



Nathan Woodliff-Stanley, Executive Director
Mark Silverstein, Legal Director

December 20, 2017

SENT VIA EMAIL: ICE-FOIA@dhs.gov

**U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009**

Re: Request for Records pertaining to Kamyar Samimi (DOB 01/03/1953)

Dear Records Custodian:

Please consider this letter a written request for disclosure of records, made under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA) and Privacy Act of 1974, 5 U.S.C. § 552a. This request is made by the American Civil Liberties Union Foundation of Colorado (“ACLU of Colorado”). In this request, the term “records” includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, photographs, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

I. Records Requested

On December 2, 2017, Kamyar Samimi (DOB 01/03/1953) died while in the custody of U.S. Immigration and Customs Enforcement (ICE).¹ ICE issued a news release regarding Mr. Samimi’s death on December 4, 2017. According to the release, Mr. Samimi was housed at the Aurora Contract Detention Facility, operated by GEO Group, Inc., since November 17, 2017, the same day ICE agents arrested Mr. Samimi at his residence.

The ACLU of Colorado requests **all records in ICE’s possession pertaining to Mr. Samimi**, including but not limited to the following records:

- **All records pertaining to the circumstances leading to Mr. Samimi’s death, including but not limited to any and all medical and mental health records, reports, notes, forms, complaints, incident reports, supplementary reports, witness**

¹ Mr. Samimi’s next of kin has signed both an Affirmation/Declaration on a form provided by U.S. Customs and Immigration Enforcement, as well as a more general Authorization for Release. Both documents are enclosed.

statements, daily activity logs, incident detail reports, and video and audio recordings.

- All records pertaining to Mr. Samimi’s detention, including detainee location logs, kites, grievances, responses to kites and grievances, and medical and mental health screenings and assessments.
- All records pertaining to ICE’s arrest of Mr. Samimi on November 17, 2017 and ICE’s investigation leading to that arrest.
- All records pertaining to any investigations of the circumstances surrounding Mr. Samimi’s arrest, detention, and/or death that are being conducted by the ICE Office of Professional Responsibility, ICE Office of Detention Oversight, or any other U.S. Department of Homeland Security entity.

II. Application for Expedited Processing

The ACLU of Colorado requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).² There is a “compelling need” for these records, as defined in the statute, because the information requested is urgently needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

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

The ACLU of Colorado is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).³ 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 of Colorado’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”).⁴

The ACLU of Colorado is part of a national organization, the American Civil Liberties Union (ACLU), that is dedicated to the defense of civil liberties. Dissemination of information

² See also 6 C.F.R. § 5.5(e)(1).

³ See also 6 C.F.R. § 5.5(e)(1)(ii).

⁴ 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 v. U.S. Dep’t of Justice*, 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).

to the public is a critical and substantial component of the ACLU's mission and work. Specifically, the ACLU publishes newsletters, news briefings, right-to-know documents, and other educational and informational materials that are broadly disseminated to the public. Such material is widely available to everyone, including individuals, tax-exempt organizations, not-for-profit groups, and law students and faculty, for no cost or for a nominal fee through its public education department. The ACLU also disseminates information through its heavily subscribed web site, <http://www.aclu.org/>. The web site addresses civil liberties issues in depth, provides features on civil liberties issues in the news, and contains many hundreds of documents relating to the issues on which the ACLU is focused. The website specifically includes features on information obtained through FOIA. *See, e.g.,* <http://www.aclu.org/technology-and-liberty/automatic-license-plate-reader-foia-documents-texas>. The ACLU also publishes an electronic newsletter, which is distributed to subscribers by e-mail. In addition, the ACLU makes archived material available at the American Civil Liberties Union Archives, Public Policy Papers, Department of Rare Books and Special Collections, Princeton University Library. After ACLU publications are disseminated to relevant groups across the country, those groups often circulate them to their members or to additional groups and organizations.

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>. The ACLU's websites also serve as a clearinghouse for news about ACLU cases, analysis about case developments, and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.

The ACLU regularly publishes *STAND*, a print magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to more than 620,000 people. The ACLU also publishes regular updates and alerts via email to approximately 2.1 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to 2.25 million social media followers (members and non-members). The magazine as well as the email and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

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

of government documents obtained through FOIA requests.⁵ The ACLU website includes many features on information obtained through FOIA.⁶

Similarly, the ACLU of Colorado regularly issues press releases to call attention to documents obtained through open records requests, as well as other breaking news,⁷ and ACLU of Colorado attorneys are interviewed frequently for news stories about documents released through ACLU records requests.⁸ The ACLU of Colorado annually publishes two newsletters that reach more than 40,000 Coloradans, as well as updates reaching its approximately 5,200 Twitter followers and 15,500 people who follow its Facebook page. The ACLU of Colorado also has a monthly podcast with 5,000 subscribers. Depending on the results of this FOIA request, the ACLU of Colorado intends to disseminate the results to the public on the ACLU of Colorado website (<http://aclu-co.org/>), through the ACLU of Colorado newsletter, and by sharing the information with the national ACLU and the other 52 ACLU affiliates and national chapters around the country.

In sum, the requested records are not sought for commercial use, and the ACLU of Colorado plans to analyze, publish, and disseminate to the public the information gathered through this Request to the public at no cost.

⁵ See, e.g., ACLU, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA's Torture Site* (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; ACLU, *Details Abound in Drone 'Playbook' – Except for the Ones That Really Matter Most* (Aug. 8, 2016, 5:30 PM), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; ACLU, *ACLU-Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida* (Feb. 22, 2015, 5:30 PM), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; ACLU, *New NSA Documents Shine More Light into Black Box of Executive Order 12333* (Oct. 30, 2014, 3:29 PM), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>; ACLU, *ACLU Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government's "Suspicious Activity Report" Systems* (Oct. 29, 2013), https://www.aclu.org/sites/default/files/assets/eye_on_fbi_-_sars.pdf.

⁶ See, e.g., <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <https://www.aclu.org/cases/aclu-v-department-defense>; <https://www.aclu.org/mappingthefbi>; <https://www.aclu.org/cases/bagram-foia>; <https://www.aclu.org/national-security/csrt-foia>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; <https://www.aclu.org/patriot-foia>; <https://www.aclu.org/nsi-documents-released-dod?redirect=cpreirect/32088>.

⁷ See, e.g., Press Release, *ACLU of Colorado, ACLU Seeks Info into Denver Police Use of Social Media Surveillance* (Oct. 6, 2016), <http://aclu-co.org/aclu-seeks-info-denver-police-use-social-media-surveillance/>; Press Release, *ACLU of Colorado, ACLU Files Suit for Records Illegally Denied by Immigration and Customs Enforcement (ICE)* (Aug. 24, 2016), <http://aclu-co.org/aclu-files-suit-records-illegally-denied-immigration-customs-enforcement-ice/>.

⁸ See, e.g., Chris Walker, *Denver Police Use Social Media to Follow Activists, Bring Back Fears of Spy Files*, Westword, January 17, 2017, <http://www.westword.com/news/denver-police-use-social-media-to-follow-activists-bring-back-fears-of-spy-files-8696953> (quoting ACLU of Colorado Legal Director, Mark Silverstein).

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).⁹ Specifically, the requested records seek to inform the public about ICE’s activities in light of the arrest, detention, and subsequent death of a community member who had resided in the United States for over four decades. Recent reports have highlighted conditions that have led to the deaths of 177 immigrant detainees since 2003, including 12 in fiscal year 2017. These reports include last week’s U.S. Department of Homeland Security Office of Inspector General report detailing its concerns regarding ICE detainee treatment and care,¹⁰ a May 2017 report “examin[ing] serious lapses in health care that have led to severe suffering and at times the preventable or premature death of individuals held in immigration detention facilities,”¹¹ and a February 2016 report concluding that “failure to provide adequate medical care has continued to result in unnecessary deaths.”¹² Care of immigrant detainees, including medical care and conditions leading to detainee deaths, are of grave concern to the public.

Because the ACLU of Colorado is an organization primarily engaged in disseminating information to the public, and the information is urgently needed to inform the public about government activity, this request satisfies the requirements for expedited processing under 5 U.S.C. § 552(a)(6)(E)(v)(II).

III. Application for Waiver or Limitation of Fees

The ACLU of Colorado requests a waiver of fees for document search, review, and duplication 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).¹³ The ACLU of Colorado also requests a waiver of search fees on the grounds that the ACLU of Colorado 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).

⁹ *See also* 6 C.F.R. § 5.5(e)(1)(ii).

¹⁰ U.S. Dep’t of Homeland Security Office of Inspector General, *Concerns about ICE Detainee Treatment and Care at Detention Facilities* (Dec. 11, 2017), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>; *see also* ACLU, *Watchdog Agency Issues Report on ICE Abuse as Agency Seeks to Acquire New Detention Centers* (Dec. 15, 2017, 4:30 p.m.), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/watchdog-agency-issues-report-ice-abuse-agency>.

¹¹ Human Rights Watch, CIVIC, *Systemic Indifference: Dangerous & Substandard Medical Care in US Immigration Detention*, at 1 (May 2017), https://www.hrw.org/sites/default/files/report_pdf/usimmigration0517_web_0.pdf.

¹² ACLU, DWN, NIJC, *Fatal Neglect: How ICE Ignores Deaths in Detention*, at 2 (Feb. 2016), <https://www.detentionwatchnetwork.org/sites/default/files/reports/Fatal%20Neglect%20ACLU-DWN-NIJC.pdf>.

¹³ *See also* 6 C.F.R. § 5.11(k).

First, the ACLU of Colorado does not seek disclosure of the records for commercial use. The ACLU of Colorado is a “non-profit, non-partisan, public interest organization.” *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003). In addition, the ACLU of Colorado intends to make any information disclosed as a result of this FOIA request available to the public at no cost. Disclosure of the requested information is in the public interest. This request will further the public understanding of government conduct; specifically, ICE’s investigation and arrest of individuals, as well as the care it provides to detainees. This type of government activity concretely affects many individuals and groups.

Second, the ACLU of Colorado also requests a waiver of search fees on the grounds that the ACLU of Colorado 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 of Colorado 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);¹⁴ *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 v. U.S. Dep’t of Justice*, 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 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 of Colorado’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).¹⁵

¹⁴ *See also* 6 C.F.R. § 5.11(b)(6).

¹⁵ 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.

As a nonprofit organization and “representative of the news media,” the ACLU of Colorado is well-situated to disseminate information it gains from this request to the general public, to the individuals and organizations who may be affected by ICE’s current practices, and to groups that protect civil liberties and constitutional rights.¹⁶

* * *

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). 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).

If this request is denied in whole or in part, I ask that you justify all deletions by reference to specific exemptions to the governing statute. The ACLU of Colorado expects the release of all segregable portions of otherwise exempt material.

Thank you for your prompt attention to this matter. Please direct all communications and furnish copies of all responsive records to:

Arash Jahanian, Staff Attorney
ACLU of Colorado
303 E. 17th Avenue, Suite 350
Denver, CO 80203
Phone: 720-402-3106
Fax: 303-777-1773

¹⁶ Because the national ACLU clearly meets the standard for a waiver of costs, fees associated with responding to FOIA requests are regularly waived for the ACLU. 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 July 2013, the Department of Defense granted the ACLU of Colorado a fee waiver with respect to contracts between the Department and a local newspaper. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted a fee-waiver request related to the same FOIA request issued to the DOJ. In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists. Likewise, in December 2008, the Department of Justice granted the ACLU a fee waiver with respect to the same request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU for a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The DOJ did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the DOJ Office of Information and Privacy—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

Sincerely,

A handwritten signature in blue ink, appearing to read 'A. Jahanian'.

Arash Jahanian
Staff Attorney, ACLU of Colorado

A handwritten signature in blue ink, appearing to read 'Mark Silverstein'.

Mark Silverstein
Legal Director, ACLU of Colorado

Encl.