

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT  
HOUSTON DIVISION

|                                   |   |                             |
|-----------------------------------|---|-----------------------------|
| ACLU FOUNDATION OF TEXAS, INC.,   | ) | Case No. _____              |
|                                   | ) |                             |
| Plaintiff,                        | ) |                             |
|                                   | ) |                             |
| v.                                | ) | <b>JURY TRIAL REQUESTED</b> |
|                                   | ) |                             |
| U.S. CUSTOMS AND BORDER           | ) |                             |
| PROTECTION and U.S. DEPARTMENT OF | ) |                             |
| HOMELAND SECURITY,                | ) |                             |
|                                   | ) |                             |
| Defendants.                       | ) |                             |

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**PLAINTIFF ACLU FOUNDATION OF TEXAS, INC.’S COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATION  
OF THE FREEDOM OF INFORMATION ACT, 5 U.S.C. § 552 et seq.**

**INTRODUCTION**

1. This case challenges the government’s refusal to respond to a Freedom of Information Act request seeking details about the U.S. Customs and Border Protection’s detention of travelers at international airports in Dallas and Houston pursuant to the President’s unconstitutional Muslim ban. We bring suit under FOIA with the aim to vindicate our fundamental democratic values of transparency and government accountability. As the Supreme Court has observed, an informed citizenry is “vital to the functioning of a democratic society” and “needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber*, 437 U.S. 214, 242 (1978). In this instance, the American public has the right to know how the ban was implemented in Texas.

2. The ACLU Foundation of Texas, Inc. (“Plaintiff” or “ACLU”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended, to obtain injunctive and other appropriate relief requiring Defendants U.S. Department of Homeland Security (“DHS”) and U.S. Customs and Border Protection (“CBP”) (collectively, “Defendants”) to respond to a FOIA request sent by Plaintiff on February 6, 2017 (“Request”), and to promptly

disclose the requested records.

3. The Request seeks records concerning CBP's local implementation of President Trump's January 27, 2017 Executive Order titled "Protecting the Nation From Foreign Terrorist Entry Into the United States," Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017) ("Executive Order"), as well as any other judicial order or executive directive issued regarding the Executive Order on or after January 27, 2017.<sup>1</sup> A true and correct copy of the Request is attached as **Exhibit A**.

4. Specifically, the Request seeks records concerning CBP's local implementation of the Executive Order at sites within the jurisdiction of CBP's Houston Field Office. These include, but are not limited to, Dallas/Fort Worth International Airport ("DFW"), Bush Intercontinental Airport ("IAH"), and the Houston Airport and Dallas/Ft. Worth Ports of Entry ("Port of Entry Offices").

### **BACKGROUND**

5. Among other things, the Executive Order purports to halt refugee admissions and bar entrants from several predominantly Muslim countries from entering the United States.

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

7. Over the weekend of January 27–29, 2017, at least five lawsuits resulted in emergency court orders enjoining implementation of various sections of the Executive Order.<sup>2</sup>

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<sup>1</sup> Request 1(m) would include President Trump's March 6, 2017 Executive Order, identically titled, Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017), which significantly references the January 27 Executive Order. *See* Ex. A.

<sup>2</sup> *Vayeghan v. Kelly*, No. CV 17-0702, 2017 WL 396531 (C.D. Cal. Jan. 29, 2017); *Tootkaboni v. Trump*, No. 17-CV-10154, 2017 WL 386550 (D. Mass. Jan. 29, 2017); *Doe v. Trump*, No. C17-126, 2017 WL 388532 (W.D. Wash. Jan. 28, 2017); *Aziz v. Trump*, No. 1:17-CV-116, 2017 WL 386549 (E.D. Va. Jan. 28, 2017); *Darweesh v. Trump*, No. 17 CIV. 480 (AMD), 2017 WL 388504 (E.D.N.Y. Jan. 28, 2017). On March 15, 2017, a district court enjoined implementation of Sections 2 and 6 of the President's identically named March 6 Executive Order. *Hawai'i v. Trump*, No. CV 17-00050 DKW-KSC, 2017 WL 1011673 (D. Haw. Mar. 15, 2017).

8. News reports described Defendants' implementation of the Executive Order as "chaotic" and "total[ly] lack[ing] . . . clarity and direction."<sup>3</sup>

9. Official DHS statements reflected this confusion. For example, DHS stated on January 28 that the Executive Order would "bar green card holders."<sup>4</sup> The next day, however, DHS Secretary John Kelly deemed "the entry of lawful permanent residents to be in the national interest"<sup>5</sup> and the government clarified that the Executive Order did *not* apply to green card holders.<sup>6</sup>

10. Reportedly spurred by this chaos, on January 29, Senators Tammy Duckworth and Dick Durbin called upon the Office of the Inspector General of the Department of Homeland Security to investigate Defendants' implementation of the Executive Order.<sup>7</sup> The Senators specifically sought information regarding: any guidance Defendants provided to the White House in developing the order; any directions that were provided to Defendants in implementing it; whether CBP officers complied with the relevant court orders; and whether DHS and CBP officers kept a list of individuals that they had detained at ports of entry under the order. In response, the Inspector General directed Defendants' personnel to preserve all records "that

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<sup>3</sup> See, e.g., Ryan Devereaux *et al.*, *Homeland Security Inspector General Opens Investigation of Muslim Ban, Orders Document Preservation*, THE INTERCEPT, Feb. 1, 2017, available at <https://theintercept.com/2017/02/01/homeland-security-inspector-general-opens-investigation-of-muslim-ban-rollout-orders-document-preservation/>.

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

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

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

<sup>7</sup> See Ryan Devereaux *et al.*, *Homeland Security Inspector General Opens Investigation of Muslim Ban, Orders Document Preservation*, THE INTERCEPT, Feb. 1, 2017, available at <https://theintercept.com/2017/02/01/homeland-security-inspector-general-opens-investigation-of-muslim-ban-rollout-orders-document-preservation/>.

might reasonably lead to the discovery of relevant information relating to the implementation of” the Executive Order.<sup>8</sup>

11. Beginning on Saturday, January 28, CBP officers at DFW began to detain travelers pursuant to the Executive Order. A total of thirteen individuals were detained on Saturday pursuant to the Executive Order,<sup>9</sup> nine of whom were detained overnight into Sunday in excess of twenty-four hours.<sup>10</sup>

12. While detained, travelers were pressured into signing papers to voluntarily withdraw their admission into the United States.<sup>11</sup>

13. Attorneys who tried to assist the detained individuals throughout Saturday and Sunday were consistently denied access by CBP officials.<sup>12</sup>

14. After the thirteen individuals detained at DFW into Sunday were released, CBP continued to detain travelers from the countries identified in the Executive Order for many hours.<sup>13</sup> Detainees included a 33-year-old Iraqi man in a wheelchair, who was detained for

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<sup>8</sup> *Id.*

<sup>9</sup> Diane Smith, *Detainees at DFW Released, but ‘This is Going to be a Day-to-Day Challenge’*, FORT WORTH STAR TELEGRAM, Jan. 29, 2017, <http://www.star-telegram.com/news/local/community/northeast-tarrant/article129449349.html>.

<sup>10</sup> Mark D. Smith, *Lawyers at DFW Airport Staying ‘Until the Job is Done’*, FORT WORTH STAR TELEGRAM, Feb. 1, 2017, <http://www.star-telegram.com/news/local/community/northeast-tarrant/article130100174.html>; Julieta Chiquillo, *Detained Travelers at DFW Airport Are Released, Reunited with Families*, DALL. MORNING NEWS, Jan. 29, 2017, <http://www.dallasnews.com/news/donald-trump-1/2017/01/29/aclu-lawyers-working-free-travelers-detained-dfw-airport-trumps-ban>; *Detainees at DFW Airport Released By Customs*, CBSDFW, Jan. 29, 2017, <http://dfw.cbslocal.com/2017/01/29/detainees-at-dfw-airport-to-be-released/>.

<sup>11</sup> Letter from Center for Constitutional Rights and Benjamin N. Cardozo School of Law to John Roth, DHS Inspector General (Feb. 6, 2017), *available at* <https://www.scribd.com/document/338703826/CCR-complaint> (Affidavit of Patricia Freshwater, Affidavit of Michelle L. Saenz-Rodriguez, Affidavit of Jaime Treviño, Affidavit of Martin Valko, Affidavit of Christopher O. Dachniwisky, Affidavit of Daniele Volfe).

<sup>12</sup> *Id.*

<sup>13</sup> *E.g.*, Mark D. Smith, *More Arrivals Detained at DFW Airport, Lawyers Group Says*, FORT WORTH STAR-TELEGRAM, Jan. 31, 2017, <http://www.star-telegram.com/news/local/community/fort-worth/article129762034.html>; Julieta Chiquillo et al., *Detained Travelers at DFW Airport Are Released, Reunited with Families*, DALL. MORNING

fifteen hours after traveling to DFW on a Special Immigrant Visa, awarded to him because of his work with the U.S. army in Iraq.<sup>14</sup> Others detained during that period included a family with a one-year-old and three-year-old whose father was an interpreter for the U.S. army and a family with a child under the age of five.<sup>15</sup>

15. Beginning on January 28, travelers were also detained at IAH in Houston pursuant to the Executive Order. Detainees included green card holders and immigrant visa holders, who were held for hours before being released in the early hours of Sunday morning.<sup>16</sup>

16. Throughout the day on January 29, at least fifty people were detained for some period of hours.<sup>17</sup>

17. Disclosure of the records Plaintiff seeks through this action would facilitate the public's understanding of how Defendants implemented and enforced the Executive Order through the Houston Field Office, including in particular at DFW and IAH. Such information is critical to the public's ability to hold the government accountable.

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NEWS, Jan. 29, 2017, <https://www.dallasnews.com/news/donald-trump-1/2017/01/29/aclu-lawyers-working-free-travelers-detained-dfw-airport-trumps-ban>;

<sup>14</sup> Sarah Mervosh et al., *Iraqi in Wheelchair Released After 15-hour Detention at DFW Airport Under Trump's Travel Ban*, DALL. MORNING NEWS, Jan. 31, 2017, <https://www.dallasnews.com/news/immigration/2017/01/30/faith-leaders-students-press-reversal-trumps-travel-restrictions-dallas-area-vigils>.

<sup>15</sup> *Id.*

<sup>16</sup> *E.g.*, Joe Martin, *Houston Immigration Lawyers Set Up Shop at IAH Following Trump Travel Ban*, HOUS. BUS. J., Feb. 1, 2017, <http://www.bizjournals.com/houston/news/2017/02/01/houston-immigration-lawyers-set-up-shop-at-iah.html>; Lindsay Ellis et al., *Protests Against Muslim Ban Ripple Across Houston, Packing IAH Terminal to Capacity*, HOUS. CHRON., Jan. 30, 2017, <http://www.chron.com/houston/article/Protests-planned-against-Muslim-ban-across-10892379.php>; Brenna Daldorph, *The Story of One Resident's Fight to Enter the US After Immigration Ban*, FRANCE24, Jan. 29, 2017, <http://www.france24.com/en/20170129-trump-muslim-ban-immigration-lawyer-usa>.

<sup>17</sup> Meagan Flynn, *Amid Nationwide Chaos, Protestors Rally at Bush Airport to Support Refugees, Muslims*, HOUS. PRESS, Jan. 30, 2017, <http://www.houstonpress.com/news/amid-nationwide-chaos-protestors-rally-at-bush-airport-to-support-refugees-muslims-9154982>.

18. This action is necessary because Defendants have failed to provide Plaintiff with a determination as to whether they will comply with the Request. Defendants invoked their ability to extend their statutory response time to a total of thirty business days, and more than thirty business days have elapsed since Defendants received the Request.

### **JURISDICTION**

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

### **VENUE**

20. Venue in the Southern District of Texas is proper under 5 U.S.C. § 552(a)(4)(B) as the requested agency records are, upon information and belief, situated within this District at CBP's Houston Field Office, as well as CBP facilities at or near IAH and Houston Airport Port of Entry. Venue is also proper because Plaintiff's principal place of business is in Houston, where its office is headquartered. For the same reasons, venue also is proper under 28 U.S.C. § 1391(e).

21. Assignment to the Houston Division is proper for the same reasons.

### **PARTIES**

22. Plaintiff is a 501(c)(3) organization dedicated to protecting and defending the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in Texas. The ACLU provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about the civil rights and civil liberties implications of pending and proposed state and federal legislation, and provides analyses of pending and proposed legislation.

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

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

25. Plaintiff is informed and therefore believes that Defendants have possession, custody, or control of the requested records.

### **FACTS**

26. On February 6, 2017, Plaintiff sent the Request to CBP's FOIA Officer at CBP Headquarters.

27. The Request sought records regarding CBP's local interpretation and enforcement of the Executive Order at IAH, DFW, and the Port of Entry Offices. The Request expressly did *not* seek information held in the records of CBP Headquarters. Plaintiff incorporates by reference the Request, which is attached as **Exhibit A**.

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

29. The Request provided detail showing that the ACLU is primarily engaged in disseminating information within the meaning of 5 U.S.C. § 552(a)(6)(E)(v), given that a critical and substantial aspect of the ACLU's mission is to obtain information about government activity, analyze that information, and publish and disseminate that information widely to the press and public. Ex. A at 9–10.

30. The Request described examples of the ACLU's information-dissemination function. Ex. A at 9–10.

31. The Request also included an application for a fee waiver or limitation under 5 U.S.C. § 552(a)(4)(A)(iii) on the grounds that disclosure of the requested records is in the public interest and is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." In particular, the ACLU emphasized that the Request would significantly contribute to public understanding on a matter of profound public importance about which scant specific information

had been made public, *i.e.*, how local CBP Field Offices had enforced, and continue to enforce, the Executive Order. The Request also made clear that the ACLU plans to disseminate the information disclosed as a result of the Request to the public at no cost. Ex. A at 13–14.

32. The Request also applied for a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) on the grounds that Plaintiff qualifies as a “representative of the news media” and the records are not sought for commercial use, given the ACLU’s non-profit mission and substantial activities to publish information for dissemination to the public, as discussed in greater detail in ¶ 30 above. Ex. A at 14–15.

33. CBP received the Request on February 8, 2017. *See Exhibit B.*

34. CBP acknowledged receipt of the Request on February 16, 2017. A true and correct copy of CBP’s acknowledgement of receipt is attached as **Exhibit C**. The acknowledgement of receipt stated that the request was being transferred to the Department of Homeland Security, Privacy Office, for processing and response. *See Ex. C.*

35. DHS acknowledged receipt of the Request on February 13, 2017. A true and correct copy of DHS’s acknowledgment of receipt is attached as **Exhibit D**. The acknowledgment of receipt granted the request for expedited processing. *See Ex. D.*

36. On February 14, 2017, DHS sent a corrected acknowledgment of receipt. A true and correct copy of the corrected DHS acknowledgment of receipt is attached as **Exhibit E**. The corrected acknowledgment of receipt granted the request for expedited processing and fee waiver. *See Ex. E.* The corrected acknowledgment of receipt also invoked a ten-day extension for the request pursuant to 5 U.S.C. § 552(a)(6)(B). *See id.*

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

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

39. Because Defendants failed to comply with the ten-day extension to the twenty-business-day time limit provision of FOIA, 5 U.S.C. § 552(a)(6)(A)(i) & (a)(6)(B), Plaintiff is

deemed to have exhausted its administrative remedies with respect to the Request under 5 U.S.C. § 552(a)(6)(C)(i).

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

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

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

**Violation of FOIA for Failure to Make Records Available**

42. Plaintiff has a legal right under FOIA to obtain the specific agency records requested on February 6, 2017, and there exists no legal basis for Defendants' failure to promptly make the requested records available to Plaintiff and the public.

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

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

**WHEREFORE**, Plaintiff requests that the Court award it the following relief:

1. Declare that Defendants violated FOIA by failing to determine whether to comply with the Request within thirty business days and by failing immediately thereafter to notify Plaintiff of such determination and the reasons therefor;
2. Declare that Defendants violated FOIA by unlawfully withholding the requested records;

3. Order Defendants to immediately disclose the requested records to the public and make copies immediately available to Plaintiff without charge for any search or duplication fees, or, in the alternative, provide for expedited proceedings to adjudicate Plaintiff's rights under FOIA;
4. Award Plaintiff its reasonable costs and attorneys' fees; and
5. Grant such other relief as the Court may deem just and proper.

DATED this 12th day of April, 2017.

Respectfully submitted,

/s/ Edgar Saldivar

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Edgar Saldivar  
Texas Bar No. 24038188  
SD Texas Bar No. 618958  
Attorney-in-Charge  
AMERICAN CIVIL LIBERTIES UNION OF  
TEXAS  
1500 McGowen, Suite 140  
Houston, TX 77004  
Tel: 713-942-8146  
Fax: 713-942-8966

Kali Cohn\*  
Texas Bar. No. 24092265  
AMERICAN CIVIL LIBERTIES UNION OF  
TEXAS  
6440 N. Central Expressway  
Dallas, TX 75206  
Tel: 214-346-6577  
Fax: 713-942-8966

Attorneys for Plaintiff  
ACLU FOUNDATION OF TEXAS, INC.

*\*Admission to the Southern District pending*

# Exhibit A



Edgar Saldivar  
Senior Staff Attorney  
713.942.8146 ext. 111  
esaldivar@aclutx.org

February 2, 2017

U.S. Customs & Border Protection  
2323 S. Shepherd, #1200  
Houston, Texas 77019

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

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

To Whom It May Concern:

The ACLU Foundation of Texas ("ACLU")<sup>1</sup> submits this Freedom of Information Act ("FOIA") request ("Request") for records about the implementation of President Trump's January 27, 2017 Executive Order ("Executive Order") by U.S. Customs and Border Protection ("CBP"). Titled "Protecting the Nation From Foreign Terrorist Entry Into the United States," the Executive Order halts refugee admissions and bars entrants from seven predominantly Muslim countries from entering the United States.<sup>2</sup> By this letter, which constitutes a request pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, and the relevant implementing regulations, *see* 6 C.F.R. § 5 *et seq.*, the ACLU

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<sup>1</sup> The ACLU Foundation of Texas, a 501(c)(3) organization, is the state's preeminent civil rights organization, dedicated to protecting and defending the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in Texas, regardless of immigration or refugee status. The ACLU provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about the civil rights and civil liberties implications of pending and proposed state and federal legislation, and provides analyses of pending and proposed legislation.

<sup>2</sup> Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017).

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF TEXAS

DALLAS OFFICE  
P.O. BOX 600169  
DALLAS, TX 75360  
T/ 214.346.6575

RIO GRANDE VALLEY OFFICE  
P.O. BOX 6087  
BROWNSVILLE, TX 77823  
T/ 956.465.1905

STATE CAPITOL OFFICE  
P.O. BOX 12905  
AUSTIN, TX 78711  
T/ 512.478.7300

STATE HEADQUARTERS  
P.O. BOX 8306  
HOUSTON, TX 77288  
T/ 713.942.8146

WWW.ACLUTX.ORG

seeks information regarding CBP's **local implementation** of the Executive Order at international airports within the purview of the Houston Field Office ("Field Office").

## **I. Background**

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

Beginning Saturday morning, protests erupted nationwide and attorneys rushed to airports to assist detained individuals and their families.<sup>8</sup> Over the next twenty-four

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

<sup>4</sup> See, e.g., Michael D. Shear et al., *Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide*, N.Y. TIMES (Jan. 28, 2017), <https://www.nytimes.com/2017/01/28/us/refugees-detained-at-us-airports-prompting-legal-challenges-to-trumps-immigration-order.html>; see also, e.g., Alex Ura, *Trump's Travel Ban Leads to Immigrant Detainment at Texas Airports*, TEX. TRIBUNE (Jan. 28, 2017), <https://www.texastribune.org/2017/01/28/trumps-travel-ban-leads-detainment-immigrants-texa/>.

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

<sup>6</sup> *Joint Press Release Between Border Patrol and ICE Councils*, NAT'L ICE COUNCIL, <http://iceunion.org/news/joint-press-release-between-border-patrol-and-ice-councils> (last visited Feb. 2, 2017).

<sup>7</sup> Alice Spieri & Ryan Devereaux, *Turmoil at DHS and State Department—“There Are People Literally Crying in the Office Here,”* INTERCEPT (Jan. 30, 2017), <https://theintercept.com/2017/01/30/asylum-officials-and-state-department-in-turmoil-there-are-people-literally-crying-in-the-office-here/>.

<sup>8</sup> See, e.g., Peter Baker, *Travelers Stranded and Protests Swell Over Trump Order*, N.Y. TIMES (Jan. 29, 2017), <https://www.nytimes.com/2017/01/29/us/politics/white-house-official-in-reversal-says-green-card-holders-wont-be-barred.html>; Issie Lapowsky & Andy Greenberg, *Trump's Ban Leaves Refugees in Civil Liberties Limbo*, WIRED (Jan. 28, 2017), <https://www.wired.com/2017/01/trumps-refugee-ban-direct->

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF TEXAS

DALLAS OFFICE  
P.O. BOX 600169  
DALLAS, TX 75360  
T/ 214.344.6575

RIO GRANDE VALLEY OFFICE  
P.O. BOX 6087  
BROWNSVILLE, TX 77823  
T/ 956.445.1905

STATE CAPITOL OFFICE  
P.O. BOX 12905  
AUSTIN, TX 78711  
T/ 512.478.7300

STATE HEADQUARTERS  
P.O. BOX 8306  
HOUSTON, TX 77288  
T/ 713.942.8146

[WWW.ACLUTX.ORG](http://WWW.ACLUTX.ORG)

hours, five federal courts ordered officials to temporarily stop enforcement of the Executive Order.<sup>9</sup> First, Judge Donnelly of the Eastern District of New York issued a nationwide order in *Darweesh v. Trump*, filed by the ACLU's Immigrants' Rights Project (among others), that prohibited the government from removing any detained travelers from the seven banned countries who had been legally authorized to enter the United States.<sup>10</sup> And a few hours later, in *Tootkaboni v. Trump*, filed by the ACLU of Massachusetts (among others), Judge Burroughs and Magistrate Judge Dein of the District of Massachusetts issued a nationwide order that not only prohibited the removal of such individuals, but also temporarily banned the government from detaining people affected by the Executive Order.<sup>11</sup>

At the same time, President Trump remained publicly committed to his opposing position. In the early hours of Sunday, January 29, 2017, after the five court orders had been issued, President Trump tweeted, "Our country needs strong borders and extreme vetting, NOW."<sup>12</sup> He also issued a statement on Facebook later that day, indicating that entry from the seven predominantly Muslim countries would remain blocked for the next ninety days.<sup>13</sup>

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assault-civil-liberties/; Zolan Kanno-Youngs & Ben Kesling, *Thousands Flood Cities' Streets to Protest Donald Trump's Immigration Ban*, WALL ST. J. (Jan. 30, 2017), <https://www.wsj.com/articles/protests-continue-against-trumps-executive-order-banning-some-from-u-s-1485735672>.

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

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

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

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

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

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF TEXAS

DALLAS OFFICE  
P.O. BOX 600169  
DALLAS, TX 75360  
T/ 214.366.6575

RIO GRANDE VALLEY OFFICE  
P.O. BOX 4087  
BROWNSVILLE, TX 77823  
T/ 956.465.1905

STATE CAPITOL OFFICE  
P.O. BOX 12905  
AUSTIN, TX 78711  
T/ 512.478.7300

STATE HEADQUARTERS  
P.O. BOX 9306  
HOUSTON, TX 77288  
T/ 713.942.8146

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

In spite of court orders to the contrary, some CBP officials appear to be continuing to detain individuals—though the approach appears to differ by location.<sup>21</sup>

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

<sup>15</sup> *Statement By Secretary John Kelly on the Entry of Lawful Permanent Residents Into the United States*, DEP’T HOMELAND SECURITY (Jan. 29, 2017), <https://www.dhs.gov/news/2017/01/29/statement-secretary-john-kelly-entry-lawful-permanent-residents-united-states>.

<sup>16</sup> Robert Mackey, *As Protests Escalate, Trump Retreats From Barring Green Card Holders*, INTERCEPT (Jan. 29, 2017), <https://theintercept.com/2017/01/29/trumps-executive-order-no-longer-bars-green-card-holders/>.

<sup>17</sup> *DHS Statement on Compliance With Court Orders and The President’s Executive Order*, DEP’T HOMELAND SECURITY (Jan. 29, 2017), <https://www.dhs.gov/news/2017/01/29/dhs-statement-compliance-court-orders-and-presidents-executive-order>.

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

<sup>19</sup> *Read the Full White House Statement on Sally Yates*, BOSTON GLOBE (Jan. 30, 2017), <https://www.bostonglobe.com/news/politics/2017/01/30/read-full-white-house-statement-sally-yates/HkFRcIYJidU9deDelPK6SM/story.html>.

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

<sup>21</sup> See, e.g., Julia Wick, *Lawyers Say At Least 17 People Are Still Detained at LAX, Protests Continue*, LAIST (Jan. 29, 2017), [http://laist.com/2017/01/29/people\\_are\\_still\\_detained\\_at\\_lax.php](http://laist.com/2017/01/29/people_are_still_detained_at_lax.php); Daniel Marans, *Customs and Border Officials Defy Court Order on Lawful Residents*, HUFFINGTON POST (Jan. 29, 2017), [http://www.huffingtonpost.com/entry/dulles-airport-feds-violated-court-order\\_us\\_588d7274e4b08a14f7e67bcf](http://www.huffingtonpost.com/entry/dulles-airport-feds-violated-court-order_us_588d7274e4b08a14f7e67bcf); Tom Cleary, *Is Border*

Accordingly, the ACLU seeks to supplement the public record to clarify CBP's understanding and implementation of the Executive Order at Bush Intercontinental Airport in Houston and Dallas Ft Worth Airport ("Local International Airports") and the Houston Airport and Dallas/Ft. Worth Ports of Entry ("Port of Entry Offices"). Through this request, the ACLU aims to facilitate the public's indispensable role in checking the power of our public officials and to learn about the facts on the ground in Texas and the Local International Airports.

## **II. Requested Records**

For the purposes of this Request, "Records" are collectively defined to include, but are not limited to: text communications between phones or other electronic devices (including, but not limited to, communications sent via SMS or other text, Blackberry Messenger, iMessage, WhatsApp, Signal, Gchat, or Twitter direct message); e-mails; images, video, and audio recorded on cell phones; voicemail messages; social-media posts; instructions; directives; guidance documents; formal and informal presentations; training documents; bulletins; alerts; updates; advisories; reports; legal and policy memoranda; contracts or agreements; minutes or notes of meetings and phone calls; and memoranda of understanding. The ACLU seeks release of the following:

1. Records created on or after January 27, 2017 concerning CBP's interpretation, enforcement, and implementation of the following at Local International Airports:
  - a. President Trump's Executive Order, signed on January 27, 2017 and titled "Protecting the Nation From Foreign Terrorist Entry Into the United States";
  - b. Any guidance "provided to DHS field personnel shortly" after President Trump signed the Executive Order, as referenced in CBP's online FAQ;<sup>22</sup>
  - c. Associate Director of Field Operations for U.S. Citizenship and Immigration Services Daniel M. Renaud's email, sent at 11:12 A.M. on

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*Patrol Defying Federal Judge's Stay on Immigration Executive Order?*, HEAVY (Jan. 29, 2017), <http://heavy.com/news/2017/01/border-patrol-homeland-security-defying-ignoring-following-judge-ruling-stay-immigration-executive-order-dulles-dfw-muslim-ban/>; Tess Owen, *Waiting for Answers: We Still Don't Know How Many People are Being Detained at US Airports*, VICE NEWS (Jan. 30, 2017), <https://news.vice.com/story/we-still-dont-know-how-many-people-are-being-detained-at-us-airports>.

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

**AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF TEXAS**

DALLAS OFFICE  
P.O. BOX 600169  
DALLAS, TX 75340  
T/ 214.344.4575

RIO GRANDE VALLEY OFFICE  
P.O. BOX 6087  
BROWNSVILLE, TX 77823  
T/ 956.445.1905

STATE CAPITOL OFFICE  
P.O. BOX 12905  
AUSTIN, TX 78711  
T/ 512.478.7300

STATE HEADQUARTERS  
P.O. BOX 8306  
HOUSTON, TX 77288  
T/ 713.942.8146

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January 27, 2017, instructing DHS employees that they could not adjudicate any immigration claims from the seven targeted countries;<sup>23</sup>

- d. Judge Donnelly's Decision and Order granting an Emergency Motion for Stay of Removal, issued in the Eastern District of New York on January 27, 2017, including records related to CBP's efforts to comply with the court's oral order requiring prompt production of a list of all class members detained by CBP;<sup>24</sup>
- e. Judge Brinkema's Temporary Restraining Order, issued in the Eastern District of Virginia on January 28, 2017;<sup>25</sup>
- f. Judge Zilly's Order Granting Emergency Motion for Stay of Removal, issued in the Western District of Washington on January 28, 2017;<sup>26</sup>
- g. Judge Burroughs' Temporary Restraining Order, issued in the District of Massachusetts on January 29, 2017;<sup>27</sup>
- h. Judge Gee's Order granting an Amended *Ex Parte* Application for Temporary Restraining Order, issued in the Central District of California on January 29, 2017;<sup>28</sup>
- i. Assurances from the U.S. Attorney's Office for the Eastern District of Pennsylvania that all individuals detained at Philadelphia International Airport under the Executive Order would be admitted to the United States and released from custody on Sunday, January 29, 2017;

<sup>23</sup> See Alice Speri & Ryan Devereaux, *Turmoil at DHS and State Department—“There Are People Literally Crying in the Office Here,”* INTERCEPT (Jan. 30, 2017), <https://theintercept.com/2017/01/30/asylum-officials-and-state-department-in-turmoil-there-are-people-literally-crying-in-the-office-here/>.

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

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

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

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

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

- j. DHS's "Response to Recent Litigation" statement, issued on January 29, 2017;<sup>29</sup>
  - k. DHS Secretary John Kelly's "Statement on the Entry of Lawful Permanent Residents Into the United States," issued on January 29, 2017;<sup>30</sup>
  - l. DHS's "Statement on Compliance with Court Orders and the President's Executive Order," issued on January 29, 2017;<sup>31</sup> and
  - m. Any other judicial order or executive directive issued regarding the Executive Order on or after January 27, 2017.
2. Records concerning the number of individuals who were detained or subjected to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver at Local International Airports pursuant to the Executive Order, including:
- a. The total number of individuals who remain detained or subject to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver at Local International Airports both as of the date of this request and as of the date on which this request is processed; and
  - b. The total number of individuals who have been detained or subjected to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver for any length of time at Local International Airports since January 27, 2017, including the number of individuals who have been
    - i. released,
    - ii. transferred into immigration detention, or
    - iii. removed from the United States;

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

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

<sup>31</sup> *DHS Statement on Compliance With Court Orders and The President's Executive Order*, DEP'T HOMELAND SECURITY (Jan. 29, 2017), <https://www.dhs.gov/news/2017/01/29/dhs-statement-compliance-court-orders-and-presidents-executive-order>.

3. Records concerning the number of individuals who have been removed from Local International Airports from January 27, 2017, to date pursuant to the Executive Order;
4. Records concerning the number of individuals who arrived at Local International Airports from January 27, 2017, to date with valid visas or green cards who subsequently agreed voluntarily to return; and
5. Records containing the “guidance” that was “provided to DHS field personnel shortly” after President Trump signed the Executive Order.<sup>32</sup>

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

We request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of our Request be conducted. Given the expedited timeline on which the relevant events and interpretations occurred, this includes the personal email accounts and work phones of all employees and former employees who may have sent or received emails or text messages regarding the subject matter of this Request, as well as all institutional, shared, group, duty, task force, and all other joint and/or multi-user email accounts and work phones which may have been utilized by each such employee or former employee. Additionally, for each relevant email account identified, all storage areas must be searched, including the inbox “folder” (and all subfolders therein), sent folder, deleted folder, and all relevant archive files.

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

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

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF TEXAS

DALLAS OFFICE  
P.O. BOX 600169  
DALLAS, TX 75360  
T/ 214.346.4575

[WWW.ACLUTX.ORG](http://WWW.ACLUTX.ORG)

RIO GRANDE VALLEY OFFICE  
P.O. BOX 6087  
BROWNSVILLE, TX 78523  
T/ 956.465.1985

STATE CAPITOL OFFICE  
P.O. BOX 12908  
AUSTIN, TX 78711  
T/ 512.478.7300

STATE HEADQUARTERS  
P.O. BOX 8306  
HOUSTON, TX 77288  
T/ 713.942.8146

and all records relating or referring to the events leading to the destruction of those records.

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

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

### **III. Application for Expedited Processing**

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).<sup>33</sup> There is a "compelling need" for these records, as defined in the statute, because the information requested is "urgen[tly]" needed by an organization primarily engaged in disseminating information "to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II).

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

The ACLU is "primarily engaged in disseminating information" within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>34</sup> Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU's work and are among its primary activities. *See ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-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").<sup>35</sup>

<sup>33</sup> *See also* 6 C.F.R. § 5.5(e)(1).

<sup>34</sup> *See also* 6 C.F.R. § 5.5(e)(1)(ii).

<sup>35</sup> Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are "primarily engaged in disseminating information." *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. U.S. Dep't of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

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DALLAS OFFICE  
P.O. BOX 600169  
DALLAS, TX 75360  
T/ 214.346.6575

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RIO GRANDE VALLEY OFFICE  
P.O. BOX 6087  
BROWNSVILLE, TX 77823  
T/ 956.465.1905

STATE CAPITOL OFFICE  
P.O. BOX 12905  
AUSTIN, TX 78711  
T/ 512.478.7300

STATE HEADQUARTERS  
P.O. BOX 8306  
HOUSTON, TX 77288  
T/ 713.942.8146

Part of the organizational mission of the ACLU is to “work daily . . . in the community to defend and preserve [] individual rights and liberty.” *About Us*, ACLU Tex., <https://www.aclutx.org/en/about/about-us> (last visited Feb. 2, 2017). This part of our mission entails public education. Our organization regularly creates and disseminates works in the form of presentations, reports, articles, interviews, testimony, social media, and blog posts to educate the public about the activities of the United States government. *See generally Issues*, ACLU Tex., <https://www.aclutx.org/en/issues/> (last visited Feb. 2, 2017). 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. *See generally Know Your Rights*, ACLU Tex. <https://www.aclutx.org/en/know-your-rights/> (last visited Feb. 2, 2017).

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 Blogs*, ACLU Tex., <https://www.aclutx.org/en/News> (last visited Feb. 2, 2017). The ACLU regularly issues press releases to call attention to news and issues affecting the public. *See Press Releases*, ACLU Tex., <https://www.aclutx.org/en/press-releases/> (last visited Feb. 2, 2017). 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. *aclutx*, YouTube, <https://www.youtube.com/user/aclutx> (last visited Feb. 2, 2017). The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, [www.aclutx.org](http://www.aclutx.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’s website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.

Further, the American Civil Liberties Foundation (“National ACLU”), of which the ACLU is an affiliate, regularly publishes *STAND*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 620,000 people. The National ACLU also publishes regular updates and alerts via email to approximately 2.1 million subscribers (both National ACLU members and non-members). These updates are additionally broadcast to 1.5 million social media followers (members and non-members). The magazine as well as the email and

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF TEXAS

DALLAS OFFICE  
P.O. BOX 600169  
DALLAS, TX 75360  
T/ 214.366.6875

RIO GRANDE VALLEY OFFICE  
P.O. BOX 4087  
BROWNSVILLE, TX 78023  
T/ 956.465.1905

STATE CAPITOL OFFICE  
P.O. BOX 12905  
AUSTIN, TX 78711  
T/ 512.478.7300

STATE HEADQUARTERS  
P.O. BOX 9306  
HOUSTON, TX 77288  
T/ 713.942.8146

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social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

The National ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,<sup>36</sup> and National ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.<sup>37</sup>

Similarly, the National ACLU publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. National ACLU projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.<sup>38</sup>

<sup>36</sup> See, e.g., Press Release, American Civil Liberties Union, *U.S. Releases Drone Strike 'Playbook' in Response to ACLU Lawsuit* (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, *Secret Documents Describe Graphic Abuse and Admit Mistakes* (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, *U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit* (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>; Press Release, American Civil Liberties Union, *Justice Department White Paper Details Rationale for Targeted Killing of Americans* (Feb. 4, 2013), <https://www.aclu.org/national-security/justice-department-white-paper-details-rationale-targeted-killing-americans>; Press Release, American Civil Liberties Union, *Documents Show FBI Monitored Bay Area Occupy Movement* (Sept. 14, 2012), <https://www.aclu.org/news/documents-show-fbi-monitored-bay-area-occupy-movement-insidebayareacom>.

<sup>37</sup> See, e.g., Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, WASH. POST (Aug. 6, 2016), [https://www.washingtonpost.com/world/national-security/newly-declassified-document-sheds-light-on-how-president-approves-drone-strikes/2016/08/06/f424fe50-5be0-11e6-831d-0324760ca856\\_story.html](https://www.washingtonpost.com/world/national-security/newly-declassified-document-sheds-light-on-how-president-approves-drone-strikes/2016/08/06/f424fe50-5be0-11e6-831d-0324760ca856_story.html) (quoting former ACLU deputy legal director Jameel Jaffer); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About 'Torture' in Its Former Detention Program*, ABC (June 15, 2016), <http://abcnews.go.com/US/newly-released-cia-documents-reveal-torture-detention-program/story?id=39873389> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Device*, GUARDIAN (Mar. 17, 2016), <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler); David Welna, *Government Suspected of Wanting CIA Torture Report to Remain Secret*, NPR (Dec. 9, 2015), <http://www.npr.org/2015/12/09/459026249/cia-torture-report-may-remain-secret> (quoting ACLU project director Hina Shamsi).

<sup>38</sup> See, e.g., ACLU, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA's Torture Site* (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; ACLU, *Details Abound in Drone 'Playbook' – Except for the Ones That Really Matter Most* (Aug. 8, 2016, 5:30 PM), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; ACLU, *ACLU- Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015,

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The National ACLU website includes many features on information obtained through the FOIA.<sup>39</sup> For example, the National ACLU's "Predator Drones FOIA" webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the National ACLU's FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves. Similarly, the National ACLU maintains an online "Torture Database," a compilation of over 100,000 pages of FOIA documents that allows researchers and the public to conduct sophisticated searches of FOIA documents relating to government policies on rendition, detention, and interrogation.<sup>40</sup>

The National ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA requests—the National ACLU created an original chart that provides the public and news media with a comprehensive summary index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition, and surveillance.<sup>41</sup> Similarly, the National ACLU produced a summary of documents released in

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5:30 PM), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; ACLU, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014, 3:29 PM), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>; ACLU, *ACLU Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government's "Suspicious Activity Report" Systems* (Oct. 29, 2013), [https://www.aclu.org/sites/default/files/assets/eye\\_on\\_fbi\\_-\\_sars.pdf](https://www.aclu.org/sites/default/files/assets/eye_on_fbi_-_sars.pdf).

<sup>39</sup> See, e.g., Nathan F. Wessler & Dyan Cortez, *FBI Releases Details of 'Zero-Day Exploit Decisionmaking Process*, ACLU (June 26, 2015, 11:00 AM), <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; Nathan F. Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights*, ACLU (Oct. 30, 2015, 8:00 AM), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; *ACLU v. DOJ-FOIA Case for Records Relating to Killing of Three U.S. Citizens*, ACLU (Dec. 30, 2016), <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; *ACLU v. Department of Defense*, ACLU (Aug. 18, 2015), <https://www.aclu.org/cases/aclu-v-department-defense>; *Mapping the FBI*, ACLU, <https://www.aclu.org/mappingthefbi>; *Bagram FOIA*, ACLU (Apr. 18, 2013), <https://www.aclu.org/cases/bagram-foia>; *CSRT FOIA*, ACLU, <https://www.aclu.org/national-security/csrt-foia>; *ACLU v. DOJ – Lawsuit to Enforce NSA Warrantless Surveillance FOIA Request*, ACLU, <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; *PATRIOT FOIA*, ACLU, <https://www.aclu.org/patriot-foia>; <https://www.aclu.org/nsi-documents-released-dod?redirect=cpreldirect/32088>.

<sup>40</sup> Home, TORTURE DATABASE, <https://www.thetorturedatabase.org>; see also *Targeted Killing FOIA Database*, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

<sup>41</sup> *Index of Bush-Era OLC Memoranda Relating to Interrogation, Detention, Rendition, and/or Surveillance*, ACLU, [https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos\\_2009\\_0305.pdf](https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf).

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BROWNSVILLE, TX 77823  
T/ 956.445.1905

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P.O. BOX 12905  
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T/ 512.478.7300

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response to a FOIA request related to the FISA Amendments Act<sup>42</sup>; a chart of original statistics about the Defense Department's use of National Security Letters based on its own analysis of records obtained through FOIA requests<sup>43</sup>; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.<sup>44</sup>

The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

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

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>45</sup> Specifically, as discussed in Part I, *supra*, the requested records seek to inform the public about the CBP's current, local enforcement of a new Executive Order amid five court orders, varying directives, and other quickly developing events.

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

#### **IV. Application for Waiver or Limitation of Fees**

The ACLU requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).<sup>46</sup> The ACLU also requests 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).

<sup>42</sup> *Summary of FISA Amendments Act Documents Released on November 29, 2010*, ACLU, <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

<sup>43</sup> *Statistics on NSLs Produced by Department of Defense*, ACLU, [https://www.aclu.org/sites/default/files/field\\_document/nsi\\_stats.pdf](https://www.aclu.org/sites/default/files/field_document/nsi_stats.pdf).

<sup>44</sup> Nathan F. Wessler, *FBI Documents Reveal New Information on Baltimore Surveillance Flights*, ACLU (Oct. 30, 2015), <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

<sup>45</sup> *See also* 6 C.F.R. § 5.5(e)(1)(ii).

<sup>46</sup> *See also* 6 C.F.R. § 5.11(k).

*A. The Request is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the ACLU.*

As discussed above, news accounts underscore the substantial public interest in the records sought through this Request. Given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance. Especially because little specific information has been made public about how local CBP Field Offices plan to enforce the Executive Order while also complying with the federal court orders, the records sought are certain to contribute significantly to the public's understanding of these issues.

The ACLU is not filing this Request to further its commercial interest. As described above, any information disclosed by the ACLU as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." [quotation marks omitted]).

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

The ACLU also requests 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);<sup>47</sup> *see also Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, "devises indices and finding aids," and "distributes the resulting work to the public" is a "representative of the news media" for purposes of the FOIA); *Serv. Women's Action Network v. U.S. Dep't of Defense*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. U.S. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at \*10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience"); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be "primarily engaged in disseminating information"). The ACLU is therefore a "representative of

<sup>47</sup> *See also* 6 C.F.R. § 5.11(b)(6).

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the news media" for the same reasons it is "primarily engaged in the dissemination of information."

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU's to be "representatives of the news media" as well. *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 10-15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for purposes of the FOIA); *Nat'l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a "public interest law firm," a news media requester).<sup>48</sup>

On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a "representative of the news media."<sup>49</sup> As was true in those instances, the ACLU meets the requirements for a fee waiver here.

\* \* \*

Pursuant to applicable statutes and regulations, the ACLU expects a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii); 6 C.F.R. § 5.5(e)(4).

If the Request is denied in whole or in part, the ACLU asks that you justify all deletions by reference to specific FOIA exemptions. The ACLU expects the release of all segregable portions of otherwise exempt material. The ACLU reserves the right to appeal a decision to withhold any information or deny a waiver of fees.

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

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

<sup>48</sup> Courts have found these organizations to be "representatives of the news media" even though they engage in litigation and lobbying activities beyond their dissemination of information / public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat'l Sec. Archive*, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

<sup>49</sup> In May 2016, the FBI granted a fee-waiver request regarding a FOIA request issued to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to "national security letters" issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted a fee-waiver request related to the same FOIA request issued to the DOJ.

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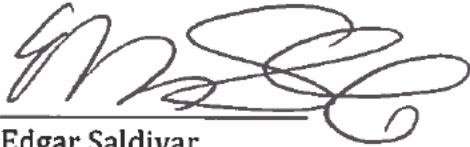
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I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Respectfully,



Edgar Saldivar  
Senior Staff Attorney  
ACLU Foundation of Texas  
P.O. Box 8306  
Houston, Texas 77288

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DALLAS OFFICE  
P.O. BOX 600169  
DALLAS, TX 75360  
T/ 214.366.6575

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# Exhibit B

# USPS Tracking® Results

FAQs > (<http://faq.usps.com/?articleId=220900>)

Track Another Package +

Remove X

Tracking Number: 70163010000047815023



Delivered

## Product & Tracking Information

See Available Actions

Postal Product:

Features:  
Certified Mail™

| DATE & TIME                                                                                            | STATUS OF ITEM               | LOCATION             |
|--------------------------------------------------------------------------------------------------------|------------------------------|----------------------|
| February 8, 2017, 10:35 am                                                                             | Delivered, To Mail Room<br>▲ | WASHINGTON, DC 20229 |
| Your item has been delivered to the mail room at 10:35 am on February 8, 2017 in WASHINGTON, DC 20229. |                              |                      |
| February 8, 2017, 9:39 am                                                                              | Arrived at Unit              | WASHINGTON, DC 20018 |
| February 8, 2017, 6:45 am                                                                              | Arrived at USPS Facility     | WASHINGTON, DC 20018 |
| February 8, 2017, 5:33 am                                                                              | In Transit to Destination    |                      |

See More ▼

## Available Actions

See Less ^

## Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs (<http://faq.usps.com/?articleId=220900>)

## There's an easier way to track your packages.

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### Sign Up

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[app=UspsTools&appURL=https%3A%2F%2Ftools.usps.com%2Fgo%2FTrackConfirmAction%21input](https://reg.usps.com/entreg/RegistrationAction_input?app=UspsTools&appURL=https%3A%2F%2Ftools.usps.com%2Fgo%2FTrackConfirmAction%21input)

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# Exhibit C

**From:** CBPFOIA@cbp.dhs.gov [mailto:CBPFOIA@cbp.dhs.gov]  
**Sent:** Thursday, February 16, 2017 10:10 AM  
**To:** Edgar Saldivar <ESaldivar@aclutx.org>  
**Subject:** Final Disposition, Request CBP-2017-030016

90 K Street NE  
MS 1181  
Washington, DC 20229

Mitra Ebadolahi  
ACLU Border Litigation Project  
PO Box 87131  
San Diego, CA 92138-7131

February 16, 2017

CBP-2017-030016

Dear Ms. Ebadolahi:

This letter is an acknowledgement to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP) seeking records created on or after January 27, 2017 concerning CBP's interpretation, enforcement, and implementation of President's Executive Order "Protecting the Nation From Foreign Terrorist Entry Into the United States" at local (Houston) International Airports.

This request is being transferred to the Department of Homeland Security, Privacy Office for processing and direct response to you.

Sincerely,

Jodi Drengson

Government Information Specialist

# Exhibit D



Homeland  
Security

February 13, 2017

**SENT VIA E-MAIL TO: esaldivar@aclutx.org**

Mitra Ebadolahi  
ACLU Border Litigation Project  
PO Box 87131  
San Diego, CA 92138-7131

Re: **2017-HQFO-00372**

Dear Ebadolahi:

This letter acknowledges receipt of your February 10, 2017, Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), for records created on or after January 27, 2017 concerning CBP's interpretation, enforcement, and implementation of the President's Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States" at local (Houston) International Airports; President Trump's Executive Order, signed on January 27, 2017 and titled "Protecting the Nation from Foreign Terrorist Entry Into the United States"; any guidance "provided to DHS field personnel shortly" after President Trump signed the Executive Order; Associate Director of Field Operations for U.S. Citizenship and Immigration Services Daniel M. Renaud's email, sent at 11:12 am on January 27, 2017, instructing DHS employees that they could not adjudicate any immigration claims from the seven targeted countries; Judge Donnelly's Decision and Order granting an Emergency Motion for Stay of Removal, issued in the Eastern District of New York on January 27, 2017, including records related to CBP's efforts to comply with the court's oral order requiring prompt production of a list of all class members detained by CBP; Judge Brinkema's Temporary Restraining Order, issued in the Eastern District of Virginia on January 28, 2017; Judge Zilly's Order Granting Emergency Motion for Stay of Removal, issued in the Western District of Washington on January 28, 2017; Judge Burroughs' Temporary Restraining Order, issued in the District of Massachusetts on January 29, 2017; Judge Gee's Order granting an Amended Ex Parte Application for Temporary Restraining Order, issued in the Central District of California on January 29, 2017; Assurances from the U.S. Attorney's Office for the Eastern District of Pennsylvania that all individuals detained at Philadelphia International Airport under the Executive Order would be admitted to the United States and released from custody on Sunday, January 29, 2017; DHS's "Response to Recent Litigation" statement, issued on January 29, 2017; DHS Secretary John Kelly's "Statement on the Entry of Lawful Permanent Residents Into the United States," issued on January 29, 2017; DHS's "Statement on Compliance with Court Orders and the President's Executive Order," issued on January 29, 2017; any other judicial order or executive directive issued regarding the Executive order on or after January 27, 2017; records concerning the number of individuals who were detained or subjected to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver at Local

International Airports pursuant to the Executive Order, including: the total number of individuals who remain detained or subject to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver at Local International Airports both as of the date of this request and as of the date on which this request is processed; and the total number of individuals who have been detained or subjected to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver for any length of time at Local International Airports since January 27, 2017, including the number of individuals who have been release, transferred into immigration detention, or removed from the United States; records concerning the number of individuals who have been removed from Local International Airports from January 27, 2017, to date pursuant to the Executive Order; records concerning the number of individuals who arrived at Local International Airport from January 27, 2017 to date with valid visas or green cards who subsequently agreed voluntarily to return; am records containing the "guidance" that was "provided to DHS field personnel shorty" after President Trump signed the Executive Order. This office received your request on February 10, 2017. Because your request was not specifically addressed to this office, your letter was initially sent to Customs and Border Protection for routing and was received by this office on February 10, 2017.

As it relates to your request for expedited processing and fee waiver, your request is granted.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances. As your request seeks documents that will require a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

#### **FOR COMMERCIAL REQUESTERS:**

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to commercial requesters. As a commercial requester, you will be charged 10 cents per page for duplication, and for search and review time at the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher and reviewer. We will construe the submission of your request as an agreement to pay up to \$25.00. This office will contact you before accruing any further fees.

We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2017-HQFO-00372**. Please refer to this identifier in any future correspondence. To check the status of your FOIA request, you may

contact this office at 1-866-431-0486 or 202-343-1743, or you may check the status of your request online at <http://www.dhs.gov/foia-status>.

Sincerely,

A handwritten signature in black ink that reads "Catherine Pruitt". The signature is written in a cursive style with a large, looped initial "C".

Catherine Pruitt  
FOIA Program Specialist

# Exhibit E



Homeland  
Security

February 14, 2017

**SENT VIA E-MAIL TO: esaldivar@aclutx.org**

Mitra Ebadolahi  
ACLU Border Litigation Project  
PO BOX 87131  
San Diego, CA 92138-7131

Re: **2017-HQFO-00372**

Dear Mitra Ebadolahi:

This is a corrected acknowledgement letter of your February 10, 2017, Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), for records created on or after January 27, 2017 concerning CBP's interpretation, enforcement, and implementation of the President's Executive Order "Protecting the Nation from Foreign Terrorist Entry into the United States" at local (Houston) International Airports; President Trump's Executive Order, signed on January 27, 2017 and titled "Protecting the Nation from Foreign Terrorist Entry Into the United States"; any guidance "provided to DHS field personnel shortly" after President Trump signed the Executive Order; Associate Director of Field Operations for U.S. Citizenship and Immigration Services Daniel M. Renaud's email, sent at 11:12 am on January 27, 2017, instructing DHS employees that they could not adjudicate any immigration claims from the seven targeted countries; Judge Donnelly's Decision and Order granting an Emergency Motion for Stay of Removal, issued in the Eastern District of New York on January 27, 2017, including records related to CBP's efforts to comply with the court's oral order requiring prompt production of a list of all class members detained by CBP; Judge Brinkema's Temporary Restraining Order, issued in the Eastern District of Virginia on January 28, 2017; Judge Zilly's Order Granting Emergency Motion for Stay of Removal, issued in the Western District of Washington on January 28, 2017; Judge Burroughs' Temporary Restraining Order, issued in the District of Massachusetts on January 29, 2017; Judge Gee's Order granting an Amended Ex Parte Application for Temporary Restraining Order, issued in the Central District of California on January 29, 2017; Assurances from the U.S. Attorney's Office for the Eastern District of Pennsylvania that all individuals detained at Philadelphia International Airport under the Executive Order would be admitted to the United States and released from custody on Sunday, January 29, 2017; DHS's "Response to Recent Litigation" statement, issued on January 29, 2017; DHS Secretary John Kelly's "Statement on the Entry of Lawful Permanent Residents Into the United States," issued on January 29, 2017; DHS's "Statement on Compliance with Court Orders and the President's Executive Order," issued on January 29, 2017; any other judicial order or executive directive issued regarding the Executive order on or after January 27, 2017; records concerning the number of individuals who were detained or subjected to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver at Local

International Airports pursuant to the Executive Order, including: the total number of individuals who remain detained or subject to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver at Local International Airports both as of the date of this request and as of the date on which this request is processed; and the total number of individuals who have been detained or subjected to secondary screening, extending questioning, an enforcement examination, or consideration for a waiver for any length of time at Local International Airports since January 27, 2017, including the number of individuals who have been release, transferred into immigration detention, or removed from the United States; records concerning the number of individuals who have been removed from Local International Airports from January 27, 2017, to date pursuant to the Executive Order; records concerning the number of individuals who arrived at Local International Airport from January 27, 2017 to date with valid visas or green cards who subsequently agreed voluntarily to return; am records containing the "guidance" that was "provided to DHS field personnel shorty" after President Trump signed the Executive Order. This office received your request on February 10, 2017.

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We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

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Sincerely,

A handwritten signature in black ink, appearing to read 'Angela Washington', with a stylized flourish at the end.

Angela Washington  
Director of Disclosure