 15, 2017).

[3] *See, e.g.*, Ryan Devereaux *et al.*, *Homeland Security Inspector General Opens Investigation of Muslim Ban, Orders Document Preservation*, THE INTERCEPT, Feb. 1, 2017, *available at*

8. Official DHS statements reflected this confusion. For example, DHS stated on January 28 that Executive Order No. 1 would "bar green card holders."[4] The next day, however, DHS Secretary John Kelly deemed "the entry of lawful permanent residents to be in the national interest"[5] and the government clarified that Executive Order No. 1 did *not* apply to green card holders.[6]

9. Reportedly spurred by this chaos, on January 29, Virginia Senators Mark Warner and Tim Kaine called upon the Office of the Inspector General of the Department of Homeland Security to investigate Defendants' implementation of Executive Order No. 1.[7] The Senators specifically sought information regarding: any guidance Defendants provided to the White House in developing the order; any directions that were provided to Defendants in implementing it; whether CBP officers complied with the relevant court orders; and whether DHS and CBP officers kept a list of individuals that they had detained at ports of entry under the order. In response, the Inspector General directed Defendants' personnel to preserve all records "that might reasonably lead to the discovery of relevant information relating the implementation of" Executive Order No. 1.[8]

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https://theintercept.com/2017/02/01/homeland-security-inspector-general-opens-investigation-of-muslim-ban-rollout-orders-document-preservation/.

[4] *See* Max Greenwood, *Immigration Ban Includes Green Card Holders: DHS*, THE HILL, Jan. 28, 2017, *available at* http://thehill.com/policy/national-security/316670-trump-refugee-ban-bars-green-card-holders-report.

[5] *Statement By Secretary John Kelly On The Entry Of Lawful Permanent Residents Into The United States*, DEP'T OF HOMELAND SECURITY (Jan. 29, 2017), *available at* https://www.dhs.gov/news/2017/01/29/statement-secretary-john-kelly-entry-lawful-permanent-residents-united-states.

[6] *See* Robert Mackey, *As Protests Escalate, Trump Retreats From Barring Green Card Holders*, THE INTERCEPT, Jan. 29, 2017, *available at* https://theintercept.com/2017/01/29/trumps-executive-order-no-longer-bars-green-card-holders/.

[7] *See Warner & Kaine Demand Answers About Status of Detained Travelers at Dulles and Across the Country, available at* http://www.warner.senate.gov/public/index.cfm/pressreleases?ContentRecord_id=E31578D6-A777-40F7-96E7-703B80603CBD.

[8] *See Ryan Devereaux et al., Homeland Security Inspector General Opens Investigation of*

10. Examples of this chaos could be seen at Washington Dulles International Airport and Philadelphia International Airport.

11. For example, Yemeni individuals flying to Dulles with valid, government-issued visas when Executive Order No. 1 took effect had their visas cancelled upon landing at Dulles and were refused entry into the United States.[9]

12. Additionally, after several courts entered orders that, among other things, required that detained travelers have access to attorneys, CBP officials at Dulles appeared to ignore the orders.[10]

13. Similarly, two Syrian families with valid immigrant visas arrived at the Philadelphia International Airport the morning of January 28, 2017 to join their relatives who live near Allentown, Pennsylvania. They were removed from the plane by a CBP agent who refused to let them contact their waiting relative, but told them they could: 1) leave the U.S. on the same plane on which they had just traveled; or 2) they would be arrested and imprisoned with their visas taken away, with the result that they would not be allowed to re-enter the U.S. for five years. Terrified of what the alternative would mean, they purchased tickets on the return flight to Qatar.[11] The experience was so frightening that one of the family members had to have oxygen administered to him on the return flight because of faintness and possible heart palpitations. At

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Muslim Ban, Orders Document Preservation, The Intercept, Feb. 1, 2017, available at https://theintercept.com/2017/02/01/homeland-security-inspector-general-opens-investigation-of-muslim-ban-rollout-orders-document-preservation/.

[9] *See Barred Travelers Arrive At Dulles: 'America Is For Everybody', available at* http://wtop.com/loudoun-county/2017/02/families-barred-by-trump-travel-ban-due-at-dulles/slide/1/.

[10] *See Border Agents Defy Courts On Trump Travel Ban, Congressmen And Lawyers Say, available at* https://www.theguardian.com/us-news/2017/jan/29/customs-border-protection-agents-trump-muslim-country-travel-ban.

[11] *See* Julie Shaw, Justine McDaniel & Aubrey Whelan, *2 Christian Syrian families detained at PHL, returned to Qatar; other migrants detained at PHL*, PHILLY.COM, January 31, 2017, *available at* http://www.philly.com/philly/blogs/real-time/2-Syrian-families-detained-at-PHL-returned-to-Qatar.html.

least five other travelers were detained at the Philadelphia airport that day.[12]

14. Lawyers retained by the families of those in detention were not allowed to speak with their clients, despite demands by Philadelphia Mayor James Kenney, U.S. Representative Robert Brady and U.S. Senator Robert Casey.

15. Governor Tom Wolf, U.S. Rep. Dwight Evans, and State Reps. Jordan Harris and Brian Sims also went to the Philadelphia airport in an effort to get the detainees released.[13]

16. Three of the detainees were eventually transported from the Philadelphia airport to the Delaware County Correctional facility, where they spent the night. Finally, at about 1:00 A.M. on Sunday, January 29, lawyers for the detained travelers were given assurance by lawyers for the U.S. that the detainees would be released the next day – but not one of the detained individuals was allowed to speak to counsel before being released.[14]

17. Disclosure of the records Plaintiffs seek through this action would facilitate the public's understanding of how Defendants implemented and enforced the Executive Orders in the Baltimore Field Office, including in particular at Washington Dulles International Airport and Philadelphia International Airport. Such information is critical to the public's ability to hold the government accountable.

18. This action is necessary because Defendants have failed to provide Plaintiffs with a determination as to whether they will comply with the Request, although more than 20 business days have elapsed since Defendants received the Request.

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[12] *See Daughters say ex-schoolteacher denied entry to Philadelphia International Airport*, THE MORNING CALL, Jan. 31, 2017, *available at* http://www.mcall.com/news/nationworld/pennsylvania/mc-pa--trump-travel-ban-philadelphia-01312017-2-20170131-story.html/.

[13] *See* Julie Shaw, Justine McDaniel, Aubrey Whelan and Chris Mondics, *At Phila. airport, protest, detentions, anger, and hope*, PHILLY.COM, January 29, 2017, *available at* http://www.philly.com/philly/news/20170129_Order_prompts_protest__local_detentions.html.

[14] *See Immigrants Detained at Philadelphia Airport to be Released Sunday*, January 29, 2017, *available at* https://www.aclupa.org/news/2017/01/29/immigrants-detained-philadelphia-airport-be-released-sunday.

JURISDICTION

19. This Court has subject-matter jurisdiction over this action and personal jurisdiction over the parties under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. §§ 701–706, and 28 U.S.C. § 1331.

VENUE

20. Venue in the Eastern District of Virginia is proper under 5 U.S.C. § 552(a)(4)(B) as Plaintiff ACLU of Virginia's principal place of business is in the Eastern District of Virginia. Additionally, at least some of the requested agency records are, upon information and belief, situated within this District, and a substantial part of the events or omissions giving rise to the claims set forth below occurred there. For example, numerous people were detained at Washington Dulles International Airport as a result of Executive Order No. 1.[15] For the same reasons, venue also is proper under 28 U.S.C. § 1391(e).

21. Assignment to the Alexandria Division is proper under Local Civil Rule 3 because Washington Dulles International Airport is within this Division, at least some of the requested agency records are, upon information and belief, situated within this Division, and a substantial part of the events or omissions giving rise to the claims set forth below occurred there, including the detention of numerous people at Washington Dulles International Airport as a result of Executive Order No. 1.[16]

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[15] *See, e.g.*, *Customs And Border Officials Defy Court Order on Lawful Residents, available at* http://www.huffingtonpost.com/entry/dulles-airport-feds-violated-court-order_us_588d7274e4b08a14f7e67bcf; *Virginia Demands More Details On Travel Ban Detentions at Dulles International Airport, available at* https://www.washingtonpost.com/local/public-safety/va-demands-more-details-on-travel-ban-detentions-at-dulles-international-airport/2017/02/01/f10aef32-e8de-11e6-80c2-30e57e57e05d_story.html?utm_term=.7dd108163be0; http://wjla.com/news/local/video-mother-from-iran-5-year-old-son-reunited-after-he-was-detained-at-dulles-airport.

[16] *Id.*

PARTIES

22. Plaintiffs are non-profit, 501(c)(4) membership organizations that educate the public about the civil liberties implications of pending and proposed state and federal legislation, provide analysis of pending and proposed legislation, directly lobby legislators, and mobilize their members to lobby their legislators.

23. Defendant Department of Homeland Security is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

24. Defendant U.S. Customs and Border Protection is a component of DHS and is a federal agency within the meaning of 5 U.S.C. § 552(f)(1).

25. Plaintiffs are informed and therefore believe that Defendants have possession, custody, or control of the requested records.

FACTS

26. On February 2, 2017, Plaintiffs sent the Request to CBP's Baltimore Field Office and CBP's FOIA Officer at CBP Headquarters via certified, trackable mail, with tracking numbers of 778343009715 and 778343090418.

27. The Request sought copies of CBP's local interpretation and enforcement of the Executive Order at: 1) certain airports specified in the Request, including Washington Dulles International Airport, Baltimore Washington International Airport, and Philadelphia International Airport, and Pittsburgh International Airport ("Local International Airports"); and 2) certain Port of Entry offices specified in the Request, including Baltimore, Philadelphia, Pittsburgh, Port of Washington-Dulles and Wilmington ("Port of Entry Offices"). The Request expressly did *not* seek information held in the records of CBP Headquarters.

28. Specifically, the Request sought the following:

1. "Records created on or after January 27, 2017 concerning CBP's interpretation, enforcement, and implementation of the following at Local International Airports:

a. President Trump's Executive Order, signed on January 27, 2017 and titled 'Protecting the Nation From Foreign Terrorist Entry Into the United States';

b. Any guidance 'provided to DHS field personnel shortly' after President Trump signed the Executive Order, as referenced in CBP's online FAQ;[17]

c. Associate Director of Field Operations for U.S. Citizenship and Immigration Services Daniel M. Renaud's email, sent at 11:12 A.M. on January 27, 2017, instructing DHS employees that they could not adjudicate any immigration claims from the seven targeted countries;[18]

d. Judge Donnelly's Decision and Order granting an Emergency Motion for Stay of Removal, issued in the Eastern District of New York on January 28, 2017, including records related to CBP's efforts to comply with the court's oral order requiring prompt production of a list of all class members detained by CBP;[19]

e. Judge Brinkema's Temporary Restraining Order, issued in the Eastern District of Virginia on January 28, 2017;[20]

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[17] To assist CBP in responding, the Request included the following information in a footnote for reference: "*Protecting the Nation from Foreign Terrorist Entry into the United States*, U.S. CUSTOMS AND BORDER PROTECTION (Jan. 31, 2017), *available at* https://www.cbp.gov/border-security/protecting-nation-foreign-terrorist-entry-united-states ('The Executive Order and the instructions therein were effective at the time of the order's signing. *Guidance was provided to DHS field personnel shortly thereafter.*') (emphasis added)."

[18] The following footnote was included for reference: "*See* Alice Speri and Ryan Devereaux, *Turmoil at DHS and State Department—'There Are People Literally Crying in the Office Here,'* THE INTERCEPT, Jan. 30, 2017, *available at* https://theintercept.com/2017/01/30/asylum-officials-and-state-department-in-turmoil-there-are-people-literally-crying-in-the-office-here/."

[19] The following footnote was included for reference: "Decision and Order, *Darweesh v. Trump*, No. 17 Civ. 480 (AMD) (E.D.N.Y. Jan. 28, 2017), *available at* https://www.aclu.org/legal-document/darweesh-v-trump-decision-and-order."

[20] The following footnote was included for reference: "Temporary Restraining Order, *Aziz v. Trump*, No. 1:17-cv-116 (E.D. Va. Jan. 28, 2017), *available* at https://www.justice4all.org/wp-content/uploads/2017/01/TRO-order-signed.pdf."

f. Judge Zilly's Order Granting Emergency Motion for Stay of Removal, issued in the Western District of Washington on January 28, 2017;[21]

g. Judge Burroughs' Temporary Restraining Order, issued in the District of Massachusetts on January 29, 2017;[22]

h. Judge Gee's Order granting an Amended *Ex Parte* Application for Temporary Restraining Order, issued in the Central District of California on January 29, 2017;[23]

i. Assurances from the U.S. Attorney's Office for the Eastern District of Pennsylvania that all individuals detained at Philadelphia International Airport under the Executive Order would be admitted to the United States and released from custody on Sunday, January 29, 2017;

j. DHS's 'Response to Recent Litigation' statement, issued on January 29, 2017;[24]

k. DHS Secretary John Kelly's 'Statement on the Entry of Lawful Permanent Residents Into the United States,' issued on January 29, 2017;[25]

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[21] The following footnote was included for reference: "Order Granting Emergency Motion for Stay of Removal, *Doe v. Trump*, No. C17-126 (W.D. Wash. Jan. 28, 2017), *available at* https://www.justsecurity.org/wpcontent/uploads/2017/01/Seattle-Order.pdf."

[22] The following footnote was included for reference: "Temporary Restraining Order, *Tootkaboni v. Trump*, No. 17-cv-10154 (D. Mass. Jan. 29, 2017), *available at* https://aclum.org/wp-content/uploads/2017/01/6-TRO-Jan-29-2017.pdf."

[23] The following footnote was included for reference: "Order, *Vayeghan v. Trump*, No. CV 17-0702 (C.D. Cal. Jan. 29, 2017), *available at* https://www.aclusocal.org/sites/default/files/vayeghan_-_order_re_tro.pdf."

[24] The following footnote was included for reference: "*Department of Homeland Security Response to Recent Litigation*, DEP'T OF HOMELAND SECURITY (Jan. 29, 2017), *available at* https://www.dhs.gov/news/2017/01/29/department-homeland-security-response-recent-litigation."

[25] *Statement By Secretary John Kelly On The Entry Of Lawful Permanent Residents Into The United States,* DEP'T OF HOMELAND SECURITY (Jan. 29, 2017), *available at* https://www.dhs.gov/news/2017/01/29/statement-secretary-john-kelly-entry-lawful-permanent-residents-united-states.

l. DHS's 'Statement on Compliance with Court Orders and the President's Executive Order,' issued on January 29, 2017;[26] and

m. Any other judicial order or executive directive issued regarding the Executive Order on or after January 27, 2017.

2. Records concerning the number of individuals who were detained or subjected to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver at Local International Airports pursuant to the Executive Order, including:

   a. The total number of individuals who remain detained or subject to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver at Local International Airports both as of the date of this request and as of the date on which this request is processed; and

   b. The total number of individuals who have been detained or subjected to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver for any length of time at Local International Airports since January 27, 2017, including the number of individuals who have been

      i. released,

      ii. transferred into immigration detention, or

      iii. removed from the United States;

[26] The following footnote was included for reference: "*DHS Statement On Compliance With Court Orders And The President's Executive Order*, DEP'T OF HOMELAND SECURITY (Jan. 29, 2017), *available at* https://www.dhs.gov/news/2017/01/29/dhs-statement-compliance-court-orders-and-presidents-executive-order."

3. Records concerning the number of individuals who have been removed from Local International Airports from January 27, 2017 to date pursuant to the Executive Order;
4. Records concerning the number of individuals who arrived at Local International Airports from January 27, 2017 to date with valid visas or green cards who subsequently agreed voluntarily to return; and
5. Records containing the 'guidance' that was 'provided to DHS field personnel shortly' after President Trump signed the Executive Order."[27]

Exh. A at 5-9.

29. The Request included an application for expedited processing, on the grounds that there is a "compelling need" for these records under 5 U.S.C. § 552(a)(6)(E)(v)(II) because the information requested is "urgently" needed by an organization primarily engaged in disseminating information "to inform the public concerning actual or alleged Federal Government activity." Exh. A at 9.

30. The Request provided detail showing that the ACLU is primarily engaged in disseminating information within the meaning of 5 U.S.C. § 552(a)(6)(E)(v), given that a critical and substantial aspect of the ACLU's mission is to obtain information about government activity, analyze that information, and publish and disseminate that information widely to the press and public. Exh. A at 9-11.

31. The Request described examples of the ACLU's information-dissemination function. Exh. A at 11-15.

32. The Request also included an application for a fee waiver or limitation under 5

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[27] The following footnote was included for reference: "*Protecting the Nation from Foreign Terrorist Entry into the United States*, U.S. CUSTOMS AND BORDER PROTECTION (Jan. 31, 2017), *available at* https://www.cbp.gov/border-security/protecting-nation-foreign-terrorist-entry-united-states ('The Executive Order and the instructions therein were effective at the time of the order's signing. *Guidance was provided to DHS field personnel shortly thereafter.*') (emphasis added)."

U.S.C. § 552(a)(4)(A)(iii) on the grounds that disclosure of the requested records is in the public interest and 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." In particular, the ACLU emphasized that the Request would significantly contribute to public understanding on a matter of profound public importance about which scant specific information had been made public, *i.e.*, how local CBP Field Offices had enforced, and continue to enforce, the Executive Orders. The Request also made clear that the ACLU plans to disseminate the information disclosed as a result of the Request to the public at no cost. Exh. A at 15.

33. The Request also applied for a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) on the grounds that Plaintiffs qualify as "representatives of the news media" and the records are not sought for commercial use, given the ACLU's non-profit mission and substantial activities to publish information for dissemination to the public, as discussed in greater detail in ¶¶29-31 above. Exh. A at 15-17.

34. CBP received the Request on February 3, 2017. *See* **Exhibit B**.

35. CBP has not acknowledged the Request.

36. As of April 12, 2017, more than 20 days (excepting Saturdays, Sundays, and legal public holidays) have elapsed since CBP received the Request.

37. As of the filing date of this Complaint, Defendants have not notified Plaintiffs of a determination as to whether Defendants will comply with the Request.

38. Because Defendants failed to comply with the 20-business-day time limit provision of FOIA, 5 U.S.C. § 552(a)(6)(A)(i), Plaintiffs are deemed to have exhausted their administrative remedies with respect to the Request under 5 U.S.C. § 552(a)(6)(C)(i).

Violation of FOIA for Failure to Provide a Determination Within 20 Business Days

39. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 38 above, inclusive.

40. Defendants have a legal duty under FOIA to determine whether to comply with a request within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receiving the request, and also have a legal duty to immediately notify a requester of the agency's determination and the reasons therefor.

41. Defendants' failure to determine whether to comply with the Request within 20 business days after receiving it violates FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and applicable regulations promulgated thereunder.

Violation of FOIA for Failure to Make Records Available

42. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 38 above, inclusive.

43. Plaintiffs have a legal right under FOIA to obtain the specific agency records requested on February 2, 2017 and there exists no legal basis for Defendants' failure to promptly make the requested records available to Plaintiffs, their members, and the public.

44. Defendants' failure to promptly make available the records sought by the Request violates FOIA, 5 U.S.C. § 552(a)(3)(A), and applicable regulations promulgated thereunder.

45. On information and belief, Defendants currently have possession, custody or control of the requested records.

Violation of FOIA for Failure to Provide a Determination As To Expedited Processing Within 10 Days

46. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 38 above, inclusive.

47. Defendants have a legal duty under FOIA to determine whether to provide expedited processing, and to provide notice of that determination to Plaintiffs, within 10 days after the date of the Request.

48. Defendants' failure determine whether to provide expedited processing and to

provide notice of that determination to Plaintiffs within 10 days after the date of the Request violates FOIA, 5 U.S.C. § 552(a)(6)(E)(ii)(I), and applicable regulations promulgated thereunder.

49. Because Defendants have not provided a complete response to the Request, this Court has jurisdiction under FOIA, 5 U.S.C. § 552(a)(6)(E)(iv) to review Defendants' failure to make a determination concerning Plaintiffs' request for expedited processing.

WHEREFORE, Plaintiffs request that the Court award them the following relief:

1. Declare that Defendants violated FOIA by failing to determine whether to comply with the Request within 20 business days and by failing to immediately thereafter notify Plaintiffs of such determination and the reasons therefor;

2. Declare that Defendants violated FOIA by unlawfully withholding the requested records;

3. Declare that Defendants violated FOIA by failing to determine whether to provide expedited processing, and to provide notice of that determination to Plaintiffs, within 10 days;

4. Order Defendants to immediately disclose the requested records to the public and make copies immediately available to Plaintiffs without charge for any search or duplication fees, or, in the alternative, provide for expedited proceedings to adjudicate Plaintiffs' rights under FOIA;

5. Award Plaintiffs their reasonable costs and attorneys' fees; and Grant such other relief as the Court may deem just and proper.

DATED this 12th day of April, 2017.

Respectfully submitted,

HUNTON & WILLIAMS LLP

By: _____

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Attorneys for Plaintiffs American Civil Liberties Union of Virginia, American Civil Liberties Union of Maryland, American Civil Liberties Union of Pennsylvania, and American Civil Liberties Union of Delaware

Exhibit A

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S. ELIZABETH LOCKMAN
PRESIDENT

KATHLEEN M. MacRAE
EXECUTIVE DIRECTOR

RICHARD H. MORSE
LEGAL DIRECTOR

RYAN R. TACK-HOOPER
STAFF ATTORNEY & LEGISLATIVE ADVOCATE

February 2, 2017

BY FEDERAL EXPRESS
U.S. Customs & Border Protection
217 E. Redwood Street, 12th Floor
Baltimore, MD 21202

FOIA Officer
U.S. Customs & Border Protection
1300 Pennsylvania Avenue, NW Room 3.3D
Washington, D.C. 20229
Phone: (202) 344-1610

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

To Whom It May Concern:

The American Civil Liberties Unions of Delaware, Maryland, Pennsylvania and Virginia and the American Civil Liberties Union Foundations of Delaware, Maryland, Pennsylvania and Virginia (together with the American Civil Liberties Union, "ACLU")[1] submit this Freedom of Information Act ("FOIA") request ("Request") for records about the implementation of President Trump's January 27, 2017 Executive Order ("Executive Order") by U.S. Customs and Border Protection ("CBP"). Titled "Protecting the Nation From Foreign Terrorist Entry Into the United States," the Executive Order halts refugee admissions and bars entrants from seven predominantly Muslim countries from entering the United States.[2] By this letter, which constitutes a request pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, and the relevant implementing regulations, *see* 6 C.F.R. § 5 *et seq.*, we seek information

[1] The American Civil Liberties Unions of Delaware, Maryland, Pennsylvania and Virginia are non-profit, 501(c)(4) membership organizations that educate the public about the civil liberties implications of pending and proposed state and federal legislation, provide analysis of pending and proposed legislation, directly lobby legislators, and mobilize their members to lobby their legislators. The American Civil Liberties Union Foundations of Delaware, Maryland, Pennsylvania and Virginia are separate 501(c)(3) organizations that provide legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educate the public about the civil rights and civil liberties implications of pending and proposed state and federal legislation, provide analyses of pending and proposed legislation, directly lobby legislators, and mobilize their members to lobby their legislators. They are affiliates of the American Civil Liberties Union.

[2] Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017).

regarding CBP's **local implementation** of the Executive Order at international airports and ports of entry within the purview of Baltimore ("Field Office").

I. Background

On January 27, 2017, President Donald J. Trump issued an executive order that indefinitely blocks refugees from Syria from entering the United States, bars all refugees for 120 days, and prohibits individuals from seven predominantly Muslim countries—Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen—from entering the United States for 90 days.[3] By the following day, January 28, 2017, CBP officials across the country had detained an estimated 100 to 200 individuals at airports throughout the United States, including Philadelphia International Airport and Washington Dulles International Airport.[4] Two unions representing more than 21,000 federal immigration officers praised the Executive Order,[5] issuing a joint press release that "applaud[ed] the three executive orders [President Trump] has issued to date."[6] Daniel M. Renaud, Associate Director of Field Operations for U.S. Citizenship and Immigration Services, instructed Department of Homeland Security ("DHS") employees that they could no longer adjudicate any immigration claims from the seven countries targeted by the Executive Order.[7]

[3] *See, e.g.*, Michael D. Shear and Helene Cooper, *Trump Bars Refugees and Citizens of 7 Muslim Countries*, N.Y. TIMES, Jan. 27, 2017, *available at* https://www.nytimes.com/2017/01/27/us/politics/trump-syrian-refugees.html.

[4] *See, e.g.*, Michael D. Shear *et al.*, *Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide*, N.Y. TIMES, Jan. 28, 2017, *available at* https://www.nytimes.com/2017/01/28/us/refugees-detained-at-us-airports-prompting-legal-challenges-to-trumps-immigration-order.html; *2 Christian Syrian Families Detained at PHL, Returned to Qatar; Other Migrants Detained at PHL, Philadelphia Inquirer (Jan. 31. 2017),* http://www.philly.com/philly/blogs/real-time/2-Syrian-families-detained-at-PHL-returned-to-Qatar.html.; http://abcnews.go.com/Politics/confusion-protest-days-trumps-immigration-order/story?id=45124158; http://www.huffingtonpost.com/entry/dulles-airport-feds-violated-court-order_us_588d7274e4b08a14f7e67bcf; https://www.washingtonpost.com/local/public-safety/va-demands-more-details-on-travel-ban-detentions-at-dulles-international-airport/2017/02/01/f10aef32-e8de-11e6-80c2-30e57e57e05d_story.html?utm_term=.7dd108163be0; http://wjla.com/news/local/video-mother-from-iran-5-year-old-son-reunited-after-he-was-detained-at-dulles-airport

[5] Robert Mackey, *America's Deportation Agents Love Trump's Ban and Rely on Breitbart for Their News*, THE INTERCEPT, Jan. 30, 2017, *available at* https://theintercept.com/2017/01/30/americas-deportation-agents-love-trumps-ban-rely-breitbart-news/.

[6] *Joint Press Release Between Border Patrol and ICE Councils*, NAT'L ICE COUNCIL, *available at* http://iceunion.org/news/joint-press-release-between-border-patrol-and-ice-councils.

[7] Alice Speri and Ryan Devereaux, *Turmoil at DHS and State Department—"There Are People Literally Crying in the Office Here,"* THE INTERCEPT, Jan. 30, 2017, *available at* https://theintercept.com/2017/01/30/asylum-officials-and-state-department-in-turmoil-there-are-people-literally-crying-in-the-office-here/.

Beginning Saturday morning, protests erupted nationwide and attorneys rushed to airports to assist detained individuals and their families.[8] Over the next twenty-four hours, five federal courts ordered officials to temporarily stop enforcement of the Executive Order.[9] First, Judge Donnelly of the Eastern District of New York issued a nationwide order in *Darweesh v. Trump*, filed by the ACLU's Immigrants' Rights Project (among others), that prohibited the government from removing any detained travelers from the seven banned countries who had been legally authorized to enter the United States.[10] And a few hours later, in *Tootkaboni v. Trump*, filed by the ACLU of Massachusetts (among others), Judge Burroughs and Magistrate Judge Dein of the District of Massachusetts issued a nationwide order that not only prohibited the removal of such individuals, but also temporarily banned the government from detaining people affected by the Executive Order.[11]

At the same time, President Trump remained publicly committed to his opposing position. In the early hours of Sunday, January 29, 2017, after the five court orders had been issued, President Trump tweeted, "Our country needs strong borders and extreme vetting, NOW."[12] He also issued a statement on Facebook

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[8] *See, e.g.*, Peter Baker, *Travelers Stranded and Protests Swell Over Trump Order*, N.Y. TIMES, Jan. 29, 2017, *available at* https://www.nytimes.com/2017/01/29/us/politics/white-house-official-in-reversal-says-green-card-holders-wont-be-barred.html; Issie Lapowsky and Andy Greenberg, *Trump's Ban Leaves Refugees in Civil Liberties Limbo*, WIRED, Jan. 28, 2017, *available at* https://www.wired.com/2017/01/trumps-refugee-ban-direct-assault-civil-liberties/; Zolan Kanno-Youngs and Ben Kesling, *Thousands Flood Cities' Streets to Protest Donald Trump's Immigration Ban*, WALL ST. J., Jan. 30, 2017, *available at* https://www.wsj.com/articles/protests-continue-against-trumps-executive-order-banning-some-from-u-s-1485735672.

[9] *See, e.g.*, Steve Vladeck, *The Airport Cases: What Happened, and What's Next?*, JUST SECURITY, Jan. 30, 2017, *available at* https://www.justsecurity.org/36960/stock-weekends-district-court-orders-immigration-eo/.

[10] Decision and Order, *Darweesh v. Trump*, No. 17 Civ. 480 (AMD) (E.D.N.Y. Jan. 28, 2017), *available at* https://www.aclu.org/legal-document/darweesh-v-trump-decision-and-order.

[11] Temporary Restraining Order, *Tootkaboni v. Trump*, No. 17-cv-10154 (D. Mass. Jan. 29, 2017), *available at* https://aclum.org/wp-content/uploads/2017/01/6-TRO-Jan-29-2017.pdf. Another federal court issued an order requiring that attorneys be allowed access to all lawful permanent residents detained at Dulles International Airport and barring the government from deporting any such individuals. *See* Temporary Restraining Order, *Aziz v. Trump*, No. 1:17-cv-116 (E.D. Va. Jan. 28, 2017), *available* at https://www.justice4all.org/wp-content/uploads/2017/01/TRO-order-signed.pdf. In *Doe v. Trump*, filed in part by the ACLU of Washington, the court banned the removal of two individuals. *See* Order Granting Emergency Motion for Stay of Removal, *Doe v. Trump*, No. C17-126 (W.D. Wash. Jan. 28, 2017), *available at* https://www.justsecurity.org/wp-content/uploads/2017/01/Seattle-Order.pdf. Finally, in *Vayeghan v. Trump*, filed in part by the ACLU of Southern California, the court ordered the government to permit an Iranian individual who had already been removed to Dubai to return to the United States and to admit him pursuant to his approved visa. Order, *Vayeghan v. Trump*, No. CV 17-0702 (C.D. Cal. Jan. 28, 2017), *available at* https://www.aclusocal.org/sites/default/files/vayeghan_-_order_re_tro.pdf.

[12] Donald J. Trump, TWITTER (Jan. 29, 2017 5:08 A.M.), https://twitter.com/realDonaldTrump/status/825692045532618753.

later that day, indicating that entry from the seven predominantly Muslim countries would remain blocked for the next ninety days.[13]

In the face of nationwide confusion about the scope and validity of the Executive Order, guidance from other relevant actors offered little clarity. For example, on Saturday, DHS confirmed that the ban "will bar green card holders."[14] But on Sunday, DHS Secretary John Kelly deemed "the entry of lawful permanent residents to be in the national interest"[15] and, that evening, the Trump administration clarified that the Executive Order does not apply to green card holders.[16] The same day, DHS stated, perhaps contradictorily and without any elaboration, "We are and will remain in compliance with judicial orders. We are and will continue to enforce President Trump's executive order humanely and with professionalism."[17] On Monday, then–Acting Attorney General Sally Yates announced that the Department of Justice would not present arguments in defense of the Executive Order unless and until she became convinced that it was lawful.[18] Shortly thereafter, Ms. Yates was relieved of her position by President Trump.[19] The same evening, President Trump also replaced the acting director of U.S. Immigration and Customs Enforcement ("ICE").[20]

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[13] Donald J. Trump, *Statement Regarding Recent Executive Order Concerning Extreme Vetting*, Jan. 29, 2017, *available at* https://www.facebook.com/DonaldTrump/posts/10158567643610725 ("We will again be issuing visas to all countries once we are sure we have reviewed and implemented the most secure policies over the next 90 days.").

[14] Max Greenwood, *Immigration Ban Includes Green Card Holders: DHS*, THE HILL, Jan. 28, 2017, *available at* http://thehill.com/policy/national-security/316670-trump-refugee-ban-bars-green-card-holders-report.

[15] *Statement By Secretary John Kelly On The Entry Of Lawful Permanent Residents Into The United States*, DEP'T OF HOMELAND SECURITY (Jan. 29, 2017), *available at* https://www.dhs.gov/news/2017/01/29/statement-secretary-john-kelly-entry-lawful-permanent-residents-united-states.

[16] Robert Mackey, *As Protests Escalate, Trump Retreats From Barring Green Card Holders*, THE INTERCEPT, Jan, 29, 2017, *available at* https://theintercept.com/2017/01/29/trumps-executive-order-no-longer-bars-green-card-holders/.

[17] *DHS Statement On Compliance With Court Orders And The President's Executive Order*, DEP'T OF HOMELAND SECURITY (Jan. 29, 2017), *available at* https://www.dhs.gov/news/2017/01/29/dhs-statement-compliance-court-orders-and-presidents-executive-order.

[18] Jonathan H. Adler, *Acting Attorney General Orders Justice Department Attorneys Not to Defend Immigration Executive Order*, WASH. POST, Jan. 30, 2017, *available at* https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/01/30/acting-attorney-general-orders-justice-department-attorneys-not-to-defend-immigration-executive-order/.

[19] *Read the Full White House Statement on Sally Yates*, BOSTON GLOBE, Jan. 30, 2017, *available at* https://www.bostonglobe.com/news/politics/2017/01/30/read-full-white-house-statement-sally-yates/HkFReIYJidU9deDelPK6SM/story.html.

[20] *Statement from Secretary Kelly on the President's Appointment of Thomas D. Homan as Acting ICE Director*, DEP'T OF HOMELAND SECURITY (Jan. 30, 2017), *available at* https://www.dhs.gov/news/2017/01/30/statement-secretary-kelly-presidents-appointment-thomas-d-homan-acting-ice-director.

In spite of court orders to the contrary, some CBP officials appear to be continuing to detain individuals—though the approach appears to differ by location.[21] Accordingly, we seek to supplement the public record to clarify CBP's understanding and implementation of the Executive Order at Baltimore-Washington International Airport, Philadelphia International Airport, Pittsburgh International Airport and Washington Dulles International Airport ("Local International Airports") and Baltimore, Philadelphia, Pittsburgh, Port of Washington-Dulles and Wilmington ("Port of Entry Offices"). Through this request, the ACLU aims to facilitate the public's indispensable role in checking the power of our public officials and to learn about the facts on the ground in Delaware, Maryland, Pennsylvania and Virginia and the Local International Airports.

II. Requested Records

For the purposes of this Request, "Records" are collectively defined to include, but are 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, Signal, Gchat, or Twitter direct message); e-mails; images, video, and audio recorded on cell phones; voicemail messages; social-media posts; instructions; directives; guidance documents; formal and informal presentations; training documents; bulletins; alerts; updates; advisories; reports; legal and policy memoranda; contracts or agreements; minutes or notes of meetings and phone calls; and memoranda of understanding. We seek release of the following:

1. Records created on or after January 27, 2017 concerning CBP's interpretation, enforcement, and implementation of the following at Local International Airports:

    a. President Trump's Executive Order, signed on January 27, 2017 and titled "Protecting the Nation From Foreign Terrorist Entry Into the United States";

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[21] *See, e.g.*, Julia Wick, *Lawyers Say At Least 17 People Are Still Detained at LAX, Protests Continue*, LAIST, Jan. 29, 2017, *available at* http://laist.com/2017/01/29/people_are_still_detained_at_lax.php; Daniel Marans, *Customs and Border Officials Defy Court Order on Lawful Residents*, HUFFINGTON POST, Jan. 29, 2017, *available at* http://www.huffingtonpost.com/entry/dulles-airport-feds-violated-court-order_us_588d7274e4b08a14f7e67bcf; Tom Cleary, *Is Border Patrol Defying Federal Judge's Stay on Immigration Executive Order?*, HEAVY, Jan. 29, 2017, *available at* http://heavy.com/news/2017/01/border-patrol-homeland-security-defying-ignoring-following-judge-ruling-stay-immigration-executive-order-dulles-dfw-muslim-ban/; Tess Owen, *Waiting for Answers: We Still Don't Know How Many People are Being Detained at US Airports*, VICE NEWS, Jan. 30, 2017, *available at* https://news.vice.com/story/we-still-dont-know-how-many-people-are-being-detained-at-us-airports.

b. Any guidance "provided to DHS field personnel shortly" after President Trump signed the Executive Order, as referenced in CBP's online FAQ;[22]

c. Associate Director of Field Operations for U.S. Citizenship and Immigration Services Daniel M. Renaud's email, sent at 11:12 A.M. on January 27, 2017, instructing DHS employees that they could not adjudicate any immigration claims from the seven targeted countries;[23]

d. Judge Donnelly's Decision and Order granting an Emergency Motion for Stay of Removal, issued in the Eastern District of New York on January 27, 2017, including records related to CBP's efforts to comply with the court's oral order requiring prompt production of a list of all class members detained by CBP;[24]

e. Judge Brinkema's Temporary Restraining Order, issued in the Eastern District of Virginia on January 28, 2017;[25]

f. Judge Zilly's Order Granting Emergency Motion for Stay of Removal, issued in the Western District of Washington on January 28, 2017;[26]

g. Judge Burroughs' Temporary Restraining Order, issued in the District of Massachusetts on January 29, 2017;[27]

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[22] *Protecting the Nation from Foreign Terrorist Entry into the United States*, U.S. CUSTOMS AND BORDER PROTECTION (Jan. 31, 2017), *available at* https://www.cbp.gov/border-security/protecting-nation-foreign-terrorist-entry-united-states ("The Executive Order and the instructions therein were effective at the time of the order's signing. *Guidance was provided to DHS field personnel shortly thereafter.*") (emphasis added).

[23] *See* Alice Speri and Ryan Devereaux, *Turmoil at DHS and State Department—"There Are People Literally Crying in the Office Here,"* THE INTERCEPT, Jan. 30, 2017, *available at* https://theintercept.com/2017/01/30/asylum-officials-and-state-department-in-turmoil-there-are-people-literally-crying-in-the-office-here/.

[24] Decision and Order, *Darweesh v. Trump*, No. 17 Civ. 480 (AMD) (E.D.N.Y. Jan. 28, 2017), *available at* https://www.aclu.org/legal-document/darweesh-v-trump-decision-and-order.

[25] Temporary Restraining Order, *Aziz v. Trump*, No. 1:17-cv-116 (E.D. Va. Jan. 28, 2017), *available* at https://www.justice4all.org/wp-content/uploads/2017/01/TRO-order-signed.pdf.

[26] Order Granting Emergency Motion for Stay of Removal, *Doe v. Trump*, No. C17-126 (W.D. Wash. Jan. 28, 2017), *available at* https://www.justsecurity.org/wpcontent/uploads/2017/01/Seattle-Order.pdf.

[27] Temporary Restraining Order, *Tootkaboni v. Trump*, No. 17-cv-10154 (D. Mass. Jan. 29, 2017), *available at* https://aclum.org/wp-content/uploads/2017/01/6-TRO-Jan-29-2017.pdf.

h. Judge Gee's Order granting an Amended *Ex Parte* Application for Temporary Restraining Order, issued in the Central District of California on January 29, 2017;[28]

i. Assurances from the U.S. Attorney's Office for the Eastern District of Pennsylvania that all individuals detained at Philadelphia International Airport under the Executive Order would be admitted to the United States and released from custody on Sunday, January 29, 2017;

j. DHS's "Response to Recent Litigation" statement, issued on January 29, 2017;[29]

k. DHS Secretary John Kelly's "Statement on the Entry of Lawful Permanent Residents Into the United States," issued on January 29, 2017;[30]

l. DHS's "Statement on Compliance with Court Orders and the President's Executive Order," issued on January 29, 2017;[31] and

m. Any other judicial order or executive directive issued regarding the Executive Order on or after January 27, 2017.

2. Records concerning the number of individuals who were detained or subjected to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver at Local International Airports pursuant to the Executive Order, including:

a. The total number of individuals who remain detained or subject to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver at Local International Airports both as of the date of this request and as of the date on which this request is processed; and

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[28] Order, *Vayeghan v. Trump*, No. CV 17-0702 (C.D. Cal. Jan. 28, 2017), *available at* https://www.aclusocal.org/sites/default/files/vayeghan_-_order_re_tro.pdf.

[29] *Department of Homeland Security Response to Recent Litigation*, DEP'T OF HOMELAND SECURITY (Jan. 29, 2017), *available at* https://www.dhs.gov/news/2017/01/29/department-homeland-security-response-recent-litigation.

[30] *Statement from Secretary Kelly on the President's Appointment of Thomas D. Homan as Acting ICE Director*, DEP'T OF HOMELAND SECURITY (Jan. 30, 2017), *available at* https://www.dhs.gov/news/2017/01/30/statement-secretary-kelly-presidents-appointment-thomas-d-homan-acting-ice-director.

[31] *DHS Statement On Compliance With Court Orders And The President's Executive Order*, DEP'T OF HOMELAND SECURITY (Jan. 29, 2017), *available at* https://www.dhs.gov/news/2017/01/29/dhs-statement-compliance-court-orders-and-presidents-executive-order.

b. The total number of individuals who have been detained or subjected to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver for any length of time at Local International Airports since January 27, 2017, including the number of individuals who have been

   i. released,

   ii. transferred into immigration detention, or

   iii. removed from the United States;

3. Records concerning the number of individuals who have been removed from Local International Airports from January 27, 2017 to date pursuant to the Executive Order;

4. Records concerning the number of individuals who arrived at Local International Airports from January 27, 2017 to date with valid visas or green cards who subsequently agreed voluntarily to return; and

5. Records containing the "guidance" that was "provided to DHS field personnel shortly" after President Trump signed the Executive Order.[32]

To reiterate: We seek information regarding CBP's interpretation and enforcement of the Executive Order at the Local International Airports, not information held in the records of CBP Headquarters. Specifically, we seek records held by CBP employees and offices at the Local International Airports, and the corresponding Port of Entry Offices and Regional Field Operations Office. CBP has an obligation to search all such field offices that are reasonably expected to produce any relevant information. *See, e.g.*, *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990); *Marks v. U.S. Dep't of Justice*, 578 F.2d 261, 263 (9th Cir. 1978) (agency not required to search all of its field offices because request did not ask for a search beyond the agency's central files); *see also Am. Immigration Council v. U.S. Dep't of Homeland Sec.*, 950 F. Supp. 2d 221, 230 (D.D.C. 2013).

We request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of our Request be conducted. Given the expedited timeline on which the relevant events and interpretations occurred, this includes the personal email accounts and work phones of all employees and former employees who may have sent or

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[32] *Protecting the Nation from Foreign Terrorist Entry into the United States*, U.S. CUSTOMS AND BORDER PROTECTION (Jan. 31, 2017), *available at* https://www.cbp.gov/border-security/protecting-nation-foreign-terrorist-entry-united-states ("The Executive Order and the instructions therein were effective at the time of the order's signing. *Guidance was provided to DHS field personnel shortly thereafter.*") (emphasis added).

received emails or text messages regarding the subject matter of this Request, as well as all institutional, shared, group, duty, task force, and all other joint and/or multi-user email accounts and work phones which may have been utilized by each such employee or former employee. Additionally, for each relevant email account identified, all storage areas must be searched, including the inbox "folder" (and all subfolders therein), sent folder, deleted folder, and all relevant archive files.

If any records responsive or potentially responsive to the Request have been destroyed, our Request includes, but is not limited to, any and all records relating or referring to the destruction of those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

As required by the relevant case law, the agency should follow any leads it discovers during the conduct of its searches and should perform additional searches when said leads indicate that records may be located in another system. Failure to follow clear leads is a violation of FOIA.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, we request 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

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).[33] 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 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).[34] 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. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-

[33] *See also* 6 C.F.R. § 5.5(e)(1).

[34] *See also* 6 C.F.R. § 5.5(e)(1)(ii).

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").[35]

The ACLU of Maryland regularly publishes "Free State Liberties," a newsletter for members that goes out to 13,000 people. The ACLU of Maryland also publishes regular updates and alerts via email to approximately 32,000 people (members and non-members). Similar messages are additionally broadcast to over 12,000 social media followers (members and non-members). Both the newsletter and email and social media alerts often include descriptions and analysis of information obtained through FOIA requests, in addition to specifically about immigrants' rights and issues of religious liberty.

The ACLU of Maryland regularly publishes "know your rights" materials, fact sheets, and reports designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties. In recent years, the ACLU of Maryland has published several reports relating to the rights of immigrants, specifically. These include: "Detained Without Process: The Excessive Use of Mandatory Detention Against Maryland's Immigrants": http://aclu-md.org/uploaded_files/0000/0887/mandatory_detention_report_2016.pdf; "Diverted into Deportation: The Immigration Consequences of Diversion Programs in Maryland": http://aclu-md.org/uploaded_files/0000/0886/immigrant_justice_diversion_report.pdf; and "Restoring Trust: How Immigration Detainers in Maryland Undermine Public

[35] 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. U.S. Dep't of Defense,* 241 F. Supp. 2d 5, 11 (D.D.C. 2003). Examples of FOIA requests filed by these ACLU affiliates for this purpose include: 2013 FOIA to Delaware Law Enforcement Agencies to search for records regarding any Special Weapons and Tactics (SWAT) teams and acquisition and use of SWAT-related technology; 2010 FOIA to FBI to search for records pertaining to the FBI's use of race and ethnicity to conduct assessments and investigations in local communities in Delaware after the FBI issued a Domestic Intelligence Operations Guide containing troubling revelations about the FBI's use of race and ethnicity when conducting investigations; 2008 FOIA to FBI and NSA after it was revealed through litigation that the Maryland State Police spied on peaceful political protesters, activity it turned out was done in partnership with the Maryland Coordination and Analysis Center, which is linked to federal intelligence databases; 2009 FOIA to Executive Office for U.S. Attorneys at DOJ to search offices of US Attorney in Maryland for records relating to policies and data regarding law enforcement acquisition of cell phone location data; 2010 FOIA to FBI Baltimore Field Office regarding the FBI's authority to collect information about and "map" racial and ethnic demographics, "behaviors," and "life style characteristics" in local communities to assist the FBI's "domain awareness" and "intelligence analysis" activities, as outlined in the Domestic Intelligence and Operations Guide revisions of 2008; 2014 FOIA to US Naval Academy seeking information about treatment of female applicants and students; 2013 FOIA to US Customs/ICE seeking information about ICE detainers in Maryland; and 2015 FOIA to ICE seeking records for the Mirna Artiga case, which is now the subject of federal court litigation.

Safety Through Unnecessary Enforcement: http://aclu-md.org/uploaded_files/0000/0472/immigration_detainer_report.pdf.

The ACLU of Virginia also regularly publishes "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.[36]

The ACLU of Delaware publishes a quarterly newsletter, "Connections," which is mailed to 1600-1800 people. The ACLU of Delaware also publishes regular updates and alerts via email to over 6,000 people (members and non-members). Similar messages are broadcast to 3600 people (members and non-members). Blog posts on ACLU of Delaware's website are visited by over 5,000 unique visitors per month, and the posts often include information regarding one's rights with ICE and the police. ACLU of Delaware's communications often include descriptions and analysis of information obtained through FOIA requests.

The ACLU of Delaware also regularly prints "Know Your Rights" materials, fact sheets, and reports designed to educate the public about civil liberties issues and government policies that influence freedom and justice. Most recently, ACLU of Delaware created a "Know Your Rights with Police" wallet card with immigrants in mind, and included information in English and Spanish. ACLU of Delaware also published "Every Sentence Should Not Equal a Life Sentence: Collateral Consequences Reform in Delaware." While it doesn't specifically address immigrants, it does call to attention the fact that Black and Latino individuals tend to suffer the most from these draconian laws.

The ACLU of Virginia publishes and distributes to its mailing list newsletters and issue mailers discussing its work and civil liberties issues twice per year. Mailings are disseminated to thousands of members and non-members. The ACLU of Virginia also broadcasts information on civil liberties and civil rights to the over 15,000 social media followers (both ACLU members and non-members).

The ACLU of Pennsylvania maintains a website that contains updates about its litigation, advocacy, and other civil liberties news.[37] In 2016, the website received 266,113 visitors. The most populated page contains fourteen Know Your Rights publications on topics ranging from rights at a protest to interactions with police and immigration agents. The website contains a blog about current civil

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[36] *See, e.g.,* Know Your Rights, American Civil Liberties Union of Virginia, *Mobile Justice*, https://acluva.org/mobilejustice/know-your-rights/; Know Your Rights, American Civil Liberties Union of Virginia, *Voters' Rights Information*, https://acluva.org/news-commentary/publications/know-your-rights/; Know Your Rights, American Civil Liberties Union of Virginia, *Advice on Dealing with the Police, FBI and INS*, https://acluva.org/1742/know-your-rights-brochures-available-from-aclu/.

[37] ACLU of Pennsylvania, *ACLU of Pennsylvania Home*, https://www.aclupa.org.

liberties issues that received 12,632 visitors in 2016.[38] The ACLU of Pennsylvania also has more than 20,000 followers on social media and 69,545 e-mail subscribers who receive updates on the ACLU of Pennsylvania's activities. The organization also released 34 press releases about its actions in 2016.[39]

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 approximately 2.1 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to 1.5 million social media followers (members and non-members). 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,[40] and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.[41]

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[38] ACLU of Pennsylvania, *Speaking Freely: The Official Blog of the American Civil Liberties Union of Pennsylvania*, https://blog.aclupa.org/.

[39] *See, e.g.*, ACLU of Pennsylvania, *ACLU-PA Sues City of Philadelphia Over Free Speech Restrictions During DNC* (Jun. 23, 2016), https://www.aclupa.org/news/2016/06/23/aclu-pa-sues-city-philadelphia-over-free-speech-restrictions.

[40] *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. *See also* Press Release, American Civil Liberties Union of Virginia, *ACLU of Virginia Demands Release of Records on Police Cell Phone Database* (Oct. 24, 2014), https://acluva.org/16226/aclu-of-virginia-demands-hampton-roads-releases-information-related-to-telephone-analysis-sharing-network/; Press Release, American Civil Liberties Union of Virginia, *ACLU of Virginia Decries Roanoke Mayor's Statements Invoking Japanese Internment* (Nov. 18, 2015), https://acluva.org/18137/aclu-of-virginia-decries-roanoke-mayors-statements-invoking-japanese-internment/; Press Release, American Civil Liberties Union of Virginia, *ACLU-VA Supports Gov. McAuliffe's Position on Syrian Refugees* (Nov. 17, 2015), https://acluva.org/18131/aclu-va-supports-gov-mcauliffes-position-on-syrian-refugees/; Press Release, American Civil Liberties Union of Virginia, *ACLU of Virginia Launches "The People's Body-Cam"* (Nov. 13, 2015), https://acluva.org/18125/aclu-of-virginia-launches-the-peoples-body-cam/.

[41] *See, e.g.*, Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes,* Wash. Post, Aug. 6, 2016, https://www.washingtonpost.com/

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.[42] 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 and ACLU of Virginia also publish widely-read blogs where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. See https://www.aclu.org/blog; See https://acluva.org/category/blog/. The ACLU and its affiliates create and disseminate original editorial and educational content on civil rights and civil

world/national-security/newly-declassified-document-sheds-light-on-how-president-approves-drone-strikes/2016/08/06/f424fe50-5be0-11e6-831d-0324760ca856_story.html (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://abcnews.go.com/US/newly-released-cia-documents-reveal-torture-detention-program/story?id=39873389 (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://www.npr.org/2015/12/09/459026249/cia-torture-report-may-remain-secret (quoting ACLU project director Hina Shamsi); "Report: Suspicious Cookies," Washington Post, 2008: http://www.washingtonpost.com/wp-dyn/content/article/2008/07/18/AR2008071802804.html; "ACLU, military women's group sue Defense Department for Naval Academy records on female midshipmen," Baltimore Sun, 2014: http://www.baltimoresun.com/business/federal-workplace/bs-md-naval-academy-foia-20150203-story.html.

[42] *See, e.g.*, ACLU, *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; ACLU, *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; ACLU, *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; ACLU, *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. . *See also, e.g.,* ACLU of Virginia, *Getting to Win-Win: The Use of Body-Worn Cameras in Virginia Policing*, https://acluva.org/bodycams/; *ACLU of Virginia, Accountable to No One: The Virginia Department of Corrections and Prisoner Medical Care* (May 2003), https://acluva.org/publications/medicalreport2003.pdf.

liberties news through multi-media projects, including videos, podcasts, and interactive features. *See, e.g.*, https://www.aclu.org/multimedia; www.aclu.org and www.acluva.org. The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The websites address 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 websites 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.[43] 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.[44] Additionally, the ACLU of Virginia's webpage, "ACLU-VA Seeks Records Related to Virginia Beach High School Assemblies Following Cancellation of Anti-Bullying Event," contains commentary on that FOIA request, the request itself, and related documents.[45]

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 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

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[43] *See, e.g.*, https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process; https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights; https://www.aclu.org/national-security/anwar-al-awlaki-foia-request; https://www.aclu.org/cases/aclu-v-department-defense; https://www.aclu.org/mappingthefbi; https://www.aclu.org/cases/bagram-foia; https://www.aclu.org/national-security/csrt-foia; http://www.aclu.org/safefree/nsaspying/30022res20060207.html; https://www.aclu.org/patriot-foia; https://www.aclu.org/nsl-documents-released-dod?redirect=cpredirect/32088.

[44] https://www.thetorturedatabase.org. *See also* https://www.aclu.org/foia-collection/targeted-killing-foia-database.

[45] https://acluva.org/19164/aclu-va-seeks-records-related-to-virginia-beach-high-school-assemblies-following-cancellation-of-gay-pride-event/.

Counsel memos relating to interrogation, detention, rendition, and surveillance.[46] Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act[47]; 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[48]; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.[49]

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).[50] Specifically, as discussed in Part I, *supra*, the requested records seek to inform the public about the CBP's current, local enforcement of a new Executive Order amid five court orders, varying directives, and other quickly developing events.

Given the foregoing, we have satisfied the requirements for expedited processing of this Request.

IV. Application for Waiver or Limitation of Fees

We request 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).[51] We also request a waiver of search fees on the grounds that we qualify 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).

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[46] https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf.

[47] https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf.

[48] https://www.aclu.org/sites/default/files/field_document/nsl_stats.pdf.

[49] https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights.

[50] *See also* 6 C.F.R. § 5.5(e)(1)(ii).

[51] *See also* 6 C.F.R. § 5.11(k).

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, news 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. Especially because little specific information has been made public about how local CBP Field Offices plan to enforce the Executive Order while also complying with the federal court orders, the records sought are certain to contribute significantly to the public's understanding of these issues.

We are not filing this Request to further our 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 the 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)).

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

We also request a waiver of search fees on the grounds that we qualify 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). We meet 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);[52] *see also Nat'l Sec. Archive v. U.S. Dep't of Defense*, 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. U.S. Dep't of Defense*, 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. U.S. Dep't of Justice*, 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"). We are therefore a

[52] *See also* 6 C.F.R. § 5.11(b)(6).

"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. U.S. 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).[53]

On account of these factors, fees associated with responding to FOIA requests are regularly waived for us as a "representative of the news media."[54] As was true in those instances, we meet the requirements for a fee waiver here.

* * *

[53] 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; *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.

[54] In 2005 and again in 2006, the FBI, Department of Defense, and Department of Homeland Security granted the ACLU of Pennsylvania a fee waiver in response to a FOIA request for documents relating to the surveillance of anti-war protestors. 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 a 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. Likewise, in December 2008, the Department of Justice granted the ACLU a fee waiver with respect to the same request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request. 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 granted a fee waiver to the ACLU for 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 DOJ 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 DOJ Office of Information and Privacy—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

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); 6 C.F.R. § 5.5(e)(4).

If the Request is denied in whole or in part, we ask that you justify all deletions by reference to specific FOIA exemptions. 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 deny a waiver of fees.

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

ACLU Border Litigation Project
c/o Mitra Ebadolahi
P.O. Box 87131
San Diego, CA 92138-7131

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,

Richard H. Morse

Richard H. Morse
Legal Director
American Civil Liberties Union
Foundation of Delaware
100 W. 10th Street, Suite 706
Wilmington, DE 19801

For the American Civil Liberties Unions and
American Civil Liberties Union Foundations
of Delaware, Maryland, Pennsylvania and
Virginia

cc: Leslie Chambers Mehta, Esq., Legal Director, ACLU of Virginia
Deborah A. Jeon, Esq., Legal Director, ACLU of Maryland
Witold Walczak, Esq., Legal Director, ACLU of Pennsylvania

Exhibit B

Rott, Carrie

From: TrackingUpdates@fedex.com
Sent: Friday, February 03, 2017 9:37 AM
To: Richard Morse
Subject: FedEx Shipment 778343009715 Delivered

Your package has been delivered

Tracking # 778343009715

Ship date:
Thu, 2/2/2017

Kathleen MacRae
WILMINGTON, DE 19801
US

Delivered

Delivery date:
Fri, 2/3/2017 9:34 am

U.S. Customs & Border Protection
12th Floor 217 E. Redwood Street
BALTIMORE, MD 21202
US

Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number:	778343009715
Status:	Delivered: 02/03/2017 09:34 AM Signed for By: M.ARRINGTON
Reference:	CBP FOIA Request
Signed for by:	M.ARRINGTON
Delivery location:	BALTIMORE, MD
Delivered to:	Receptionist/Front Desk
Service type:	FedEx Priority Overnight
Packaging type:	FedEx Envelope
Number of pieces:	1
Weight:	0.50 lb.
Special handling/Services:	Deliver Weekday
Standard transit:	2/3/2017 by 10:30 am

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 8:36 AM CST on 02/03/2017.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above.

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.

Thank you for your business.

Rott, Carrie

From: TrackingUpdates@fedex.com
Sent: Friday, February 03, 2017 9:36 AM
To: Richard Morse
Subject: FedEx Shipment 778343090418 Delivered

Your package has been delivered

Tracking # 778343090418

Ship date:
Thu, 2/2/2017

Kathleen MacRae
WILMINGTON, DE 19801
US

Delivered

Delivery date:
Fri, 2/3/2017 9:23 am

FOIA Officer
U.S. Customs & Border Protection
1300 Pennsylvania Avenue NW
Room 3.3D
WASHINGTON, DC 20229
US

Shipment Facts

Our records indicate that the following package has been delivered.

Tracking number:	778343090418
Status:	Delivered: 02/03/2017 09:23 AM Signed for By: H.CLEMENTS
Reference:	CBP FOIA Request
Signed for by:	H.CLEMENTS
Delivery location:	WASHINGTON, DC
Delivered to:	Shipping/Receiving
Service type:	FedEx Priority Overnight
Packaging type:	FedEx Envelope
Number of pieces:	1
Weight:	0.50 lb.
Special handling/Services:	Deliver Weekday
Standard transit:	2/3/2017 by 10:30 am

Please do not respond to this message. This email was sent from an unattended mailbox. This report was generated at approximately 8:35 AM CST on 02/03/2017.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above.

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.

Thank you for your business.