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EXECUTIVE DIRECTOR

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PRESIDENT



February 3, 2009

*Via E-mail and U.S. Mail*  
Freedom of Information Act Office  
U.S. Immigration and Customs Enforcement  
800 North Capitol St., NW, Room 585  
Washington, DC 20536

Re: FREEDOM OF INFORMATION ACT REQUEST  
Expedited Processing Requested

AMERICAN CIVIL  
LIBERTIES UNION FOUNDATION  
OF ARIZONA  
P.O. BOX 17148  
PHOENIX, AZ 85011-0148  
P/602.650.1967  
F/ 602.650.1376  
WWW.ACLUAZ.ORG

To Whom It May Concern:

This is a request for records made pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 522, implementing regulations 8 C.F.R. § 103.10 and 6 C.F.R. § 5, and any other applicable regulations.

#### **I. Request for Information**

The American Civil Liberties Union ("ACLU") of Arizona, the Northern Arizona Interfaith Council (NAIC), and the Flagstaff New Day Peace Center (FNDPC) hereby request disclosure of all records in your possession relating to civil immigration enforcement actions conducted by the U.S. Immigration and Customs Enforcement ("ICE") on November 19-23, 2008 in Coconino and Yavapai Counties (the "enforcement actions"), including but not limited to any actions undertaken by ICE's Fugitive Operations Teams.<sup>1</sup>

In particular, we request disclosure of any and all records created before, during, or after the enforcement actions containing:

1. Policies and procedures for civil immigration enforcement: records setting forth policies and procedures related to the planning and/or implementation of the enforcement actions, including:

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<sup>1</sup> The term "records" as used herein includes all records or communications in written or electronic form, including but not limited to correspondence, documents, data, videotapes, audio tapes, emails, faxes, telephone messages, logs, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, training manuals, other manuals, or studies. With respect to privacy concerns for members of the public, we will accept copies that are redacted to protect private information of individuals identified in the documents, such as names, social security numbers and alien numbers, but we would object to the redaction of their birthdates and birthplaces. In addition, we request that members of the public whose identifying information is redacted be identified with an alphanumeric code so that multiple records relating to the same individual will be recognized as such. This redaction agreement does not apply to the names and badge numbers of federal agents.

- a. Determining locations for enforcement actions;
  - b. Methods for entering residences and workplaces (i.e., presentation of administrative warrants, consent, etc);
  - c. Verifying that persons arrested are those identified in administrative warrants for arrest or removal;
  - d. When and how agents should identify themselves;
  - e. Treatment of minors encountered in an enforcement action;
  - f. Methods for contacting members of the public in the vicinity of residences or workplaces in which persons with outstanding deportation persons are suspected to reside or work (i.e., stops on premises, pedestrian stops, vehicle stops, searches, etc); and
  - g. The criteria or factors used to select members of the public to contact, including ethnic, racial or language characteristics, or other factors relating to perceived national origin.
2. Factual bases for enforcement: records referring to or relating to information that was received or considered that would affect the timing, location, or methods of the enforcement actions, including any requests from or to the local Office of Detention and Removal Operations to undertake the action and response thereto, and any factual or demographic analyses made or used in preparation for the enforcement actions;
  3. Training materials: records referring or relating to training for ICE agents regarding polices, procedures, law enforcement methods, and other restrictions on the conduct of ICE agents in the course of civil immigration enforcement actions, effective as of November 2008;
  4. Targets of enforcement effort: records referring or relating to categories, descriptions, or classifications of the intended targets of the enforcement actions, including but not limited to any lists of “fugitives” sought, information regarding their whereabouts that was or was not used to direct the enforcement action, and the success of the enforcement actions with respect to the targeted aliens in each designated category;
  5. Communication with local authorities: communications between any entity of ICE and any representative of the Arizona Department of Public Safety, or any subdivision of Coconino or Yavapai Counties or the Cities of Flagstaff, Prescott, or Sedona from July 2008 through January 2009 regarding a) the enforcement actions; b) demonstrations, activities, or events by members of the public; or c) policies and procedures governing or affecting immigration enforcement;
  6. Actions related to demonstrators immediately prior to or during the enforcement actions: records referring or relating to policies, practices, or actual conduct of ICE agents or local law enforcement authorities

with whom ICE was working with respect to members of public participating in demonstrations in the vicinity of the enforcement actions, including any videotape recordings generated by agents or officers whether in furtherance of an investigation or not;

7. Records for each action: post-investigation reports and other records that include:
  - a. The date, time, and location of the enforcement action;
  - b. Types of contacts with members of the public;
  - c. Names, titles, ranks, and total number of immigration agents involved;
  - d. Names and total number of officers from other law enforcement agencies involved; and
  - e. Daily logs, reports, memoranda, and notes created or maintained by agents or officers.
  
8. Aggregate data: we seek the following aggregate data for the enforcement actions, disaggregated by date and location:
  - a. The number of persons contacted, including consensual encounters, questioning of persons stopped by officers and questioning of persons in custody;
  - b. The number of persons arrested;
  - c. The number of arrested persons subsequently released;
  - d. The number of arrested persons subsequently placed in removal proceedings;
  - e. The number of arrested persons subsequently removed without removal proceedings;
  - f. The number of arrested persons for whom there were outstanding orders of removal at the time of their arrest;
  - g. The number of arrested persons for whom there were arrest warrants at the time of their arrest;
  - h. The number of arrested persons who were previously convicted of a crime;
  - i. The number of persons contacted in private residences;
  - j. The number of persons contacted at places of business;
  - k. The number of persons contacted on public streets;
  - l. The number of persons contacted in vehicles;
  - m. The numbers of persons contacted in schools;
  - n. The number of persons contacted within two blocks of a school, and the times at which contact occurred; and
  - o. The number of residences entered;
  - p. The number of residences entered on consent;
  - q. The number of residences entered after presentation of an administrative warrant of arrest or removal;
  - r. The number of residences entered after presentation of a court warrant.

## II. Request for Expedited Processing

We seek expedited processing of this request. FOIA provides for expedited processing of requests for agency records, directing agencies to “process as soon as practicable any requests for records to which [they have] granted expedited processing.” 5 U.S.C. § 552(a)(6)(E)(iii). Expedition is available for requests “(I) in cases in which the person requesting the records demonstrates a compelling need; and (II) in other cases determined by the agency.” 5 U.S.C. § 552(a)(6)(E)(i). See also ACLU v. Department of Justice, 321 F. Supp. 2d 24, 27–28 (D.D.C. 2004).

There is a compelling need for the information requested. With respect to entities “primarily engaged in disseminating information,” a compelling need is demonstrated by an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). Among the factors to be considered as to whether there is a compelling need are “whether the request concerns a matter of current exigency to the American public” and “whether the consequences of delaying a response would compromise a significant recognized federal government activity.” ACLU v. Department of Justice, 321 F. Supp 2d at 29.

According to news reports and press releases, in November 2008, ICE led an interagency task force to apprehend “criminal aliens, immigration fugitives and immigration violators” in Flagstaff, Sedona, and Prescott Valley, Arizona. “ICE Bust Nets 80 Arrests Including Alleged Immigration Fugitives,” *ICE and Yavapai County Sheriff’s Office News Release*, Nov. 24, 2008, available at [azfamily.com](http://azfamily.com); see also Larry Hendricks, “16 Arrested in ICE Raids So Far,” *Arizona Daily Sun*, Nov. 22, 2008; Larry Hendricks, “ICE Raids Target Illegals,” *Arizona Daily Sun*, Nov. 21, 2008. There have been reports that ICE, sometimes in cooperation with state or local law enforcement, illegally entered and searched homes and workplaces and violated the due process rights of immigrants and U.S. citizens. If true, these reports could undermine trust towards law enforcement authorities and jeopardize public safety in immigrant communities.

A delayed response to this request would compromise a significant public interest because it would prevent communities from being able to engage in timely, thoughtful debate regarding immigration enforcement actions and potential detrimental effects on matters of public concern.

## III. Request for Fee Waiver

The ACLU of Arizona, NAIC, and FNDPC additionally request a waiver of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents shall be furnished without any charge or at a [reduced] charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”). Disclosure in this case meets the

statutory criteria, and a fee waiver would fulfill Congress's legislative intent in amending FOIA. See Judicial Watch, Inc. v. Rossotti, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (internal quotation omitted)).

## 1. Requestors

The ACLU of Arizona is an affiliate of the ACLU, a national organization that works to defend and preserve individual rights and freedoms provided by the Constitution and the laws of the United States for all people, including the basic constitutional rights to privacy, free expression, and due process of law. The ACLU of Arizona, which is responsible for serving the residents of Arizona, has more than 500,000 members. One of its major activities is to disseminate information to its members and to the general public about issues of concern.

NAIC is a non-profit network of congregations serving the Flagstaff, Verde Valley and Prescott areas of Coconino and Yavapai Counties whose mission is to build relational power for collective actions in the pursuit of justice and the common good. Through individual, house, and community meetings, it creates leadership and awareness about the issues confronting families, especially within low-income and minority communities.

FNDPC is a grassroots organization dedicated to promoting the principles and practice of nonviolent social change by providing a center for community peace education, initiating projects that promote peace and social justice, and by providing resources for the local community, students, veterans, and conscientious objectors.

## 2. Basis for Fee Waiver

Disclosure pursuant to this request is in the public interest. First, the records pertain directly to the operations and activities of the federal government (of which ICE is an agency) within various communities of Arizona. Second, disclosure will advance the understanding of the general public. The general public's understanding is advanced when the requestor has "knowledge or expertise as may be necessary to understand the information. 28 C.F.R. Part 16.11(k)(2)(iii). One of the requestors in this case has significant knowledge and expertise in this area and disclosure to the ACLU is likely to "contribute significantly to public understanding." 28 C.F.R. Part 16.11(k)(2)(iv).

Furthermore, because at least one of the requestors qualifies as a "representative of the news media" as defined by FOIA, ICE should find that the requestors have the "intention to effectively convey information to the public." 28 C.F.R. Part 16.11(k)(2)(iii). The ACLU of Arizona meets the definition of a representative of the news media because it is "an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into distinct work, and distributes that work to an audience." National Security Archive v.

Department of Defense, 880 F.2d 1381, 1387 (D.C. Cir. 1989). The ACLU of Arizona regularly gathers information on issues of public significance; uses its editorial skills to turn that information into distinct publications such as reports, newsletters, right-to-know pamphlets, fact sheets, and other educational materials; and distributes those materials to the general public.

Finally, disclosure is not in the requestors' "commercial, trade, or profit interest[]." 28 C.F.R. § 16.11(b)(1). For example, the ACLU is a "non-profit, non-partisan, public interest organization." See Judicial Watch, 326 F.3d at 1310. The purpose of the request is to monitor and vindicate legal rights; it is unrelated to commercial business, trade or profit.

Because the ACLU nationally and locally meets the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU and its regional affiliates. The fees should likewise be waived in this instance. If a fee waiver is denied, the requestors are prepared to pay fees up to \$25. We ask that you inform us first if fees in excess of \$25 may be charged, though we reserve the right to appeal a denial of fee waivers.

As the Obama Administration recently declared, all agencies are bound by "a presumption in favor of disclosure . . . to all decisions involving FOIA." 74 Fed. Reg. 4683 (Memorandum of the President dated Jan. 21, 2009). If this request is denied in whole or in part, we additionally ask that you justify all deletions by reference to specific provisions under the Freedom of Information Act. We expect you to release all segregable portions of otherwise exempt material. The requestors reserve the right to appeal a decision to withhold any information or to deny a waiver.

Thank you for your prompt attention to this matter. We look forward to receiving a determination of the request for expedited processing within ten (10) calendar days and a determination on this request for documents within twenty (20) days following receipt of this letter. See 28 C.F.R. § 16.5(d)(4); 5 U.S.C. § 552 (a)(6)(A)(i). Please furnish all applicable records to: Legal Department, American Civil Liberties Union of Arizona, P.O. Box 17148, Phoenix, AZ 85011-0148. If you have any questions regarding this matter, please telephone me at (602) 650-1854 ext.103.

Sincerely,

/s/

Dan Pochoda  
Legal Director  
American Civil Liberties Union of Arizona

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