

EXHIBIT A

UNIVERSITY OF CALIFORNIA, IRVINE

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The ACLU's Border Litigation Project investigates, documents, and litigates civil and human rights violations in the U.S.-Mexico border region.



July 3, 2014

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via Email and Certified U.S. Mail

RE: Freedom of Information Act Request / Expedited Processing Requested

To Whom It May Concern:

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and related Department of Homeland Security (“DHS”) implementing regulations, *see* 6 C.F.R. § 5 *et seq.* Requesters seek the disclosure of records related to U.S. Border Patrol’s “roving patrol” operations in Southern California, as detailed below.

BACKGROUND

Over the past eight years, the budget for U.S. Customs and Border Protection (“CBP”) has more than doubled, from \$6 billion in fiscal year 2006 to \$12.9 billion in fiscal year 2014.¹ During the same period, the number of U.S. Border Patrol agents has ballooned from approximately 12,000 to over 21,000.² U.S. taxpayers now spend over \$18 billion on immigration enforcement agencies—more than on all other federal law enforcement combined.³

¹ *See* DEP’T OF HOMELAND SEC., FY 2014 BUDGET IN BRIEF, 6 (2013), *available at* <http://1.usa.gov/1bjeofu>.

² The U.S. Border Patrol “is the mobile, uniformed law enforcement arm of U.S. Customs and Border Protection within the Department of Homeland Security responsible for securing U.S. borders between ports of entry.” *See* U.S. Customs and Border Protection, Along U.S. Borders, <http://1.usa.gov/UIaKFe> (last visited June 25, 2014).

³ *See* Doris Meissner *et al.*, MIGRATION POLICY INSTITUTE, IMMIGRATION ENFORCEMENT IN THE UNITED STATES: THE RISE OF A FORMIDABLE MACHINERY (2013), *available at* <http://bit.ly/1ltBfrp>.

One result of these unprecedented expansions has been a tremendous increase in reported Border Patrol abuses, both along the physical border and throughout the interior of the United States.⁴ Many communities have reported Border Patrol “roving patrols,” whereby Border Patrol agents stop individual motorists, pedestrians, public transportation customers, and even landowners on private property, far from any actual border and without reasonable suspicion of unlawful activity.

CBP claims authority to conduct warrantless stops and seizures within a “reasonable distance” of the border.⁵ Outdated regulations define that distance as “100 air miles” from any external boundary, including coastal boundaries.⁶ Today, this encompasses roughly two-thirds of the U.S. population and the entirety of several states.⁷ Border Patrol often ignores even this limitation, roaming still further into the interior of the country.⁸ In Southern California, this means that Border Patrol agents are present throughout a number of metropolitan and densely populated areas a considerable distance from the U.S.-Mexico border.

Available evidence suggests that Border Patrol is engaged in widespread unlawful activities throughout the southwest border region and far into the U.S. interior. For example, the ACLU of Arizona filed a complaint in October 2013 on behalf of five Arizona residents, each of whom was stopped and detained by Border Patrol far from the border.⁹ In one of those cases, agents threatened to cut a woman out of her seatbelt in front of her two young children after she questioned the basis for the stop. Others were forcibly removed from their vehicles and subjected to unauthorized searches. The complaint notes:

⁴ From 2004 through 2011, as the ranks of agents doubled to more than 21,000, the number of CBP-related complaints received by the DHS Office of Civil Liberties and Civil Rights nearly tripled. *See* DEP’T OF HOMELAND SEC., OFFICE OF CIVIL RIGHTS AND CIVIL LIBERTIES, DEPARTMENT-WIDE DATA ON COMPLAINTS RECEIVED, *available at* <http://1.usa.gov/1c1ASN8>. Given the many problems with the DHS complaint system, it is likely that incidents of abuse are substantially under-reported. *See, e.g.*, AMERICAN IMMIGRATION COUNCIL, NO ACTION TAKEN: LACK OF CBP ACCOUNTABILITY IN RESPONDING TO COMPLAINTS OF ABUSE (2014), *available at* <http://bit.ly/SwNbye>.

⁵ 8 U.S.C. § 1357(a)(3).

⁶ 8 C.F.R. § 287.1(b). The Justice Department published regulations defining “reasonable distance” as 100 miles in the Federal Register in 1957. *See* Field Officers: Powers and Duties, 22 FED. REG. 236, 9808–09 (Dec. 6, 1957) (to be codified at C.F.R. § 287). There is no public history as to why the Justice Department chose this figure.

⁷ States that lie entirely or almost entirely within this area include Connecticut, Delaware, Florida, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. Nine of the ten largest metropolitan areas, as determined by the 2010 U.S. Census, also fall within this zone: New York City, Los Angeles, Chicago, Houston, Philadelphia, Phoenix, San Antonio, San Diego, and San Jose. *See* United States Census 2010, Interactive Population Map, <http://1.usa.gov/1qF0Wsx> (last visited June 25, 2014); *see also* American Civil Liberties Union, Know Your Rights: “Constitution Free Zone”—Map, <http://bit.ly/1fZZQ0h> (last visited June 25, 2014).

⁸ *See, e.g.*, Todd Miller, *War on the Border*, N.Y. TIMES, Aug. 18, 2013, *available at* <http://nyti.ms/1bjgk7R> (describing checkpoint stop of Senator Patrick Leahy 125 miles south of the border in New York state: “When Mr. Leahy asked what authority the agent had to detain him, the agent pointed to his gun and said, ‘That’s all the authority I need.’”); Michelle Garcia, *Securing the Border Imposes a Toll on Life in Texas*, AL JAZEERA AMERICA, Sept. 25, 2013, *available at* <http://alj.am/1cWPDkz> (“[W]hen it was pointed out that [Alice, Texas] sits more than 100 miles from the border, [a Border Patrol spokesman] explained that ‘the law does not say that we cannot patrol. Our jurisdiction kinda changes.’”).

⁹ *See* ACLU of Arizona, Administrative Complaint and Request for Investigation of Unlawful Roving Patrol Stops by U.S. Border Patrol in Southern Arizona Including Unlawful Search and Seizure, Racial Profiling, Trespassing, Excessive Force, and Destruction of Personal Property (Oct. 9, 2013), *available at* <http://bit.ly/1oOBYEz>.

In addition to unlawful vehicle stops, the ACLU has documented cases in which Border Patrol agents have interrogated pedestrians on the streets of Yuma and Tucson as well as patients in Tucson area hospitals. Last year, a Sunnyside High School student in Tucson was wrongfully handed over to Border Patrol agents by school officials for investigation of his immigration status. The picture that emerges from these incidents and years of litigation is of pervasive abuse and a systemic failure of oversight and accountability at all levels of CBP.

Id. Earlier in 2013, a New York Times Op-Ed profiled Arizona rancher Stuart Loew, who was detained on his ranch while Border Patrol agents demanded identification.¹⁰ Loew's neighbor, Jim McManus, stated in an interview with National Public Radio that "If you conduct business here, you live here, you're always being watched, you're always being stopped, and you're treated as if you're a criminal."¹¹

Unlawful roving patrol practices are not unique to the southwest border region. In September 2013, the ACLU of Washington settled a class action lawsuit challenging roving patrol practices on the Olympic Peninsula on behalf of several victims of racial profiling.¹² Pursuant to that settlement, Border Patrol agreed to re-train agents on their obligations under the Fourth Amendment and to share stop data with the ACLU.¹³ In March 2014, the ACLU of Washington received the first batch of stop data, consisting of Field Contact Data Sheets ("FCDS") issued by Border Patrol agents. The data indicated a significant reduction in Border Patrol roving patrols on the Olympic Peninsula as a result of the ACLU's litigation.

In January 2013, following extensive FOIA litigation, Families for Freedom and New York University issued a report disclosing an "incentives program" for Border Patrol agents and the agency's widespread practice of arresting individuals lawfully present in the United States.¹⁴ The report noted:

The documents show that USBP agents act on the assumption that no matter where they operate within the United States, they may arrest any noncitizen—whether a tourist or a long-term legal resident with a driver's license—whenever that person is

¹⁰ Todd Miller, *War on the Border*, N.Y. TIMES, Aug. 18, 2013, available at <http://nyti.ms/1bjgk7R>.

¹¹ Michel Marizco, *Living Life Under Federal Watch On The Border*, NPR, Aug. 5, 2013, available at <http://bit.ly/1gfpGid>.

¹² See Complaint, *Sanchez v. U.S. Office of Border Patrol* (W.D. Wa. Apr. 26, 2012) (No. 2:12-cv-00735), available at <http://bit.ly/N7xtpO>; see also Manuel Valdes, *ACLU, Immigrant Groups to Keep an Eye on U.S. Border Patrol After Profiling-case Win*, WASH. POST, Sept. 24, 2013, available at <http://wapo.st/1oODDdp>.

¹³ See Settlement Agreement, *Sanchez v. U.S. Border Patrol* (W.D. Wa. 2012) (No. 2:12-cv-00735), available at <http://bit.ly/1j9wUXP>.

¹⁴ See FAMILIES FOR FREEDOM & NYU LAW IMMIGRANT RIGHTS CLINIC, UNCOVERING USBP: INCENTIVES PROGRAMS FOR UNITED STATES BORDER PATROL AGENTS AND THE ARREST OF LAWFULLY PRESENT INDIVIDUALS (Jan. 2013), available at <http://bit.ly/1bjjh8h>. CBP denied the existence of documents responsive to plaintiffs' FOIA request for more than a year before finally producing those records. The report noted:

Contrary to sworn statements submitted in the federal district court stating that the agency did not maintain an array of arrest statistics, including annual totals for the Rochester Station, the depositions ordered by the Court revealed that arrest statistics are the primary measure employed by local USBP stations and their Sector supervisors in the Buffalo Sector.

Id. at iv.

not carrying detailed documentation that provides proof of status. But USBP's records also show that the agents are not genuinely interested in what documents the law might require noncitizens to carry. Instead, USBP's demand for "papers" is universal, resulting in an enforcement culture that maximizes arrest rates.

Id. at v. A prior report based on the same FOIA request examined thousands of Border Patrol stops aboard public transportation in upstate New York.¹⁵ The vast majority of those stops did not target recent border-crossers and occurred far from the border, with only one percent resulting in the initiation of removal proceedings; many involved clear violations of agency arrest guidelines, including improper reliance on race as a basis for questioning passengers and arrests of lawfully present individuals.¹⁶

Roving patrol abuses are exacerbated by inadequate training, oversight, and accountability mechanisms, as well as a persistent lack of transparency within DHS, CBP, and the U.S. Border Patrol itself. The Border Patrol lowered its training and admissions standards to take on a large number of new agents between 2005 and 2012.¹⁷ Oversight bodies like the DHS Office of Inspector General ("OIG") and Office for Civil Rights and Civil Liberties ("CRCL")—lacking in both enforcement authority and internal transparency—have not kept pace with CBP's rapid growth.¹⁸ Recently, the American Immigration Council released a damning report finding that, of 809 abuse complaints filed against Border Patrol agents between January 2009 and January 2012, ninety-seven percent resulted in "no action taken."¹⁹ Thus, although reports of Border Patrol abuse are increasingly common, many questions remain regarding the full extent and impact of wide-ranging roving patrol operations conducted by the largest federal law enforcement agency in the country.

REQUESTERS

The ACLU is a national, non-partisan organization of more than a half million members, countless additional activists and supporters, and fifty-three affiliates nationwide. The ACLU is dedicated to the defense of civil rights and civil liberties and to holding the U.S. government

¹⁵ See NEW YORK CIVIL LIBERTIES UNION, NYU LAW IMMIGRANT RIGHTS CLINIC, & FAMILIES FOR FREEDOM, JUSTICE DERAILED (Nov. 2011), available at <http://bit.ly/N7A03q>.

¹⁶ See, e.g., *id.* at 1–3.

¹⁷ See, e.g., Andrew Becker, *On Polygraph Tests, Would-Be Border Patrol Agents Confess to Crimes*, The Daily Beast, Apr. 4, 2013, <http://thebea.st/1yFZUPu> ("It took almost five years, however, for Customs and Border Protection to require all applicants to take a polygraph. In that time, the agency continued to hire potentially flawed candidates."); Rob O'Dell and Bob Ortega, *More Border Agents Assisting Local Police*, ARIZONA REPUBLIC, Dec. 17, 2013, available at <http://bit.ly/1cnqDGg> ("During its hiring surge, the Border Patrol scaled back training and relaxed requirements—such as not requiring a high-school diploma. It sometimes skipped background checks, leading to problems with corruption and poorly trained agents.").

¹⁸ While CBP's budget increased by 97 percent from FY 2004 to FY 2012, OIG's budget increased by only 70 percent during this same time period, and CRCL's budget increased only 56 percent. Overall, the combined budget of the OIG and CRCL accounted for less than 0.005 percent of the total DHS budget in FY 2011. See DEPT OF HOMELAND SEC., OFFICE OF THE INSPECTOR GENERAL, FISCAL YEAR 2004 ANNUAL PERFORMANCE PLAN 6 (2004), available at <http://1.usa.gov/1fwEEik>; DEPT OF HOMELAND SEC., FY 2014 BUDGET IN BRIEF 6 (2013), available at <http://1.usa.gov/1bjeofu>; DEPT OF HOMELAND SEC., OFFICE OF CIVIL RIGHTS AND CIVIL LIBERTIES, FISCAL YEAR 2011 AND ANNUAL REPORT TO CONGRESS 6 (June 2012), available at <http://1.usa.gov/1feQxNw>.

¹⁹ See AMERICAN IMMIGRATION COUNCIL, NO ACTION TAKEN: LACK OF CBP ACCOUNTABILITY IN RESPONDING TO COMPLAINTS OF ABUSE (2014), available at <http://bit.ly/SwNbye>.

accountable to principles of due process and of the U.S. Constitution in general. The ACLU of San Diego & Imperial Counties (“ACLU-SDIC”) is the ACLU’s San Diego affiliate. The ACLU of Southern California (“ACLU-So Cal”), another ACLU affiliate, serves Los Angeles, Orange, San Bernardino and Riverside Counties.

Professors Annie Lai and Sameer Ashar teach at the University of California, Irvine School of Law. Together, they direct the Immigrant Rights Clinic (“IRC”). IRC provides pro bono legal services to clients on immigration, employment and civil rights matters. Students work under faculty supervisors who are licensed attorneys. IRC also engages in non-litigation advocacy work and community education to advance immigrants’ rights. For example, IRC has produced reports and commentary on immigrants’ rights issues, which it makes available to the public at no cost on its website, www.law.uci.edu/academics/real-life-learning/clinics/immigrant-rights.html. Most recently, IRC published a report on the harms of probation officials’ referral of juveniles to immigration authorities for deportation in Orange County, California and held a widely-attended news briefing on the issue.

RECORDS REQUESTED

Requesters seek disclosure of U.S. Border Patrol records²⁰ pertaining to “roving patrol” operations in the San Diego Sector and El Centro Sector, construed to include any field operations involving roving vehicle or pedestrian stops by Border Patrol agents (including any allegedly consensual encounters), as well as any related records held by CBP or other agencies within DHS for these two Border Patrol sectors.²¹ Requesters seek all records from January 2011 to the present, to include at least the following:

1. Internal memoranda, legal opinions, guidance, directives, criteria, standards, rules, instructions, advisories, training materials and presentations, and any other written policies or procedures pertaining to roving patrol operations generally;
2. Internal memoranda, legal opinions, guidance, directives, criteria, standards, rules, instructions, advisories, training materials and presentations, and any other written policies or procedures pertaining to all searches and seizures (including arrests) made pursuant to roving patrol operations;
3. Audits, reports, statistical data and analysis, quotas, targets, goals, and performance standards, measures, or reviews, and all documents related to any incentives or bonus programs relating to roving patrol operations in San Diego Sector and El Centro Sector;

²⁰ As used herein, the term “records” includes all records or communications preserved in electronic or written form, including but not limited to: correspondence; documents; data; videotapes; audio tapes; emails; faxes; files; guidance; guidelines; evaluations; instructions; analysis; memoranda; agreements; notes; orders; policies; procedures; protocols; reports; rules; manuals; specifications; and/or studies.

Please note: Should any responsive record contain the personal identifying information of any third party, Requesters ask that the agencies redact that information. This Request seeks records relevant to the Border Patrol roving patrol program, *not* any personal or identifying information about any specific individual(s).

²¹ San Diego Sector includes Imperial Beach Station, Brown Field Station, Campo Station, San Clemente Station, El Cajon Station, Murrieta Station, Chula Vista Station, and Boulevard Station. El Centro Sector includes El Centro Station, Calexico Station, Riverside Station, and Indio Station. *See* U.S. Customs and Border Protection, Border Patrol Sectors, <http://1.usa.gov/1xpfAT> (last visited June 25, 2014).

4. Organizational charts, diagrams, or schematics pertaining to roving patrol operations in San Diego Sector and El Centro Sector, including charts reflecting agency leadership structures or individuals involved in decisionmaking related to roving patrol operations;
5. Internal memoranda, legal opinions, guidance, directives, criteria, standards, rules, instructions, advisories, training materials and presentations, and any other written policies or procedures or other records pertaining to Border Patrol's authority to conduct roving patrol stops based on alleged or actual violations of local or state law, including traffic laws, in San Diego Sector and El Centro Sector;
6. Communications, agreements, or any other records related to state or local law enforcement involvement in roving patrol operations in San Diego Sector and El Centro Sector;
7. Records regarding any individual questioned, stopped, searched, detained, and/or arrested in roving patrol operations in San Diego Sector and El Centro Sector, including but not limited to:
 - a. Field Contact Data Sheets;
 - b. Forms I-247 (DHS "Immigration Detainer—Notice of Action");
 - c. Forms I-213 ("Record of Deportable Alien");
 - d. Forms I-286 ("Application for a Stay of Deportation or Removal");
 - e. Forms I-44 ("Report of Apprehension or Seizure");
 - f. Forms I-862 ("Notice to Appear");
 - g. Forms I-826 ("Notice of Rights and Request for Disposition"); and
 - h. Forms I-210 ("Voluntary Departure and Verification of Departure").
8. For each of the years 2011, 2012, 2013, and 2014, for both San Diego Sector and El Centro Sector, records relating to and/or containing information sufficient to show:
 - a. the total number of roving patrol **stops** made by U.S. Border Patrol agents;
 - b. the total number of roving patrol stops resulting in **searches**;
 - c. the total number of roving patrol stops resulting in **arrest**, as well as the disposition of each such arrest (*e.g.*, Notice to Appear; Voluntary Return; criminal charges and resolution thereof, etc.);
 - d. the citizenship of each individual **stopped** in the course of a roving patrol;
 - e. the citizenship of each individual **searched** in the course of a roving patrol;
 - f. the citizenship of each individual **arrested** in the course of a roving patrol;
 - g. the apparent race or ethnicity of each individual **stopped** in the course of a roving patrol;
 - h. the apparent race or ethnicity of each individual **searched** in the course of a roving patrol;
 - i. the apparent race or ethnicity of each individual **arrested** in the course of a roving patrol;
 - j. the location of each roving patrol **stop**,²²
 - k. the location of each roving patrol stop resulting in a **search**;
 - l. the location of each roving patrol stop resulting in any **arrest**;
 - m. the type of each roving patrol **stop** (*e.g.*, entry onto private land, pedestrian encounter, vehicle stop, or public transportation stop (train, trolley, bus, etc.));
 - n. the type of each roving patrol stop resulting in a **search** (*e.g.*, entry onto private land, pedestrian encounter, vehicle stop, or public transportation stop (train, trolley, bus, etc.));

²² To the extent materials exist that document such information in various formats (*e.g.*, databases or other compilations of information based on, for example, city, county, sector, and/or zip code), such materials are included in this Request.

- o. the type of each roving patrol stop resulting in **arrest** (*e.g.*, entry onto private land, pedestrian encounter, vehicle stop, or public transportation stop (train, trolley, bus, etc.));
 - p. the date of each roving patrol **stop**;
 - q. the date of each roving patrol stop resulting in a **search**;
 - r. the date of each roving patrol stop resulting in any **arrest**;
 - s. the number of agents involved in each roving patrol **stop**;
 - t. the number of agents involved in any **search** in the course of a roving patrol, and whether a search involved one or more canines;
 - u. the number of agents involved in any **arrest** in the course of a roving patrol;
 - v. the basis for all stops **resulting in arrest**, including stops initiated by any state or local law enforcement agency;
 - w. the basis for all stops **not resulting in arrest**, including stops initiated by any state or local law enforcement agency;
 - x. the Border Patrol agent(s) and/or CBP officer(s) involved in determining whether reasonable suspicion or probable cause existed to justify each stop, and whether the reviewing agent(s)/officer(s) was or were the same as the agent(s)/officer(s) who initiated the stop under review;
 - y. the date, time, and location of any roving patrol that was the subject of any complaint, internal or external investigation, civil litigation, and/or a motion to suppress; the basis of the complaint, investigation, or civil or criminal court proceedings; and the status and/or outcome of any such complaint, investigation, or civil or criminal court proceedings.
9. Any complaints received by any Border Patrol, CBP, or DHS official or agency from any person, organization, agency, tribal government, consular official, or any other entity, whether verbal or written, related to roving patrol operations in San Diego Sector and/or El Centro Sector, as well as any communications regarding and responses to any such complaints; AND
10. All disciplinary records resulting from any alleged agent misconduct or alleged violation of Border Patrol, CBP, and/or DHS rules or regulations related to roving patrol operations in San Diego Sector and/or El Centro Sector.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that responsive documents be provided electronically in text-searchable, static-image format (PDF), in the best image quality in the agencies' possession. We further request that reasonable metadata be transmitted along with responsive documents, including but not limited to email attachments, author and recipient information, date and time stamps, and the like.

REQUEST FOR EXPEDITED PROCESSING

Requesters seek expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d)(1)(ii) ("Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve: . . . (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.").

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

Dissemination of information to the public about actual or alleged government activity is a critical and substantial component of the ACLU's mission and work. Specifically, the ACLU

publishes a continuously updated blog, newsletters, news briefings, “Know Your Rights” documents, and other educational and informational materials that are broadly disseminated to the public.²³ Such material is widely available to everyone, including individuals, tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee through the ACLU’s public education department and website.

The ACLU’s national website (www.aclu.org) and the sites run by the ACLU-SDIC (www.aclusandiego.org) and the ACLU-So Cal (www.aclusocal.org) address civil rights and civil liberties issues in depth, provide features on civil rights and civil liberties issues in the news, and contain many thousands of documents relating to the issues on which the ACLU is focused. These websites also include features highlighting information obtained through the FOIA process.²⁴

In addition, the ACLU publishes a newsletter at least twice a year that reports on and analyzes civil liberties-related current events; this publication is distributed to approximately 450,000 people. The ACLU also publishes a bi-weekly electronic newsletter, which is distributed to approximately 300,000 subscribers (both ACLU members and non-members) by e-mail. Both of these newsletters often include descriptions and analyses of information obtained from the government through FOIA, as well as information about cases, governmental policies, pending legislation, abuses of constitutional rights, and polling data. *Cf. Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5, 13–14 (D.D.C. 2003) (finding the Electronic Privacy Information Center to be a representative of the news media under Department of Defense regulations because it published a “bi-weekly electronic newsletter that is distributed to over 15,000 readers” about “court cases and legal challenges, government policies, legislation, civil rights, surveys and polls, legislation, privacy abuses, international issues, and trends and technological advancements.”).

The ACLU also regularly publishes books, “Know Your Rights” publications, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and governmental policies that implicate civil rights and liberties. These materials are specifically designed to be educational and widely disseminated to the public. *See Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11 (finding the Electronic Privacy Information Center to be a news-media requester because of its publication and distribution of seven books on privacy, technology, and civil liberties). The ACLU further disseminates information to the public via social media platforms such as Facebook and Twitter.

Depending on the results of this request, the ACLU plans to “disseminate the information” it receives “among the public” through these kinds of publications in these kinds of channels. The ACLU is therefore an organization “primarily engaged in disseminating information” within the meaning of the statute and the relevant regulations—as has been previously recognized in FOIA litigation between the ACLU and the Department of Justice. *See, e.g., ACLU v. Department of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a non-profit, public-interest group that

²³ *See, e.g.*, Dan Gillmor, *In Praise of the Almost-Journalists*, Slate (Mar. 28, 2014, 12:29 PM), <http://slate.me/1jg5YXx> (describing ACLU’s efforts to broadly disseminate important civil rights-related news stories) (last visited July 2, 2014).

²⁴ *See, e.g.*, <http://www.thetorturedatabase.org>; <http://www.aclu.org/mappingthefbi>; *see also, e.g.*, Press Release, ACLU of San Diego & Imperial Counties, CBP Releases Report, New Training Handbook (May 22, 2014), <http://www.aclusandiego.org/radio-silence-border-patrol-use-force-policies-leads-lawsuit/> (last visited July 2, 2014).

“gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” is “primarily engaged in disseminating information”) (internal citation omitted).

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

The records requested are urgently needed to inform the public about actual or alleged government activity, specifically, U.S. Border Patrol’s roving patrol policies and practices throughout Southern California. The public has and continues to manifest an abiding interest in Border Patrol’s conduct with respect to roving patrols, as well as in CBP’s overall accountability for misconduct and abuse and the transparency of internal agency investigations into alleged misconduct. Between 2004 and 2011, complaints involving CBP officers nearly tripled, with the majority of these grievances involving allegations of excessive force and discrimination.²⁵ The ACLU has also documented an increasing number of Border Patrol abuses in recent years, including frequent reports of unlawful roving patrol operations conducted far into the interior; many of these stops include unlawful searches, prolonged detention, and verbal and physical abuse. Likewise, Border Patrol roving patrol operations have attracted considerable media coverage and public attention in recent months.²⁶

A delayed response to this Request would compromise a significant public interest because it would prevent the public from being able to engage in a timely, thoughtful debate about Border Patrol activities at a time when documented cases of Border Patrol abuses—including roving patrol abuses—are increasing. In light of the foregoing, expedited processing of this Request is warranted under 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d)(ii).

REQUEST FOR LIMITATION OR WAIVER OF SEARCH AND REVIEW FEES

Requesters further seek a limitation or waiver of processing (search and review) fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media”); 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”). *See also* 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged “for requests by educational institutions . . . or representatives of the news media”); § 5.11(k)(1) (“Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section where a component determines,

²⁵ *See* DEP’T OF HOMELAND SEC., OFFICE OF CIVIL RIGHTS AND CIVIL LIBERTIES, DEPARTMENT-WIDE DATA ON COMPLAINTS RECEIVED (2011–2012), *available at* <http://1.usa.gov/1c1ASN8>; DEPARTMENT-WIDE DATA ON COMPLAINTS RECEIVED (2004–2010), *available at* <http://1.usa.gov/1mstOl6>.

²⁶ *See, e.g.*, Rob O’Dell and Bob Ortega, *More Border Agents Assisting Local Police*, ARIZONA REPUBLIC, Dec. 17, 2013, *available at* <http://bit.ly/1cnqDGg>; Bob Ortega, *Border Patrol Hit With Abuse Complaints*, USA TODAY, Oct. 9, 2013, *available at* <http://bit.ly/1nccCN3>; Manuel Valdes, *U.S. Border Patrol Settles Racial Profiling Case, Will Share Stop Records*, WASHINGTON TIMES, Sept. 24, 2013, *available at* <http://bit.ly/1ig4pew>; Todd Miller, *War on the Border*, NY TIMES, Aug. 18, 2013, *available at* <http://nyti.ms/1lz83L6>; Michel Marizco, *Living Life Under Federal Watch On The Border*, FRONTERAS DESK, Aug. 5, 2013, *available at* <http://bit.ly/1gfpGid>; Perla Trevizo, *Hiker Wants Ariz. Park Ranger Fired Over Search*, ARIZONA DAILY STAR, May 20, 2013, *available at* <http://bit.ly/1smnr7h>; *see also* David Antón Armendáriz, *On the Border Patrol and Its Use of Illegal Roving Patrol Stops*, 14 Scholar 553 (2012), *available at* <http://bit.ly/1smmDPZ>.

based on all available information, that the requester has demonstrated that (i) disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and (ii) disclosure of the information is not primarily in the commercial interest of the requester.”).

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

The records requested will contribute significantly to public understanding of the government’s operations or activities. Under 6 C.F.R. § 5.11(k)(2), the following factors are to be considered in determining whether a disclosure is in the public interest: (i) whether the subject of the requested records concerns “the operations or activities of the government”; (ii) whether the disclosure is “likely to contribute” to an understanding of government operations or activities; (iii) whether disclosure of the requested information will contribute to “public understanding,” that is, “the understanding of a reasonably broad audience of persons interested in the subject”; and (iv) whether disclosure is likely to contribute “significantly” to public understanding of government operations or activities. *See* 6 C.F.R. § 5.11(k)(2)(i)–(iv). Each of these considerations is satisfied here.

First, the records requested pertain directly to the operations and activities of the federal government (specifically, CBP and one of its subcomponents, the U.S. Border Patrol).

Second, this Request is “likely to contribute” to an understanding of government operations or activities, specifically by helping the public determine whether individuals encountered, apprehended, and/or detained by the U.S. Border Patrol are treated in a manner that comports with our Constitution and other federal laws, and whether CBP personnel are properly investigated and held accountable when they fail to respect those laws.

Third, disclosure of the requested information will contribute to “the understanding of a reasonably broad audience of persons interested in the subject” of U.S. Border Patrol roving patrols. Professors Lai and Ashar intend to rely on responsive documents in their teaching, research and/or advocacy as clinical law faculty, and the ACLU will publish responsive records and analyze specific documents to raise public awareness of roving patrols generally.

Finally, disclosure will contribute “significantly” to the public understanding of Border Patrol’s roving patrol operations. Roving patrol abuses have been the subject of substantial litigation and media attention, yet much remains unknown about these patrols and their impact on the public.

Requesters have thus established, “with reasonable specificity[,] that [their] request pertains to operations of the government,” and “the informative value of a request depends not on there being certainty of what the documents will reveal, but rather on the requesting party having explained with reasonable specificity how those documents would increase public knowledge of the functions of the government.” *Citizens for Responsibility and Ethics in Washington v. Department of Health and Human Services*, 481 F. Supp. 2d 99, 107–109 (D.D.C. 2006).

B. Disclosure of the information requested is not in Requesters’ commercial interest.

Disclosure of the information requested is not in the commercial interest of either the ACLU or IRC. Any information obtained as a result of this FOIA request will be made available to the public at no cost.

C. The ACLU qualifies as a representative of the news media.

The ACLU meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU is a “representative of the news media” for the same reasons that it is “primarily engaged in the dissemination of information.” *See Electronic Privacy Information Center*, 241 F. Supp. 2d at 10–15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for FOIA purposes).²⁷ Various federal courts have held that the ACLU is a “representative of the news media.” *See, e.g., Serv. Women’s Action Network v. Department of Defense*, No. 3:11CV1534 (MRK), 2012 WL 3683399, at *3 (D. Conn. May 14, 2012); *American Civil Liberties Union of Washington v. Department of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

D. Professors Lai and Ashar are researchers at an educational institution.

Both Professors Lai and Ashar qualify as researchers at an educational institution as that phrase is defined under the Freedom of Information Act and its implementing regulations. *See* 6 C.F.R. § 5.11(c)(1)(i), (d)(1); *see also* § 5.11(b)(4) (defining educational institution to include “an institution of professional education . . . that operates a program of scholarly research”). Professors Lai and Ashar are faculty at UCI School of Law and teach and conduct research in the area of immigrant rights. They seek the requested records not for any commercial use but rather to further the institution’s scholarly research goals. *See* 6 C.F.R. § 5.11(b)(4); *see also Sack v. Department of Defense*, 12-CV-1754 (RLW), 2013 WL 6640776, at *10 (D.D.C. Dec. 13, 2013) (“[A] request from a professor of geology at a State university for records relating to soil erosion, written on letterhead of the Department of Geology, could be presumed to be from an educational institution.” (quoting

²⁷ On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. In June 2011, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU with regard to a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The Department of Justice did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the Office of Information and Privacy in the Department of Justice—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

OMB Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 Fed. Reg. 10,012, 10,014 (Mar. 27, 1987))).

For the foregoing reasons, a fee waiver or limitation should be granted. A fee waiver would also fulfill Congress's legislative intent in amending FOIA, namely to ensure that the Act is liberally construed in favor of granting waivers for noncommercial requesters and to effectuate disclosure of documents of public importance. See *Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (internal quotation marks and citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that "disclosure, not secrecy, is the dominant objective of the Act," quoting *Department of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

Should a total waiver be denied, fees should be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(II). In the event a fee waiver or reduction of costs is denied, please notify us in advance if the anticipated costs associated with this Request exceed \$100.00.

CONCLUSION

Pursuant to the applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) calendar days. See 5 U.S.C. § 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(d)(4).

We further expect your reply to the Request itself within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(i). If the Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material.

We reserve the right to appeal a decision to withhold any information, or to deny expedited processing or a waiver of fees.

Please furnish the requested records to:
ACLU of San Diego & Imperial Counties
c/o Mitra Ebadolahi
P.O. Box 87131
San Diego, CA 92138
mcbadolahi@aclusandiego.org

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi); 6 C.F.R. § 5.5(d)(3). Thank you for your prompt attention to this matter.

Sincerely,



Mitra Ebadolahi
Staff Attorney
ACLU-SDIC

Lucero Chavez
Immigrant Rights Attorney
ACLU-So Cal (Orange County)

Annie Lai
Assistant Clinical Professor of Law
UC Irvine School of Law

Sameer Ashar
Clinical Professor of Law
UC Irvine School of Law

EXHIBIT B



The ACLU's Border Litigation Project investigates, documents, and litigates civil and human rights violations in the U.S.-Mexico border region.



July 3, 2014

U.S. Customs & Border Protection
FOIA Officer/Public Liaison
Sabrina Burroughs
90 K Street NE, 9th Floor
Washington, D.C. 20229-1181
Phone: 202-325-0150
Fax: 202-325-0230

via Certified U.S. Mail and FOIA Online

RE: Freedom of Information Act Request / Expedited Processing Requested

To Whom It May Concern:

This letter constitutes a request ("Request") pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and related Department of Homeland Security ("DHS") implementing regulations, *see* 6 C.F.R. § 5 *et seq.* Requesters seek the disclosure of records related to U.S. Border Patrol's "roving patrol" operations in Southern California, as detailed below.

BACKGROUND

Over the past eight years, the budget for U.S. Customs and Border Protection ("CBP") has more than doubled, from \$6 billion in fiscal year 2006 to \$12.9 billion in fiscal year 2014.¹ During the same period, the number of U.S. Border Patrol agents has ballooned from approximately 12,000 to over 21,000.² U.S. taxpayers now spend over \$18 billion on immigration enforcement agencies—more than on all other federal law enforcement combined.³

One result of these unprecedented expansions has been a tremendous increase in reported Border Patrol abuses, both along the physical border and throughout the interior of the United

¹ *See* DEP'T OF HOMELAND SEC., FY 2014 BUDGET IN BRIEF, 6 (2013), *available at* <http://1.usa.gov/1bjeofu>.

² The U.S. Border Patrol "is the mobile, uniformed law enforcement arm of U.S. Customs and Border Protection within the Department of Homeland Security responsible for securing U.S. borders between ports of entry." *See* U.S. Customs and Border Protection, Along U.S. Borders, <http://1.usa.gov/UIaKFe> (last visited June 25, 2014).

³ *See* Doris Meissner *et al.*, MIGRATION POLICY INSTITUTE, IMMIGRATION ENFORCEMENT IN THE UNITED STATES: THE RISE OF A FORMIDABLE MACHINERY (2013), *available at* <http://bit.ly/1tBfrp>.

States.⁴ Many communities have reported Border Patrol “roving patrols,” whereby Border Patrol agents stop individual motorists, pedestrians, public transportation customers, and even landowners on private property, far from any actual border and without reasonable suspicion of unlawful activity.

CBP claims authority to conduct warrantless stops and seizures within a “reasonable distance” of the border.⁵ Outdated regulations define that distance as “100 air miles” from any external boundary, including coastal boundaries.⁶ Today, this encompasses roughly two-thirds of the U.S. population and the entirety of several states.⁷ Border Patrol often ignores even this limitation, roaming still further into the interior of the country.⁸ In Southern California, this means that Border Patrol agents are present throughout a number of metropolitan and densely populated areas a considerable distance from the U.S.-Mexico border.

Available evidence suggests that Border Patrol is engaged in widespread unlawful activities throughout the southwest border region and far into the U.S. interior. For example, the ACLU of Arizona filed a complaint in October 2013 on behalf of five Arizona residents, each of whom was stopped and detained by Border Patrol far from the border.⁹ In one of those cases, agents threatened to cut a woman out of her seatbelt in front of her two young children after she questioned the basis for the stop. Others were forcibly removed from their vehicles and subjected to unauthorized searches. The complaint notes:

In addition to unlawful vehicle stops, the ACLU has documented cases in which Border Patrol agents have interrogated pedestrians on the streets of Yuma and

⁴ From 2004 through 2011, as the ranks of agents doubled to more than 21,000, the number of CBP-related complaints received by the DHS Office of Civil Liberties and Civil Rights nearly tripled. *See* DEP’T OF HOMELAND SEC., OFFICE OF CIVIL RIGHTS AND CIVIL LIBERTIES, DEPARTMENT-WIDE DATA ON COMPLAINTS RECEIVED, *available at* <http://1.usa.gov/1c1ASN8>. Given the many problems with the DHS complaint system, it is likely that incidents of abuse are substantially under-reported. *See, e.g.*, AMERICAN IMMIGRATION COUNCIL, NO ACTION TAKEN: LACK OF CBP ACCOUNTABILITY IN RESPONDING TO COMPLAINTS OF ABUSE (2014), *available at* <http://bit.ly/SwNbye>.

⁵ 8 U.S.C. § 1357(a)(3).

⁶ 8 C.F.R. § 287.1(b). The Justice Department published regulations defining “reasonable distance” as 100 miles in the Federal Register in 1957. *See* Field Officers: Powers and Duties, 22 FED. REG. 236, 9808–09 (Dec. 6, 1957) (to be codified at C.F.R. § 287). There is no public history as to why the Justice Department chose this figure.

⁷ States that lie entirely or almost entirely within this area include Connecticut, Delaware, Florida, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. Nine of the ten largest metropolitan areas, as determined by the 2010 U.S. Census, also fall within this zone: New York City, Los Angeles, Chicago, Houston, Philadelphia, Phoenix, San Antonio, San Diego, and San Jose. *See* United States Census 2010, Interactive Population Map, <http://1.usa.gov/1qF0Wsx> (last visited June 25, 2014); *see also* American Civil Liberties Union, Know Your Rights: “Constitution Free Zone”—Map, <http://bit.ly/1fZZQ0h> (last visited June 25, 2014).

⁸ *See, e.g.*, Todd Miller, *War on the Border*, N.Y. TIMES, Aug. 18, 2013, *available at* <http://nyti.ms/1bjgk7R> (describing checkpoint stop of Senator Patrick Leahy 125 miles south of the border in New York state: “When Mr. Leahy asked what authority the agent had to detain him, the agent pointed to his gun and said, ‘That’s all the authority I need.’”); Michelle Garcia, *Securing the Border Imposes a Toll on Life in Texas*, AL JAZEERA AMERICA, Sept. 25, 2013, *available at* <http://alj.am/1cWPDkz> (“[W]hen it was pointed out that [Alice, Texas] sits more than 100 miles from the border, [a Border Patrol spokesman] explained that ‘the law does not say that we cannot patrol. Our jurisdiction kinda changes.’”).

⁹ *See* ACLU of Arizona, Administrative Complaint and Request for Investigation of Unlawful Roving Patrol Stops by U.S. Border Patrol in Southern Arizona Including Unlawful Search and Seizure, Racial Profiling, Trespassing, Excessive Force, and Destruction of Personal Property (Oct. 9, 2013), *available at* <http://bit.ly/1oOBYEz>.

Tucson as well as patients in Tucson area hospitals. Last year, a Sunnyside High School student in Tucson was wrongfully handed over to Border Patrol agents by school officials for investigation of his immigration status. The picture that emerges from these incidents and years of litigation is of pervasive abuse and a systemic failure of oversight and accountability at all levels of CBP.

Id. Earlier in 2013, a New York Times Op-Ed profiled Arizona rancher Stuart Loew, who was detained on his ranch while Border Patrol agents demanded identification.¹⁰ Loew's neighbor, Jim McManus, stated in an interview with National Public Radio that "If you conduct business here, you live here, you're always being watched, you're always being stopped, and you're treated as if you're a criminal."¹¹

Unlawful roving patrol practices are not unique to the southwest border region. In September 2013, the ACLU of Washington settled a class action lawsuit challenging roving patrol practices on the Olympic Peninsula on behalf of several victims of racial profiling.¹² Pursuant to that settlement, Border Patrol agreed to re-train agents on their obligations under the Fourth Amendment and to share stop data with the ACLU.¹³ In March 2014, the ACLU of Washington received the first batch of stop data, consisting of Field Contact Data Sheets ("FCDS") issued by Border Patrol agents. The data indicated a significant reduction in Border Patrol roving patrols on the Olympic Peninsula as a result of the ACLU's litigation.

In January 2013, following extensive FOIA litigation, Families for Freedom and New York University issued a report disclosing an "incentives program" for Border Patrol agents and the agency's widespread practice of arresting individuals lawfully present in the United States.¹⁴ The report noted:

The documents show that USBP agents act on the assumption that no matter where they operate within the United States, they may arrest any noncitizen—whether a tourist or a long-term legal resident with a driver's license—whenever that person is not carrying detailed documentation that provides proof of status. But USBP's records also show that the agents are not genuinely interested in what documents the

¹⁰ Todd Miller, *War on the Border*, N.Y. TIMES, Aug. 18, 2013, available at <http://nyti.ms/1bjgk7R>.

¹¹ Michel Marizco, *Living Life Under Federal Watch On The Border*, NPR, Aug. 5, 2013, available at <http://bit.ly/1gfpGid>.

¹² See Complaint, *Sanchez v. U.S. Office of Border Patrol* (W.D. Wa. Apr. 26, 2012) (No. 2:12-cv-00735), available at <http://bit.ly/N7xtpO>; see also Manuel Valdes, *ACLU, Immigrant Groups to Keep an Eye on U.S. Border Patrol After Profiling-case Win*, WASH. POST, Sept. 24, 2013, available at <http://wapo.st/1oODDdp>.

¹³ See Settlement Agreement, *Sanchez v. U.S. Border Patrol* (W.D. Wa. 2012) (No. 2:12-cv-00735), available at <http://bit.ly/1j9wUXP>.

¹⁴ See FAMILIES FOR FREEDOM & NYU LAW IMMIGRANT RIGHTS CLINIC, UNCOVERING USBP: INCENTIVES PROGRAMS FOR UNITED STATES BORDER PATROL AGENTS AND THE ARREST OF LAWFULLY PRESENT INDIVIDUALS (Jan. 2013), available at <http://bit.ly/1bjjh8h>. CBP denied the existence of documents responsive to plaintiffs' FOIA request for more than a year before finally producing those records. The report noted:

Contrary to sworn statements submitted in the federal district court stating that the agency did not maintain an array of arrest statistics, including annual totals for the Rochester Station, the depositions ordered by the Court revealed that arrest statistics are the primary measure employed by local USBP stations and their Sector supervisors in the Buffalo Sector.

Id. at iv.

law might require noncitizens to carry. Instead, USBP's demand for "papers" is universal, resulting in an enforcement culture that maximizes arrest rates.

Id. at v. A prior report based on the same FOIA request examined thousands of Border Patrol stops aboard public transportation in upstate New York.¹⁵ The vast majority of those stops did not target recent border-crossers and occurred far from the border, with only one percent resulting in the initiation of removal proceedings; many involved clear violations of agency arrest guidelines, including improper reliance on race as a basis for questioning passengers and arrests of lawfully present individuals.¹⁶

Roving patrol abuses are exacerbated by inadequate training, oversight, and accountability mechanisms, as well as a persistent lack of transparency within DHS, CBP, and the U.S. Border Patrol itself. The Border Patrol lowered its training and admissions standards to take on a large number of new agents between 2005 and 2012.¹⁷ Oversight bodies like the DHS Office of Inspector General ("OIG") and Office for Civil Rights and Civil Liberties ("CRCL")—lacking in both enforcement authority and internal transparency—have not kept pace with CBP's rapid growth.¹⁸ Recently, the American Immigration Council released a damning report finding that, of 809 abuse complaints filed against Border Patrol agents between January 2009 and January 2012, ninety-seven percent resulted in "no action taken."¹⁹ Thus, although reports of Border Patrol abuse are increasingly common, many questions remain regarding the full extent and impact of wide-ranging roving patrol operations conducted by the largest federal law enforcement agency in the country.

REQUESTERS

The ACLU is a national, non-partisan organization of more than a half million members, countless additional activists and supporters, and fifty-three affiliates nationwide. The ACLU is dedicated to the defense of civil rights and civil liberties and to holding the U.S. government accountable to principles of due process and of the U.S. Constitution in general. The ACLU of San Diego & Imperial Counties ("ACLU-SDIC") is the ACLU's San Diego affiliate. The ACLU of

¹⁵ See NEW YORK CIVIL LIBERTIES UNION, NYU LAW IMMIGRANT RIGHTS CLINIC, & FAMILIES FOR FREEDOM, JUSTICE DERAILED (Nov. 2011), available at <http://bit.ly/N7A03q>.

¹⁶ See, e.g., *id.* at 1–3.

¹⁷ See, e.g., Andrew Becker, *On Polygraph Tests, Would-Be Border Patrol Agents Confess to Crimes*, The Daily Beast, Apr. 4, 2013, <http://thebea.st/1yFZUPu> ("It took almost five years, however, for Customs and Border Protection to require all applicants to take a polygraph. In that time, the agency continued to hire potentially flawed candidates."); Rob O'Dell and Bob Ortega, *More Border Agents Assisting Local Police*, ARIZONA REPUBLIC, Dec. 17, 2013, available at <http://bit.ly/1cnqDGg> ("During its hiring surge, the Border Patrol scaled back training and relaxed requirements—such as not requiring a high-school diploma. It sometimes skipped background checks, leading to problems with corruption and poorly trained agents.").

¹⁸ While CBP's budget increased by 97 percent from FY 2004 to FY 2012, OIG's budget increased by only 70 percent during this same time period, and CRCL's budget increased only 56 percent. Overall, the combined budget of the OIG and CRCL accounted for less than 0.005 percent of the total DHS budget in FY 2011. See DEP'T OF HOMELAND SEC., OFFICE OF THE INSPECTOR GENERAL, FISCAL YEAR 2004 ANNUAL PERFORMANCE PLAN 6 (2004), available at <http://1.usa.gov/1fwEEik>; DEP'T OF HOMELAND SEC., FY 2014 BUDGET IN BRIEF 6 (2013), available at <http://1.usa.gov/1bjeofu>; DEP'T OF HOMELAND SEC., OFFICE OF CIVIL RIGHTS AND CIVIL LIBERTIES, FISCAL YEAR 2011 AND ANNUAL REPORT TO CONGRESS 6 (June 2012), available at <http://1.usa.gov/1feQxNw>.

¹⁹ See AMERICAN IMMIGRATION COUNCIL, NO ACTION TAKEN: LACK OF CBP ACCOUNTABILITY IN RESPONDING TO COMPLAINTS OF ABUSE (2014), available at <http://bit.ly/SwNbye>.

Southern California (“ACLU-So Cal”), another ACLU affiliate, serves Los Angeles, Orange, San Bernardino and Riverside Counties.

Professors Annie Lai and Sameer Ashar teach at the University of California, Irvine School of Law. Together, they direct the Immigrant Rights Clinic (“IRC”). IRC provides pro bono legal services to clients on immigration, employment and civil rights matters. Students work under faculty supervisors who are licensed attorneys. IRC also engages in non-litigation advocacy work and community education to advance immigrants’ rights. For example, IRC has produced reports and commentary on immigrants’ rights issues, which it makes available to the public at no cost on its website, www.law.uci.edu/academics/real-life-learning/clinics/immigrant-rights.html. Most recently, IRC published a report on the harms of probation officials’ referral of juveniles to immigration authorities for deportation in Orange County, California and held a widely-attended news briefing on the issue.

RECORDS REQUESTED

Requesters seek disclosure of U.S. Border Patrol records²⁰ pertaining to “roving patrol” operations in the San Diego Sector and El Centro Sector, construed to include any field operations involving roving vehicle or pedestrian stops by Border Patrol agents (including any allegedly consensual encounters), as well as any related records held by CBP or other agencies within DHS for these two Border Patrol sectors.²¹ Requesters seek all records from January 2011 to the present, to include at least the following:

1. Internal memoranda, legal opinions, guidance, directives, criteria, standards, rules, instructions, advisories, training materials and presentations, and any other written policies or procedures pertaining to roving patrol operations generally;
2. Internal memoranda, legal opinions, guidance, directives, criteria, standards, rules, instructions, advisories, training materials and presentations, and any other written policies or procedures pertaining to all searches and seizures (including arrests) made pursuant to roving patrol operations;
3. Audits, reports, statistical data and analysis, quotas, targets, goals, and performance standards, measures, or reviews, and all documents related to any incentives or bonus programs relating to roving patrol operations in San Diego Sector and El Centro Sector;
4. Organizational charts, diagrams, or schematics pertaining to roving patrol operations in San Diego Sector and El Centro Sector, including charts reflecting agency leadership structures or individuals involved in decisionmaking related to roving patrol operations;

²⁰ As used herein, the term “records” includes all records or communications preserved in electronic or written form, including but not limited to: correspondence; documents; data; videotapes; audio tapes; emails; faxes; files; guidance; guidelines; evaluations; instructions; analysis; memoranda; agreements; notes; orders; policies; procedures; protocols; reports; rules; manuals; specifications; and/or studies.

Please note: Should any responsive record contain the personal identifying information of any third party, Requesters ask that the agencies redact that information. This Request seeks records relevant to the Border Patrol roving patrol program, *not* any personal or identifying information about any specific individual(s).

²¹ San Diego Sector includes Imperial Beach Station, Brown Field Station, Campo Station, San Clemente Station, El Cajon Station, Murrieta Station, Chula Vista Station, and Boulevard Station. El Centro Sector includes El Centro Station, Calexico Station, Riverside Station, and Indio Station. See U.S. Customs and Border Protection, Border Patrol Sectors, <http://1.usa.gov/1lxpfAT> (last visited June 25, 2014).

5. Internal memoranda, legal opinions, guidance, directives, criteria, standards, rules, instructions, advisories, training materials and presentations, and any other written policies or procedures or other records pertaining to Border Patrol's authority to conduct roving patrol stops based on alleged or actual violations of local or state law, including traffic laws, in San Diego Sector and El Centro Sector;
6. Communications, agreements, or any other records related to state or local law enforcement involvement in roving patrol operations in San Diego Sector and El Centro Sector;
7. Records regarding any individual questioned, stopped, searched, detained, and/or arrested in roving patrol operations in San Diego Sector and El Centro Sector, including but not limited to:
 - a. Field Contact Data Sheets;
 - b. Forms I-247 (DHS "Immigration Detainer—Notice of Action");
 - c. Forms I-213 ("Record of Deportable Alien");
 - d. Forms I-286 ("Application for a Stay of Deportation or Removal");
 - e. Forms I-44 ("Report of Apprehension or Seizure");
 - f. Forms I-862 ("Notice to Appear");
 - g. Forms I-826 ("Notice of Rights and Request for Disposition"); and
 - h. Forms I-210 ("Voluntary Departure and Verification of Departure").
8. For each of the years 2011, 2012, 2013, and 2014, for both San Diego Sector and El Centro Sector, records relating to and/or containing information sufficient to show:
 - a. the total number of roving patrol **stops** made by U.S. Border Patrol agents;
 - b. the total number of roving patrol stops resulting in **searches**;
 - c. the total number of roving patrol stops resulting in **arrest**, as well as the disposition of each such arrest (*e.g.*, Notice to Appear; Voluntary Return; criminal charges and resolution thereof, etc.);
 - d. the citizenship of each individual **stopped** in the course of a roving patrol;
 - e. the citizenship of each individual **searched** in the course of a roving patrol;
 - f. the citizenship of each individual **arrested** in the course of a roving patrol;
 - g. the apparent race or ethnicity of each individual **stopped** in the course of a roving patrol;
 - h. the apparent race or ethnicity of each individual **searched** in the course of a roving patrol;
 - i. the apparent race or ethnicity of each individual **arrested** in the course of a roving patrol;
 - j. the location of each roving patrol **stop**;²²
 - k. the location of each roving patrol stop resulting in a **search**;
 - l. the location of each roving patrol stop resulting in any **arrest**;
 - m. the type of each roving patrol **stop** (*e.g.*, entry onto private land, pedestrian encounter, vehicle stop, or public transportation stop (train, trolley, bus, etc.));
 - n. the type of each roving patrol stop resulting in a **search** (*e.g.*, entry onto private land, pedestrian encounter, vehicle stop, or public transportation stop (train, trolley, bus, etc.));
 - o. the type of each roving patrol stop resulting in **arrest** (*e.g.*, entry onto private land, pedestrian encounter, vehicle stop, or public transportation stop (train, trolley, bus, etc.));
 - p. the date of each roving patrol **stop**;
 - q. the date of each roving patrol stop resulting in a **search**;

²² To the extent materials exist that document such information in various formats (*e.g.*, databases or other compilations of information based on, for example, city, county, sector, and/or zip code), such materials are included in this Request.

- r. the date of each roving patrol stop resulting in any **arrest**;
 - s. the number of agents involved in each roving patrol **stop**;
 - t. the number of agents involved in any **search** in the course of a roving patrol, and whether a search involved one or more canines;
 - u. the number of agents involved in any **arrest** in the course of a roving patrol;
 - v. the basis for all stops **resulting in arrest**, including stops initiated by any state or local law enforcement agency;
 - w. the basis for all stops **not resulting in arrest**, including stops initiated by any state or local law enforcement agency;
 - x. the Border Patrol agent(s) and/or CBP officer(s) involved in determining whether reasonable suspicion or probable cause existed to justify each stop, and whether the reviewing agent(s)/officer(s) was or were the same as the agent(s)/officer(s) who initiated the stop under review;
 - y. the date, time, and location of any roving patrol that was the subject of any complaint, internal or external investigation, civil litigation, and/or a motion to suppress; the basis of the complaint, investigation, or civil or criminal court proceedings; and the status and/or outcome of any such complaint, investigation, or civil or criminal court proceedings.
9. Any complaints received by any Border Patrol, CBP, or DHS official or agency from any person, organization, agency, tribal government, consular official, or any other entity, whether verbal or written, related to roving patrol operations in San Diego Sector and/or El Centro Sector, as well as any communications regarding and responses to any such complaints; AND
10. All disciplinary records resulting from any alleged agent misconduct or alleged violation of Border Patrol, CBP, and/or DHS rules or regulations related to roving patrol operations in San Diego Sector and/or El Centro Sector.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), we request that responsive documents be provided electronically in text-searchable, static-image format (PDF), in the best image quality in the agencies' possession. We further request that reasonable metadata be transmitted along with responsive documents, including but not limited to email attachments, author and recipient information, date and time stamps, and the like.

REQUEST FOR EXPEDITED PROCESSING

Requesters seek expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d)(1)(ii) ("Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve: . . . (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.").

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

Dissemination of information to the public about actual or alleged government activity is a critical and substantial component of the ACLU's mission and work. Specifically, the ACLU publishes a continuously updated blog, newsletters, news briefings, "Know Your Rights" documents, and other educational and informational materials that are broadly disseminated to the

public.²³ Such material is widely available to everyone, including individuals, tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee through the ACLU's public education department and website.

The ACLU's national website (www.aclu.org) and the sites run by the ACLU-SDIC (www.aclusandiego.org) and the ACLU-So Cal (www.aclusocal.org) address civil rights and civil liberties issues in depth, provide features on civil rights and civil liberties issues in the news, and contain many thousands of documents relating to the issues on which the ACLU is focused. These websites also include features highlighting information obtained through the FOIA process.²⁴

In addition, the ACLU publishes a newsletter at least twice a year that reports on and analyzes civil liberties-related current events; this publication is distributed to approximately 450,000 people. The ACLU also publishes a bi-weekly electronic newsletter, which is distributed to approximately 300,000 subscribers (both ACLU members and non-members) by e-mail. Both of these newsletters often include descriptions and analyses of information obtained from the government through FOIA, as well as information about cases, governmental policies, pending legislation, abuses of constitutional rights, and polling data. *Cf. Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5, 13–14 (D.D.C. 2003) (finding the Electronic Privacy Information Center to be a representative of the news media under Department of Defense regulations because it published a “bi-weekly electronic newsletter that is distributed to over 15,000 readers” about “court cases and legal challenges, government policies, legislation, civil rights, surveys and polls, legislation, privacy abuses, international issues, and trends and technological advancements.”).

The ACLU also regularly publishes books, “Know Your Rights” publications, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and governmental policies that implicate civil rights and liberties. These materials are specifically designed to be educational and widely disseminated to the public. *See Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11 (finding the Electronic Privacy Information Center to be a news-media requester because of its publication and distribution of seven books on privacy, technology, and civil liberties). The ACLU further disseminates information to the public via social media platforms such as Facebook and Twitter.

Depending on the results of this request, the ACLU plans to “disseminate the information” it receives “among the public” through these kinds of publications in these kinds of channels. The ACLU is therefore an organization “primarily engaged in disseminating information” within the meaning of the statute and the relevant regulations—as has been previously recognized in FOIA litigation between the ACLU and the Department of Justice. *See, e.g., ACLU v. Department of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding that a non-profit, public-interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn

²³ *See, e.g.,* Dan Gillmor, *In Praise of the Almost-Journalists*, Slate (Mar. 28, 2014, 12:29 PM), <http://slate.me/1jg5YXx> (describing ACLU's efforts to broadly disseminate important civil rights-related news stories) (last visited July 2, 2014).

²⁴ *See, e.g.,* <http://www.thetorturedatabase.org>; <http://www.aclu.org/mappingthefbi>; *see also, e.g.,* Press Release, ACLU of San Diego & Imperial Counties, CBP Releases Report, New Training Handbook (May 22, 2014), <http://www.aclusandiego.org/radio-silence-border-patrol-use-force-policies-leads-lawsuit/> (last visited July 2, 2014).

the raw material into a distinct work, and distributes that work to an audience” is “primarily engaged in disseminating information”) (internal citation omitted).

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

The records requested are urgently needed to inform the public about actual or alleged government activity, specifically, U.S. Border Patrol’s roving patrol policies and practices throughout Southern California. The public has and continues to manifest an abiding interest in Border Patrol’s conduct with respect to roving patrols, as well as in CBP’s overall accountability for misconduct and abuse and the transparency of internal agency investigations into alleged misconduct. Between 2004 and 2011, complaints involving CBP officers nearly tripled, with the majority of these grievances involving allegations of excessive force and discrimination.²⁵ The ACLU has also documented an increasing number of Border Patrol abuses in recent years, including frequent reports of unlawful roving patrol operations conducted far into the interior; many of these stops include unlawful searches, prolonged detention, and verbal and physical abuse. Likewise, Border Patrol roving patrol operations have attracted considerable media coverage and public attention in recent months.²⁶

A delayed response to this Request would compromise a significant public interest because it would prevent the public from being able to engage in a timely, thoughtful debate about Border Patrol activities at a time when documented cases of Border Patrol abuses—including roving patrol abuses—are increasing. In light of the foregoing, expedited processing of this Request is warranted under 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d)(ii).

REQUEST FOR LIMITATION OR WAIVER OF SEARCH AND REVIEW FEES

Requesters further seek a limitation or waiver of processing (search and review) fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media . . .”); 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”). *See also* 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged “for requests by educational institutions . . . or representatives of the news media”); § 5.11(k)(1) (“Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section where a component determines, based on all available information, that the requester has demonstrated that (i) disclosure of the

²⁵ *See* DEP’T OF HOMELAND SEC., OFFICE OF CIVIL RIGHTS AND CIVIL LIBERTIES, DEPARTMENT-WIDE DATA ON COMPLAINTS RECEIVED (2011–2012), *available at* <http://1.usa.gov/1c1ASN8>; DEPARTMENT-WIDE DATA ON COMPLAINTS RECEIVED (2004–2010), *available at* <http://1.usa.gov/1mstOl6>.

²⁶ *See, e.g.,* Rob O’Dell and Bob Ortega, *More Border Agents Assisting Local Police*, ARIZONA REPUBLIC, Dec. 17, 2013, *available at* <http://bit.ly/1cnqDGg>; Bob Ortega, *Border Patrol Hit With Abuse Complaints*, USA TODAY, Oct. 9, 2013, *available at* <http://bit.ly/1nccCN3>; Manuel Valdes, *U.S. Border Patrol Settles Racial Profiling Case, Will Share Stop Records*, WASHINGTON TIMES, Sept. 24, 2013, *available at* <http://bit.ly/1ig4pew>; Todd Miller, *War on the Border*, NY TIMES, Aug. 18, 2013, *available at* <http://nyti.ms/1lz83L6>; Michel Marizco, *Living Life Under Federal Watch On The Border*, FRONTERAS DESK, Aug. 5, 2013, *available at* <http://bit.ly/1gfpGid>; Perla Trevizo, *Hiker Wants Ariz. Park Ranger Fired Over Search*, ARIZONA DAILY STAR, May 20, 2013, *available at* <http://bit.ly/1smnr7h>; *see also* David Antón Armendáriz, *On the Border Patrol and Its Use of Illegal Roving Patrol Stops*, 14 Scholar 553 (2012), *available at* <http://bit.ly/1smdpZ>.

requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and (ii) disclosure of the information is not primarily in the commercial interest of the requester.”).

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

The records requested will contribute significantly to public understanding of the government’s operations or activities. Under 6 C.F.R. § 5.11(k)(2), the following factors are to be considered in determining whether a disclosure is in the public interest: (i) whether the subject of the requested records concerns “the operations or activities of the government”; (ii) whether the disclosure is “likely to contribute” to an understanding of government operations or activities; (iii) whether disclosure of the requested information will contribute to “public understanding,” that is, “the understanding of a reasonably broad audience of persons interested in the subject”; and (iv) whether disclosure is likely to contribute “significantly” to public understanding of government operations or activities. *See* 6 C.F.R. § 5.11(k)(2)(i)–(iv). Each of these considerations is satisfied here.

First, the records requested pertain directly to the operations and activities of the federal government (specifically, CBP and one of its subcomponents, the U.S. Border Patrol).

Second, this Request is “likely to contribute” to an understanding of government operations or activities, specifically by helping the public determine whether individuals encountered, apprehended, and/or detained by the U.S. Border Patrol are treated in a manner that comports with our Constitution and other federal laws, and whether CBP personnel are properly investigated and held accountable when they fail to respect those laws.

Third, disclosure of the requested information will contribute to “the understanding of a reasonably broad audience of persons interested in the subject” of U.S. Border Patrol roving patrols. Professors Lai and Ashar intend to rely on responsive documents in their teaching, research and/or advocacy as clinical law faculty, and the ACLU will publish responsive records and analyze specific documents to raise public awareness of roving patrols generally.

Finally, disclosure will contribute “significantly” to the public understanding of Border Patrol’s roving patrol operations. Roving patrol abuses have been the subject of substantial litigation and media attention, yet much remains unknown about these patrols and their impact on the public.

Requesters have thus established, “with reasonable specificity[,] that [their] request pertains to operations of the government,” and “the informative value of a request depends not on there being certainty of what the documents will reveal, but rather on the requesting party having explained with reasonable specificity how those documents would increase public knowledge of the functions of the government.” *Citizens for Responsibility and Ethics in Washington v. Department of Health and Human Services*, 481 F. Supp. 2d 99, 107–109 (D.D.C. 2006).

B. Disclosure of the information requested is not in Requesters’ commercial interest.

Disclosure of the information requested is not in the commercial interest of either the ACLU or IRC. Any information obtained as a result of this FOIA request will be made available to the public at no cost.

C. The ACLU qualifies as a representative of the news media.

The ACLU meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU is a “representative of the news media” for the same reasons that it is “primarily engaged in the dissemination of information.” *See Electronic Privacy Information Center*, 241 F. Supp. 2d at 10–15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for FOIA purposes).²⁷ Various federal courts have held that the ACLU is a “representative of the news media.” *See, e.g., Serv. Women’s Action Network v. Department of Defense*, No. 3:11CV1534 (MRK), 2012 WL 3683399, at *3 (D. Conn. May 14, 2012); *American Civil Liberties Union of Washington v. Department of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

D. Professors Lai and Ashar are researchers at an educational institution.

Both Professors Lai and Ashar qualify as researchers at an educational institution as that phrase is defined under the Freedom of Information Act and its implementing regulations. *See* 6 C.F.R. § 5.11(c)(1)(i), (d)(1); *see also* § 5.11(b)(4) (defining educational institution to include “an institution of professional education . . . that operates a program of scholarly research”). Professors Lai and Ashar are faculty at UCI School of Law and teach and conduct research in the area of immigrant rights. They seek the requested records not for any commercial use but rather to further the institution’s scholarly research goals. *See* 6 C.F.R. § 5.11(b)(4); *see also Sack v. Department of Defense*, 12-CV-1754 (RLW), 2013 WL 6640776, at *10 (D.D.C. Dec. 13, 2013) (“[A] request from a professor of geology at a State university for records relating to soil erosion, written on letterhead of the Department of Geology, could be presumed to be from an educational institution.” (quoting

²⁷ On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. In June 2011, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU with regard to a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The Department of Justice did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the Office of Information and Privacy in the Department of Justice—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

OMB Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 Fed. Reg. 10,012, 10,014 (Mar. 27, 1987))).

For the foregoing reasons, a fee waiver or limitation should be granted. A fee waiver would also fulfill Congress's legislative intent in amending FOIA, namely to ensure that the Act is liberally construed in favor of granting waivers for noncommercial requesters and to effectuate disclosure of documents of public importance. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (internal quotation marks and citation omitted)); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that "disclosure, not secrecy, is the dominant objective of the Act," quoting *Department of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

Should a total waiver be denied, fees should be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(II). In the event a fee waiver or reduction of costs is denied, please notify us in advance if the anticipated costs associated with this Request exceed \$100.00.

CONCLUSION

Pursuant to the applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(d)(4).

We further expect your reply to the Request itself within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(i). If the Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material.

We reserve the right to appeal a decision to withhold any information, or to deny expedited processing or a waiver of fees.

Please furnish the requested records to:
ACLU of San Diego & Imperial Counties
c/o Mitra Ebadolahi
P.O. Box 87131
San Diego, CA 92138
mebadolahi@aclusandiego.org

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi); 6 C.F.R. § 5.5(d)(3). Thank you for your prompt attention to this matter.

Sincerely,



Mitra Ebadolahi
Staff Attorney
ACLU-SDIC

Lucero Chavez
Immigrant Rights Attorney
ACLU-So Cal (Orange County)

Annie Lai
Assistant Clinical Professor of Law
UC Irvine School of Law

Sameer Ashar
Clinical Professor of Law
UC Irvine School of Law

EXHIBIT C

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