



December 6, 2019

SENT VIA E-MAIL

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street SW, Stop 5009
Washington, DC 20536-5009
Email: ICE-FOIA@dhs.gov

Senior Director of FOIA Operations
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655
Email: Foia@hq.dhs.gov

AMERICAN CIVIL
LIBERTIES UNION FOUNDATION

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

DAVID C. FATHI
DIRECTOR
ATTORNEY AT LAW*

*NOT ADMITTED IN DC;
PRACTICE LIMITED TO
FEDERAL COURTS

**Re: FOIA Request Related to ICE's Provision of Reproductive
and Gender-Specific Health Care Services**

Dear Freedom of Information Officer:

The American Civil Liberties Union (“ACLU”) submits this Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, request for production of records (the “Request”). The ACLU also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d). The justification for the fee waiver and expedited processing are set out in detail following the Request.

Request for Information

The ACLU seeks any and all records that were prepared, received, transmitted, collected and/or maintained by the U.S. Immigration and Customs Enforcement (ICE) that describe, refer or relate to policies, guidelines, protocols, or procedures regarding reproductive health care and “gender appropriate care” provided to individuals in ICE detention. Unless otherwise noted, we request the records specified below from January 20, 2017 to the present.

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

For purposes of this request, the term “DHS” means Department of Homeland Security, and any components, subcomponents, offices, or personnel therein.

For purposes of this request, the term “ICE” means Immigration and Customs Enforcement, and any components, subcomponents, offices, or personnel therein.

For purposes of this request, “IHSC” means the U.S. Immigration and Customs Enforcement Health Services Corp.

For purposes of this request, the term “immigration detention facility” has the same scope used in 6 C.F.R. § 115.5.

For purposes of this request, “detainee” means any person detained in an immigration detention facility or holding facility.

Specific Records Requested:

1. Any and all IHSC, ICE Enforcement and Removal Operations (ERO), and ICE Homeland Security Investigations (HSI) directives, policies, procedures, and protocols, regarding the identification, care, and treatment of pregnant individuals in ICE custody, including the use of restraints, access to abortion information and/or services, services for survivors of sexual assault, prenatal care, and “gender appropriate” medical exams as described in 2011 ICE Performance-Based National Detention Standard (PBNDS) Section 4.4, “Medical Care-Women”. This includes all versions of the documents that were in effect during the request period, as well as any updates, amendments, and attachments thereto.
2. Any documents, communications, and other records, including significant incident reports (SIRs) and associated documentation

regarding the identification, care, and treatment of pregnant individuals in ICE custody, including the use of restraints, access to abortion information and/or services, services for survivors of sexual assault, prenatal care, and “gender appropriate” medical exams as described in 2011 ICE Performance-Based National Detention Standard (PBNDS) Section 4.4, “Medical Care-Women.”

3. Any and all documents and communications, including grievances and requests received by ICE from persons in ICE detention, regarding the use of restraints on detained pregnant women pursuant to 2011 PBNDS Section 4.4 (V)(E)(1), “Non-Use of Restraints”.
4. From January 20, 2017 to present, any and all records documenting the total number of times that restraints have been used on pregnant detainees, the length of time that restraints were used, the type of restraint used, and the manner in which the restraint was used.
5. From January 20, 2017 to present, any and all records including reports from the on-site medical authority and/or healthcare professional(s) responsible for approving and providing guidance on the use of restraints on any pregnant detainee, as required by PBNDS 2011 Section 4.4(V)(E)(1).
6. Any and all records, including policies, protocols, and memos relating to or implementing PBNDS 2011 Section 4.4(V)(E)(1), “Non-Use of Restraints.”
7. Any and all documents including but not limited to PowerPoint presentations and handouts, displayed or distributed to ERO, HSI, and IHSC staff, as well as any contractors in connection with training implementing or related to 2011 PBNDS Section 4.4 (V)(E)(1), “Non-Use of Restraints.”
8. Any and all records regarding advice, consultation, prescription and/or provision of any type of birth control (including, but not limited to, preventative and emergency contraception, permanent birth control methods such as tubal ligation, hysterectomy, and vasectomy, and non-surgical permanent birth control) to ICE detainees, including any documentation of requests for such birth control and any record of the cost to the detainee of such birth control methods of procedures.
9. Any and all documents, communications and records, including individual requests received by ICE from persons in ICE detention or on their behalf for access to abortion information and/or services, including documentation in the detainee’s medical records pursuant to 2011 PBNDS Section 4.4(V)(E)(2), “Abortion Access.”

10. From January 20, 2017 to present, any and all records documenting (i) the total number of requests for abortion from persons in ICE custody; (ii) the total number of requests for abortion from persons in ICE custody that were denied and any and all documents pertaining to those denials, including but not limited to the reasons for denying each such request; and/or (iii) the total number of persons in ICE detention who obtained abortions; and (iv) the total costs expended by ICE for abortions pursuant to 2011 PBNDS Section 4.4(V)(E)(2).
11. Any and all records, including questionnaires, screening tools, intake assessments, protocols, memos, and policies used to assess whether a person in ICE detention is seeking an abortion pursuant to 2011 PBNDS Section 4.4(V)(E)(2).
12. Any and all records, including referral information for religious, nondirective, and/or social counseling, questionnaires, screening tools, intake assessments protocols, memos, and/or policies used in counseling persons in ICE detention requesting information about or access to abortion information and/or services pursuant to 2011 PBNDS Section 4.4(V)(E)(2)(b).
13. Any and all records including policies, protocols, and memos, documenting the process for determining whether ICE will assume the costs associated with an individual's decision to terminate a pregnancy pursuant to 2011 PBNDS Section 4.4(V)(E)(2).
14. Any and all documents including but not limited to PowerPoint presentations and handouts, displayed or distributed to ERO and IHSC staff as well as any contractors in connection with training implementing or related to 2011 PBNDS Section 4.4 (V)(E)(2), "Abortion Access."
15. Any documents, communications, and other records of referrals for mental or medical healthcare after disclosures of physical or sexual victimization, as required by 2011 PBNDS Section 4.3(V)(P).
16. Any and all records indicating the number of times each woman who was in ICE custody for more than one year was transferred to an external medical facility for gender-specific care, including but not limited to mammograms.

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

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the ACLU requests that responsive electronic records be provided electronically in their native file format, if possible, with all metadata and load files. Alternatively, the ACLU requests that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files. We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. However, to the extent that a response to this request would require you to provide multiple copies of identical material, the request is limited so that only one copy of the identical material is requested. We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. Please do not compress images or downsample the resolution, as this interferes with their legibility. To facilitate a speedy response, we ask that records responsive to this request be produced on a rolling basis. The ACLU will accept records and other information that have been redacted pursuant to the Health Insurance and Portability Accountability Act¹ or other statutes or regulations protecting the privacy of individual detainees.

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

Fee Waiver Request

The ACLU requests that any fees associated responding to its FOIA request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k). Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), fees should be waived or reduced if disclosure is (1) in the public interest because it is "likely to contribute significantly to public understanding of the operations or activities of the government" and (2) "not primarily in the commercial interest of the requester." Disclosure in this case meets both of these tests. The ACLU also requests a waiver or reduction of fees on the grounds that the ACLU qualifies as a "representative[] of the news media" and the records are

¹ 42 U.S.C. § 1320d-6.

not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(d)(1).

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

First, disclosure pursuant to this Request is in the public interest. The U.S. immigration detention system has grown significantly over the past two years, with a daily average detained population close to 45,000 people.² Along with this growth in overall number of detained migrants, there has been a noted increase in the number of immigrant women subjected to detention. In 2016, advocates “observed a marked increase” in the number of detained women asylum seekers.³ More asylum-seekers than ever are women and families.⁴ The increasing number of women in ICE custody requires robust standards for age- and gender-responsive treatment, including access to regular preventative care such as gynecological examinations, mammograms, and cervical cancer screenings.⁵

Many of the women and girls seeking asylum in the U.S. are fleeing sexual and domestic violence, while others are subjected to such violence while en route to the United States.⁶ They have reason to fear further victimization while in ICE custody at the hands of staff and other detained persons.⁷ Sexual

² Dara Lind and Javier Zarracina, *By the Numbers: How 2 years of Trump's Policies Have Affected Immigrants*, VOX (Jan. 19, 2019, 4:38 PM), <https://www.vox.com/policy-and-politics/2019/1/19/18123891/trump-immigration-statistics>.

³ *See* Michelle Brané, *Our Detention System is Broken*, WOMEN'S REFUGEE COMM'N (Oct. 26, 2017), <https://www.womensrefugeecommission.org/blog/2732-our-detention-system-is-broken>.

⁴ LUTHERAN IMMIGRATION AND REFUGEE SERVS. ET AL., *BETRAYING FAMILY VALUES: HOW IMMIGRATION POLICY AT THE UNITED STATES BORDER IS SEPARATING FAMILIES 1* (updated 2017).

⁵ *See* *Ages 19-39 Years: Laboratory and Other Tests*, THE AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS, <https://www.acog.org/About-ACOG/ACOG-Departments/Annual-Womens-Health-Care/Well-Woman-Recommendations/laboratory-testing-Ages-19-39-Years> (last visited Nov. 20, 2018); *Ages 40-64 Years: Laboratory and Other Tests*, THE AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS, <https://www.acog.org/About-ACOG/ACOG-Departments/Annual-Womens-Health-Care/Well-Woman-Recommendations/Laboratory-Testing-Ages-40-64-Years> (last visited Nov. 20, 2018).

⁶ *See* Silva Mathema, *They Are (Still) Refugees: People Continue to Flee Violence in Latin American Countries*,

<https://www.americanprogress.org/issues/immigration/reports/2018/06/01/451474/still-refugees-people-continue-flee-violence-latin-american-countries/> (Jul. 1, 2018).

⁷ Alice Speri, *Detained, Then Violated: 1,224 Complaints Reveal a Staggering Pattern of Sexual Abuse in Immigration Detention. Half of Those Accused Worked for ICE*, THE INTERCEPT (Apr. 11, 2018, 12:11 PM), <https://theintercept.com/2018/04/11/immigration-detention-sexual-abuse-ice-dhs/>.

violence victims require specialized medical care, including access to mental health services, testing and treatment for sexually transmitted infections, and, because pregnancy following rape can be re-traumatizing, access to emergency contraception and abortion if desired.⁸

Additionally, recent reports indicate that pregnant women in ICE custody are shackled despite ICE standards prohibiting shackling except in extraordinary circumstances.⁹ Placing pregnant women in shackles or restraints can have serious health consequences, as outlined by the American College of Obstetricians and Gynecologists.¹⁰

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

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

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

The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU website also includes many features on information obtained through FOIA requests. For

⁸ See Paul Bouvier, *Sexual Violence, Health and Humanitarian Ethics: Towards a Holistic, Person-Centred Approach*, INT'L REV. OF THE RED CROSS 565, 569 (2015).

⁹ See Ema O'Connor & Nidhi Prakash, *Pregnant Women Say They Miscarried In Immigration Detention And Didn't Get The Care They Needed*, BUZZFEED NEWS (July 9, 2018, 2:44 PM), <https://www.buzzfeednews.com/article/emaconnor/pregnant-migrant-women-miscarriage-cpb-ice-detention-trump#joOYZ78Nm>.

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

¹¹ See 6 C.F.R. § 5.11(k)(1)(ii); 6 C.F.R. § 5.11(k)(3).

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.¹² The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, in February 2017 the ACLU produced an analysis of documents released in response to a FOIA request about the TSA’s behavior detection program. The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the ACLU plans to disseminate the information disclosed as a result of this Request to the public at no cost.

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

The ACLU is also entitled to a waiver of search fees on the grounds that the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The ACLU meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see supra*; *also Nat’l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).

Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. For example, the ACLU regularly

¹² The Torture Database, <https://www.thetorturedatabase.org> (last visited Sept. 19 2019); *see also Countering Violent Extremism FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/cve-foia-documents>; *TSA Behavior Detection FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; *Targeted Killing FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

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

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,¹³ and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.¹⁴ Similarly, ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.¹⁵ This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

¹³ See, e.g., Press Release, ACLU, U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, ACLU, Secret Documents Describe Graphic Abuse and Admit Mistakes (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, ACLU, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>.

¹⁴ See, e.g., Cora Currier, *TSA’s Own Files Show Doubtful Science Behind Its Behavioral Screen Program*, Intercept, Feb. 8, 2017, <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program/> (quoting ACLU attorney Hugh Handeyside); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC, June 15, 2016, <http://abcn.ws/2jy40d3> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Device*, Guardian, Mar. 17, 2016, <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler).

¹⁵ See, e.g., Manar Waheed, *Customs and Border Protection Violated Court Orders During the First Muslim Ban Implementation* (Jan. 24, 2018, 3:45 PM), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/customs-and-border-protection-violated-court>; Vera Eidelman, *We Sued for Records About Trump’s Muslim Bans. Here’s What We Found Out*. (Oct. 24, 2017, 3:15 PM), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/we-sued-records-about-trumps-muslim-bans-heres>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Galen Sherwin, ACLU, *Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (May 27, 2016), <https://www.aclu.org/report/leaving-girls-behind>.

The ACLU also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties. The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See* <https://www.aclu.org/multimedia>.

Underscoring this point, courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU’s are “representatives of the news media” as well. *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).¹⁶

As a representative of the news media, the ACLU plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use. On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news media.”¹⁷ A fee waiver would

¹⁶ Courts have found these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information and public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat’l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

¹⁷ For example, in May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ.

fulfill Congress's legislative intent in amending FOIA.¹⁸ Additionally, on account of these factors, the ACLU has not been charged fees associated with responding to FOIA requests on numerous occasions.¹⁹

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

Expedited Processing Request

The ACLU requests expedited processing of this Request pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). 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); *see also* 6 C.F.R. 5.5(e)(1)(ii).

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

¹⁸ *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requestors.’”) (citation omitted); *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) (“[FOIA’s] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.”) (internal quotation marks and citation omitted).

¹⁹ For example, in August 2016, the ICE FOIA Office and DHS Privacy Office both granted fee waivers to the ACLU for a FOIA request seeking a DHS OIG supermemorandum and ICE’s response to that memorandum. Similarly, in March 2016, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about selected deaths in detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office. In July 2015, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about the use of segregation in ICE detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office.

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). As detailed *supra*, the ACLU has the ability and intention to widely disseminate the requested information through a variety of sources, including reports, newsletters, news briefings, right-to-know handbooks, and other materials, to the public at no cost. Indeed, 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. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).²⁰ Moreover, as mentioned *supra*, the ACLU intends to distribute the information obtained through this FOIA request via the ACLU website and/or means available to us.

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

The requested records are also urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, the requested records pertain to the provision of reproductive health care and “gender appropriate care” provided to individuals in ICE detention. As described *supra*, this is a matter of widespread media and public interest, and the requested records will inform the public concern of this activity by ICE. 5 U.S.C. § 552(a)(6)(E)(i)(I).

Furthermore, denial of expedited disclosure of the requested records involving the health care and treatment of women in immigration detention could “reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” 5 U.S.C. § 552(a)(6)(E)(v)(I); 6 C.F.R. § 5.5(d)(1)(i). Major medical organizations including the American Academy of Pediatrics, American Academy of Family Physicians, and American College of Obstetricians and Gynecologists have criticized the ICE detention system for failing to provide adequate healthcare to pregnant women and adolescents.²¹ In

²⁰ 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*, 404 F. Supp. 2d at 260; *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11.

²¹ Letter from American Academy of Pediatrics, American College of Obstetricians and Gynecologists, and American Academy of Family Physicians, to Thomas Homan, Acting

2017, the ACLU and partner organizations documented cases of abuse and medical neglect among women detained by the Department of Homeland Security.²² As recently as January 2019, a woman was reportedly detained by immigration authorities for several days without access to the medication she needed to manage her high-risk pregnancy.²³ These cases regarding the treatment of women in immigration custody raise immediate concerns about the widespread and system-wide failures with life and death consequences for women who are in government custody. The requested records are essential to fully understand the government's role in the detention and treatment of immigrant women who are in its custody.

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

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) and 6 C.F.R. § 5.5(d)(3).

Thank you for your prompt attention to this Request. We look forward to your reply to this Request within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I) and 6 C.F.R. § 5.5(e)(4). Please furnish all responsive records to:

Eunice Cho
ACLU National Prison Project
915 15th St. NW, 7th Floor
Washington, DC 20005
echo@aclu.org

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny a waiver of

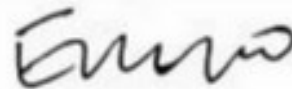
Director, U.S. Immigration and Customs Enforcement (Mar. 30, 2018), https://www.aila.org/infonet/medic-professionals-against-ice-detention-policies?utm_source=aila.org&utm_medium=InfoNet%20Search.

²² Increasing Numbers of Pregnant Women Facing Harm in Detention, Administrative Complaint filed with Office for Civil Rights and Civil Liberties, and the Office of the Inspector General, September 26, 2017, <https://www.womensrefugeecommission.org/rights/resources/1524-joint-complaint-ice-detention-treatment-of-pregnant-women>.

²³ Natalia Megas, *ICE Jailed Pregnant Woman and Could've Killed Her Unborn Child*, THE DAILY BEAST (Jan. 31, 2019), <https://www.thedailybeast.com/ice-jailed-pregnant-woman-and-couldve-killed-her-unborn-child>.

fees. Please call me at (202) 548-6616 if you have any questions or wish to obtain further information about the nature of the records in which we are interested.

Respectfully,

A handwritten signature in black ink, appearing to read "Eunice Cho".

Eunice Cho
American Civil Liberties Union
National Prison Project
915 15th St. NW, 7th Floor
Washington, DC 20005
echo@aclu.org

**AMERICAN CIVIL
LIBERTIES
UNION FOUNDATION**