

Exhibit 1



Peter Simonson, Executive Director
Tim Macdonald, Legal Director

August 8, 2025

SUBMITTED ELECTRONICALLY

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street SW, Stop 5009
Washington, DC 20536-5009

**Re: FOIA Request for Records Related to Hudson Correctional Facility
(Fee Waiver & Expedited Proceeding Requested)**

Dear Freedom of Information Officer:

This letter is a request for records (“Request”) made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, et seq., and the relevant implementing regulations, see 6 C.F.R. § 5 et seq. The Request is submitted by the American Civil Liberties Union Foundation of Colorado (“ACLU-CO”) (“Requestor”).

Requestor seeks the disclosure of ramp-up plans for adding detention capacity for immigrants in Colorado or Wyoming by Immigration and Customs Enforcement (ICE) or ICE’s Enforcement and Removal Office (ICE-ERO) and emails including the keywords “Hudson,” “Big Horn,” “Huerfano,” or “Southern Ute” as all these locations are under consideration for additional detention in Colorado.

Requestor also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d). The justifications for the fee waiver and expedited processing are set out in detail below.

I. Background

ICE detains over 43,000 people each day in a network of approximately 120 immigration detention facilities nationwide.¹ Although ICE owns five detention facilities, it relies on contracts, inter-governmental service agreements, or inter-governmental agreements with private prison

¹ TRACImmigration, Immigration Detention Quick Facts, <https://tracreports.org/immigration/quickfacts/detention.html> [https://perma.cc/9T9V-UDJS] (Feb. 23, 2025); ICE ERO, Authorized Non-Dedicated Facility List, Authorized Dedicated Facility List, <https://www.ice.gov/doclib/facilityInspections/dedicatedNonDedicatedFacilityList.xlsx> (Sept. 9, 2024).

companies, and local and state jurisdictions, for the use of prisons, jails, and other detention facilities to hold the majority of people in its custody.²

On February 14, 2025, ICE issued a Request for Information (“RFI”) titled the “Denver Area of Responsibility Detention Facility Support-Request for Information,” with Notice ID number 2025_ICE-DCR_DenverAOR on Sam.gov, the federal government’s official website for contract opportunities.³ In the accompanying attachment, ICE provided further specifications for the RFI, noting that “ICE is seeking available detention facilities for single adult populations (male and female)” within the Denver ERO Field Office, including Colorado and Wyoming.

On February 21, 2025, Hudson Reit, Inc. submitted a response proposing to operate a facility formerly known as the Hudson Correctional Facility located in Hudson, Colorado, as part of ICE’s immigration detention operations. Also on February 21, 2025, CoreCivic submitted a response proposing to operate a facility known as the Huerfano County Correctional Center, as part of ICE’s immigration detention operations. Other companies submitted responses for facilities in different parts of Colorado. In addition, the Southern Ute detention center has previously been used by ICE for immigrant detention in Colorado.

II. Records Requested

This Request seeks, for the period from February 21, 2025 to the present, the following records:

- Ramp-up plans for adding detention capacity for immigrants in Colorado or Wyoming.
- Emails including the keywords “Hudson,” “Big Horn,” “Huerfano,” or “Southern Ute.”

The custodians to be searched for the keyword search above include Monica Burke and Albert Dainton.

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

“ICE-ERO” or “ERO” means Immigration and Customs Enforcement’s Enforcement and Removal Office, and any components, subcomponents, offices, or personnel therein.

“ICE” means Immigration and Customs Enforcement, and any components, subcomponents, offices, or personnel therein.

III. Fee Waiver Request

Requestor requests that any fees associated responding to its FOIA request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k). Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), fees should be waived or reduced if disclosure is (1) in

² DHS Office of Inspector General, ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards 3 (2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

³ Sam.gov, Denver Area of Responsibility Detention Facility Support-Request for Information, <https://sam.gov/opp/7e6e095983064363938daab9bb2e11c1/view> [<https://perma.cc/422T-P3GP>].

the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Disclosure in this case meets both of these tests. Requestor also requests a waiver or reduction of fees on the grounds that it qualifies as “representative[s] of the news media” and the records are not sought for commercial use. See 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(d)(1).

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

First, disclosure pursuant to this Request is in the public interest. ICE’s interest in expanding and establishing new immigration detention facilities via the RFI and other similar requests have prompted active concern and attention from Congress, the media, and advocates. Members of Congress have written multiple letters to the Department of Homeland Security raising concern about potential expansion of the immigration detention system, and urging DHS and ICE to reject contracts with for-profit prison corporations for detention. For example, ten senators wrote to DHS and ICE on May 14, 2024, urging the agency to recommit to phasing out ICE’s use of private, for-profit detention facilities.⁴ On July 16, 2024, U.S. Representatives from Washington State, including Pramila Jayapal and Adam Smith, wrote a letter to DHS calling for the phase out of the use of private, for-profit detention centers for immigrants and consider alternatives to expanding the immigration detention system.⁵

Multiple national news outlets have covered ICE’s plans to expand detention capacity, including through other RFIs issued by ICE for additional detention space.⁶ Advocates have likewise raised concern with ICE’s efforts to expand detention: on July 11, 2024, over 200 immigrant rights organizations sent a letter to DHS urging the prior administration to halt ICE’s

⁴ Letter from Sen. Elizabeth Warren, et al., to DHS Secretary Alejandro Mayorkas, May 14, 2024, https://www.warren.senate.gov/imo/media/doc/final_letter_to_dhs_and_ice_on_private_detention_center_use_05142024.pdf [<https://perma.cc/EJ5T-HC4L>].

⁵ Letter from Rep. Pramila Jayapal and Adam Smith, to DHS Secretary Alejandro Mayorkas, Jul. 16, 2024, <https://jayapal.house.gov/wp-content/uploads/2024/07/Mayorkas-Letter-Dilley-Closure-071624.pdf>.

⁶ See, e.g. Maria Sacchetti, Lawsuit Shows Private Detention Companies Offered Beds to ICE This Year, Washington Post, Dec. 19, 2024, <https://www.washingtonpost.com/immigration/2024/12/19/ice-immigration-detention-expansion-proposals/>; Michael Dorgan, ICE Looking Into Expanding Migrant Detention Facilities, ACLU Says, Fox News, Jan. 9, 2025, <https://www.foxnews.com/politics/ice-looking-expanding-migrant-detention-facilities-aclu-says>; Sam Levine, ICE Could Add 600 Beds to New Jersey Detention Center, Documents Show, The Guardian, Nov. 22, 2024, <https://www.theguardian.com/us-news/2024/nov/22/ice-new-jersey-detention>; Patricia Ortiz, ACLU: Texas Government Likely to Cooperate with Mass Deportation Efforts Expected Under Trump, Houston Public Media, Jan. 20, 2025, <https://www.houstonpublicmedia.org/articles/news/politics/immigration/2025/01/20/511087/aclu-texas-says-state-government-is-likely-to-cooperate-with-mas-deportation-efforts-from-the-trump-administration/>; Lily Celeste, ACLU Lawsuit Reveals ICE May Expand Valley Immigration Detention Facilities, KRGV.com, Jan. 7, 2025, <https://www.krgv.com/news/aclu-lawsuit-reveals-ice-may-expand-valley-immigration-detention-facilities/>.

detention expansion efforts.⁷ Disclosure of the information sought in the Request will contribute significantly to the public's understanding of ICE's plans to expand immigration detention in new facilities nationwide.

B. Disclosure is not primarily in the commercial interest of the Requestor.

Second, Requestor is not filing this request to further a commercial interest. Requestor is a 501(c)(3) nonprofit organization and therefore has no commercial interest. Requestor intends to make any relevant information obtained through this FOIA available to the public.⁸ Requestor publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee.

ACLU-CO publishes, analyzes, and disseminates information through its website, www.aclu-co.org. The ACLU-CO regularly issues press releases to call attention to documents obtained through open records requests, as well as other breaking news,⁹ and ACLU-CO attorneys are interviewed frequently for news stories about documents released through ACLU records requests.¹⁰ The ACLU-CO annually publishes two newsletters that reach more than 40,000 Coloradans, as well as updates reaching its approximately 19,700 followers on Instagram and 23,500 people who follow its Facebook page.

ACLU-CO is a state affiliate of the national American Civil Liberties Union Foundation ("ACLU"). The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which Requester is focused. The ACLU's website also includes many features on information obtained through FOIA requests. For example, the websites of both the ACLU-CO and the ACLU host pages with information regarding the organizations' recent FOIA litigation against ICE, American Civil Liberties Union

⁷ Letter from 211 Immigrant Rights Organizations to DHS Sec. Mayorkas, Pattern of Deteriorating Immigration Detention Conditions Amid Expansion Efforts, Jul. 11, 2024, <https://www.detentionwatchnetwork.org/sites/default/files/NGO%20Letter%20regarding%20ICE%20Detention%20-%20July%202024.pdf> [<https://perma.cc/MM6M-VPW3>].

⁸ See 6 C.F.R. § 5.11(k)(1)(ii); 6 C.F.R. § 5.11(k)(3).

⁹ See, e.g., Press Release, ACLU of Colorado, ACLU FOIA Litigation Reveals New Information about Plans to Expand ICE Detention in Colorado, (July 9, 2025), <https://www.aclu-co.org/press-releases/page/>; Press Release, ACLU of Colorado, ACLU, ACLU of Colorado Sue ICE for Records Regarding Potential Expansion of Immigration Detention in Western States (Apr. 21, 2025), <https://www.aclu-co.org/en/press-releases/aclu-aclu-colorado-sue-ice-records-regarding-potential-expansion-immigration>; Press Release, ACLU of Colorado, ACLU Seeks Info into Denver Police Use of Social Media Surveillance (Oct. 6, 2016), <https://www.aclu-co.org/news/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), <https://www.aclu-co.org/news/aclu-files-suit-records-illegally-denied-immigration-and-customs-enforcement-ice/>.

¹⁰ See, e.g., Chris Walker, Denver Police Use Social Media to Follow Activists, Bring Back Fears of Spy Files, Westword (January 17, 2017), <https://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).

Foundation v. U.S. Immigration and Customs Enforcement, No. 1:25-cv-03271 (S.D.N.Y. Apr. 21, 2025), over its failure to release records regarding the agency’s plans to expand immigration detention across Colorado and Wyoming. The websites provide access to the underlying FOIA request, press releases, litigation documents, as well as the 115 pages of records ultimately obtained from the agency.¹¹

For another example, the ACLU’s “Predator Drones FOIA” webpage, <https://www.aclu.org/foia-collections/targeted-killing-foia-database>, contains commentary about the ACLU’s FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves.¹²

Requestor has also published charts and explanatory materials that collect, summarize, and analyze information it has obtained through FOIA. For example, in February 2017 the ACLU produced an analysis of documents released in response to a FOIA request about TSA’s behavior detection program. Based on information obtained from a February 2018 FOIA for records about ICE’s practice of misrepresenting or concealing their identity when conducting enforcement actions, the ACLU has both sued to stop these practices and provided community resources on the practice.¹³

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

C. Requestor also qualifies for a fee waiver because they are representatives of the news media and the records are not sought for commercial use.

Requestor is also entitled to a waiver of search fees on the grounds that it 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). Requestor meets the statutory and regulatory definitions of “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); see also *Nat’l Sec. Archive v. U.S.*

¹¹ ACLU of Colorado, *ACLU et al. v. ICE*, <https://www.aclu-co.org/en/cases/aclu-et-al-v-us-ice>; ACLU, *American Civil Liberties Union Foundation v. U.S. Immigration and Customs Enforcement*, <https://www.aclu.org/cases/american-civil-liberties-union-foundation-v-u-s-immigration-and-customs-enforcement>; ACLU, *Colorado ICE Detention*, <https://www.aclu.org/documents/colorado-ice-detention>.

¹² See also FOIA Database Regarding the U.S. Government’s Violent Extremism Initiatives, ACLU, <https://www.aclu.org/foia-collection/cve-foia-documents>; TSA Behavior Detection FOIA Database, ACLU, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; Targeted Killing FOIA Database, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

¹³ See ACLU of S. Cal., *Kidd v. Mayorkas*, available at <https://www.aclusocal.org/en/cases/kidd-v-mayorkas> (describing lawsuit and case developments); ACLU of S. Cal., *ICE Not Welcome: Verify, Document, and Report*, available at <https://www.aclusocal.org/icenotwelcome> (community resources).

Dep't of Def., 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D. D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).

Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor's work and are among its primary activities. For example, the ACLU regularly publishes ACLU Magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 950,000 households. The ACLU also publishes regular updates and alerts via email to approximately 4 million subscribers (both ACLU members and nonmembers). These updates are additionally broadcast to 4.9 million social media followers (members and non-members). The magazine, email, and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

Requestor also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,¹⁴ and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.¹⁵ Similarly, Requestor regularly publish and disseminate reports that include a description and analysis of

14 See, e.g., *supra* fn. 10; Press Release, ACLU, U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, ACLU, CIA Releases Dozens of Torture Documents in Response to ACLU Lawsuit (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, ACLU, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>.

15 See, e.g., Tony Gorman, Six Colorado Cites Considered for ICE Detention, Colorado Public Radio (July 10, 2025), <https://www.cpr.org/2025/07/10/proposed-ice-detention-facilities-colorado-aclu/> (quoting ACLU senior staff attorney Eunice Cho); Anna Alejo, Private Prison Companies Vie for Business as ICE Plans to Expand Colorado Detention Capacity, CBS News (July 9, 2025), <https://www.cbsnews.com/colorado/news/private-prison-companies-ice-plans-expand-colorado-detention-capacity/> (quoting ACLU of Colorado Legal Director Tim Macdonald); Cora Currier, TSA's Own Files Show Doubtful Science Behind Its Behavior Screening Program, *Intercept* (Feb. 8, 2017), <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program/> (quoting ACLU attorney Hugh Handeyside); ABC News, What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program, ABC News (June 15, 2016), <http://abcn.ws/2jy40d3> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, US Marshals Spent \$10M on Equipment for Warrantless Stingray Surveillance, *Guardian* (Mar. 17, 2016), <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler).

government documents obtained through FOIA requests.¹⁶ This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

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

Underscoring this point, courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to Requestor’s are “representatives of the news media” as well. See, e.g., *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *Jud. Watch, Inc. v. U.S. Dep’t of Just.*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a non-profit “public interest law firm,” a news media requester).¹⁷

As representatives of the news media, Requestor plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use. On account of these factors, fees associated with responding to FOIA requests

¹⁶ See, e.g., ACLU of Colorado, *Cashing in on Cruelty: Stories of Death, Abuse and Neglect at the GEO Immigration Detention Facility in Aurora* (Sept. 17, 2019), <https://www.aclu-co.org/en/publications/cashing-cruelty-stories-death-abuse-and-neglect-geo-immigration-detention-facility>; Manar Waheed, *Customs and Border Protection Violated Court Orders During the First Muslim Ban Implementation* (Jan. 24, 2018), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/customs-and-border-protection-violated-court>; Vera Eidelman, *We Sued for Records About Trump’s Muslim Bans. Here’s What We Found Out.* (Oct. 24, 2017), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/we-sued-records-about-trumps-muslim-bans-heres>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Galen Sherwin et al., *ACLU, Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (May 27, 2016), <https://www.aclu.org/report/leaving-girls-behind>.

¹⁷ Courts have found organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information and public education activities. See, e.g., *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 6; *Nat’l Sec. Archive*, 880 F.2d at 1387; see also *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

are regularly waived for the ACLU as a “representative of the news media.”¹⁸ A fee waiver would fulfill Congress’s legislative intent in amending FOIA.¹⁹ Additionally, on account of these factors, Requestor has not been charged fees associated with responding to FOIA requests on numerous occasions.²⁰

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

IV. Expedited Processing Request

Requestor requests expedited processing of this Request pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); see also 6 C.F.R. § 5.5(e)(1)(ii).

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

Requestor is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). As detailed supra, Requestor has the ability and intention

¹⁸ For example, in May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ.

¹⁹ See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requestors.’”) (citation omitted); *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) (“[FOIA’s] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.”) (internal quotation marks and citation omitted).

²⁰ For example, just last month, on July 2, 2025, ICE disclosed without charge documents responsive to an ACLU and ACLU-COFOIA request regarding plans for expanding detention facilities in the West (ICE FOIA Case No. 2025-ICLI-00050). Similarly, in August 2016, the ICE FOIA Office and DHS Privacy Office both granted fee waivers to the ACLU for a FOIA request seeking a DHS OIG super-memorandum and ICE’s response to that memorandum. Likewise, in March 2016, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about selected deaths in detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office. In July 2015, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about the use of segregation in ICE detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office.

to widely disseminate the requested information through a variety of sources, including reports, newsletters, news briefings, right-to-know handbooks, and other materials, to the public at no cost. Indeed, obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor's work and are among its primary activities. See ACLU, 321 F. Supp. 2d at 29 n.5 (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").²¹ Moreover, as mentioned supra, Requestor intends to distribute the information obtained through this FOIA request via its website and/or other means available to it.

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

The requested records are also urgently needed to inform the public about actual or alleged government activity. See 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, the requested records pertain to ICE's active plans to expand immigration detention facilities in Colorado.

Detention of noncitizens, and ICE's decision to expand or end detention contracts, is a matter of significant government activity and public interest. ²² Plans to expand or close detention facilities in the areas identified by the RFI is a matter of widespread media interest, which have closely followed and reported on local and national administrative measures to restrict detention, close detention facilities, or open new facilities in Colorado.²³ Members of Congress—including those representing states where ICE has sought proposals for expanded immigration detention in

²¹ Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are "primarily engaged in disseminating information." See, e.g., Leadership Conference on Civil Rights, 404 F. Supp. 2d at 260; ACLU, 321 F. Supp. 2d at 29 n.5; Elec. Privacy Info. Ctr., 241 F. Supp. 2d at 11.

²² See, e.g. Ted Hesson, Mica Rosenberg, and Kristina Cooke, Biden Vowed to Reform Immigration Detention. Instead, Private Prisons Benefited, Reuters, Aug. 7, 2023, <https://www.reuters.com/world/us/biden-vowed-reform-immigration-detention-instead-private-prisons-benefited-2023-08-07/>; Jose Olivares, Investigators Wanted to Close an Abusive ICE Facility. Biden's Administration Extended Its Contract, The Appeal, Jul. 25, 2024, <https://theappeal.org/biden-admin-extended-contract-abusive-ice-detention-center/>; Austin Fisher, Torrance County Commission Votes to Extend ICE Contract, Source New Mexico, Apr. 25, 2024, <https://sourcennm.com/2024/04/25/torrance-county-commission-votes-to-extend-ice-contract/>; Allison Kite, Shuttered Private Jail in Leavenworth Could Become ICE Detention Center, Kansas Reflector, Sept. 6, 2023, <https://kansasreflector.com/2023/09/06/shuttered-private-jail-in-leavenworth-could-become-ice-detention-center/>; Jose Abonce, ICE Detains Illinois Immigrants in Out-of-State Jails, South Side Weekly, Dec. 6, 2023, <https://southsideweekly.com/ice-detains-chicago-immigrants-in-wisconsin-despite-illinois-way-forward-act/>.

²³ See, e.g. Phil Stewart and Idrees Ali, ICE to Use U.S. Military Base in Colorado to Detain Migrants, Reuters, Jan. 28, 2025, <https://www.reuters.com/world/us/ice-use-us-military-base-colorado-detain-migrants-2025-01-29/>; Matt Bloom, Colorado Joins Growing Number of States Banning Local Jails and Prisons from Partnering with ICE to Hold Immigration Detainees, CPR News, Jun. 9, 2023, <https://www.cpr.org/2023/06/09/colorado-jails-prisons-ice-detainees-agreements-ban/>.

this RFI—have repeatedly raised concerns about conditions of confinement, continued presence, use of private prison detention facilities, and expansion of detention with the Department of Homeland Security.²⁴ The requested records will inform the public of activity by ICE and DHS. 5 U.S.C. § 552(a)(6)(E)(i)(I).

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi) and 6 C.F.R. § 5.5(e)(3).

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

Sara Neel
ACLU of Colorado
303 17th Ave, Ste. 350
Denver, CO 80203
sneel@aclu-co.org

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny a waiver of fees. Please email or call me at the contact information above if you have any questions or wish to obtain further information about the nature of the records in which we are interested.

Sincerely,

/s/ Sara R. Neel

Sara R. Neel
Senior Staff Attorney
ACLU Foundation of Colorado

²⁴ Letter from Rep. Jason Crow, et al., to DHS Inspector Gen. Joseph Cuffari, Aug. 5, 2024, https://crow.house.gov/sites/evo-subsites/crow.house.gov/files/evo-media-document/08.05.2024%2C%20DHS%20OIG%2C%20ICE%2C%20Inspections_Final.pdf [<https://perma.cc/8SRK-2BEK>]; Sen. Elizabeth Warren, et al., to DHS Secretary Alejandro Mayorkas, May 14, 2024, https://www.warren.senate.gov/imo/media/doc/final_-_letter_to_dhs_and_ice_on_private_detention_center_use_05142024.pdf [<https://perma.cc/EJ5T-HC4L>]; Letter from Rep. Pramila Jayapal and Adam Smith, to DHS Secretary Alejandro Mayorkas, Jul. 16, 2024, <https://jayapal.house.gov/wp-content/uploads/2024/07/Mayorkas-Letter-Dilley-Closure-071624.pdf> [<https://perma.cc/Q5JD-PAC8>]; Letter from 50 Members of Congress to DHS Secretary Alejandro Mayorkas, Feb. 16, 2024, <https://jayapal.house.gov/wp-content/uploads/2024/02/ICE-Detention-Closure-Letter-021624.pdf> [<https://perma.cc/B4TV-75JZ>].

Exhibit 2

Sara Neel - she/her/hers

From: ice-foia@ice.dhs.gov <noreply@securerelease.us>
Sent: Monday, August 11, 2025 8:10 AM
To: Sara Neel - she/her/hers
Subject: ICE FOIA 2025-ICFO-53841 Clarification Request

This Message Is From an External Sender

This message came from outside your organization.

08/11/2025

Sara Neel
303 E. 17th Ave.
Denver, Colorado 80203

RE: ICE FOIA Case Number 2025-ICFO-53841

Dear Requester:

This e-mail is in regards to your 8/8/2025 ICE FOIA request for records related to records pertaining to the plan to increase detention capacity for immigration in Colorado or Wyoming. Seek period February 21, 2025 to present .

In conducting a search for responsive records, the ICE FOIA office has determined that further clarification is needed regarding your request.

Please clarify which U.S. State you are seeking records from, Colorado or Wyoming. Please specify the names or locations of the detention center or centers you are interested in. Clarify what is the meaning of the terms or "keywords", "Hudson", "Big Horn", "Huerfano", or "Southern Ute". Please clarify who are Monika Burk, and Albert Dainton. Please specify for which agency, department, or division these two individuals or "custodians" work for.

Please provide the ICE FOIA office with a response as soon as possible to avoid any further delay in the processing of your request. If a response is not received within 30 calendar days, your request will be administratively closed.

Sincerely,

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

Sara Neel - she/her/hers

From: Sara Neel - she/her/hers
Sent: Tuesday, August 12, 2025 9:11 PM
To: ice-foia@ice.dhs.gov
Cc: Tim Macdonald
Subject: RE: ICE FOIA 2025-ICFO-53841 Clarification Request

To ICE FOIA Office:

Please find below the answers to each of your four clarification questions:

- Question: Please clarify which U.S. State you are seeking records from, Colorado or Wyoming.
- **Answer:** We are requesting ramp-up plans for adding detention capacity in both Colorado and Wyoming.
- Question: Please specify the names or locations of the detention center or centers you are interested in.
- **Answer:** We are interested in all detention centers that ICE is considering using or building for additional ICE detention capacity in Colorado and Wyoming. The facilities include, but are not limited to, the following:
 - The Hudson Correctional Facility in Hudson, Colorado, which we believe ICE may be referring to as the Big Horn facility
 - The Huerfano County Correctional Center in Walsenburg, Colorado
 - The Southern Ute Detention Center in Ignacio, Colorado
- Question: Clarify what is the meaning of the terms or "keywords", "Hudson", "Big Horn", "Huerfano", or "Southern Ute".
- **Answer:** These terms relate to detention facilities and are being provided to help narrow the search for records.
 - "Hudson" relates to the detention facility formerly known as Hudson Correctional Facility in Hudson Colorado
 - "Big Horn" is a name that we believe has been used by ICE to refer to the detention facility formerly known as Hudson Correctional Facility in Hudson, Colorado
 - "Huerfano" relates to the Huerfano County Correctional Center in Walsenburg, Colorado
 - "Southern Ute" relates to the Southern Ute Detention Center in Ignacio, Colorado
- Question: Please clarify who are Monika Burk, and Albert Dainton. Please specify for which agency, department, or division these two individuals or "custodians" work for.
- **Answer:** Monika Burk and Albert Dainton are individuals who work for ICE and who we believe are or were involved in the process of seeking to expand ICE detention capacity in Colorado. To the best of our understanding, these may be their recent job titles with ICE. Because we don't work for the government, and you do, we assume that you should have an easier time of determining their current job titles.

- Albert Dainton: Director and Head of Contracting Activity, Office of Acquisition Management, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security
- Monika Burk: Acting Assistant Director of Custody Management Division, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security

Sara R. Neel

Pronouns: she, hers

Senior Staff Attorney | Managing Attorney
American Civil Liberties Union of Colorado
303 E. 17th Ave., Suite 350, Denver, CO 80203
720.402.3107 | sneel@aclu-co.org
aclu-co.org

ACLU Colorado

From: ice-foia@ice.dhs.gov <noreply@securerelease.us>
Sent: Monday, August 11, 2025 8:10 AM
To: Sara Neel - she/her/hers <sneel@aclu-co.org>
Subject: ICE FOIA 2025-ICFO-53841 Clarification Request

This Message Is From an External Sender

This message came from outside your organization.

08/11/2025

Sara Neel
303 E. 17th Ave.
Denver, Colorado 80203

RE: ICE FOIA Case Number 2025-ICFO-53841

Dear Requester:

This e-mail is in regards to your 8/8/2025 ICE FOIA request for records related to records pertaining to the plan to increase detention capacity for immigration in Colorado or Wyoming. Seek period February 21, 2025 to present .

In conducting a search for responsive records, the ICE FOIA office has determined that further clarification is needed regarding your request.

Please clarify which U.S. State you are seeking records from, Colorado or Wyoming. Please specify the names or locations of the detention center or centers you are interested in. Clarify what is the meaning of the terms or "keywords", "Hudson", "Big Horn", "Huerfano", or "Southern Ute". Please clarify who are Monika Burk, and Albert Dainton. Please specify for which agency, department, or division these two individuals or "custodians" work for.

Please provide the ICE FOIA office with a response as soon as possible to avoid any further delay in the processing of your request. If a response is not received within 30 calendar days, your request will be administratively closed.

Sincerely,

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

Sara Neel - she/her/hers

From: ice-foia@ice.dhs.gov <noreply@securerelease.us>
Sent: Wednesday, August 13, 2025 8:31 AM
To: Sara Neel - she/her/hers
Subject: ICE FOIA 2025-ICFO-53841

This Message Is From an External Sender

This message came from outside your organization.

08/13/2025

Sara Neel
303 E. 17th Ave.
Denver, Colorado 80203

RE: ICE FOIA Case Number 2025-ICFO-53841

Dear Requester:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated 8/8/2025, your request for a waiver of all assessable FOIA fees, and your request for expedited treatment. Your request was received in this office on 8/8/2025. Specifically, you have requested records pertaining to the plan to increase detention capacity for immigration in Colorado or Wyoming. Seek period February 21, 2025 to present .

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you're able to narrow the scope of your request please contact our office. Narrowing the scope may speed up the search process. We will make every effort to comply with your request in a timely manner.

In addition, ICE acknowledges that your FOIA request includes a request for fee waiver. We will adjudicate this request only if the agency is allowed to assess fees under the FOIA. See 6 C.F.R. § 5.11(c)-(d). If this is the case, you will be notified of our decision in a separate communication. If there are no assessable fees, your request for a fee waiver will be moot and you will not receive further communications from ICE regarding fees related to this FOIA request.

Your request for expedited treatment is hereby denied.

Under the DHS FOIA regulations, expedited processing of a FOIA request is warranted if the request involves “circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual,” 6 C.F.R. § 5.5(e)(1)(i), or “an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information,” 6 C.F.R. § 5.5(e)(1)(ii). Requesters seeking expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct. 6 C.F.R. § 5.5(e)(3).

Your request for expedited processing is denied because you do not qualify for either category under 6 C.F.R. § 5.5(e)(1). You failed to demonstrate a particular urgency to inform the public about the government activity involved in the request beyond the public’s right to know about government activity generally. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

If you deem the decision to deny expedited treatment of your request an adverse determination, you have the right to appeal. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.5(e)(2). You may submit your appeal electronically at GILDFOIAAppeals@ice.dhs.gov or via regular mail to:

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street,, S.W., Mail Stop 5900
Washington, D.C. 20536-5900

Your envelope and letter should be marked “FOIA Appeal.” Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

ICE has queried the appropriate program offices within ICE 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.

If you have any questions, please contact FOIA Public Liaison Daniel Edgington, at (866) 633-1182 or 500 12th St, SW Stop 5009 Washington, DC 20536-5009. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448.

Your request has been assigned reference number 2025-ICFO-53841. Please use this number in future correspondence.

Sincerely,

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

Exhibit 3



Peter Simonson, Executive Director
Tim Macdonald, Legal Director

August 15, 2025

SENT VIA EMAIL: GILDFOIAAppeals@ice.dhs.gov

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, SW, Mail Stop 5900
Washington, DC 20536-5900

Re: Appeal of denial of expedited treatment of FOIA request no. 2025-ICFO-53841

To Whom it May Concern:

I am writing to appeal a denial of expedited processing for the above referenced Freedom of Information Act request pursuant to 5 U.S.C. § 552(a)(6).

The initial request for documents and expedited processing was made on August 8, 2025. It requested two simple and discrete categories of documents: “ramp up” plans for adding ICE detention capacity in Colorado and Wyoming, and emails sent or received after February 21, 2025 containing three keywords (“Hudson,” “Big Horn,” “Huerfano” or “Southern Ute”: the names of potential detention facilities). Expedited processing was denied on August 13, 2025.

The original request is attached as Exhibit A, and ICE’s preliminary response denying expedited processing is attached as Exhibit B.

Expedited processing of this request is appropriate because the requested information is related to “an urgency to inform the public about an actual or alleged federal government activity, ... made by a person primarily engaged in disseminating information.” 6 C.F.R. § 5.5(3)(1)(ii). The ACLU of Colorado’s request for these documents satisfies both these requirements.

First, there is an “urgency” to inform the public about expanded ICE detention in Colorado. “[A] request concerns a matter of *current* exigency to the American public where ‘the subject matter of the request was central to a pressing issue of the day,’ or was ‘of immediate public interest in view of an ongoing debate.’” *Rolling Stone LLC v. Dep’t of Justice*, 739 F.Supp.3d 237, 242 (cleaned up, emphasis in original, citing *Wadelton v. Dep’t of State*, 941 F.Supp.2d 210, 123 (D. D.C. 2013) & *Am. Civ. Liberties Union v. U.S. Dep’t of Justice*, 321 F.Supp.2d 24, 29 (D. D.C. 2004)). There can be no doubt that immigration matters are “a pressing issue of the day” and “of

immediate public interest.”¹ ICE’s detention activities particularly generate near daily news coverage in Colorado.² The proposed detention center *in Hudson that is a subject of this request* is even the topic of “breaking news” coverage by the state’s largest newspaper, which cited to the ACLU of Colorado’s previous FOIA requests.³ Indeed, when the ACLU of Colorado previously published documents related to ICE’s intent to expand detention in the state on July 9, 2025,⁴ several media organizations quickly covered the documents that were obtained through FOIA.⁵

Secondly, the ACLU is “primarily engaged in disseminating information.” The ACLU publishes *ACLU Magazine* that reports on civil liberties-related current events – the most recent issue featured a story on immigration controversies.⁶ Approximately 950,000 households subscribe to *ACLU Magazine*. The ACLU also sends regular updates and alerts via email to approximately 4 million subscribers, and publishes information to 4.9 million social media

¹ See, e.g., The White House, “‘Unheard of’: Illegal Border Crossings Plummet to Another New Record Low,” Aug. 1, 2025, available at: <https://www.whitehouse.gov/articles/2025/08/unheard-of-illegal-border-crossings-plummet-to-another-new-record-low/>; Letter from Rep. Jason Crow, et al., to DHS Inspector Gen. Joseph Cuffari, Aug. 5, 2024, https://crow.house.gov/sites/evo-subsites/crow.house.gov/files/evo-media-document/08.05.2024%2C%20DHS%20OIG%2C%20ICE%2C%20Inspections_Final.pdf.

² See, e.g., S. Klamann, *Colorado congressional Democrats visit Aurora ICE facility*, DENVER POST, Aug. 11, 2025, available at: <https://www.denverpost.com/2025/08/11/colorado-congressional-democrats-visit-ice-facility/>; A. Sherry, *Angry Democratic members of Congress get a planned tour of ICE detention facility, leave with questions*, COLORADO PUBLIC RADIO, Aug. 11, 2025, available at: <https://www.cpr.org/2025/08/11/aurora-immigrant-detention-facility-congressional-democrats-tour/>.

³ S. Klamann, *ICE tells Colorado lawmakers it plans to open new detention facility near metro Denver*, DENVER POST, Aug. 12, 2025, available at: <https://www.denverpost.com/2025/08/12/colorado-immigration-detention-ice-hudson/> (“Highlands REIT, a Chicago-based real estate investment trust, offered the shuttered private prison it owns in Hudson as a potential new detention center, according to records obtained by the American Civil Liberties Union”).

⁴ Press Release: ACLU FOIA Litigation Reveals New Information About Plans to Expand ICE Detention in Colorado, ACLU OF COLORADO, July 9, 2025, available at: <https://www.aclu-co.org/press-releases/page/>.

⁵ See, e.g., Tony Gorman, *Six Colorado Cites Considered for ICE Detention*, COLORADO PUBLIC RADIO (July 10, 2025), <https://www.cpr.org/2025/07/10/proposed-ice-detention-facilities-colorado-aclu/> (quoting ACLU senior staff attorney Eunice Cho); Anna Alejo, *Private Prison Companies Vie for Business as ICE Plans to Expand Colorado Detention Capacity*, CBS NEWS (July 9, 2025), <https://www.cbsnews.com/colorado/news/private-prison-companies-ice-plans-expand-colorado-detention-capacity/> (quoting ACLU of Colorado Legal Director Tim Macdonald).

⁶ T. Vellner, “Immigrants Welcome: Artists Rally for Immigrants’ Rights,” ACLU MAGAZINE, Spring 2025, p. 31, available at: <https://www.aclu.org/documents/aclu-magazine-spring-2025>.

followers.⁷ The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,⁸ and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.⁹ Similarly, the ACLU regularly publishes and disseminates reports that include a description and analysis of government documents obtained through FOIA requests.¹⁰ This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

Thus, courts regularly grant expedited processing to the ACLU for these reasons. *See, e.g., Am. Civ. Liberties Union v. Dep't of Homeland Security*, No. 20-3204, 2023 WL 2733721, *1 (D. D.C. Mar. 31, 2023) (noting “DHS granted the ACLU’s request for expedited treatment” of request regarding COVID-19 in ICE detention facilities); *Am. Civ. Liberties Union of Northern California v. U.S. Dep't of Defense*, No. C 06-01698, 2006 WL 1469418 (N.D. Cal. May 25, 2006) (granting summary judgment to ACLU on expedited processing issue). *See also Am. Civ. Liberties Union of Northern California v. U.S. Dep't of Justice*, 880 F.3d 473, 480 (9th Cir. 2018) (noting DOJ “informed ACLU-NC that it would expedite processing”). Indeed, courts also regularly find that other organizations similar to the ACLU are “representatives of the news media” for FOIA purposes, even if they also engage in litigation and lobbying activities as well. *See, e.g., Elec.*

⁷ *See, e.g.,* ACLU of Colorado, Instagram (July 9, 2025), https://www.instagram.com/p/DL5mjtvR-48/?utm_source=ig_web_copy_link&igsh=MzRlODBiNWFiZA== (publishing information from FOIA documents regarding ICE detention).

⁸ *See, e.g.,* Press Release: ACLU FOIA Litigation Reveals New Information About Plans to Expand ICE Detention in Colorado, ACLU OF COLORADO, July 9, 2025, *available at:* <https://www.aclu-co.org/press-releases/page/> (publishing released FOIA documents regarding ICE detention).

⁹ *See, e.g.,* Tony Gorman, *Six Colorado Cites Considered for ICE Detention*, COLORADO PUBLIC RADIO (July 10, 2025), <https://www.cpr.org/2025/07/10/proposed-ice-detention-facilities-colorado-aclu/> (quoting ACLU senior staff attorney Eunice Cho); Anna Alejo, *Private Prison Companies Vie for Business as ICE Plans to Expand Colorado Detention Capacity*, CBS NEWS (July 9, 2025), <https://www.cbsnews.com/colorado/news/private-prison-companies-ice-plans-expand-colorado-detention-capacity/> (quoting ACLU of Colorado Legal Director Tim Macdonald).

¹⁰ *See, e.g.,* ACLU of Colorado, *Cashing in on Cruelty: Stories of Death, Abuse and Neglect at the GEO Immigration Detention Facility in Aurora*, Sept. 17, 2019, *available at:* <https://www.aclu-co.org/publications/cashing-cruelty-stories-death-abuse-and-neglect-geo-immigration-detention-facility/>; Manar Waheed, *Customs and Border Protection Violated Court Orders During the First Muslim Ban Implementation* (Jan. 24, 2018), <https://www.aclu.org/news/immigrants-rights/customs-and-border-protection-violated-court>; Vera Eidelman, *We Sued for Records About Trump’s Muslim Bans. Here’s What We Found Out.* (Oct. 24, 2017), <https://www.aclu.org/news/immigrants-rights/we-sued-records-about-trumps-muslim-bans-heres>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016), <https://www.aclu.org/news/criminal-law-reform/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias>; Galen Sherwin et al., *ACLU, Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (May 27, 2016), <https://www.aclu.org/publications/leaving-girls-behind>.

Privacy Info. Ctr. v. U.S. Dep't of Def., 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Jud. Watch, Inc. v. U.S. Dep't of Just.*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a non-profit “public interest law firm,” was a news media requester).

ICE's rationale for denying expedited processing here is simply unavailing. Initially, ICE wrongly asserts that our request “seeks numerous documents that will necessitate a thorough and wide-ranging search.” Ex. B, p. 1. This is flatly untrue: the request seeks a small number of documents – “ramp up” plans for additional detention centers (a discrete set of documents), and emails from only two custodians with just four key words. If ICE has further suggestions that would assist in its offer that narrowing the scope of our request may “speed up the search process,” we are welcome to hear any suggestions that would produce relevant documents at less burden to ICE. Please feel free to contact me regarding this offer.

Likewise, our request for expedited processing was not “conclusory,” but instead was well-supported and provided an extensive rationale for both why there is a “particular urgency to inform the public” about ICE's detention activities and the ACLU's status as a media representative.¹¹ Though ICE's response suggests otherwise, the request also certified that the statements in the request were true and correct. *Compare* Ex. B, p. 2 (“the statement must be certified by the requester to be true and correct”) *with* Ex. A, p. 10 (“I affirm that the information provided supporting the request for expedited processing is true and correct” citing 5 U.S.C. § 552(a)(6)(E)(vi) & 6 C.F.R. § 5.5(e)(4)).

For the above reasons, the ACLU of Colorado's request is entitled to expedited processing. Again, please feel free to contact me if there is anything we can discuss to expedite receipt of the requested documents.

Sincerely,

Sara R. Neel
Senior Staff Attorney, ACLU of Colorado

¹¹ See Ex. A, pp. 8-10.

Exhibit A



Peter Simonson, Executive Director
Tim Macdonald, Legal Director

August 8, 2025

SUBMITTED ELECTRONICALLY

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street SW, Stop 5009
Washington, DC 20536-5009

**Re: FOIA Request for Records Related to Hudson Correctional Facility
(Fee Waiver & Expedited Proceeding Requested)**

Dear Freedom of Information Officer:

This letter is a request for records (“Request”) made pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, et seq., and the relevant implementing regulations, see 6 C.F.R. § 5 et seq. The Request is submitted by the American Civil Liberties Union Foundation of Colorado (“ACLU-CO”) (“Requestor”).

Requestor seeks the disclosure of ramp-up plans for adding detention capacity for immigrants in Colorado or Wyoming by Immigration and Customs Enforcement (ICE) or ICE’s Enforcement and Removal Office (ICE-ERO) and emails including the keywords “Hudson,” “Big Horn,” “Huerfano,” or “Southern Ute” as all these locations are under consideration for additional detention in Colorado.

Requestor also seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d). The justifications for the fee waiver and expedited processing are set out in detail below.

I. Background

ICE detains over 43,000 people each day in a network of approximately 120 immigration detention facilities nationwide.¹ Although ICE owns five detention facilities, it relies on contracts, inter-governmental service agreements, or inter-governmental agreements with private prison

¹ TRACImmigration, Immigration Detention Quick Facts, <https://tracreports.org/immigration/quickfacts/detention.html> [https://perma.cc/9T9V-UDJS] (Feb. 23, 2025); ICE ERO, Authorized Non-Dedicated Facility List, Authorized Dedicated Facility List, <https://www.ice.gov/doclib/facilityInspections/dedicatedNonDedicatedFacilityList.xlsx> (Sept. 9, 2024).

companies, and local and state jurisdictions, for the use of prisons, jails, and other detention facilities to hold the majority of people in its custody.²

On February 14, 2025, ICE issued a Request for Information (“RFI”) titled the “Denver Area of Responsibility Detention Facility Support-Request for Information,” with Notice ID number 2025_ICE-DCR_DenverAOR on Sam.gov, the federal government’s official website for contract opportunities.³ In the accompanying attachment, ICE provided further specifications for the RFI, noting that “ICE is seeking available detention facilities for single adult populations (male and female)” within the Denver ERO Field Office, including Colorado and Wyoming.

On February 21, 2025, Hudson Reit, Inc. submitted a response proposing to operate a facility formerly known as the Hudson Correctional Facility located in Hudson, Colorado, as part of ICE’s immigration detention operations. Also on February 21, 2025, CoreCivic submitted a response proposing to operate a facility known as the Huerfano County Correctional Center, as part of ICE’s immigration detention operations. Other companies submitted responses for facilities in different parts of Colorado. In addition, the Southern Ute detention center has previously been used by ICE for immigrant detention in Colorado.

II. Records Requested

This Request seeks, for the period from February 21, 2025 to the present, the following records:

- Ramp-up plans for adding detention capacity for immigrants in Colorado or Wyoming.
- Emails including the keywords “Hudson,” “Big Horn,” “Huerfano,” or “Southern Ute.”

The custodians to be searched for the keyword search above include Monica Burke and Albert Dainton.

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

“ICE-ERO” or “ERO” means Immigration and Customs Enforcement’s Enforcement and Removal Office, and any components, subcomponents, offices, or personnel therein.

“ICE” means Immigration and Customs Enforcement, and any components, subcomponents, offices, or personnel therein.

III. Fee Waiver Request

Requestor requests that any fees associated responding to its FOIA request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k). Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), fees should be waived or reduced if disclosure is (1) in

² DHS Office of Inspector General, ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards 3 (2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

³ Sam.gov, Denver Area of Responsibility Detention Facility Support-Request for Information, <https://sam.gov/opp/7e6e095983064363938daab9bb2e11c1/view> [<https://perma.cc/422T-P3GP>].

the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Disclosure in this case meets both of these tests. Requestor also requests a waiver or reduction of fees on the grounds that it qualifies as “representative[s] of the news media” and the records are not sought for commercial use. See 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(d)(1).

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

First, disclosure pursuant to this Request is in the public interest. ICE’s interest in expanding and establishing new immigration detention facilities via the RFI and other similar requests have prompted active concern and attention from Congress, the media, and advocates. Members of Congress have written multiple letters to the Department of Homeland Security raising concern about potential expansion of the immigration detention system, and urging DHS and ICE to reject contracts with for-profit prison corporations for detention. For example, ten senators wrote to DHS and ICE on May 14, 2024, urging the agency to recommit to phasing out ICE’s use of private, for-profit detention facilities.⁴ On July 16, 2024, U.S. Representatives from Washington State, including Pramila Jayapal and Adam Smith, wrote a letter to DHS calling for the phase out of the use of private, for-profit detention centers for immigrants and consider alternatives to expanding the immigration detention system.⁵

Multiple national news outlets have covered ICE’s plans to expand detention capacity, including through other RFIs issued by ICE for additional detention space.⁶ Advocates have likewise raised concern with ICE’s efforts to expand detention: on July 11, 2024, over 200 immigrant rights organizations sent a letter to DHS urging the prior administration to halt ICE’s

⁴ Letter from Sen. Elizabeth Warren, et al., to DHS Secretary Alejandro Mayorkas, May 14, 2024, https://www.warren.senate.gov/imo/media/doc/final_letter_to_dhs_and_ice_on_private_detention_center_use_05142024.pdf [<https://perma.cc/EJ5T-HC4L>].

⁵ Letter from Rep. Pramila Jayapal and Adam Smith, to DHS Secretary Alejandro Mayorkas, Jul. 16, 2024, <https://jayapal.house.gov/wp-content/uploads/2024/07/Mayorkas-Letter-Dilley-Closure-071624.pdf>.

⁶ See, e.g. Maria Sacchetti, Lawsuit Shows Private Detention Companies Offered Beds to ICE This Year, Washington Post, Dec. 19, 2024, <https://www.washingtonpost.com/immigration/2024/12/19/ice-immigration-detention-expansion-proposals/>; Michael Dorgan, ICE Looking Into Expanding Migrant Detention Facilities, ACLU Says, Fox News, Jan. 9, 2025, <https://www.foxnews.com/politics/ice-looking-expanding-migrant-detention-facilities-aclu-says>; Sam Levine, ICE Could Add 600 Beds to New Jersey Detention Center, Documents Show, The Guardian, Nov. 22, 2024, <https://www.theguardian.com/us-news/2024/nov/22/ice-new-jersey-detention>; Patricia Ortiz, ACLU: Texas Government Likely to Cooperate with Mass Deportation Efforts Expected Under Trump, Houston Public Media, Jan. 20, 2025, <https://www.houstonpublicmedia.org/articles/news/politics/immigration/2025/01/20/511087/aclu-texas-says-state-government-is-likely-to-cooperate-with-mas-deportation-efforts-from-the-trump-administration/>; Lily Celeste, ACLU Lawsuit Reveals ICE May Expand Valley Immigration Detention Facilities, KRGV.com, Jan. 7, 2025, <https://www.krgv.com/news/aclu-lawsuit-reveals-ice-may-expand-valley-immigration-detention-facilities/>.

detention expansion efforts.⁷ Disclosure of the information sought in the Request will contribute significantly to the public's understanding of ICE's plans to expand immigration detention in new facilities nationwide.

B. Disclosure is not primarily in the commercial interest of the Requestor.

Second, Requestor is not filing this request to further a commercial interest. Requestor is a 501(c)(3) nonprofit organization and therefore has no commercial interest. Requestor intends to make any relevant information obtained through this FOIA available to the public.⁸ Requestor publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee.

ACLU-CO publishes, analyzes, and disseminates information through its website, www.aclu-co.org. The ACLU-CO regularly issues press releases to call attention to documents obtained through open records requests, as well as other breaking news,⁹ and ACLU-CO attorneys are interviewed frequently for news stories about documents released through ACLU records requests.¹⁰ The ACLU-CO annually publishes two newsletters that reach more than 40,000 Coloradans, as well as updates reaching its approximately 19,700 followers on Instagram and 23,500 people who follow its Facebook page.

ACLU-CO is a state affiliate of the national American Civil Liberties Union Foundation ("ACLU"). The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which Requester is focused. The ACLU's website also includes many features on information obtained through FOIA requests. For example, the websites of both the ACLU-CO and the ACLU host pages with information regarding the organizations' recent FOIA litigation against ICE, American Civil Liberties Union

⁷ Letter from 211 Immigrant Rights Organizations to DHS Sec. Mayorkas, Pattern of Deteriorating Immigration Detention Conditions Amid Expansion Efforts, Jul. 11, 2024, <https://www.detentionwatchnetwork.org/sites/default/files/NGO%20Letter%20regarding%20ICE%20Detention%20-%20July%202024.pdf> [<https://perma.cc/MM6M-VPW3>].

⁸ See 6 C.F.R. § 5.11(k)(1)(ii); 6 C.F.R. § 5.11(k)(3).

⁹ See, e.g., Press Release, ACLU of Colorado, ACLU FOIA Litigation Reveals New Information about Plans to Expand ICE Detention in Colorado, (July 9, 2025), <https://www.aclu-co.org/press-releases/page/>; Press Release, ACLU of Colorado, ACLU, ACLU of Colorado Sue ICE for Records Regarding Potential Expansion of Immigration Detention in Western States (Apr. 21, 2025), <https://www.aclu-co.org/en/press-releases/aclu-aclu-colorado-sue-ice-records-regarding-potential-expansion-immigration>; Press Release, ACLU of Colorado, ACLU Seeks Info into Denver Police Use of Social Media Surveillance (Oct. 6, 2016), <https://www.aclu-co.org/news/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), <https://www.aclu-co.org/news/aclu-files-suit-records-illegally-denied-immigration-and-customs-enforcement-ice/>.

¹⁰ See, e.g., Chris Walker, Denver Police Use Social Media to Follow Activists, Bring Back Fears of Spy Files, Westword (January 17, 2017), <https://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).

Foundation v. U.S. Immigration and Customs Enforcement, No. 1:25-cv-03271 (S.D.N.Y. Apr. 21, 2025), over its failure to release records regarding the agency’s plans to expand immigration detention across Colorado and Wyoming. The websites provide access to the underlying FOIA request, press releases, litigation documents, as well as the 115 pages of records ultimately obtained from the agency.¹¹

For another example, the ACLU’s “Predator Drones FOIA” webpage, <https://www.aclu.org/foia-collections/targeted-killing-foia-database>, contains commentary about the ACLU’s FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves.¹²

Requestor has also published charts and explanatory materials that collect, summarize, and analyze information it has obtained through FOIA. For example, in February 2017 the ACLU produced an analysis of documents released in response to a FOIA request about TSA’s behavior detection program. Based on information obtained from a February 2018 FOIA for records about ICE’s practice of misrepresenting or concealing their identity when conducting enforcement actions, the ACLU has both sued to stop these practices and provided community resources on the practice.¹³

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

C. Requestor also qualifies for a fee waiver because they are representatives of the news media and the records are not sought for commercial use.

Requestor is also entitled to a waiver of search fees on the grounds that it 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). Requestor meets the statutory and regulatory definitions of “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); see also *Nat’l Sec. Archive v. U.S.*

¹¹ ACLU of Colorado, *ACLU et al. v. ICE*, <https://www.aclu-co.org/en/cases/aclu-et-al-v-us-ice>; ACLU, *American Civil Liberties Union Foundation v. U.S. Immigration and Customs Enforcement*, <https://www.aclu.org/cases/american-civil-liberties-union-foundation-v-u-s-immigration-and-customs-enforcement>; ACLU, *Colorado ICE Detention*, <https://www.aclu.org/documents/colorado-ice-detention>.

¹² See also FOIA Database Regarding the U.S. Government’s Violent Extremism Initiatives, ACLU, <https://www.aclu.org/foia-collection/cve-foia-documents>; TSA Behavior Detection FOIA Database, ACLU, <https://www.aclu.org/foia-collection/tsa-behavior-detection-foia-database>; Targeted Killing FOIA Database, ACLU, <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

¹³ See ACLU of S. Cal., *Kidd v. Mayorkas*, available at <https://www.aclusocal.org/en/cases/kidd-v-mayorkas> (describing lawsuit and case developments); ACLU of S. Cal., *ICE Not Welcome: Verify, Document, and Report*, available at <https://www.aclusocal.org/icenotwelcome> (community resources).

Dep't of Def., 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D. D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).

Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor's work and are among its primary activities. For example, the ACLU regularly publishes ACLU Magazine that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 950,000 households. The ACLU also publishes regular updates and alerts via email to approximately 4 million subscribers (both ACLU members and nonmembers). These updates are additionally broadcast to 4.9 million social media followers (members and non-members). The magazine, email, and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

Requestor also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,¹⁴ and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.¹⁵ Similarly, Requestor regularly publish and disseminate reports that include a description and analysis of

14 See, e.g., *supra* fn. 10; Press Release, ACLU, U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, ACLU, CIA Releases Dozens of Torture Documents in Response to ACLU Lawsuit (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, ACLU, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>.

15 See, e.g., Tony Gorman, Six Colorado Cites Considered for ICE Detention, Colorado Public Radio (July 10, 2025), <https://www.cpr.org/2025/07/10/proposed-ice-detention-facilities-colorado-aclu/> (quoting ACLU senior staff attorney Eunice Cho); Anna Alejo, Private Prison Companies Vie for Business as ICE Plans to Expand Colorado Detention Capacity, CBS News (July 9, 2025), <https://www.cbsnews.com/colorado/news/private-prison-companies-ice-plans-expand-colorado-detention-capacity/> (quoting ACLU of Colorado Legal Director Tim Macdonald); Cora Currier, TSA's Own Files Show Doubtful Science Behind Its Behavior Screening Program, Intercept (Feb. 8, 2017), <https://theintercept.com/2017/02/08/tsas-own-files-show-doubtful-science-behind-its-behavior-screening-program/> (quoting ACLU attorney Hugh Handeyside); ABC News, What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program, ABC News (June 15, 2016), <http://abcn.ws/2jy40d3> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, US Marshals Spent \$10M on Equipment for Warrantless Stingray Surveillance, Guardian (Mar. 17, 2016), <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler).

government documents obtained through FOIA requests.¹⁶ This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

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

Underscoring this point, courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to Requestor’s are “representatives of the news media” as well. See, e.g., *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *Jud. Watch, Inc. v. U.S. Dep’t of Just.*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a non-profit “public interest law firm,” a news media requester).¹⁷

As representatives of the news media, Requestor plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use. On account of these factors, fees associated with responding to FOIA requests

¹⁶ See, e.g., ACLU of Colorado, *Cashing in on Cruelty: Stories of Death, Abuse and Neglect at the GEO Immigration Detention Facility in Aurora* (Sept. 17, 2019), <https://www.aclu-co.org/en/publications/cashing-cruelty-stories-death-abuse-and-neglect-geo-immigration-detention-facility>; Manar Waheed, *Customs and Border Protection Violated Court Orders During the First Muslim Ban Implementation* (Jan. 24, 2018), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/customs-and-border-protection-violated-court>; Vera Eidelman, *We Sued for Records About Trump’s Muslim Bans. Here’s What We Found Out.* (Oct. 24, 2017), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/we-sued-records-about-trumps-muslim-bans-heres>; Carl Takei, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; Galen Sherwin et al., *ACLU, Leaving Girls Behind: An Analysis of Washington D.C.’s “Empowering Males of Color” Initiative* (May 27, 2016), <https://www.aclu.org/report/leaving-girls-behind>.

¹⁷ Courts have found organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information and public education activities. See, e.g., *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 6; *Nat’l Sec. Archive*, 880 F.2d at 1387; see also *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

are regularly waived for the ACLU as a “representative of the news media.”¹⁸ A fee waiver would fulfill Congress’s legislative intent in amending FOIA.¹⁹ Additionally, on account of these factors, Requestor has not been charged fees associated with responding to FOIA requests on numerous occasions.²⁰

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

IV. Expedited Processing Request

Requestor requests expedited processing of this Request pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); see also 6 C.F.R. § 5.5(e)(1)(ii).

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

Requestor is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). As detailed supra, Requestor has the ability and intention

¹⁸ For example, in May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ.

¹⁹ See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requestors.’”) (citation omitted); *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) (“[FOIA’s] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.”) (internal quotation marks and citation omitted).

²⁰ For example, just last month, on July 2, 2025, ICE disclosed without charge documents responsive to an ACLU and ACLU-COFOIA request regarding plans for expanding detention facilities in the West (ICE FOIA Case No. 2025-ICLI-00050). Similarly, in August 2016, the ICE FOIA Office and DHS Privacy Office both granted fee waivers to the ACLU for a FOIA request seeking a DHS OIG super-memorandum and ICE’s response to that memorandum. Likewise, in March 2016, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about selected deaths in detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office. In July 2015, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about the use of segregation in ICE detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office.

to widely disseminate the requested information through a variety of sources, including reports, newsletters, news briefings, right-to-know handbooks, and other materials, to the public at no cost. Indeed, obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of Requestor's work and are among its primary activities. See ACLU, 321 F. Supp. 2d at 29 n.5 (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").²¹ Moreover, as mentioned supra, Requestor intends to distribute the information obtained through this FOIA request via its website and/or other means available to it.

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

The requested records are also urgently needed to inform the public about actual or alleged government activity. See 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, the requested records pertain to ICE's active plans to expand immigration detention facilities in Colorado.

Detention of noncitizens, and ICE's decision to expand or end detention contracts, is a matter of significant government activity and public interest. ²² Plans to expand or close detention facilities in the areas identified by the RFI is a matter of widespread media interest, which have closely followed and reported on local and national administrative measures to restrict detention, close detention facilities, or open new facilities in Colorado.²³ Members of Congress—including those representing states where ICE has sought proposals for expanded immigration detention in

²¹ Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are "primarily engaged in disseminating information." See, e.g., Leadership Conference on Civil Rights, 404 F. Supp. 2d at 260; ACLU, 321 F. Supp. 2d at 29 n.5; Elec. Privacy Info. Ctr., 241 F. Supp. 2d at 11.

²² See, e.g. Ted Hesson, Mica Rosenberg, and Kristina Cooke, Biden Vowed to Reform Immigration Detention. Instead, Private Prisons Benefited, Reuters, Aug. 7, 2023, <https://www.reuters.com/world/us/biden-vowed-reform-immigration-detention-instead-private-prisons-benefited-2023-08-07/>; Jose Olivares, Investigators Wanted to Close an Abusive ICE Facility. Biden's Administration Extended Its Contract, The Appeal, Jul. 25, 2024, <https://theappeal.org/biden-admin-extended-contract-abusive-ice-detention-center/>; Austin Fisher, Torrance County Commission Votes to Extend ICE Contract, Source New Mexico, Apr. 25, 2024, <https://sourcennm.com/2024/04/25/torrance-county-commission-votes-to-extend-ice-contract/>; Allison Kite, Shuttered Private Jail in Leavenworth Could Become ICE Detention Center, Kansas Reflector, Sept. 6, 2023, <https://kansasreflector.com/2023/09/06/shuttered-private-jail-in-leavenworth-could-become-ice-detention-center/>; Jose Abonce, ICE Detains Illinois Immigrants in Out-of-State Jails, South Side Weekly, Dec. 6, 2023, <https://southsideweekly.com/ice-detains-chicago-immigrants-in-wisconsin-despite-illinois-way-forward-act/>.

²³ See, e.g. Phil Stewart and Idrees Ali, ICE to Use U.S. Military Base in Colorado to Detain Migrants, Reuters, Jan. 28, 2025, <https://www.reuters.com/world/us/ice-use-us-military-base-colorado-detain-migrants-2025-01-29/>; Matt Bloom, Colorado Joins Growing Number of States Banning Local Jails and Prisons from Partnering with ICE to Hold Immigration Detainees, CPR News, Jun. 9, 2023, <https://www.cpr.org/2023/06/09/colorado-jails-prisons-ice-detainees-agreements-ban/>.

this RFI—have repeatedly raised concerns about conditions of confinement, continued presence, use of private prison detention facilities, and expansion of detention with the Department of Homeland Security.²⁴ The requested records will inform the public of activity by ICE and DHS. 5 U.S.C. § 552(a)(6)(E)(i)(I).

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi) and 6 C.F.R. § 5.5(e)(3).

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

Sara Neel
ACLU of Colorado
303 17th Ave, Ste. 350
Denver, CO 80203
sneel@aclu-co.org

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny a waiver of fees. Please email or call me at the contact information above if you have any questions or wish to obtain further information about the nature of the records in which we are interested.

Sincerely,

/s/ Sara R. Neel

Sara R. Neel
Senior Staff Attorney
ACLU Foundation of Colorado

²⁴ Letter from Rep. Jason Crow, et al., to DHS Inspector Gen. Joseph Cuffari, Aug. 5, 2024, https://crow.house.gov/sites/evo-subsites/crow.house.gov/files/evo-media-document/08.05.2024%2C%20DHS%20OIG%2C%20ICE%2C%20Inspections_Final.pdf [<https://perma.cc/8SRK-2BEK>]; Sen. Elizabeth Warren, et al., to DHS Secretary Alejandro Mayorkas, May 14, 2024, https://www.warren.senate.gov/imo/media/doc/final_-_letter_to_dhs_and_ice_on_private_detention_center_use_05142024.pdf [<https://perma.cc/EJ5T-HC4L>]; Letter from Rep. Pramila Jayapal and Adam Smith, to DHS Secretary Alejandro Mayorkas, Jul. 16, 2024, <https://jayapal.house.gov/wp-content/uploads/2024/07/Mayorkas-Letter-Dilley-Closure-071624.pdf> [<https://perma.cc/Q5JD-PAC8>]; Letter from 50 Members of Congress to DHS Secretary Alejandro Mayorkas, Feb. 16, 2024, <https://jayapal.house.gov/wp-content/uploads/2024/02/ICE-Detention-Closure-Letter-021624.pdf> [<https://perma.cc/B4TV-75JZ>].

Exhibit B

[REDACTED]

[REDACTED]

[REDACTED]

From: ice-foia@ice.dhs.gov <noreply@securerelease.us>

Sent: Wednesday, August 13, 2025 8:31 AM

To: Sara Neel - she/her/hers <sneel@aclu-co.org>

Subject: ICE FOIA 2025-ICFO-53841

This Message Is From an External Sender

This message came from outside your organization.

08/13/2025

Sara Neel
303 E. 17th Ave.
Denver, Colorado 80203

RE: ICE FOIA Case Number 2025-ICFO-53841

Dear Requester:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated 8/8/2025, your request for a waiver of all assessable FOIA fees, and your request for expedited treatment. Your request was received in this office on 8/8/2025. Specifically, you have requested records pertaining to the plan to increase detention capacity for immigration in Colorado or Wyoming. Seek period February 21, 2025 to present .

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you're able to narrow the scope of your request please contact our office. Narrowing the scope may speed up the search process. We will make every effort to comply with your request in a timely manner.

Under the DHS FOIA regulations, expedited processing of a FOIA request is warranted if the request involves “circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual,” 6 C.F.R. § 5.5(e)(1)(i), or “an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information,” 6 C.F.R. § 5.5(e)(1)(ii). Requesters seeking expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct. 6 C.F.R. § 5.5(e)(3).

Your request for expedited processing is denied because you do not qualify for either category under 6 C.F.R. § 5.5(e)(1). You failed to demonstrate a particular urgency to inform the public about the government activity involved in the request beyond the public’s right to know about government activity generally. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

If you deem the decision to deny expedited treatment of your request an adverse determination, you have the right to appeal. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.5(e)(2). You may submit your appeal electronically at GILDFOIAAppeals@ice.dhs.gov or via regular mail to:

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street,, S.W., Mail Stop 5900
Washington, D.C. 20536-5900

Your envelope and letter should be marked “FOIA Appeal.” Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

ICE has queried the appropriate program offices within ICE 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.

If you have any questions, please contact FOIA Public Liaison Daniel Edgington, at (866) 633-1182 or 500 12th St, SW Stop 5009 Washington, DC 20536-5009. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448.

Your request has been assigned reference number 2025-ICFO-53841. Please use this number in future correspondence.

Sincerely,

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

Exhibit 4

Sara Neel - she/her/hers

From: ice-foia@ice.dhs.gov <noreply@securerelease.us>
Sent: Friday, August 15, 2025 12:29 PM
To: Sara Neel - she/her/hers
Subject: ICE FOIA 2025-ICAP-00387, 2025-ICFO-53841

This Message Is From an External Sender

This message came from outside your organization.

08/15/2025

Sara Neel
303 E. 17th Ave.
Denver, Colorado 80203

RE: ICE FOIA Case Number 2025-ICAP-00387, 2025-ICFO-53841

Dear Requester:

The Department of Homeland Security has received your letter appealing the adverse determination of your Freedom of Information Act/Privacy Act (FOIA/PA) request by U.S. Immigration and Customs Enforcement. Your appeal was dated and received on 8/15/2025.

The Government Information Law Division acknowledges your appeal request of and is assigning it number 2025-ICAP-00387 for tracking purposes. Please reference this number in any future communications about your appeal.

A high number of FOIA/PA requests have been received by the Department. Accordingly, we have adopted the court-sanctioned practice of generally handling backlogged appeals on a first-in, first-out basis. While we will make every effort to process your appeal on a timely basis, there may be some delay in resolving this matter. Should you have any questions concerning the processing of your appeal, please contact Daniel Edgington ICE FOIA Office/Public Liaison at (866) 633-1182 or at 500 12th St., SW Washington, DC 20536-5009.

Sincerely,

Sara Jazayeri
Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
U.S. Department of Homeland Security

Exhibit 5

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



U.S. Immigration
and Customs
Enforcement

September 15, 2025

Sara Neel
ACLU of Colorado
303 E. 17th Ave., Suite 350
Denver, CO 80203
sneel@aclu-co.org

RE: 2025-ICAP-00387, 2025-ICFO-53841

Dear Ms. Neel:

This is in response to your letter dated August 15, 2025, received that same date, appealing the U.S. Immigration and Customs Enforcement's (ICE) Freedom of Information Act (FOIA) Office's denial of your request for expedited processing to your FOIA request dated August 8, 2025, seeking the following records:

This Request seeks, for the period from February 21, 2025 to the present, the following records:

- Ramp-up plans for adding detention capacity for immigrants in Colorado or Wyoming.
- Emails including the keywords "Hudson," "Big Horn," "Huerfano," or "Southern Ute."

Expedited Treatment

In your request, you raised one condition to rationalize expedited processing, that you are primarily engaged in disseminating information and that there is an urgency to inform the public about an actual or alleged federal government activity.

By letter dated August 13, 2025, the ICE FOIA Office acknowledged receipt of your FOIA request, and denied your request for expedited processing. With respect to the latter, the ICE FOIA office stated:

Your request for expedited processing is denied because you do not qualify for either category under 6 C.F.R. § 5.5(e)(1). You failed to demonstrate a particular urgency to inform the public about the government activity involved in the request beyond the public's right to know about government activity generally. Your letter was conclusory

Sara Neel

Page 2

in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

You have appealed the denial of expedited treatment of your FOIA request. In your appeal, you explain you are seeking a small number of documents, and that your request was not conclusory but “well-supported and provided an extensive rationale.” To support this assertion, you cite your August 8, 2025, FOIA request.

On appeal, ICE employs a *de novo* review of the denial of expedited treatment of your FOIA request. As a requester, you bear the burden under the FOIA of showing that your request satisfies the requirements for expedited treatment.

The DHS FOIA Regulations at 6 C.F.R. § 5.5(e) provide the following four situations in which expedited processing is warranted:

- (i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information;
- (iii) The loss of substantial due process rights; or
- (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.

The first situation in which processing on an expedited basis is appropriate requires a showing of circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. You have not provided any specific evidence demonstrating that standard processing of the request would pose an imminent threat to the life or physical safety of any particular individual.

The second situation in which processing on an expedited basis is appropriate has two prongs. The first requirement is that there is an “urgency to inform the public about an actual or alleged federal government activity.” The second requirement is that the requester “is primarily engaged in disseminating information.” Although you may have demonstrated that you represent an organization that is primarily engaged in disseminating information, you have only tangentially demonstrated an urgency to inform the public about a federal government activity by connecting the request to general widespread media interest following and reporting on local and national administrative measures to expand or open new facilities.

The “urgency to inform the public” prong determination hinges on three factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity. *Am. Civil Liberties Union v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 (D.D.C. 2004). The first two factors have not been satisfied. You have not demonstrated that the request concerns a matter of current exigency to the American public. The ICE FOIA Office’s August 13, 2025 letter, responding to your FOIA request, noted that you failed to show a particular urgency to inform the public about government

Sara Neel
Page 3

activity beyond the public's right to know about government activity generally. You have not responded to this issue in your appeal and therefore your request for expedited treatment fails under 6 C.F.R. § 5.5(e)(1)(ii). .

With regard to the third situation in which processing on an expedited basis is appropriate, a request may be expedited if it is shown that substantial due process rights of the requester would be impaired by the failure to process immediately, and that the information sought is not otherwise available. Here, you did not make a showing of a loss of substantial due process rights. Thus, your request for expedited treatment fails under 6 C.F.R. § 5.5(e)(1)(iii).

Finally, with regard to the fourth situation in which processing on an expedited basis is appropriate, you claim that the subject matter of your request is a matter of widespread media interest but present no fact or argument that there exists possible questions about the government's integrity which affect public confidence. Therefore, your request for expedition fails under 6 C.F.R. § 5.5(e)(1)(iv).

However, upon a complete review of the administrative record, ICE has determined that the ICE FOIA Office did not provide you with a final response to your FOIA request. We are therefore remanding your appeal to the ICE FOIA Office for the completion of processing, including tasking to the appropriate agency/office(s) to obtain any responsive documents. The ICE FOIA Office will respond directly to you.

Should you have any questions regarding this appeal decision, please contact ICE at ice-foia@dhs.gov. In the subject line of the email please include the word "appeal," your appeal number, which is **2025-ICAP-00387**, and the FOIA case number, which is **2025-ICFO-53841**.

Sincerely,

/s/ *Erick Cipau*

for Sara Jazayeri
Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
U.S. Department of Homeland Security

cc: The ICE FOIA Office