

SANA A. SINGH (SBN 34614)
ssingh@aclunc.org
MICHELLE (MINJU) CHO (SBN 321939)
mcho@aclunc.org
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA
39 Drumm Street
San Francisco, California 94111
Phone: (415) 621-2493
Facsimile: (415) 255-8437

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO-OAKLAND DIVISION**

AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA,

Plaintiff,

v.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT,

Defendant.

CASE NO. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF FOR
VIOLATION OF THE FREEDOM
OF INFORMATION ACT, 5 U.S.C.
§ 552 ET SEQ.**

INTRODUCTION

1. The American Civil Liberties Union of Northern California (“ACLU NorCal”) brings this action against the United States Immigration and Customs Enforcement (“ICE”) under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, to enforce the public’s right to know about grievances filed at ICE’s immigration detention facilities in California.

2. The federal government detains more immigrants in California than in all but two other states in the nation.¹ Individuals are detained within the state across six² detention facilities, which operate through contracts between ICE and private detention contractors.³ Abuses at immigration detention facilities in California are rampant and severe as documented in complaints filed with the Department of Homeland Security’s Office for Civil Rights and Civil Liberties

¹ Transactional Records Access Clearinghouse, *Detention Facilities Average Daily Population*, <https://trac.syr.edu/immigration/detentionstats/facilities.html> (last visited June 1, 2023).

² *Detention Facilities*, U.S. IMMIGR. & CUSTOMS ENF’T, <https://www.ice.gov/detention-facilities?state=3&office=&name=> (last visited June 1, 2023).

³ See *Detention Facility Contracts – H.R. 116-458 P. 38*, U.S. IMMIGR. & CUSTOMS ENF’T, <https://www.ice.gov/foia/library> (last visited June 1, 2023), for a selection of contracts between private detention contractors and ICE released pursuant to FOIA requests.

1 (“CRCL”),⁴ lawsuits,⁵ medical journals,⁶ and in reports and publications by other federal agencies.⁷

2 3. On February 6, 2023, ACLU NorCal submitted a FOIA request to ICE seeking
3 grievance logs maintained at each of the six immigration detention facilities in California for the
4 previous month. ACLU NorCal filed subsequent, identical requests on March 1, 2023; April 3, 2023;
5 May 4, 2023; and June 5, 2023. As the requests make clear, ACLU NorCal does not seek copies of
6 individual grievances, but only the grievance logs that ICE’s own operating guidelines require it to
7 collect and maintain.
8

9 4. ICE acknowledged receipt of each request, sought a ten-day extension for each
10 request, and denied expedited processing on three of the requests. Nonetheless, since February 6,
11

12 ⁴ ACLU of Northern California, *Civil Rights Groups File Complaint Against ICE and Contractors for*
13 *Violating First Amendment Rights of People in Immigration Detention* (Aug. 26, 2021),
14 [https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-](https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-amendment)
15 [amendment](https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-amendment); California Collaborative for Immigrant Justice, *Detained Leaders file simultaneous federal*
16 *complaints against ICE, GEO Group & MTC* (Sept. 13, 2022), [https://www.ccijustice.org/post/detained-](https://www.ccijustice.org/post/detained-leaders-file-simultaneous-federal-complaints-against-ice-geo-group-mtc)
17 [leaders-file-simultaneous-federal-complaints-against-ice-geo-group-mtc](https://www.ccijustice.org/post/detained-leaders-file-simultaneous-federal-complaints-against-ice-geo-group-mtc); ACLU of Northern California et al.,
18 *DHS Office for Civil Rights and Civil Liberties Complaint Re: Sexually Abusive Pat-Downs Against*
19 *Individuals in Immigration Detention at Mesa Verde Detention Facility* (Jan. 17, 2023),
20 <https://www.aclunc.org/sites/default/files/Mesa%20Verde%20Complalint%20only%2001.23.pdf>.

21 ⁵ See, e.g., Farida Jhabvala Romero, *ICE Detainees Making \$1 a Day Sue Over Alleged Wage Theft*, KQED
22 (July 16, 2022), [https://www.kqed.org/news/11919749/ice-detainees-making-1-a-day-sue-over-alleged-wage-](https://www.kqed.org/news/11919749/ice-detainees-making-1-a-day-sue-over-alleged-wage-theft)
23 [theft](https://www.kqed.org/news/11919749/ice-detainees-making-1-a-day-sue-over-alleged-wage-theft); Andrea Castillo, *ICE held a man in solitary confinement for more than a year. He’s suing under a new*
24 *California law*, L.A. TIMES (Oct. 14, 2021), [https://www.latimes.com/california/story/2021-10-14/ice-](https://www.latimes.com/california/story/2021-10-14/ice-lawsuit-california-solitary-confinement-detention-citizen)
25 [lawsuit-california-solitary-confinement-detention-citizen](https://www.latimes.com/california/story/2021-10-14/ice-lawsuit-california-solitary-confinement-detention-citizen); Lawyers’ Committee For Civil Rights,
26 *Groundbreaking COVID-19 Settlement to Yield Protections for Immigrants Detained by ICE, Limit Re-*
27 *detention for People Released* (Jan. 27, 2022), [https://lccrsf.org/pressroom_posts/groundbreaking-covid-19-](https://lccrsf.org/pressroom_posts/groundbreaking-covid-19-settlement-to-lead-protections-for-immigrants-detained-by-ice-limit-re-detention-for-people-released/)
28 [settlement-to-lead-protections-for-immigrants-detained-by-ice-limit-re-detention-for-people-released/](https://lccrsf.org/pressroom_posts/groundbreaking-covid-19-settlement-to-lead-protections-for-immigrants-detained-by-ice-limit-re-detention-for-people-released/).

⁶ Altaf Saadi et al., *Cumulative Risk of Immigration Prison Conditions on Health Outcomes Among Detained*
Immigrants in California, 9 J. OF RACIAL AND ETHNIC HEALTH DISPARITIES 2518 (Nov. 29, 2021),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8628823/>.

⁷ Office of Inspector Gen., U.S. Dep’t of Homeland Sec., *OIG-20-42, Early Experiences with COVID-19 at*
ICE Detention Facilities (2020), [https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-42-](https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-42-Jun20.pdf)
[Jun20.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-42-Jun20.pdf); Office of Inspector Gen., U.S. Dep’t of Homeland Sec., *OIG-18-86, Management Alert—Issues*
Requiring Action at the Adelanto ICE Processing Center in Adelanto, California (2018),
<https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>; Office of Inspector Gen.,
U.S. Dep’t of Homeland Sec., *OIG-21-12, ICE Needs to Address Prolonged Administrative Segregation and*
Other Violations at the Imperial Regional Detention Facility (2020),
[https://www.oig.dhs.gov/reports/2021/ice-needs-address-prolonged-administrative-segregation-and-other-](https://www.oig.dhs.gov/reports/2021/ice-needs-address-prolonged-administrative-segregation-and-other-violations-imperial-regional-detention-facility/oig-21-12-dec20)
[violations-imperial-regional-detention-facility/oig-21-12-dec20](https://www.oig.dhs.gov/reports/2021/ice-needs-address-prolonged-administrative-segregation-and-other-violations-imperial-regional-detention-facility/oig-21-12-dec20); Office of Inspector Gen., U.S. Dep’t of
Homeland Sec., *Capping Report: Observations of Unannounced Inspections of ICE Facilities in 2019* (2020),
<https://www.oig.dhs.gov/sites/default/files/assets/2020-07/OIG-20-45-Jul20.pdf>.

1 2023, ICE has failed to produce any records for any of these straightforward requests and, despite
2 ACLU NorCal's attempts to follow up, has likewise failed to provide any information about the
3 status of the requests.

4 5. ACLU NorCal now brings this action to enforce the public's right, under FOIA, to
5 records related to the unconstitutional conditions in immigration detention facilities in California, a
6 matter of grave public concern.
7

8 **PARTIES**

9 6. Plaintiff ACLU NorCal is a non-profit organization and an affiliate of the national
10 American Civil Liberties Union, the nation's predominant civil rights organization. ACLU NorCal is
11 committed to government transparency and accountability and seeks to ensure that the American
12 public is informed about the conduct of its government in matters that impact civil liberties and
13 human rights. ACLU NorCal is established under the laws of the state of California and is
14 headquartered in San Francisco, California. In support of its mission, ACLU NorCal uses its
15 communications department to disseminate to the public information relating to its mission, through
16 its website, newsletters, in-depth reports, and other publications.
17

18 7. Defendant ICE is a component of the U.S. Department of Homeland Security
19 ("DHS"). ICE is an agency within the meaning of 5 U.S.C. § 552(f). The agency has its headquarters
20 in Washington, D.C., and has field offices all over the country, including San Francisco, California.
21 ICE has possession, custody, and control of the records that ACLU NorCal seeks.
22

23 **JURISDICTION**

24 8. This Court has subject matter jurisdiction and personal jurisdiction over the parties
25 pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has subject matter
26 jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1346.
27
28

VENUE AND INTRADISTRICT ASSIGNMENT

9. Venue is proper in this district pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 28 U.S.C. §§ 1391(e) and 1402 because Plaintiff ACLU NorCal has its principal place of business in this district.

10. Pursuant to Civil Local Rule 3-2(c) and (d), assignment to the San Francisco division is proper because Plaintiff ACLU NorCal is headquartered in San Francisco.

FACTUAL ALLEGATIONS

The Conditions in Immigration Detention Facilities Run by For-Profit Corporations in Contract with the Federal Government Are a Matter of Significant Public Interest

11. In just the past five years, the conditions in immigration detention facilities across California have been the subject of numerous lawsuits and much media coverage. These lawsuits and media have revealed conditions such as excessive and retaliatory use of solitary confinement,⁸ sexual abuse,⁹ and unsafe living conditions.¹⁰

12. As detailed in a report recently published by the California Department of Justice, as a direct result of litigation, the number of people detained at ICE facilities in California was “sharply reduced in 2020 and remained well under pre-pandemic numbers in 2021.”¹¹ However, during that same time frame, “the average number of days a person was detained in the facilities across the State increased exponentially.”¹² According to the report, four out of six of the immigration detention

⁸ Complaint for Declaratory & Injunctive Relief & Damages, *Gomez v. GEO Group, Inc.*, No. 1:22-CV-00868-ADA-CDB, 2022 WL 17741040, at 12 (E.D. Cal. July 13, 2022), <https://www.classaction.org/media/gomez-et-al-v-the-geo-group-inc.pdf>; Castillo, *supra* note 5; OIG-21-12, *supra* note 7.

⁹ Castillo, *supra* note 5.

¹⁰ Gustavo Solis, *ICE Detainees in Imperial County Allege Negligent Medical Care, Other Abuses*, KPBS (Sept. 19, 2022), <https://www.kpbs.org/news/local/2022/09/19/ice-detainees-in-imperial-county-allege-negligent-medical-care-other-abuses>.

¹¹ Cal. Dep’t of Just., *Immigration Detention in California: A Review of Detention Facilities’ Response to COVID-19 as of Fall 2021* 1 (2022), <https://oag.ca.gov/system/files/media/immigration-detention-2022.pdf>.

¹² *Id.*

1 facilities in California had an average length of stay of over 100 days.¹³ At Adelanto ICE Processing
 2 Center, the average length of stay was 719 days, or just short of two years.¹⁴

3 13. On February 17, 2023, eighty-two immigrants in detention launched a hunger strike
 4 to protest inhumane conditions at Mesa Verde ICE Processing Center and Golden State Annex¹⁵—
 5 two of the facilities about which ACLU NorCal seeks records. Many individuals refused to eat for
 6 weeks, despite suffering illegal retaliation in the form of physical abuse, disconnected phone lines,
 7 and the unjustified transfer of seven individuals to El Paso, Texas.¹⁶

9 14. The public has the right to know about the conditions in ICE facilities that led eighty-
 10 two individuals to starve themselves in protest. Against this backdrop of historical abuses and
 11 patterns of retaliation, there is significant reason to believe that ICE persists in maintaining
 12 unconstitutional, cruel, and degrading conditions in immigration detention facilities within the state.
 13 This state of affairs requires immediate and decisive remedial action, which necessarily entails, first
 14 and foremost, full transparency into the nature of the prevailing conditions.

16 15. The 2011 ICE Performance-Based National Detention Standards (“PBNDS”), which
 17 govern the standard of care at all facilities in California, mandate a functioning grievance system.¹⁷
 18 Individuals in detention have diligently utilized the grievance systems available at their respective
 19 facilities to seek corrective action regarding substandard living conditions and mistreatment. These
 20

22 ¹³ *Id.*

23 ¹⁴ *Id.*

24 ¹⁵ ACLU of Northern California, *Hunger Strikers in Central Valley Immigration Detention Facilities File Class Action Lawsuit Against ICE, GEO Group for Illegal Retaliation* (Feb. 24, 2023),
<https://www.aclunc.org/news/hunger-strikers-central-valley-immigration-detention-facilities-file-class-action-lawsuit>.

25 ¹⁶ ACLU of Northern California, *Detained Individuals Forced to Pause Hunger Strike at Central Valley Immigration Detention Facilities, Following Weeks of Retaliation and Medical Negligence* (Mar. 29, 2023),
<https://www.aclunc.org/news/detained-individuals-forced-pause-hunger-strike-central-valley-immigration-detention>.

27 ¹⁷ Performance-Based National Detention Standards 2011, U.S. IMMIGR. & CUSTOMS ENF’T (rev’d Dec. 2016), § 6.2 [hereinafter PBNDS], <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>
 28

grievance systems are an essential tool for documenting the conditions in facilities and are often the only way individuals in detention can assert their civil and human rights.¹⁸

16. ICE does not maintain public repositories of grievances filed at immigration detention facilities. Accordingly, the public remains largely unaware of how many grievances are filed at particular facilities and within individual state like California. The public is likewise in the dark as to how those grievances are handled, and further, to what extent individuals in detention have any protections for asserting their basic human rights.

17. As of 2019, more than three million Californian U.S. citizens and permanent residents lived in mixed-status families with undocumented relatives.¹⁹ These Californians have an urgent need to know about the conditions their loved ones face in immigration detention as documented through grievances filed by people in detention.

18. More broadly, the general public plainly has an interest in knowing about the conditions within facilities operating under government contract. In fact, “the core purpose of the FOIA” is to “contribut[e] significantly to public understanding *of the operations or activities of the government*.”²⁰

19. ACLU NorCal has endeavored to fill this gap in public understanding via requests for records under FOIA. The information sought in ACLU NorCal’s FOIA requests would reveal critical information concerning the way immigration detention facilities in California use and maintain a grievance system and how they handle and respond to urgent grievances submitted by people

¹⁸ See Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>; Gabe Ortiz, *Lawmakers Urge Probe into Allegations of Abuse and Retaliation at Private Detention Facilities*, DAILY KOS (Sept. 19, 2022), https://www.dailykos.com/stories/2022/9/19/2123837/-Lawmakers-urge-probe-into-allegations-of-abuse-and-retaliation-at-private-detention-facilities?utm_campaign=recent.

¹⁹ Cal. Immigrant Data Portal, *Mixed-Status Families*, <https://immigrantdataca.org/indicators/mixed-status-families> (last visited June 22, 2023).

²⁰ *U.S. Dep’t of Just. v. Reps. Comm. For Freedom of Press*, 489 U.S. 749, 775 (1989) (emphasis in original).

1 detained at those facilities. This information would shed light on important ongoing public debates
2 about immigration detention and conditions in communities across the country.

3 **ACLU NorCal Has Submitted Multiple FOIA Requests to ICE, But ICE Has Failed to**
4 **Produce Any Records or Explain When it Will Do So**

5 20. On February 6, 2023, ACLU NorCal submitted a FOIA request to ICE seeking
6 information related to grievance logs maintained by all six California immigration detention
7 facilities. A copy of ACLU NorCal's request is appended hereto as Exhibit 1.

8 21. Specifically, the request seeks the following records held by ICE from the period of
9 January 1 to 31 of 2023:
10

- 11 1. A copy of the detainee grievance log maintained by facility staff at Adelanto ICE Processing
- 12 2. A copy of the detainee grievance log maintained by facility staff at Desert View Annex in
- 13 3. A copy of the detainee grievance log maintained by facility staff at Golden State Annex in
- 14 4. A copy of the detainee grievance log maintained by facility staff at Imperial Regional
- 15 5. A copy of the detainee grievance log maintained by facility staff at Mesa Verde ICE
- 16 6. A copy of the detainee grievance log maintained by facility staff at Otay Mesa Detention
- 17 Processing Center in accordance with PBNDS Section 6.2(V)(D); and
- 18 Center in accordance with PBNDS Section 6.2(V)(D).

19 22. ICE acknowledged receipt of the request on February 9, 2023, assigning the request
20 tracking number 2023-ICFO-12506. *See* Exhibit 2. Simultaneously, ICE granted ACLU NorCal's
21 request for a fee waiver, denied ACLU NorCal's request for expedited processing, and invoked a 10-
22 day extension. *Id.* The 10-day extension expired on March 23, 2023.

23 23. ACLU NorCal filed a timely appeal of the denial of expedited processing on February
24 27, 2023. *See* Exhibit 3. On March 30, 2023, ICE denied ACLU NorCal's appeal. *See* Exhibit 4.

25 24. Since the February 9, 2023 communication, ICE has neither responded further nor
26 produced responsive records related to ACLU NorCal's February 6, 2023 request.
27
28

1 25. On March 1, 2023 (Reference No. 2023-ICFO-15587), April 3, 2023 (Reference No.
2 2023-ICFO-20329), May 4, 2023 (Reference No. 2023-ICFO-25150), and June 5, 2023 (2023-
3 ICFO-28869), ACLU NorCal submitted requests for grievance logs which were substantially
4 identical to those submitted on February 6, requesting that each of the six immigration detention
5 facilities in California provide grievance logs for the previous calendar month. Copies of each
6 request are appended hereto as Exhibits 5, 6, 7, and 8, respectively.

7
8 26. The following events ensued as to each request:

9 a. March 1, 2023 request:

- 10 ○ March 2: ICE acknowledged receipt, invoked a 10-day extension, and did
11 not address ACLU NorCal's requests for a fee waiver or expedited
12 processing. *See* Exhibit 9.
13 ○ April 12: The 10-day extension expired.
14 ○ As of the date of this filing, ACLU NorCal's requests for a fee waiver and
15 expedited processing remain pending on the SecureRelease portal.
16

17 b. April 3, 2023 request:

- 18 ○ April 12: ICE acknowledged receipt, invoked a 10-day extension, and did
19 not address ACLU NorCal's requests for a fee waiver or expedited
20 processing. *See* Exhibit 10.
21 ○ Late April: Counsel for ACLU NorCal logged into the SecureRelease
22 portal to check the status of the April 3, 2023 request and saw that the fee
23 waiver had been granted and the expedited processing had been denied.
24 ○ May 9: ACLU NorCal filed a timely appeal of the denial of expedited
25 processing. *See* Exhibit 11.
26 ○ May 11: ICE acknowledged the appeal on May 11, 2023 and assigned it
27
28

tracking number 2023-ICAP-00294. *See* Exhibit 12.

○ May 12: The 10-day extension expired.

c. May 4, 2023 request:

○ May 8: ICE acknowledged receipt of the May 4, 2023 request, invoked a 10-day extension, and did not address ACLU NorCal's requests for a fee waiver and expedited processing. *See* Exhibit 13.

○ June 20: The 10-day extension expired.

d. June 5, 2023 request:

○ June 5: ICE acknowledged receipt of the request, invoked a 10-day extension, granted ACLU NorCal's request for a fee waiver, and denied the request for expedited processing. *See* Exhibit 14.

○ June 13: ACLU NorCal filed a timely appeal of the denial of expedited processing. *See* Exhibit 15.

○ June 14: ICE acknowledged receipt of the appeal and assigned it tracking number 2023-ICAP-00389. *See* Exhibit 16.

27. As of the date of the filing of this Complaint, ACLU NorCal has not received a determination from ICE as to whether ICE will comply with the requests.

28. As of the date of filing of this Complaint, ACLU NorCal has not received any documents from ICE that are responsive to the requests or any correspondence indicating when they might provide any documents. This is so despite the simplicity of the requests, which are unlikely to require complex searches of agency databases.

29. ACLU NorCal has made repeated attempts to seek information about the status of its requests and to avoid the need for litigation. These attempts included an attorney at ACLU NorCal calling the FOIA Public Liaison by telephone on May 2, 2023. However, the call was routed to an

1 unmonitored inbox.

2 **ADMINISTRATIVE EXHAUSTION**

3 30. ACLU NorCal has exhausted all applicable administrative remedies because ICE
4 constructively denied NorCal's FOIA requests by failing to make any determination on the requests
5 within the statutory period. 5 U.S.C. 552(a)(6)(C)(i).
6

7 **CLAIM FOR RELIEF**
8 **Violation of the Freedom of Information Act**
9 **(5 U.S.C. §§ 552(a)(3), 552(a)(4), 552(a)(6))**

10 31. Plaintiff incorporates by reference the above paragraphs as if fully set forth herein.

11 32. Defendant has wrongfully withheld agency records requested by Plaintiff under FOIA
12 and has failed to comply with the statutory time for processing.

13 33. Plaintiff has exhausted the applicable administrative remedies.

14 34. Plaintiff is entitled to injunctive and declaratory relief with respect to the release and
15 disclosure of the requested documents because Defendant continues to improperly withhold agency
16 records in violation of FOIA. Plaintiff will suffer irreparable injury from, and has no adequate legal
17 remedy for, Defendant's illegal withholding of government documents pertaining to the subject of
18 Plaintiff's FOIA request.

19 **PRAYER FOR RELIEF**

20 Plaintiff respectfully requests that this Court:

21 A. Retain jurisdiction over this action to ensure that no agency records are
22 wrongfully withheld;

23 B. Declare that Defendant's failure to respond and disclose the records requested
24 by Plaintiff is unlawful;

25 C. Declare that Plaintiff is entitled to disclosure of the requested records;

26 D. Order Defendant to promptly conduct a thorough search for all responsive
27
28

1 records;

2 E. Order Defendant to immediately process and release, in their entirety,
3 unredacted versions of all records responsive to the FOIA requests that are not specifically
4 exempt from disclosure under FOIA, to Plaintiff;

5 F. Enjoin Defendant from continuing to withhold any and all non-exempt records
6 responsive to the FOIA requests;

7 G. Award Plaintiff its litigation costs and reasonable attorneys' fees incurred in
8 this action; and

9 H. Grant such other relief as the Court may deem just and proper.
10

11
12 Dated: June 23, 2023

Respectfully Submitted,

13
14 /s/ Sana A. Singh

15 Sana A. Singh (SBN 342614)
16 ssingh@aclunc.org
17 Michelle (Minju) Cho (SBN 321939)
18 mcho@aclunc.org
19 AMERICAN CIVIL LIBERTIES UNION
20 FOUNDATION
21 OF NORTHERN CALIFORNIA
22 39 Drumm Street
23 San Francisco, California 94111
24 Phone: (415) 621-2493
25 Facsimile: (415) 255-8437

26
27 *Attorneys for Plaintiff*
28

Exhibit 1



Northern
California

February 6, 2023

Via USPS Certified Mail, Email, and Secure Release Portal

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009
E-mail: ice-foia@dhs.gov

Re: FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities (Fee Waiver and Expedited Processing Requested)

Dear FOIA Officer:

I write on behalf of the American Civil Liberties Union of Northern California (“ACLU NorCal” or “Requestor”) to request records related to grievances filed at California immigration detention facilities. This request (“Request”) is made pursuant to the Freedom of Information Act, 5 U.S.C. § 522 *et seq.*, implementing regulations 6 C.F.R. § 5.1 *et seq.*, and any other applicable regulations.

We ask that you direct this request to all appropriate offices, components, divisions, and/or directorates within Immigration and Customs Enforcement (“ICE”), including but not limited to the ICE Office of Professional Responsibility and the ICE Office of Detention Oversight divisions of ICE.

ACLU NorCal further 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

The ongoing detention of individuals in immigration detention facilities with documented patterns of inhumane treatment and conditions raises serious civil and human rights and civil liberties concerns. As of January 2023, immigration detention facilities in California house nearly two thousand individuals—the fourth largest population of people in immigration detention in the

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
 Page 2

country.¹ These individuals are detained across six² detention facilities, which operate through contracts between U.S. Immigration and Customs Enforcement (“ICE”) and private detention contractors.³ The abuses at immigration detention facilities in California have been well documented in complaints filed with the Office for Civil Rights and Civil Liberties (“CRCL”),⁴ lawsuits,⁵ medical journals,⁶ and other government agencies.⁷

In the past year, there have been reports of inadequate medical care, unsanitary living conditions, inadequate COVID-19 prevention, and the overuse of solitary confinements, among other concerning complaints. The repeated reports of such abuses lead to the conclusion that private contractors at ICE facilities have a pattern of failing to meet the basic needs of populations in detention. Furthermore, individuals who have spoken up about these horrific conditions have faced retaliation including solitary confinement, sexually abusive pat-downs, revocation of commissary access, and threatened transfers.

¹ Transactional Records Access Clearinghouse, *Detention Facilities Average Daily Population*, <https://trac.syr.edu/immigration/detentionstats/facilities.html> (last visited Jan. 30, 2023).

² U.S. Immigration and Customs Enforcement, *Detention Facilities*, <https://www.ice.gov/detention-facilities?state=3&office=&name=> (last visited Jan. 30, 2023).

³ U.S. Immigration and Customs Enforcement, *FOIA Library – Detention Facility Contracts*, <https://www.ice.gov/foia/library> (last visited Jan. 30, 2023).

⁴ Press Release, ACLU of Northern California, Civil Rights Groups File Complaint Against ICE and Contractors for Violating First Amendment Rights of People in Immigration Detention (Aug. 26, 2021), <https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-amendment>; Press Release, California Collaborative for Immigrant Justice, Detained Leaders file simultaneous federal complaints against ICE, Gro Group & MTC (Sept. 13, 2022), <https://www.ccijustice.org/post/detained-leaders-file-simultaneous-federal-complaints-against-ice-gro-group-mtc>; ACLU of Northern California et al., CRCL Complaint Re: Sexually Abusive Pat-Downs Against Individuals in Immigration Detention at Mesa Verde Detention Facility (Jan. 17, 2023), https://www.aclunc.org/sites/default/files/Mesa%20Verde%20Complalint%20only%20_01.23.pdf

⁵ Farida Jhabvala Romero, *ICE Detainees Making \$1 a Day Sue Over Alleged Wage Theft*, KQED (July 16, 2022), <https://www.kqed.org/news/11919749/ice-detainees-making-1-a-day-sue-over-alleged-wage-theft>; Andrea Castillo, *ICE held a man in solitary confinement for more than a year. He’s suing under a new California law*, LA Times (Oct. 14, 2021), <https://www.latimes.com/california/story/2021-10-14/ice-lawsuit-california-solitary-confinement-detention-citizen>; Press Release, Lawyers’ Committee For Civil Rights, Groundbreaking COVID-19 Settlement to Yield Protections for Immigrants Detained by ICE, Limit Re-detention for People Released (Jan. 27, 2022), https://lccrsf.org/pressroom_posts/groundbreaking-covid-19-settlement-to-yield-protections-for-immigrants-detained-by-ice-limit-re-detention-for-people-released/;

⁶ Altaf Saadi et al., *Cumulative Risk of Immigration Prison Conditions on Health Outcomes Among Detained Immigrants in California*, Journal of Racial and Ethnic Health Disparities (Nov. 29, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8628823/>

⁷ DHS Office of Inspector General, Early Experiences with COVID-19 at ICE Detention Facilities (June 18, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-42-Jun20.pdf>; DHS Office of Inspector General, Management Alert—Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California (Sept. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>; DHS Office of Inspector General, ICE Needs to Address Prolonged Administrative Segregation and Other Violations at the Imperial Regional Detention Facility (Dec. 18, 2020), <https://www.oig.dhs.gov/reports/2021/ice-needs-address-prolonged-administrative-segregation-and-other-violations-imperial-regional-detention-facility/oig-21-12-dec20>; DHS Office of Inspector General, Capping Report: Observations of Unannounced Inspections of ICE Facilities in 2019 (July 1, 2020), <https://www.oig.dhs.gov/reports/2020/capping-report-observations-unannounced-inspections-ice-facilities-2019/oig-20-45-jul20>.

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
 39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

While advocates on the outside have attempted to bring attention to the abuses in immigration detention in California, individuals in detention have diligently utilized the grievance systems available at the facilities to draw attention to their substandard living conditions. These grievance systems are an essential tool for documenting the conditions in facilities and are often the only way individuals in detention can assert their civil and human rights.⁸ A functioning grievance system is mandated at all facilities in California by the 2011 Operations Manual ICE Performance-Based National Detention Standards (“PBNDS”).⁹ However, given the frequent reports of poor conditions and abuse at immigration detention facilities in California, ACLU NorCal, the immigrant community we serve, and the public have an urgent need to know about the grievance process in the immigration detention facilities across the state.

II. Records Requested

ACLU NorCal requests the following records held by ICE from the period of January 1, 2023 to January 31, 2023:

1. A copy of the detainee grievance log maintained by facility staff at Adelanto ICE Processing Center in accordance with PBNDS Section 6.2 (D);
2. A copy of the detainee grievance log maintained by facility staff at Desert View Annex in accordance with PBNDS Section 6.2 (D);
3. A copy of the detainee grievance log maintained by facility staff at Golden State Annex in accordance with PBNDS Section 6.2 (D);
4. A copy of the detainee grievance log maintained by facility staff at Imperial Regional Detention Facility in accordance with PBNDS Section 6.2 (D);
5. A copy of the detainee grievance log maintained by facility staff at Mesa Verde ICE Processing Center in accordance with PBNDS Section 6.2 (D); and
6. A copy of the detainee grievance log maintained by facility staff at Otay Mesa Detention Center in accordance with PBNDS Section 6.2 (D).

III. Fee Waiver Request

ACLU NorCal requests that any fees associated with responding to this FOIA Request be waived pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k). Pursuant to those provisions, fees should be waived or reduced if disclosure is (1) “in the public interest because it is likely to

⁸ Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>; Gabe Ortiz, *Lawmakers Urge Probe into Allegations of Abuse and Retaliation at Private Detention Facilities*, Daily KOS (Sept. 19, 2022), https://www.dailykos.com/stories/2022/9/19/2123837/-Lawmakers-urge-probe-into-allegations-of-abuse-and-retaliation-at-private-detention-facilities?utm_campaign=recent.

⁹ ICE Performance-Based National Detention Standards 2011 (hereinafter, “PBNDS”), Section 6.2, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Here, disclosure meets both tests.

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

Disclosure of the records in this Request is in the public interest. As described above, there are concerning reports of abusive living conditions at immigration detention facilities across California. However, very little is currently known about the number and frequency of grievances filed by individuals in immigration detention facilities across the state. ACLU NorCal is not aware of any publicly available and regularly updated records of grievances filed at immigration detention facilities. The ways in which the substandard living conditions at immigration detention facilities have profound effects on people’s lives has been the subject of significant media attention.¹⁰

Records on grievances filed at immigration detention facilities are of critical interest to the public, particularly for U.S. citizens and permanent residents with undocumented family members. As of 2019, more than 3 million Californian U.S. citizens and permanent residents lived in mixed-status families with undocumented relatives.¹¹ Given the ongoing and widespread media attention to this issue, the records sought by the Request will significantly contribute to the public understanding of the operations and activities of ICE detention facilities and will be of interest to a broad interest. *See* 6 C.F.R. § 5.11(k)(1)(i), (k)(2)(iii). This is critical information to mixed-status families, immigration advocacy groups, legislators, and the public at large. ACLU NorCal plans to disseminate to the public, at no cost, the information and records disclosed from this FOIA Request.

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

In filing this request, ACLU NorCal does not seek to further any commercial interest. ACLU NorCal is a 501(c)(3) nonprofit organization and therefore has no commercial interest. We intend to widely disseminate to the public any relevant information obtained through this FOIA request. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k). ACLU NorCal frequently publishes

¹⁰ Andrea Castillo, *California Fines Detention Center Operator \$100,000 Over Immigrants’ Working Conditions*, LA Times (Jan. 30, 2023), <https://www.latimes.com/politics/story/2023-01-30/detained-immigrants-alleged-unsafe-working-conditions-at-california-facility-fine>; Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>; Andrea Castillo, *Abuse Reports From Detained Black Immigrants Disproportionately High, Advocacy Groups Say*, LA Times (Oct. 27, 2022), <https://www.latimes.com/politics/story/2022-10-27/racism-and-abuse-of-detained-black-immigrants-disproportionately-high-report-says>; Farida Jhabvala Romero, *ICE Overusing Solitary Confinement in California, Lawmakers Worry*, KQED (Aug. 26, 2022), <https://www.kqed.org/news/11923753/ice-overusing-solitary-confinement-in-california-lawmakers-worry>.

¹¹ California Immigrant Data Portal, *Mixed-Status Families*, <https://immigrantdata.org/indicators/mixed-status-families> (last visited Jan. 30, 2023).

information and records implicating civil rights issues to the public, at no cost. The primary purpose of doing so is public education and government accountability—not commercial.

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.’”) (citation omitted); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that “disclosure, not secrecy, is the dominant objective of the Act,” quoting *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

C. ACLU NorCal also qualifies for a fee waiver because it is a representative of the news media, and the records are not sought for commercial use

ACLU NorCal is also entitled to a waiver of search fees because we qualify 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); 22 C.F.R. §§ 171.16(a)(1)(iii), (a)(2). ACLU NorCal 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); *see Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (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 NorCal’s communications department is a division of a nonprofit 501(c)(3) organization and is a “representative of the news media.” It regularly publishes newsletters, news briefings, reports, know-your-rights handbooks, press releases, and other materials that are distributed 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. Examples of recent publications includes a report entitled *Collusion in California’s Central Valley: The Case for Ending Sheriff Entanglement with ICE*,¹² and the podcast series “Gold Chains: The Hidden History of Slavery in California,” which has exceeded 5,500 downloads.¹³ ACLU NorCal’s communications department also disseminates information through the website <https://www.aclunc.org/>, which averages between 7,500 and 10,000 visitors per week and includes a widely read blog,¹⁴ where original editorial content reporting on and analyzing civil rights and civil liberties news is posted frequently. The website addresses civil liberties issues in depth and features civil liberties issues on which ACLU NorCal is focused, including immigrants’ rights. ACLU NorCal staff members are frequent spokespersons in television, print, and radio media and

¹² ACLU of Northern California, ACLU Report Reveals that Sheriffs in California’s Central Valley Have Developed Shadow ICE Notification and Transfer Systems, Circumventing State Law (Feb. 9, 2022), <https://www.aclunc.org/news/aclu-report-reveals-sheriffs-california-s-central-valley-have-developed-shadow-ice>.

¹³ ACLU of Northern California, ACLU of Northern California Launches Gold Chains: The Hidden History of Slavery in California (Nov. 14, 2019), <https://www.aclunc.org/news/aclu-northern-california-launches-gold-chains-hidden-history-slavery-california>.

¹⁴ Available at <https://www.aclunc.org/blog>.

make public presentations at meetings and events. Further, ACLU NorCal's communications department issues a triannual newsletter, which is distributed to over 78,000 subscribers by mail. It also disseminates information through social media channels, including its Instagram account, which has about 15,000 followers;¹⁵ and its Twitter account, which has about 23,200 followers.¹⁶ ACLU NorCal often disseminate descriptions and analysis of information obtained through FOIA requests through these various publication channels. These extensive publication activities make ACLU NorCal a "representative of the news media" under the FOIA and relevant regulations.

Courts have found other organizations whose missions, functions, publishing, and public education activities are similar in kind to ACLU NorCal's to be "representative[s] of the news media." *See, e.g., Serv. Women's Action Network v. Dep't of Def.*, 888 F. Supp. 2d 282, 288 (D. Conn. 2012) (finding that nonprofit public interest groups, including the Service Women's Action Network, the ACLU, and the ACLU of Connecticut were "representatives of the news media" for FOIA purposes); *ACLU of Wash. v. U.S. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington was a "representative of the news media" for FOIA purposes); *Elec. Privacy Info. Ctr. v. U.S. Dep't of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding nonprofit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for FOIA purposes); *Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that the National Security Archive was a "representative of the news media" for FOIA purposes); *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding that Judicial Watch, a self-described "public interest law firm," was a "representative of the news media" for FOIA purposes).

As stated, the requested records are not sought for commercial use. As a representative of the news media, we plan to analyze and disseminate the information disclosed from this FOIA request to the public at no cost. Because of these factors, a fee waiver here would fulfill Congress's legislative intent in amending the FOIA. *See Judicial Watch, Inc.*, 326 F.3d at 1312. Recognizing this, on numerous occasions ACLU NorCal has not been charged fees associated with responding to FOIA requests.¹⁷

¹⁵ Available at https://www.instagram.com/aclu_norcal/.

¹⁶ Available at https://twitter.com/ACLU_NorCal.

¹⁷ For example, ICE granted ACLU NorCal a fee waiver in two FOIA requests filed in March 2018, one seeking information on ICE's use of automated license plate reader systems and the other seeking communications between ICE and California law enforcement agencies. The Department of Homeland Security also granted ACLU NorCal a fee waiver in a FOIA request filed in February 2019 seeking information concerning the criminal investigation and surveillance of refugees. U.S. Citizenship and Immigration Services, a component of ICE, granted ACLU NorCal a fee waiver in a January 2023 FOIA request seeking records related to the situational exceptions to the Terrorism-Related Inadmissibility Grounds.

IV. Expedited Processing Request

ACLU NorCal 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* 6 C.F.R. § 5.5(e)(1)(ii).

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

ACLU NorCal is “primarily engaged in disseminating information” within the meaning of 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii). As explained above, ACLU NorCal has the ability and intention to widely disseminate through various sources, including newsletters, news briefings, reports, know-your-rights handbooks, press releases, and other materials, the records and information received through this request. These materials will be available to the public at no cost.

Further, ACLU NorCal is a non-profit organization and an affiliate of the ACLU, a national organization that works to protect civil liberties of all people, including the safeguarding of the basic constitutional rights to privacy, free expression, and due process of law. ACLU NorCal is responsible for serving the population of northern California and ACLU NorCal staff persons are frequent spokespersons in television and print media and make public presentations at meetings and events. ACLU NorCal plans to analyze and disseminate to the public the information gathered through this Request at no cost, and the records are not sought for any commercial purpose.

Dissemination of information about actual or alleged governmental activity is a critical and substantial component of the ACLU NorCal’s mission and work. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are among ACLU NorCal’s primary activities and substantial components of our work. *See ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding that nonprofit 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” is “primarily engaged in disseminating information”) (internal quotation marks omitted). Courts have found that organizations with similar missions as ACLU NorCal that engage in information-dissemination activities similar to ACLU NorCal are “primarily engaged in disseminating information” for purposes of requesting expedited processing under the FOIA. *See, e.g., Leadership Conf. on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11. And as explained above, ACLU NorCal intends to distribute the information obtained through this FOIA request via our website and other available publication channels.

ACLU NorCal actively disseminates and frequently garners extensive media coverage of the information it obtains about actual or alleged government activity through FOIA and

California's statutory counterpart, the California Public Records Act.¹⁸ It does so through a heavily visited website (averaging between 7,500 and 10,000 visitors per week) and a paper newsletter distributed to over 78,000 members.

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

The records we request are “urgen[tly]” needed “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). Recent complaints regarding civil rights abuses at California ICE detention facilities have prompted public attention, including pressure from more than a dozen California members of Congress to investigate a complaint filed by individuals detained at Mesa Verde ICE Processing Center.¹⁹ Furthermore, individuals detained at immigration detention facilities in California have filed at least three complaints with the Department of Homeland Security Office for Civil Rights and Civil Liberties in the past four months alone.²⁰ There is an urgent need to inform the public regarding the volume of grievances filed at California ICE detention facilities.

Moreover, the records sought in this Request should be readily accessible to ICE and easy to locate through mandated facility-maintained grievance logs that are subject to regular inspection by the Field Office Director and ICE Headquarters staff and reviewed during ICE/ERO-initiated facility inspections.²¹ The agency is therefore unlikely to expend undue resources locating the records requested to fulfill this Request.

Should you determine that expedited processing is not warranted, while reserving our right to appeal that decision, Requestor expects a response within the twenty-day time limit set forth under 5 U.S.C. § 552(a)(6)(A)(i).

* * *

¹⁸ ACLU of Northern California, *ACLU of Northern California et al. v. ICE* (Apr. 13, 2021), <https://www.aclunc.org/our-work/legal-docket/aclu-northern-california-et-al-v-ice>; ACLU of Northern California, Documents Reveal ICE Using Driver Location Data From Local Police for Deportations (Mar. 13, 2019), <https://www.aclunc.org/blog/documents-reveal-ice-using-driver-location-data-local-police-deportations>.

¹⁹ Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>.

²⁰ Press Release, ACLU of Northern California, Civil Rights Groups File Complaint Against ICE and Contractors for Violating First Amendment Rights of People in Immigration Detention (Aug. 26, 2021), <https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-amendment>; Press Release, California Collaborative for Immigrant Justice, Detained Leaders file simultaneous federal complaints against ICE, Gro Group & MTC (Sept. 13, 2022), <https://www.ccijjustice.org/post/detained-leaders-file-simultaneous-federal-complaints-against-ice-geo-group-mtc>; ACLU of Northern California et al., *CRCL Complaint Re: Sexually Abusive Pat-Downs Against Individuals in Immigration Detention at Mesa Verde Detention Facility* (Jan. 17, 2023), https://www.aclunc.org/sites/default/files/Mesa%20Verde%20Complaint%20only%20_01.23.pdf.

²¹ PBNDS, Section 6.2 (D), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>; PBNDS, Section 6.2 (H), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities

Page 9

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, ideally in electronic format, to:

Sana Singh
American Civil Liberties Union of Northern California
39 Drumm St
San Francisco, CA 94111

or via electronic mail to ssingh@aclunc.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 below if you have any questions or wish to obtain further information about the nature of the records in which we are interested.

Sincerely,



Sana A. Singh
ssingh@aclunc.org
(415) 293-6360

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

Exhibit 2

From: ice-foia@ice.dhs.gov
To: [Sana Singh](#)
Subject: ICE FOIA Case Number 2023-ICFO-12506
Date: Thursday, February 9, 2023 10:58:15 AM

02/09/2023

Sana Singh
39 Drumm Street
San Francisco, California 94111

RE: ICE FOIA Case Number 2023-ICFO-12506

Dear Requester:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated 2/6/2023, your request for a waiver of all assessable FOIA fees, and your request for expedited treatment. Your request was received in this office on 2/6/2023. Specifically, you have requested records from the period of January 1, 2023 to January 31, 2023:

1. A copy of the detainee grievance log maintained by facility staff at Adelanto ICE Processing Center in accordance with PBNDS Section 6.2 (D);
2. A copy of the detainee grievance log maintained by facility staff at Desert View Annex in accordance with PBNDS Section 6.2 (D);
3. A copy of the detainee grievance log maintained by facility staff at Golden State Annex in accordance with PBNDS Section 6.2 (D);
4. A copy of the detainee grievance log maintained by facility staff at Imperial Regional Detention Facility in accordance with PBNDS Section 6.2 (D);
5. A copy of the detainee grievance log maintained by facility staff at Mesa Verde ICE Processing Center in accordance with PBNDS Section 6.2 (D); and
6. A copy of the detainee grievance log maintained by facility staff at Otay Mesa Detention Center in accordance with PBNDS Section 6.2 (D)..

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.

ICE evaluates fee waiver requests under the legal standard set forth above and the fee waiver policy guidance issued by the Department of Justice on April 2, 1987, as incorporated into the Department

of Homeland Security's Freedom of Information Act regulations. These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. I have considered the following factors in my evaluation of your request for a fee waiver:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government";
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant";
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

Upon review of your request and a careful consideration of the factors listed above, I have determined to grant your request for a fee waiver.

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 Fernando Pineiro Jr. 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; or facsimile at 202-741-5769.

Your request has been assigned reference number **2023-ICFO-12506**. 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

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and any disclosure, copying, or distribution of this message, or the taking of any action based on it, by you is strictly prohibited.

Deloitte refers to a Deloitte member firm, one of its related entities, or Deloitte Touche Tohmatsu Limited ("DTTL"). Each Deloitte member firm is a separate legal entity and a member of DTTL. DTTL does not provide services to clients. Please see

www.deloitte.com/about to learn more.

v.E.1

Exhibit 3



Northern
California

February 27, 2023

Via USPS Certified Mail and Email

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
GILDFOIAAppeals@ice.dhs.gov

**Re: Freedom of Information Act Appeal
Appeal of ICE's Denial of Expedited Processing for FOIA Request #2023-ICFO-12506**

To Whom It May Concern:

I write on behalf of the American Civil Liberties Union of Northern California ("ACLU NorCal" or "Requestor") to appeal the Immigration and Customs Enforcement ("ICE") interim response to Freedom of Information Act ("FOIA") Request No. 2023-ICFO-12506 (the "Request," attached as Exhibit A). The Request, dated February 6, 2023, seeks records held by ICE relating to grievances filed at ICE detention facilities in the state of California.

In a letter dated February 9, 2022 (the "Response," attached as Exhibit B), ICE denied ACLU NorCal's request for expedited processing. ICE denied the request on the grounds that ACLU NorCal did not satisfy an applicable category under 6 C.F.R. § 5.5(e)(1); specifically, "an urgency to inform the public about an actual or alleged federal government activity."¹ 6 C.F.R. § 5.5(e)(1)(ii).² ACLU NorCal appeals ICE's denial of expedited processing.

The Department of Homeland Security's FOIA regulations set forth the following four situations in which expedited processing will be granted:

- (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

¹ The agency does not appear to dispute that the ACLU is primarily engaged in disseminating information.

² See also 5 U.S.C. § 552(a)(6)(E)(v)(II).

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

- (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

6 C.F.R. § 5.5(e)(1).

I. There is an urgent need to inform the public about the information sought in the Request.

In the Response, ICE alleges that ACLU NorCal's statements in the Request in support of a request for expedited processing were "conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards." Ex. B at 2. This is false; the Request references three separate complaints filed with the Department of Homeland Security's Office for Civil Rights and Civil Liberties within the past two years, each of which includes pages upon pages of *specific, detailed*, and deeply troubling reports of conditions at immigration detention facilities within the state of California. Ex. A at 8.

Furthermore, reports of conditions coming out of two of these facilities were so troubling that sixteen members of Congress submitted a letter to the Department of Homeland Security ("September 2022 Congressional letter"), requesting a full and complete investigation into conditions at both facilities.³ Ex. A at 8. This Congressional letter followed a separate letter from October 2021 ("October 2021 Congressional letter"), signed by twenty-four members of Congress, calling for the "*immediate termination* of contracts" at three other immigration detention facilities in California (separate from the two facilities mentioned in the September 2022 Congressional letter).⁴ Such letters from Congressional representatives are not drafted lightly and certainly not based on "conclusory" evidence. Of the five facilities mentioned in the September 2022 and October 2021 Congressional letters, four remain open and are subjects of the Request.

As detailed in the Request, the records sought relate to grievances filed at detention centers across California. Grievances are one of the clearest glimpses into detention facilities as they provide individuals in detention a direct way to document problematic conditions of confinement. In fact, the express purpose of the grievance system established in ICE's 2011 Performance-Based National Detention Standards is to "ensure[] that all detainees are treated fairly."⁵ Therefore, the requested records are necessary to inform the public about conditions of confinement in immigration detention facilities across California.

³ Representative Lofgren, Letter to Secretary Mayorkas and Acting Director Johnson (Sept. 14, 2022), available at <https://lofgren.house.gov/sites/lofgren.house.gov/files/9.14.22%20-%20ICE%20CA%20Facility%20Follow%20up%20Letter%20Final.pdf>.

⁴ Representative Lofgren, Letter to Secretary Mayorkas (Oct. 21, 2021), available at <https://lofgren.house.gov/sites/lofgren.house.gov/files/CA%20ICE%20Detention%20Letter.pdf>.

⁵ ICE Performance-Based National Detention Standards 2011, Section 6, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

In addition to the historical record of abuse at immigration detention facilities in California outlined in the Request and referenced above, new facts create an even greater urgency for the public to learn about conditions in immigration detention facilities in California. On February 17, 2023, seventy-seven detained immigrants launched a hunger strike to protest inhumane conditions at Mesa Verde ICE Processing Center and Golden State Annex – two of the facilities the Request seeks records from.⁶ One week later, on February 23, 2023, 73 individuals remained on hunger strike. The grievance logs sought in the Request directly reflect the conditions that led individuals in detention to take such drastic collective action and put their health at risk. The public has an urgent need to know about the conditions at immigration detention facilities that drove these individuals to this action immediately.

II. The Request concerns a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

Since the launch of the hunger strike on February 17, 2023, many news outlets have reported on detention conditions at immigration facilities in California in print, radio, and video formats.⁷ Media coverage of conditions at these facilities has spanned numerous outlets,

⁶ Press Release: Seventy-seven Detained Immigrants Launch Hunger Strike at Two Central Valley Facilities, Protest Unpaid Labor and Inhumane Conditions, <https://www.aclunc.org/news/seventy-seven-detained-immigrants-launch-hunger-strike-two-central-valley-facilities-protest>.

⁷ Farida Jhabvala Romero, *'Until We Drop': Immigrant Detainees on Hunger Strike Sue ICE, Detention Contractor for Alleged Retaliation*, KQED (Feb. 23, 2023), <https://www.kqed.org/news/11941677/until-we-drop-hunger-strike-enters-second-week-as-immigrants-in-ice-detention-protest-conditions>; *Asylum Seekers at Two California ICE Detention Centers Hold Hunger Strike*, Democracy Now! (Feb. 20, 2023), https://www.democracynow.org/2023/2/20/headlines/asylum_seekers_at_two_california_ice_detention_centers_hold_hunger_strike; Jonathan Lewis, *Hunger Strike by 84 Detained CA Immigrants Demands Fair Living/Working Conditions*, Davis Vanguard (Feb. 19, 2023), <https://www.davisvanguard.org/2023/02/hunger-strike-by-84-detained-ca-immigrants-demands-fair-living-working-conditions/>; Ishani Desai, *Nearly 100 Mesa Verde, Golden State Annex detainees launch hunger strike*, Bakersfield.com (Feb. 17, 2023), https://www.bakersfield.com/news/nearly-100-mesa-verde-golden-state-annex-detainees-launch-hunger-strike/article_03ae529a-af3b-11ed-a4cb-f3a341464227.html; Yesenia Amaro, *ICE says it takes misconduct allegations seriously. Central Valley hunger strikes continue*, Fresno Bee (Feb. 23, 2023), <https://www.fresnobee.com/news/local/article272572709.html>; Vania Patino, *Civil Rights activists demand transparency from ICE detention facilities*, 23ABC (Feb. 22, 2023), <https://www.turnto23.com/news/local-news/civil-rights-activists-demand-transparency-from-ice-detention-facilities>; Joshua Yeager, *Detainees at Kern County ICE facilities organize hunger strike*, KVPR (Feb. 23, 2023), <https://www.kvpr.org/local-news/2023-02-23/inmates-at-kern-county-ice-facilities-organize-hunger-strike>; Eric Burkett, *Immigrants claim ICE retribution for hunger strike over poor conditions*, Courthouse News (Feb. 24, 2023),

including Spanish-language outlets such as Univision, which is the United States' largest provider of Spanish-language content. These news articles highlight the failures of ICE and its contractors to adequately care for those in their custody. Media outlets have continued to publish stories detailing the horrific conditions of confinement and individuals' failed attempts to seek recourse at the facility level as the hunger strike continues. On February 23, 2023, ACLU NorCal, along with the ACLU of Southern California and the California Collaborative for Immigrant Justice, hosted a congressional briefing for the California congressional delegation. The briefing outlined the abhorrent and intolerable conditions in immigration detention facilities throughout the state as well as the callous indifference of ICE and its contractors when individuals in detention attempted to utilize the grievance system to resolve issues with the facility. The briefing was attended by 13 Congressional offices.

Furthermore, a lawsuit⁸ filed on February 23, 2023 reflects swift and ongoing retaliation by ICE and its contractors. The lawsuit alleges that ICE and their private contractor, the GEO Group, unlawfully retaliated against individuals detained at Mesa Verde ICE Processing Center and Golden State Annex, "with the purpose of chilling their peaceful, First-Amendment-protected protest."⁹ The allegations of retaliation reflect unlawful and unconstitutional retaliation on the part of ICE and its contractor. According to the complaint, one facility staff member went so far as to say, "I don't know why you're starving yourself when ICE doesn't care what happens to you."¹⁰ This pattern of behavior raises troubling questions about the integrity of ICE, its contractors, the Department of Homeland Security, and the entire federal immigration in the face of such unlawful retaliation and cruel disregard for human suffering. In sum, the increased media interest in immigration detention facilities in California and the allegations of abuse by ICE and its contractors warrant a grant of expedited processing for records related to conditions of confinement.

*

*

*

<https://www.courthousenews.com/immigrants-claim-ice-retribution-for-hunger-strike-over-poor-conditions/>; *Grupo de migrantes detenidos en centros de procesamiento de ICE en California inician huelga de hambre: esto exigen*, Univision (Feb. 18, 2023), <https://www.univision.com/shows/noticiero-univision/grupo-de-migrantes-detenido-en-centros-de-procesamiento-de-ice-en-california-inician-huelga-de-hambre-esto-exigen-video>; *Migrantes detenidos en California realizan huelga de hambre por malos tratos en los centros de reclusion*, Latinus (Feb. 18, 2023), <https://latinus.us/2023/02/18/migrantes-detenido-california-realizan-huelga-hambre-malos-tratos-centros-reclusion/>.

⁸ *Mendez v. ICE*, No. 3:23-cv-00829 (N.D. Cal. filed Feb. 23, 2023) available at https://www.aclunc.org/sites/default/files/Mendez_v._ICE_Complaint.pdf.

⁹ *Id.* at 1.

¹⁰ *Id.* at 14.

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

Appeal of ICE's Denial of Expedited Processing re FOIA Request #2023-ICFO-12506

Page 5

For the foregoing reasons, as well as those set forth in the Request, ICE's decision to deny expedited processing was an error. ACLU NorCal respectfully requests that ICE grant expedited processing and promptly process the Request.

Thank you for your attention to this matter. Please furnish all responsive records, ideally in electronic format, to:

Sana Singh
American Civil Liberties Union of Northern California
39 Drumm St
San Francisco, CA 94111

or via electronic mail to ssingh@aclunc.org. Please email or call me at the contact information below if you have any questions.

Sincerely,

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

Sana A. Singh
ssingh@aclunc.org
(415) 293-6360

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

EXHIBIT A



Northern
California

February 6, 2023

Via USPS Certified Mail, Email, and Secure Release Portal

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009
E-mail: ice-foia@dhs.gov

Re: FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities (Fee Waiver and Expedited Processing Requested)

Dear FOIA Officer:

I write on behalf of the American Civil Liberties Union of Northern California (“ACLU NorCal” or “Requestor”) to request records related to grievances filed at California immigration detention facilities. This request (“Request”) is made pursuant to the Freedom of Information Act, 5 U.S.C. § 522 *et seq.*, implementing regulations 6 C.F.R. § 5.1 *et seq.*, and any other applicable regulations.

We ask that you direct this request to all appropriate offices, components, divisions, and/or directorates within Immigration and Customs Enforcement (“ICE”), including but not limited to the ICE Office of Professional Responsibility and the ICE Office of Detention Oversight divisions of ICE.

ACLU NorCal further 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

The ongoing detention of individuals in immigration detention facilities with documented patterns of inhumane treatment and conditions raises serious civil and human rights and civil liberties concerns. As of January 2023, immigration detention facilities in California house nearly two thousand individuals—the fourth largest population of people in immigration detention in the

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
 Page 2

country.¹ These individuals are detained across six² detention facilities, which operate through contracts between U.S. Immigration and Customs Enforcement (“ICE”) and private detention contractors.³ The abuses at immigration detention facilities in California have been well documented in complaints filed with the Office for Civil Rights and Civil Liberties (“CRCL”),⁴ lawsuits,⁵ medical journals,⁶ and other government agencies.⁷

In the past year, there have been reports of inadequate medical care, unsanitary living conditions, inadequate COVID-19 prevention, and the overuse of solitary confinements, among other concerning complaints. The repeated reports of such abuses lead to the conclusion that private contractors at ICE facilities have a pattern of failing to meet the basic needs of populations in detention. Furthermore, individuals who have spoken up about these horrific conditions have faced retaliation including solitary confinement, sexually abusive pat-downs, revocation of commissary access, and threatened transfers.

¹ Transactional Records Access Clearinghouse, *Detention Facilities Average Daily Population*, <https://trac.syr.edu/immigration/detentionstats/facilities.html> (last visited Jan. 30, 2023).

² U.S. Immigration and Customs Enforcement, *Detention Facilities*, <https://www.ice.gov/detention-facilities?state=3&office=&name=> (last visited Jan. 30, 2023).

³ U.S. Immigration and Customs Enforcement, *FOIA Library – Detention Facility Contracts*, <https://www.ice.gov/foia/library> (last visited Jan. 30, 2023).

⁴ Press Release, ACLU of Northern California, Civil Rights Groups File Complaint Against ICE and Contractors for Violating First Amendment Rights of People in Immigration Detention (Aug. 26, 2021),

<https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-amendment>; Press Release, California Collaborative for Immigrant Justice, Detained Leaders file simultaneous federal complaints against ICE, Gro Group & MTC (Sept. 13, 2022), <https://www.ccijustice.org/post/detained-leaders-file-simultaneous-federal-complaints-against-ice-gro-group-mtc>; ACLU of Northern California et al., CRCL Complaint Re: Sexually Abusive Pat-Downs Against Individuals in Immigration Detention at Mesa Verde Detention Facility (Jan. 17, 2023),

<https://www.aclunc.org/sites/default/files/Mesa%20Verde%20Complaint%20only%20-01.23.pdf>

⁵ Farida Jhabvala Romero, *ICE Detainees Making \$1 a Day Sue Over Alleged Wage Theft*, KQED (July 16, 2022), <https://www.kqed.org/news/11919749/ice-detainees-making-1-a-day-sue-over-alleged-wage-theft>; Andrea Castillo,

ICE held a man in solitary confinement for more than a year. He’s suing under a new California law, LA Times (Oct. 14, 2021), <https://www.latimes.com/california/story/2021-10-14/ice-lawsuit-california-solitary-confinement-detention-citizen>;

Press Release, Lawyers’ Committee For Civil Rights, Groundbreaking COVID-19 Settlement to Yield Protections for Immigrants Detained by ICE, Limit Re-detention for People Released (Jan. 27, 2022),

https://lccrsf.org/pressroom_posts/groundbreaking-covid-19-settlement-to-lead-protections-for-immigrants-detained-by-ice-limit-re-detention-for-people-released/;

⁶ Altaf Saadi et al., *Cumulative Risk of Immigration Prison Conditions on Health Outcomes Among Detained Immigrants in California*, Journal of Racial and Ethnic Health Disparities (Nov. 29, 2021),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8628823/>

⁷ DHS Office of Inspector General, Early Experiences with COVID-19 at ICE Detention Facilities (June 18, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-42-Jun20.pdf>; DHS Office of Inspector General,

Management Alert—Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California (Sept. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>; DHS Office of

Inspector General, ICE Needs to Address Prolonged Administrative Segregation and Other Violations at the Imperial Regional Detention Facility (Dec. 18, 2020), <https://www.oig.dhs.gov/reports/2021/ice-needs-address-prolonged-administrative-segregation-and-other-violations-imperial-regional-detention-facility/oig-21-12-dec20>;

DHS Office of Inspector General, Capping Report: Observations of Unannounced Inspections of ICE Facilities in 2019 (July 1, 2020), <https://www.oig.dhs.gov/reports/2020/capping-report-observations-unannounced-inspections-ice-facilities-2019/oig-20-45-jul20>.

While advocates on the outside have attempted to bring attention to the abuses in immigration detention in California, individuals in detention have diligently utilized the grievance systems available at the facilities to draw attention to their substandard living conditions. These grievance systems are an essential tool for documenting the conditions in facilities and are often the only way individuals in detention can assert their civil and human rights.⁸ A functioning grievance system is mandated at all facilities in California by the 2011 Operations Manual ICE Performance-Based National Detention Standards (“PBNDS”).⁹ However, given the frequent reports of poor conditions and abuse at immigration detention facilities in California, ACLU NorCal, the immigrant community we serve, and the public have an urgent need to know about the grievance process in the immigration detention facilities across the state.

II. Records Requested

ACLU NorCal requests the following records held by ICE from the period of January 1, 2023 to January 31, 2023:

1. A copy of the detainee grievance log maintained by facility staff at Adelanto ICE Processing Center in accordance with PBNDS Section 6.2 (D);
2. A copy of the detainee grievance log maintained by facility staff at Desert View Annex in accordance with PBNDS Section 6.2 (D);
3. A copy of the detainee grievance log maintained by facility staff at Golden State Annex in accordance with PBNDS Section 6.2 (D);
4. A copy of the detainee grievance log maintained by facility staff at Imperial Regional Detention Facility in accordance with PBNDS Section 6.2 (D);
5. A copy of the detainee grievance log maintained by facility staff at Mesa Verde ICE Processing Center in accordance with PBNDS Section 6.2 (D); and
6. A copy of the detainee grievance log maintained by facility staff at Otay Mesa Detention Center in accordance with PBNDS Section 6.2 (D).

III. Fee Waiver Request

ACLU NorCal requests that any fees associated with responding to this FOIA Request be waived pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k). Pursuant to those provisions, fees should be waived or reduced if disclosure is (1) “in the public interest because it is likely to

⁸ Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>; Gabe Ortiz, *Lawmakers Urge Probe into Allegations of Abuse and Retaliation at Private Detention Facilities*, Daily KOS (Sept. 19, 2022), https://www.dailykos.com/stories/2022/9/19/2123837/-Lawmakers-urge-probe-into-allegations-of-abuse-and-retaliation-at-private-detention-facilities?utm_campaign=recent.

⁹ ICE Performance-Based National Detention Standards 2011 (hereinafter, “PBNDS”), Section 6.2, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Here, disclosure meets both tests.

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

Disclosure of the records in this Request is in the public interest. As described above, there are concerning reports of abusive living conditions at immigration detention facilities across California. However, very little is currently known about the number and frequency of grievances filed by individuals in immigration detention facilities across the state. ACLU NorCal is not aware of any publicly available and regularly updated records of grievances filed at immigration detention facilities. The ways in which the substandard living conditions at immigration detention facilities have profound effects on people’s lives has been the subject of significant media attention.¹⁰

Records on grievances filed at immigration detention facilities are of critical interest to the public, particularly for U.S. citizens and permanent residents with undocumented family members. As of 2019, more than 3 million Californian U.S. citizens and permanent residents lived in mixed-status families with undocumented relatives.¹¹ Given the ongoing and widespread media attention to this issue, the records sought by the Request will significantly contribute to the public understanding of the operations and activities of ICE detention facilities and will be of interest to a broad interest. *See* 6 C.F.R. § 5.11(k)(1)(i), (k)(2)(iii). This is critical information to mixed-status families, immigration advocacy groups, legislators, and the public at large. ACLU NorCal plans to disseminate to the public, at no cost, the information and records disclosed from this FOIA Request.

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

In filing this request, ACLU NorCal does not seek to further any commercial interest. ACLU NorCal is a 501(c)(3) nonprofit organization and therefore has no commercial interest. We intend to widely disseminate to the public any relevant information obtained through this FOIA request. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k). ACLU NorCal frequently publishes

¹⁰ Andrea Castillo, *California Fines Detention Center Operator \$100,000 Over Immigrants’ Working Conditions*, LA Times (Jan. 30, 2023), <https://www.latimes.com/politics/story/2023-01-30/detained-immigrants-alleged-unsafe-working-conditions-at-california-facility-fine>; Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>; Andrea Castillo, *Abuse Reports From Detained Black Immigrants Disproportionately High, Advocacy Groups Say*, LA Times (Oct. 27, 2022), <https://www.latimes.com/politics/story/2022-10-27/racism-and-abuse-of-detained-black-immigrants-disproportionately-high-report-says>; Farida Jhabvala Romero, *ICE Overusing Solitary Confinement in California, Lawmakers Worry*, KQED (Aug. 26, 2022), <https://www.kqed.org/news/11923753/ice-overusing-solitary-confinement-in-california-lawmakers-worry>.

¹¹ California Immigrant Data Portal, *Mixed-Status Families*, <https://immigrantdata.org/indicators/mixed-status-families> (last visited Jan. 30, 2023).

information and records implicating civil rights issues to the public, at no cost. The primary purpose of doing so is public education and government accountability—not commercial.

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.’”) (citation omitted); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that “disclosure, not secrecy, is the dominant objective of the Act,” quoting *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

C. ACLU NorCal also qualifies for a fee waiver because it is a representative of the news media, and the records are not sought for commercial use

ACLU NorCal is also entitled to a waiver of search fees because we qualify 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); 22 C.F.R. §§ 171.16(a)(1)(iii), (a)(2). ACLU NorCal 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); *see Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (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 NorCal’s communications department is a division of a nonprofit 501(c)(3) organization and is a “representative of the news media.” It regularly publishes newsletters, news briefings, reports, know-your-rights handbooks, press releases, and other materials that are distributed 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. Examples of recent publications includes a report entitled *Collusion in California’s Central Valley: The Case for Ending Sheriff Entanglement with ICE*,¹² and the podcast series “Gold Chains: The Hidden History of Slavery in California,” which has exceeded 5,500 downloads.¹³ ACLU NorCal’s communications department also disseminates information through the website <https://www.aclunc.org/>, which averages between 7,500 and 10,000 visitors per week and includes a widely read blog,¹⁴ where original editorial content reporting on and analyzing civil rights and civil liberties news is posted frequently. The website addresses civil liberties issues in depth and features civil liberties issues on which ACLU NorCal is focused, including immigrants’ rights. ACLU NorCal staff members are frequent spokespersons in television, print, and radio media and

¹² ACLU of Northern California, ACLU Report Reveals that Sheriffs in California’s Central Valley Have Developed Shadow ICE Notification and Transfer Systems, Circumventing State Law (Feb. 9, 2022), <https://www.aclunc.org/news/aclu-report-reveals-sheriffs-california-s-central-valley-have-developed-shadow-ice>.

¹³ ACLU of Northern California, ACLU of Northern California Launches Gold Chains: The Hidden History of Slavery in California (Nov. 14, 2019), <https://www.aclunc.org/news/aclu-northern-california-launches-gold-chains-hidden-history-slavery-california>.

¹⁴ Available at <https://www.aclunc.org/blog>.

make public presentations at meetings and events. Further, ACLU NorCal's communications department issues a triannual newsletter, which is distributed to over 78,000 subscribers by mail. It also disseminates information through social media channels, including its Instagram account, which has about 15,000 followers;¹⁵ and its Twitter account, which has about 23,200 followers.¹⁶ ACLU NorCal often disseminate descriptions and analysis of information obtained through FOIA requests through these various publication channels. These extensive publication activities make ACLU NorCal a "representative of the news media" under the FOIA and relevant regulations.

Courts have found other organizations whose missions, functions, publishing, and public education activities are similar in kind to ACLU NorCal's to be "representative[s] of the news media." *See, e.g., Serv. Women's Action Network v. Dep't of Def.*, 888 F. Supp. 2d 282, 288 (D. Conn. 2012) (finding that nonprofit public interest groups, including the Service Women's Action Network, the ACLU, and the ACLU of Connecticut were "representatives of the news media" for FOIA purposes); *ACLU of Wash. v. U.S. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington was a "representative of the news media" for FOIA purposes); *Elec. Privacy Info. Ctr. v. U.S. Dep't of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding nonprofit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for FOIA purposes); *Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that the National Security Archive was a "representative of the news media" for FOIA purposes); *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding that Judicial Watch, a self-described "public interest law firm," was a "representative of the news media" for FOIA purposes).

As stated, the requested records are not sought for commercial use. As a representative of the news media, we plan to analyze and disseminate the information disclosed from this FOIA request to the public at no cost. Because of these factors, a fee waiver here would fulfill Congress's legislative intent in amending the FOIA. *See Judicial Watch, Inc.*, 326 F.3d at 1312. Recognizing this, on numerous occasions ACLU NorCal has not been charged fees associated with responding to FOIA requests.¹⁷

¹⁵ Available at https://www.instagram.com/aclu_norcal/.

¹⁶ Available at https://twitter.com/ACLU_NorCal.

¹⁷ For example, ICE granted ACLU NorCal a fee waiver in two FOIA requests filed in March 2018, one seeking information on ICE's use of automated license plate reader systems and the other seeking communications between ICE and California law enforcement agencies. The Department of Homeland Security also granted ACLU NorCal a fee waiver in a FOIA request filed in February 2019 seeking information concerning the criminal investigation and surveillance of refugees. U.S. Citizenship and Immigration Services, a component of ICE, granted ACLU NorCal a fee waiver in a January 2023 FOIA request seeking records related to the situational exceptions to the Terrorism-Related Inadmissibility Grounds.

IV. Expedited Processing Request

ACLU NorCal 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* 6 C.F.R. § 5.5(e)(1)(ii).

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

ACLU NorCal is “primarily engaged in disseminating information” within the meaning of 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii). As explained above, ACLU NorCal has the ability and intention to widely disseminate through various sources, including newsletters, news briefings, reports, know-your-rights handbooks, press releases, and other materials, the records and information received through this request. These materials will be available to the public at no cost.

Further, ACLU NorCal is a non-profit organization and an affiliate of the ACLU, a national organization that works to protect civil liberties of all people, including the safeguarding of the basic constitutional rights to privacy, free expression, and due process of law. ACLU NorCal is responsible for serving the population of northern California and ACLU NorCal staff persons are frequent spokespersons in television and print media and make public presentations at meetings and events. ACLU NorCal plans to analyze and disseminate to the public the information gathered through this Request at no cost, and the records are not sought for any commercial purpose.

Dissemination of information about actual or alleged governmental activity is a critical and substantial component of the ACLU NorCal’s mission and work. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are among ACLU NorCal’s primary activities and substantial components of our work. *See ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding that nonprofit 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” is “primarily engaged in disseminating information”) (internal quotation marks omitted). Courts have found that organizations with similar missions as ACLU NorCal that engage in information-dissemination activities similar to ACLU NorCal are “primarily engaged in disseminating information” for purposes of requesting expedited processing under the FOIA. *See, e.g., Leadership Conf. on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11. And as explained above, ACLU NorCal intends to distribute the information obtained through this FOIA request via our website and other available publication channels.

ACLU NorCal actively disseminates and frequently garners extensive media coverage of the information it obtains about actual or alleged government activity through FOIA and

California's statutory counterpart, the California Public Records Act.¹⁸ It does so through a heavily visited website (averaging between 7,500 and 10,000 visitors per week) and a paper newsletter distributed to over 78,000 members.

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

The records we request are “urgen[tly]” needed “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). Recent complaints regarding civil rights abuses at California ICE detention facilities have prompted public attention, including pressure from more than a dozen California members of Congress to investigate a complaint filed by individuals detained at Mesa Verde ICE Processing Center.¹⁹ Furthermore, individuals detained at immigration detention facilities in California have filed at least three complaints with the Department of Homeland Security Office for Civil Rights and Civil Liberties in the past four months alone.²⁰ There is an urgent need to inform the public regarding the volume of grievances filed at California ICE detention facilities.

Moreover, the records sought in this Request should be readily accessible to ICE and easy to locate through mandated facility-maintained grievance logs that are subject to regular inspection by the Field Office Director and ICE Headquarters staff and reviewed during ICE/ERO-initiated facility inspections.²¹ The agency is therefore unlikely to expend undue resources locating the records requested to fulfill this Request.

Should you determine that expedited processing is not warranted, while reserving our right to appeal that decision, Requestor expects a response within the twenty-day time limit set forth under 5 U.S.C. § 552(a)(6)(A)(i).

* * *

¹⁸ ACLU of Northern California, *ACLU of Northern California et al. v. ICE* (Apr. 13, 2021), <https://www.aclunc.org/our-work/legal-docket/aclu-northern-california-et-al-v-ice>; ACLU of Northern California, Documents Reveal ICE Using Driver Location Data From Local Police for Deportations (Mar. 13, 2019), <https://www.aclunc.org/blog/documents-reveal-ice-using-driver-location-data-local-police-deportations>.

¹⁹ Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>.

²⁰ Press Release, ACLU of Northern California, Civil Rights Groups File Complaint Against ICE and Contractors for Violating First Amendment Rights of People in Immigration Detention (Aug. 26, 2021), <https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-amendment>; Press Release, California Collaborative for Immigrant Justice, Detained Leaders file simultaneous federal complaints against ICE, Gro Group & MTC (Sept. 13, 2022), <https://www.ccijjustice.org/post/detained-leaders-file-simultaneous-federal-complaints-against-ice-geo-group-mtc>; ACLU of Northern California et al., *CRCL Complaint Re: Sexually Abusive Pat-Downs Against Individuals in Immigration Detention at Mesa Verde Detention Facility* (Jan. 17, 2023), https://www.aclunc.org/sites/default/files/Mesa%20Verde%20Complalint%20only%20_01.23.pdf.

²¹ PBNDS, Section 6.2 (D), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>; PBNDS, Section 6.2 (H), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities

Page 9

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, ideally in electronic format, to:

Sana Singh
American Civil Liberties Union of Northern California
39 Drumm St
San Francisco, CA 94111

or via electronic mail to ssingh@aclunc.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 below if you have any questions or wish to obtain further information about the nature of the records in which we are interested.

Sincerely,



Sana A. Singh
ssingh@aclunc.org
(415) 293-6360

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

EXHIBIT B

From: ice-foia@ice.dhs.gov
To: [Sana Singh](#)
Subject: ICE FOIA Case Number 2023-ICFO-12506
Date: Thursday, February 9, 2023 10:58:15 AM

02/09/2023

Sana Singh
39 Drumm Street
San Francisco, California 94111

RE: ICE FOIA Case Number 2023-ICFO-12506

Dear Requester:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated 2/6/2023, your request for a waiver of all assessable FOIA fees, and your request for expedited treatment. Your request was received in this office on 2/6/2023. Specifically, you have requested records from the period of January 1, 2023 to January 31, 2023:

1. A copy of the detainee grievance log maintained by facility staff at Adelanto ICE Processing Center in accordance with PBNDS Section 6.2 (D);
2. A copy of the detainee grievance log maintained by facility staff at Desert View Annex in accordance with PBNDS Section 6.2 (D);
3. A copy of the detainee grievance log maintained by facility staff at Golden State Annex in accordance with PBNDS Section 6.2 (D);
4. A copy of the detainee grievance log maintained by facility staff at Imperial Regional Detention Facility in accordance with PBNDS Section 6.2 (D);
5. A copy of the detainee grievance log maintained by facility staff at Mesa Verde ICE Processing Center in accordance with PBNDS Section 6.2 (D); and
6. A copy of the detainee grievance log maintained by facility staff at Otay Mesa Detention Center in accordance with PBNDS Section 6.2 (D)..

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.

ICE evaluates fee waiver requests under the legal standard set forth above and the fee waiver policy guidance issued by the Department of Justice on April 2, 1987, as incorporated into the Department

of Homeland Security's Freedom of Information Act regulations. These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. I have considered the following factors in my evaluation of your request for a fee waiver:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government";
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant";
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

Upon review of your request and a careful consideration of the factors listed above, I have determined to grant your request for a fee waiver.

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 Fernando Pineiro Jr. 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; or facsimile at 202-741-5769.

Your request has been assigned reference number **2023-ICFO-12506**. 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

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and any disclosure, copying, or distribution of this message, or the taking of any action based on it, by you is strictly prohibited.

Deloitte refers to a Deloitte member firm, one of its related entities, or Deloitte Touche Tohmatsu Limited ("DTTL"). Each Deloitte member firm is a separate legal entity and a member of DTTL. DTTL does not provide services to clients. Please see

www.deloitte.com/about to learn more.

v.E.1

Exhibit 4

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



U.S. Immigration
and Customs
Enforcement

March 30, 2023

Ms. Sana Singh
39 Drumm Street
San Francisco, CA 94111

RE: 2023-ICAP-00256; 2022-ICFO-12506

Dear Ms. Singh,

This is in response to your email dated February 27, 2023, received February 27, 2023, appealing the U.S. Immigration and Customs Enforcement's (ICE) Freedom of Information Act (FOIA) Office's response to your request for expedited treatment of your FOIA Request dated February 6, 2023.

By email dated February 9, 2023, the ICE FOIA Office acknowledged receipt of your FOIA request, granted your request for a fee waiver, 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). It was found that 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. It was also found that your letter is conclusory 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 stated that expedited processing is warranted "because the Request references three separate complaints filed with the Department of Homeland Security's Office for Civil Rights and Civil Liberties within the past two years, each of which includes pages upon pages of *specific*, *detailed*, and deeply troubling reports of conditions at immigration detention facilities within the state of California." Additionally, you noted that "reports of conditions coming out of two of these facilities were so troubling that sixteen members of Congress submitted a letter to the Department of Homeland Security, requesting a full and complete investigation into conditions at both facilities." Furthermore, you indicated that there is a compelling need for expedited processing because "many news outlets have reported on detention conditions at immigration facilities in California in print, radio, and video formats." Lastly, you reference a lawsuit filed on February 23, 2023, that you state shows of swift and ongoing retaliation by ICE and its contractors against detainees, which has "increased media interest in immigration detention facilities in California." Due to this, you indicate that your request is one of a matter of

Ms. Sana Singh

2023-ICAP-00256, 2022-ICFO-12506

Page 2

widespread and exceptional media interest in which there exist possible questions about the government's integrity which would affect public confidence.

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." While you have provided evidence suggesting that you represent an organization that is primarily engaged in disseminating information, you have not demonstrated an urgency to inform the public about a federal government activity.

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. You have also not demonstrated that the consequences of delaying a response to your request would compromise a significant recognized interest. While you have explained that there is a need for public transparency and information on the current conditions in detention facilities and the personnel overseeing those facilities, no convincing reason was presented that there is an urgency to inform the public.

Ms. Sana Singh

2023-ICAP-00256, 2022-ICFO-12506

Page 3

With regard to the third situation in which processing on an expedited basis is appropriate (“[t]he loss of substantial due process rights”), you have not made a showing of a loss of substantial due process rights.

With regard to the fourth situation in which processing on an expedited basis is appropriate, you have showed that the request deals with a matter of widespread media interest; however, you have not made a showing regarding the existence of possible questions about the government’s integrity which would affect public confidence.

Therefore, ICE affirms the decision of ICE FOIA to deny your request for expedited processing.

However, upon a complete review of the administrative record, it appears that the ICE Enforcement and Removal Operations (ERO) is currently processing your FOIA request. Since you will be receiving a response to your FOIA request, ICE is administratively closing this appeal regarding the denial of expedited processing.

Should you have any questions regarding this response, 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 **2023-ICAP-00256**, and the FOIA case number, which is **2022-ICFO-12506**.

Sincerely,

/s/ *Christopher West*

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

cc: The ICE FOIA Office

Exhibit 5



Northern
California

March 1, 2023

Via USPS Certified Mail, Email, and Secure Release Portal

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009
E-mail: ice-foia@dhs.gov

Re: FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities (Fee Waiver and Expedited Processing Requested)

Dear FOIA Officer:

I write on behalf of the American Civil Liberties Union of Northern California (“ACLU NorCal” or “Requestor”) to request records related to grievances filed at California immigration detention facilities. This request (“Request”) is made pursuant to the Freedom of Information Act, 5 U.S.C. § 522 *et seq.*, implementing regulations 6 C.F.R. § 5.1 *et seq.*, and any other applicable regulations.

We ask that you direct this request to all appropriate offices, components, divisions, and/or directorates within Immigration and Customs Enforcement (“ICE”), including but not limited to the ICE Office of Professional Responsibility and the ICE Office of Detention Oversight divisions of ICE.

ACLU NorCal further 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

The ongoing detention of individuals in immigration detention facilities with documented patterns of inhumane treatment and conditions raises serious civil and human rights and civil liberties concerns. As of February 2023, immigration detention facilities in California house nearly two thousand individuals—the fourth largest population of people in immigration detention in the

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
 Page 2

country.¹ These individuals are detained across six² detention facilities, which operate through contracts between U.S. Immigration and Customs Enforcement (“ICE”) and private detention contractors.³ The abuses at immigration detention facilities in California have been well documented in complaints filed with the Office for Civil Rights and Civil Liberties (“CRCL”),⁴ lawsuits,⁵ medical journals,⁶ and other government agencies.⁷

In the past year, there have been reports of inadequate medical care, unsanitary living conditions, inadequate COVID-19 prevention, and the overuse of solitary confinements, among other concerning complaints. The repeated reports of such abuses lead to the conclusion that private contractors at ICE facilities have a pattern of failing to meet the basic needs of populations in detention. Furthermore, individuals who have spoken up about these horrific conditions have faced retaliation including solitary confinement, sexually abusive pat-downs, revocation of commissary access, and threatened transfers.

¹ Transactional Records Access Clearinghouse, *Detention Facilities Average Daily Population*, <https://trac.syr.edu/immigration/detentionstats/facilities.html> (last visited Feb. 28, 2023).

² U.S. Immigration and Customs Enforcement, *Detention Facilities*, <https://www.ice.gov/detention-facilities?state=3&office=&name=> (last visited Jan. 30, 2023).

³ U.S. Immigration and Customs Enforcement, *FOIA Library – Detention Facility Contracts*, <https://www.ice.gov/foia/library> (last visited Jan. 30, 2023).

⁴ Press Release, ACLU of Northern California, Civil Rights Groups File Complaint Against ICE and Contractors for Violating First Amendment Rights of People in Immigration Detention (Aug. 26, 2021), <https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-amendment>; Press Release, California Collaborative for Immigrant Justice, Detained Leaders file simultaneous federal complaints against ICE, Gro Group & MTC (Sept. 13, 2022), <https://www.ccijustice.org/post/detained-leaders-file-simultaneous-federal-complaints-against-ice-gro-group-mtc>; ACLU of Northern California et al., CRCL Complaint Re: Sexually Abusive Pat-Downs Against Individuals in Immigration Detention at Mesa Verde Detention Facility (Jan. 17, 2023), <https://www.aclunc.org/sites/default/files/Mesa%20Verde%20Complaint%20only%20-01.23.pdf>

⁵ Farida Jhabvala Romero, *ICE Detainees Making \$1 a Day Sue Over Alleged Wage Theft*, KQED (July 16, 2022), <https://www.kqed.org/news/11919749/ice-detainees-making-1-a-day-sue-over-alleged-wage-theft>; Andrea Castillo, *ICE held a man in solitary confinement for more than a year. He’s suing under a new California law*, LA Times (Oct. 14, 2021), <https://www.latimes.com/california/story/2021-10-14/ice-lawsuit-california-solitary-confinement-detention-citizen>; Press Release, Lawyers’ Committee For Civil Rights, Groundbreaking COVID-19 Settlement to Yield Protections for Immigrants Detained by ICE, Limit Re-detention for People Released (Jan. 27, 2022), https://lccrsf.org/pressroom_posts/groundbreaking-covid-19-settlement-to-yield-protections-for-immigrants-detained-by-ice-limit-re-detention-for-people-released/;

⁶ Altaf Saadi et al., *Cumulative Risk of Immigration Prison Conditions on Health Outcomes Among Detained Immigrants in California*, Journal of Racial and Ethnic Health Disparities (Nov. 29, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8628823/>

⁷ DHS Office of Inspector General, Early Experiences with COVID-19 at ICE Detention Facilities (June 18, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-42-Jun20.pdf>; DHS Office of Inspector General, Management Alert—Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California (Sept. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>; DHS Office of Inspector General, ICE Needs to Address Prolonged Administrative Segregation and Other Violations at the Imperial Regional Detention Facility (Dec. 18, 2020), <https://www.oig.dhs.gov/reports/2021/ice-needs-address-prolonged-administrative-segregation-and-other-violations-imperial-regional-detention-facility/oig-21-12-dec20>; DHS Office of Inspector General, Capping Report: Observations of Unannounced Inspections of ICE Facilities in 2019 (July 1, 2020), <https://www.oig.dhs.gov/reports/2020/capping-report-observations-unannounced-inspections-ice-facilities-2019/oig-20-45-jul20>.

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
 39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

While advocates on the outside have attempted to bring attention to the abuses in immigration detention in California, individuals in detention have diligently utilized the grievance systems available at the facilities to draw attention to their substandard living conditions. These grievance systems are an essential tool for documenting the conditions in facilities and are often the only way individuals in detention can assert their civil and human rights.⁸ A functioning grievance system is mandated at all facilities in California by the 2011 Operations Manual ICE Performance-Based National Detention Standards (“PBNDS”).⁹

Conditions at immigration facilities in California have continued to deteriorate and on February 17, 2023, seventy-seven detained immigrants launched a hunger strike to protest inhumane conditions at Mesa Verde ICE Processing Center and Golden State Annex – two of the facilities the Request seeks records from.¹⁰ As of February 28, 2023, dozens of individuals remain on hunger strike. The grievance logs sought in the Request directly reflect the conditions that led individuals in detention to take such drastic collective action and put their health at risk. The public has an urgent need to know about the conditions at immigration detention facilities that drove these individuals to this action immediately. Given the historical pattern of abuse and ongoing action at detention facilities, ACLU NorCal, the immigrant community we serve, and the public have an urgent need to know about the grievance process in the immigration detention facilities across the state.

II. Records Requested

ACLU NorCal requests the following records held by ICE from the period of February 1, 2023 to February 28, 2023:

1. A copy of the detainee grievance log maintained by facility staff at Adelanto ICE Processing Center in accordance with PBNDS Section 6.2 (D);
2. A copy of the detainee grievance log maintained by facility staff at Desert View Annex in accordance with PBNDS Section 6.2 (D);
3. A copy of the detainee grievance log maintained by facility staff at Golden State Annex in accordance with PBNDS Section 6.2 (D);
4. A copy of the detainee grievance log maintained by facility staff at Imperial Regional Detention Facility in accordance with PBNDS Section 6.2 (D);

⁸ Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>; Gabe Ortiz, *Lawmakers Urge Probe into Allegations of Abuse and Retaliation at Private Detention Facilities*, Daily KOS (Sept. 19, 2022), https://www.dailykos.com/stories/2022/9/19/2123837/-Lawmakers-urge-probe-into-allegations-of-abuse-and-retaliation-at-private-detention-facilities?utm_campaign=recent.

⁹ ICE Performance-Based National Detention Standards 2011 (hereinafter, “PBNDS”), Section 6.2, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

¹⁰ Press Release: Seventy-seven Detained Immigrants Launch Hunger Strike at Two Central Valley Facilities, Protest Unpaid Labor and Inhumane Conditions, <https://www.aclunc.org/news/seventy-seven-detained-immigrants-launch-hunger-strike-two-central-valley-facilities-protest>.

5. A copy of the detainee grievance log maintained by facility staff at Mesa Verde ICE Processing Center in accordance with PBNDS Section 6.2 (D); and
6. A copy of the detainee grievance log maintained by facility staff at Otay Mesa Detention Center in accordance with PBNDS Section 6.2 (D).

III. Fee Waiver Request

ACLU NorCal requests that any fees associated with responding to this FOIA Request be waived pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k). Pursuant to those provisions, fees should be waived or reduced if disclosure is (1) “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Here, disclosure meets both tests.

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

Disclosure of the records in this Request is in the public interest. As described above, there are concerning reports of abusive living conditions at immigration detention facilities across California. However, very little is currently known about the number and frequency of grievances filed by individuals in immigration detention facilities across the state. ACLU NorCal is not aware of any publicly available and regularly updated records of grievances filed at immigration detention facilities. The ways in which the substandard living conditions at immigration detention facilities have profound effects on people’s lives has been the subject of significant media attention.¹¹

Records on grievances filed at immigration detention facilities are of critical interest to the public, particularly for U.S. citizens and permanent residents with undocumented family members. As of 2019, more than 3 million Californian U.S. citizens and permanent residents lived in mixed-status families with undocumented relatives.¹² Given the ongoing and widespread media attention to this issue, the records sought by the Request will significantly contribute to the public understanding of the operations and activities of ICE detention facilities and will be of interest to a broad interest. *See* 6 C.F.R. § 5.11(k)(1)(i), (k)(2)(iii). This is critical information to mixed-status families, immigration advocacy groups, legislators, and the public at large. ACLU NorCal plans

¹¹ Andrea Castillo, *California Fines Detention Center Operator \$100,000 Over Immigrants’ Working Conditions*, LA Times (Jan. 30, 2023), <https://www.latimes.com/politics/story/2023-01-30/detained-immigrants-alleged-unsafe-working-conditions-at-california-facility-fine>; Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>; Andrea Castillo, *Abuse Reports From Detained Black Immigrants Disproportionately High, Advocacy Groups Say*, LA Times (Oct. 27, 2022), <https://www.latimes.com/politics/story/2022-10-27/racism-and-abuse-of-detained-black-immigrants-disproportionately-high-report-says>; Farida Jhabvala Romero, *ICE Overusing Solitary Confinement in California, Lawmakers Worry*, KQED (Aug. 26, 2022), <https://www.kqed.org/news/11923753/ice-overusing-solitary-confinement-in-california-lawmakers-worry>.

¹² California Immigrant Data Portal, *Mixed-Status Families*, <https://immigrantdataca.org/indicators/mixed-status-families> (last visited Jan. 30, 2023).

to disseminate to the public, at no cost, the information and records disclosed from this FOIA Request.

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

In filing this request, ACLU NorCal does not seek to further any commercial interest. ACLU NorCal is a 501(c)(3) nonprofit organization and therefore has no commercial interest. We intend to widely disseminate to the public any relevant information obtained through this FOIA request. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k). ACLU NorCal frequently publishes information and records implicating civil rights issues to the public, at no cost. The primary purpose of doing so is public education and government accountability—not commercial.

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.’”) (citation omitted); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that “disclosure, not secrecy, is the dominant objective of the Act,” quoting *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

C. ACLU NorCal also qualifies for a fee waiver because it is a representative of the news media, and the records are not sought for commercial use

ACLU NorCal is also entitled to a waiver of search fees because we qualify 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); 22 C.F.R. §§ 171.16(a)(1)(iii), (a)(2). ACLU NorCal 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); *see Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (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 NorCal’s communications department is a division of a nonprofit 501(c)(3) organization and is a “representative of the news media.” It regularly publishes newsletters, news briefings, reports, know-your-rights handbooks, press releases, and other materials that are distributed 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. Examples of recent publications includes a report entitled *Collusion in California’s Central Valley: The Case for Ending Sheriff Entanglement with ICE*,¹³ and the podcast series “Gold Chains: The Hidden History

¹³ ACLU of Northern California, ACLU Report Reveals that Sheriffs in California’s Central Valley Have Developed Shadow ICE Notification and Transfer Systems, Circumventing State Law (Feb. 9, 2022), <https://www.aclunc.org/news/aclu-report-reveals-sheriffs-california-s-central-valley-have-developed-shadow-ice>.

of Slavery in California,” which has exceeded 5,500 downloads.¹⁴ ACLU NorCal’s communications department also disseminates information through the website <https://www.aclunc.org/>, which averages between 7,500 and 10,000 visitors per week and includes a widely read blog,¹⁵ where original editorial content reporting on and analyzing civil rights and civil liberties news is posted frequently. The website addresses civil liberties issues in depth and features civil liberties issues on which ACLU NorCal is focused, including immigrants’ rights. ACLU NorCal staff members are frequent spokespersons in television, print, and radio media and make public presentations at meetings and events. Further, ACLU NorCal’s communications department issues a triannual newsletter, which is distributed to over 78,000 subscribers by mail. It also disseminates information through social media channels, including its Instagram account, which has about 15,000 followers;¹⁶ and its Twitter account, which has about 23,200 followers.¹⁷ ACLU NorCal often disseminate descriptions and analysis of information obtained through FOIA requests through these various publication channels. These extensive publication activities make ACLU NorCal a “representative of the news media” under the FOIA and relevant regulations.

Courts have found other organizations whose missions, functions, publishing, and public education activities are similar in kind to ACLU NorCal’s to be “representative[s] of the news media.” *See, e.g., Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 288 (D. Conn. 2012) (finding that nonprofit public interest groups, including the Service Women’s Action Network, the ACLU, and the ACLU of Connecticut were “representatives of the news media” for FOIA purposes); *ACLU of Wash. v. U.S. Dep’t of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington was a “representative of the news media” for FOIA purposes); *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Def.*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003) (finding nonprofit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for FOIA purposes); *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that the National Security Archive was a “representative of the news media” for FOIA purposes); *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding that Judicial Watch, a self-described “public interest law firm,” was a “representative of the news media” for FOIA purposes).

As stated, the requested records are not sought for commercial use. As a representative of the news media, we plan to analyze and disseminate the information disclosed from this FOIA request to the public at no cost. Because of these factors, a fee waiver here would fulfill Congress’s legislative intent in amending the FOIA. *See Judicial Watch, Inc.*, 326 F.3d at 1312. Recognizing

¹⁴ ACLU of Northern California, ACLU of Northern California Launches Gold Chains: The Hidden History of Slavery in California (Nov. 14, 2019), <https://www.aclunc.org/news/aclu-northern-california-launches-gold-chains-hidden-history-slavery-california>.

¹⁵ Available at <https://www.aclunc.org/blog>.

¹⁶ Available at https://www.instagram.com/aclu_norcal/.

¹⁷ Available at https://twitter.com/ACLU_NorCal.

this, on numerous occasions ACLU NorCal has not been charged fees associated with responding to FOIA requests.¹⁸

IV. Expedited Processing Request

ACLU NorCal 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* 6 C.F.R. § 5.5(e)(1)(ii).

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

ACLU NorCal is “primarily engaged in disseminating information” within the meaning of 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii). As explained above, ACLU NorCal has the ability and intention to widely disseminate through various sources, including newsletters, news briefings, reports, know-your-rights handbooks, press releases, and other materials, the records and information received through this request. These materials will be available to the public at no cost.

Further, ACLU NorCal is a non-profit organization and an affiliate of the ACLU, a national organization that works to protect civil liberties of all people, including the safeguarding of the basic constitutional rights to privacy, free expression, and due process of law. ACLU NorCal is responsible for serving the population of northern California and ACLU NorCal staff persons are frequent spokespersons in television and print media and make public presentations at meetings and events. ACLU NorCal plans to analyze and disseminate to the public the information gathered through this Request at no cost, and the records are not sought for any commercial purpose.

Dissemination of information about actual or alleged governmental activity is a critical and substantial component of the ACLU NorCal’s mission and work. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are among ACLU NorCal’s primary activities and substantial components of our work. *See ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding that nonprofit 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” is “primarily engaged in disseminating information”)

¹⁸ For example, ICE granted ACLU NorCal a fee waiver in two FOIA requests filed in March 2018, one seeking information on ICE’s use of automated license plate reader systems and the other seeking communications between ICE and California law enforcement agencies. The Department of Homeland Security also granted ACLU NorCal a fee waiver in a FOIA request filed in February 2019 seeking information concerning the criminal investigation and surveillance of refugees. U.S. Citizenship and Immigration Services, a component of ICE, granted ACLU NorCal a fee waiver in a January 2023 FOIA request seeking records related to the situational exceptions to the Terrorism-Related Inadmissibility Grounds.

(internal quotation marks omitted). Courts have found that organizations with similar missions as ACLU NorCal that engage in information-dissemination activities similar to ACLU NorCal are “primarily engaged in disseminating information” for purposes of requesting expedited processing under the FOIA. *See, e.g., Leadership Conf. on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11. And as explained above, ACLU NorCal intends to distribute the information obtained through this FOIA request via our website and other available publication channels.

ACLU NorCal actively disseminates and frequently garners extensive media coverage of the information it obtains about actual or alleged government activity through FOIA and California’s statutory counterpart, the California Public Records Act.¹⁹ It does so through a heavily visited website (averaging between 7,500 and 10,000 visitors per week) and a paper newsletter distributed to over 78,000 members.

B. The records sought are urgently needed to inform the public about actual or alleged government activity and are of exceptional media interest

The records we request are “urgen[tly]” needed “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). Recent complaints regarding civil rights abuses at California ICE detention facilities have prompted public attention, including pressure from more than a dozen California members of Congress to investigate a complaint filed by individuals detained at Mesa Verde ICE Processing Center and Golden State Annex.²⁰ This Congressional ask followed a separate letter from October 2021 (“October 2021 Congressional letter”), signed by twenty-four members of Congress, calling for the “immediate termination of contracts” at three other immigration detention facilities in California (separate from the two facilities mentioned in the September 2022 Congressional letter).²¹ Of the five facilities mentioned in the September 2022 and October 2021 Congressional letters, four remain open and are subjects of the Request. Separately, individuals detained at immigration detention facilities in California have filed at least three complaints with the Department of Homeland Security Office for Civil Rights and Civil Liberties in the past five months alone.²²

¹⁹ ACLU of Northern California, *ACLU of Northern California et al. v. ICE* (Apr. 13, 2021), <https://www.aclunc.org/our-work/legal-docket/aclu-northern-california-et-al-v-ice>; ACLU of Northern California, Documents Reveal ICE Using Driver Location Data From Local Police for Deportations (Mar. 13, 2019), <https://www.aclunc.org/blog/documents-reveal-ice-using-driver-location-data-local-police-deportations>.

²⁰ Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>.

²¹ Representative Lofgren, Letter to Secretary Mayorkas (Oct. 21, 2021), available at <https://lofgren.house.gov/sites/lofgren.house.gov/files/CA%20ICE%20Detention%20Letter.pdf>.

²² Press Release, ACLU of Northern California, Civil Rights Groups File Complaint Against ICE and Contractors for Violating First Amendment Rights of People in Immigration Detention (Aug. 26, 2021), <https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-amendment>; Press Release, California Collaborative for Immigrant Justice, Detained Leaders file simultaneous federal complaints against ICE, Gro Group & MTC (Sept. 13, 2022), <https://www.ccijustice.org/post/detained-leaders-file-simultaneous-federal-complaints-against-ice-geo-group-mtc>; ACLU of Northern California et al., *CRCL Complaint Re: Sexually Abusive Pat-Downs Against Individuals in Immigration Detention at Mesa Verde Detention*

Furthermore, a lawsuit²³ filed on February 23, 2023 reflects swift and ongoing retaliation by ICE and its contractors. The lawsuit alleges that ICE and their private contractor, the GEO Group, unlawfully retaliated against individuals detained at Mesa Verde ICE Processing Center and Golden State Annex, “with the purpose of chilling their peaceful, First-Amendment-protected protest.”²⁴ Conditions at immigration detention facilities have become a matter of widespread and exceptional media interest. Since the launch of the hunger strike on February 17, 2023, many news outlets have reported on detention conditions at immigration facilities in California in print, radio, and video formats.²⁵ Media coverage of conditions at these facilities has spanned numerous outlets, including Spanish-language outlets such as Univision, which is the United States’ largest provider of Spanish-language content. These news articles highlight the failures of ICE and its contractors to adequately care for those in their custody. Media outlets have continued to publish stories detailing the horrific conditions of confinement and individuals’ failed attempts to seek recourse at the facility level as the hunger strike continues.

There is an urgent need to inform the public regarding the volume of grievances filed at California ICE detention facilities. Moreover, the records sought in this Request should be readily accessible to ICE and easy to locate through mandated facility-maintained grievance logs that are

Facility (Jan. 17, 2023),

https://www.aclunc.org/sites/default/files/Mesa%20Verde%20Complalint%20only%20_01.23.pdf.

²³ *Mendez v. ICE*, No. 3:23-cv-00829 (N.D. Cal. filed Feb. 23, 2023) available at

https://www.aclunc.org/sites/default/files/Mendez_v._ICE_Complaint.pdf.

²⁴ *Id.* at 1.

²⁵ Farida Jhabvala Romero, ‘Until We Drop’: Immigrant Detainees on Hunger Strike Sue ICE, Detention Contractor for Alleged Retaliation, KQED (Feb. 23, 2023), <https://www.kqed.org/news/11941677/until-we-drop-hunger-strike-enters-second-week-as-immigrants-in-ice-detention-protest-conditions>; Asylum Seekers at Two California ICE Detention Centers Hold Hunger Strike, Democracy Now! (Feb. 20, 2023),

https://www.democracynow.org/2023/2/20/headlines/asylum_seekers_at_two_california_ice_detention_centers_hold_hunger_strike;

Jonathan Lewis, *Hunger Strike by 84 Detained CA Immigrants Demands Fair Living/Working Conditions*, Davis Vanguard (Feb. 19, 2023),

<https://www.davisvanguard.org/2023/02/hunger-strike-by-84-detained-ca-immigrants-demands-fair-living-working-conditions/>;

Ishani Desai, *Nearly 100 Mesa Verde, Golden State Annex detainees launch hunger strike*, Bakersfield.com (Feb. 17, 2023),

https://www.bakersfield.com/news/nearly-100-mesa-verde-golden-state-annex-detainees-launch-hunger-strike/article_03ae529a-af3b-11ed-a4cb-f3a341464227.html;

Yesenia Amaro, *ICE says it takes misconduct allegations seriously. Central Valley hunger strikes continue*, Fresno Bee (Feb. 23, 2023),

<https://www.fresnobee.com/news/local/article272572709.html>;

Vania Patino, *Civil Rights activists demand transparency from ICE detention facilities*, 23ABC (Feb. 22, 2023),

<https://www.turnto23.com/news/local-news/civil-rights-activists-demand-transparency-from-ice-detention-facilities>;

Joshua Yeager, *Detainees at Kern County ICE facilities organize hunger strike*, KVPR (Feb. 23, 2023),

<https://www.kvpr.org/local-news/2023-02-23/inmates-at-kern-county-ice-facilities-organize-hunger-strike>;

Eric Burkett, *Immigrants claim ICE retribution for hunger strike over poor conditions*, Courthouse News (Feb. 24, 2023),

<https://www.courthousenews.com/immigrants-claim-ice-retribution-for-hunger-strike-over-poor-conditions/>;

Grupo de migrantes detenidos en centros de procesamiento de ICE en California inician huelga de hambre: esto exigen,

Univision (Feb. 18, 2023), <https://www.univision.com/shows/noticiero-univision/grupo-de-migrantes-detenidos-en-centros-de-procesamiento-de-ice-en-california-inician-huelga-de-hambre-esto-exigen-video>;

Migrantes detenidos en California realizan huelga de hambre por malos tratos en los centros de reclusion, Latinus (Feb. 18, 2023),

<https://latinus.us/2023/02/18/migrantes-detenidos-california-realizan-huelga-hambre-malos-tratos-centros-reclusion/>;

Aleja Hertzler-McCain, *Detained immigrants launch hunger strike at two California facilities*, National Catholic Reporter (Feb. 28, 2023),

<https://www.ncronline.org/news/detained-immigrants-launch-hunger-strike-two-california-facilities>;

Dalu Okoli, *Mesa Verde ICE detainees protest alleged inhumane living conditions*, KGET (Feb. 27, 2023),

<https://www.kget.com/news/local-news/mesa-verde-ice-detainees-protest-inhumane-living-conditions/>.

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO

39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
Page 10

subject to regular inspection by the Field Office Director and ICE Headquarters staff and reviewed during ICE/ERO-initiated facility inspections.²⁶ The agency is therefore unlikely to expend undue resources locating the records requested to fulfill this Request.

Should you determine that expedited processing is not warranted, while reserving our right to appeal that decision, Requestor expects a response within the twenty-day time limit set forth under 5 U.S.C. § 552(a)(6)(A)(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, ideally in electronic format, to:

Sana Singh
American Civil Liberties Union of Northern California
39 Drumm St
San Francisco, CA 94111

or via electronic mail to ssingh@aclunc.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 below if you have any questions or wish to obtain further information about the nature of the records in which we are interested.

Sincerely,



Sana A. Singh
ssingh@aclunc.org
(415) 293-6360

²⁶ PBNS, Section 6.2 (D), <https://www.ice.gov/doclib/detention-standards/2011/pbns2011r2016.pdf>; PBNS, Section 6.2 (H), <https://www.ice.gov/doclib/detention-standards/2011/pbns2011r2016.pdf>.

Exhibit 6



Northern
California

April 3, 2023

Via USPS Certified Mail, Email, and Secure Release Portal

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009
E-mail: ice-foia@dhs.gov

Re: FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities (Fee Waiver and Expedited Processing Requested)

Dear FOIA Officer:

I write on behalf of the American Civil Liberties Union of Northern California (“ACLU NorCal” or “Requestor”) to request records related to grievances filed at California immigration detention facilities. This request (“Request”) is made pursuant to the Freedom of Information Act, 5 U.S.C. § 522 *et seq.*, implementing regulations 6 C.F.R. § 5.1 *et seq.*, and any other applicable regulations.

We ask that you direct this request to all appropriate offices, components, divisions, and/or directorates within Immigration and Customs Enforcement (“ICE”), including but not limited to the ICE Office of Professional Responsibility and the ICE Office of Detention Oversight divisions of ICE.

ACLU NorCal further 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

The ongoing detention of individuals in immigration detention facilities with documented patterns of inhumane treatment and conditions raises serious civil and human rights and civil liberties concerns. As of March 2023, immigration detention facilities in California house nearly two thousand individuals—the third largest population of people in immigration detention in the

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
 Page 2

country.¹ These individuals are detained across six² detention facilities, which operate through contracts between U.S. Immigration and Customs Enforcement (“ICE”) and private detention contractors.³ The abuses at immigration detention facilities in California have been well documented in complaints filed with the Office for Civil Rights and Civil Liberties (“CRCL”),⁴ lawsuits,⁵ medical journals,⁶ and other government agencies.⁷

In the past year, there have been reports of inadequate medical care, unsanitary living conditions, inadequate COVID-19 prevention, and the overuse of solitary confinements, among other concerning complaints. The repeated reports of such abuses lead to the conclusion that private contractors at ICE facilities have a pattern of failing to meet the basic needs of populations in detention. Furthermore, individuals who have spoken up about these horrific conditions have faced retaliation including solitary confinement, sexually abusive pat-downs, revocation of commissary access, and retaliatory transfers.

¹ Transactional Records Access Clearinghouse, *Detention Facilities Average Daily Population*, <https://trac.syr.edu/immigration/detentionstats/facilities.html> (last visited Mar. 30, 2023).

² U.S. Immigration and Customs Enforcement, *Detention Facilities*, <https://www.ice.gov/detention-facilities?state=3&office=&name=> (last visited Jan. 30, 2023).

³ U.S. Immigration and Customs Enforcement, *FOIA Library – Detention Facility Contracts*, <https://www.ice.gov/foia/library> (last visited Jan. 30, 2023).

⁴ Press Release, ACLU of Northern California, Civil Rights Groups File Complaint Against ICE and Contractors for Violating First Amendment Rights of People in Immigration Detention (Aug. 26, 2021), <https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-amendment>; Press Release, California Collaborative for Immigrant Justice, Detained Leaders file simultaneous federal complaints against ICE, Gro Group & MTC (Sept. 13, 2022), <https://www.ccijustice.org/post/detained-leaders-file-simultaneous-federal-complaints-against-ice-gro-group-mtc>; ACLU of Northern California et al., CRCL Complaint Re: Sexually Abusive Pat-Downs Against Individuals in Immigration Detention at Mesa Verde Detention Facility (Jan. 17, 2023), https://www.aclunc.org/sites/default/files/Mesa%20Verde%20Complalint%20only%20_01.23.pdf

⁵ Farida Jhabvala Romero, *ICE Detainees Making \$1 a Day Sue Over Alleged Wage Theft*, KQED (July 16, 2022), <https://www.kqed.org/news/11919749/ice-detainees-making-1-a-day-sue-over-alleged-wage-theft>; Andrea Castillo, *ICE held a man in solitary confinement for more than a year. He’s suing under a new California law*, LA Times (Oct. 14, 2021), <https://www.latimes.com/california/story/2021-10-14/ice-lawsuit-california-solitary-confinement-detention-citizen>; Press Release, Lawyers’ Committee For Civil Rights, Groundbreaking COVID-19 Settlement to Yield Protections for Immigrants Detained by ICE, Limit Re-detention for People Released (Jan. 27, 2022), https://lccrsf.org/pressroom_posts/groundbreaking-covid-19-settlement-to-yield-protections-for-immigrants-detained-by-ice-limit-re-detention-for-people-released/;

⁶ Altaf Saadi et al., *Cumulative Risk of Immigration Prison Conditions on Health Outcomes Among Detained Immigrants in California*, Journal of Racial and Ethnic Health Disparities (Nov. 29, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8628823/>

⁷ DHS Office of Inspector General, Early Experiences with COVID-19 at ICE Detention Facilities (June 18, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-42-Jun20.pdf>; DHS Office of Inspector General, Management Alert—Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California (Sept. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>; DHS Office of Inspector General, ICE Needs to Address Prolonged Administrative Segregation and Other Violations at the Imperial Regional Detention Facility (Dec. 18, 2020), <https://www.oig.dhs.gov/reports/2021/ice-needs-address-prolonged-administrative-segregation-and-other-violations-imperial-regional-detention-facility/oig-21-12-dec20>; DHS Office of Inspector General, Capping Report: Observations of Unannounced Inspections of ICE Facilities in 2019 (July 1, 2020), <https://www.oig.dhs.gov/reports/2020/capping-report-observations-unannounced-inspections-ice-facilities-2019/oig-20-45-jul20>.

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
 39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

While advocates on the outside have attempted to bring attention to the abuses in immigration detention in California, individuals in detention have diligently utilized the grievance systems available at the facilities to draw attention to their substandard living conditions. These grievance systems are an essential tool for documenting the conditions in facilities and are often the only way individuals in detention can assert their civil and human rights.⁸ A functioning grievance system is mandated at all facilities in California by the 2011 Operations Manual ICE Performance-Based National Detention Standards (“PBNDS”).⁹

Conditions at immigration facilities in California have continued to deteriorate and on February 17, 2023, seventy-seven detained immigrants launched a hunger strike to protest inhumane conditions at Mesa Verde ICE Processing Center and Golden State Annex – two of the facilities the Request seeks records from.¹⁰ Several individuals remained on strike for weeks, putting their safety and well-being on the line to raise awareness about the horrendous conditions in detention. These individuals faced brutal retaliation, including use of physical force, disconnected phone lines, and the transfer of four individuals to El Paso Texas.¹¹ The grievance logs sought in the Request directly reflect the conditions that led individuals in detention to take such drastic collective action and put their health at risk. The public has an urgent need to know about the conditions at immigration detention facilities that drove these individuals to this action immediately. Given the historical pattern of abuse and ongoing action at detention facilities, ACLU NorCal, the immigrant community we serve, and the public have an urgent need to know about the grievance process in the immigration detention facilities across the state.

II. Records Requested

ACLU NorCal requests the following records held by ICE from the period of March 1, 2023 to March 31, 2023:

1. A copy of the detainee grievance log maintained by facility staff at Adelanto ICE Processing Center in accordance with PBNDS Section 6.2 (D);
2. A copy of the detainee grievance log maintained by facility staff at Desert View Annex in accordance with PBNDS Section 6.2 (D);

⁸ Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>; Gabe Ortiz, *Lawmakers Urge Probe into Allegations of Abuse and Retaliation at Private Detention Facilities*, Daily KOS (Sept. 19, 2022), https://www.dailykos.com/stories/2022/9/19/2123837/-Lawmakers-urge-probe-into-allegations-of-abuse-and-retaliation-at-private-detention-facilities?utm_campaign=recent.

⁹ ICE Performance-Based National Detention Standards 2011 (hereinafter, “PBNDS”), Section 6.2, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

¹⁰ Press Release: Seventy-seven Detained Immigrants Launch Hunger Strike at Two Central Valley Facilities, Protest Unpaid Labor and Inhumane Conditions, <https://www.aclunc.org/news/seventy-seven-detained-immigrants-launch-hunger-strike-two-central-valley-facilities-protest>.

¹¹ ACLU of Northern California, *After Hours of Violent Abuse, ICE and GEO Group Abruptly Transfer Four Mesa Verde Hunger Strikers to Texas* (Mar. 8, 2023), <https://www.aclunc.org/news/after-hours-violent-abuse-ice-and-geo-group-abruptly-transfer-four-mesa-verde-hunger-strikers>

3. A copy of the detainee grievance log maintained by facility staff at Golden State Annex in accordance with PBNDS Section 6.2 (D);
4. A copy of the detainee grievance log maintained by facility staff at Imperial Regional Detention Facility in accordance with PBNDS Section 6.2 (D);
5. A copy of the detainee grievance log maintained by facility staff at Mesa Verde ICE Processing Center in accordance with PBNDS Section 6.2 (D); and
6. A copy of the detainee grievance log maintained by facility staff at Otay Mesa Detention Center in accordance with PBNDS Section 6.2 (D).

III. Fee Waiver Request

ACLU NorCal requests that any fees associated with responding to this FOIA Request be waived pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k). Pursuant to those provisions, fees should be waived or reduced if disclosure is (1) “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Here, disclosure meets both tests.

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

Disclosure of the records in this Request is in the public interest. As described above, there are concerning reports of abusive living conditions at immigration detention facilities across California. However, very little is currently known about the number and frequency of grievances filed by individuals in immigration detention facilities across the state. ACLU NorCal is not aware of any publicly available and regularly updated records of grievances filed at immigration detention facilities. The ways in which the substandard living conditions at immigration detention facilities have profound effects on people’s lives has been the subject of significant media attention.¹²

Records on grievances filed at immigration detention facilities are of critical interest to the public, particularly for U.S. citizens and permanent residents with undocumented family members. As of 2019, more than 3 million Californian U.S. citizens and permanent residents lived in mixed-status families with undocumented relatives.¹³ Given the ongoing and widespread media attention

¹² Andrea Castillo, *California Fines Detention Center Operator \$100,000 Over Immigrants’ Working Conditions*, LA Times (Jan. 30, 2023), <https://www.latimes.com/politics/story/2023-01-30/detained-immigrants-alleged-unsafe-working-conditions-at-california-facility-fine>; Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>; Andrea Castillo, *Abuse Reports From Detained Black Immigrants Disproportionately High, Advocacy Groups Say*, LA Times (Oct. 27, 2022), <https://www.latimes.com/politics/story/2022-10-27/racism-and-abuse-of-detained-black-immigrants-disproportionately-high-report-says>; Farida Jhabvala Romero, *ICE Overusing Solitary Confinement in California, Lawmakers Worry*, KQED (Aug. 26, 2022), <https://www.kqed.org/news/11923753/ice-overusing-solitary-confinement-in-california-lawmakers-worry>.

¹³ California Immigrant Data Portal, *Mixed-Status Families*, <https://immigrantdataca.org/indicators/mixed-status-families> (last visited Jan. 30, 2023).

to this issue, the records sought by the Request will significantly contribute to the public understanding of the operations and activities of ICE detention facilities and will be of interest to a broad interest. *See* 6 C.F.R. § 5.11(k)(1)(i), (k)(2)(iii). This is critical information to mixed-status families, immigration advocacy groups, legislators, and the public at large. ACLU NorCal plans to disseminate to the public, at no cost, the information and records disclosed from this FOIA Request.

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

In filing this request, ACLU NorCal does not seek to further any commercial interest. ACLU NorCal is a 501(c)(3) nonprofit organization and therefore has no commercial interest. We intend to widely disseminate to the public any relevant information obtained through this FOIA request. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k). ACLU NorCal frequently publishes information and records implicating civil rights issues to the public, at no cost. The primary purpose of doing so is public education and government accountability—not commercial.

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.’”) (citation omitted); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that “disclosure, not secrecy, is the dominant objective of the Act,” quoting *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

C. ACLU NorCal also qualifies for a fee waiver because it is a representative of the news media, and the records are not sought for commercial use

ACLU NorCal is also entitled to a waiver of search fees because we qualify 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); 22 C.F.R. §§ 171.16(a)(1)(iii), (a)(2). ACLU NorCal 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); *see Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (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 NorCal’s communications department is a division of a nonprofit 501(c)(3) organization and is a “representative of the news media.” It regularly publishes newsletters, news briefings, reports, know-your-rights handbooks, press releases, and other materials that are distributed 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. Examples of recent publications includes a report entitled *Collusion in California’s Central Valley: The Case for*

Ending Sheriff Entanglement with ICE,¹⁴ and the podcast series “Gold Chains: The Hidden History of Slavery in California,” which has exceeded 5,500 downloads.¹⁵ ACLU NorCal’s communications department also disseminates information through the website <https://www.aclunc.org/>, which averages between 7,500 and 10,000 visitors per week and includes a widely read blog,¹⁶ where original editorial content reporting on and analyzing civil rights and civil liberties news is posted frequently. The website addresses civil liberties issues in depth and features civil liberties issues on which ACLU NorCal is focused, including immigrants’ rights. ACLU NorCal staff members are frequent spokespersons in television, print, and radio media and make public presentations at meetings and events. Further, ACLU NorCal’s communications department issues a triannual newsletter, which is distributed to over 78,000 subscribers by mail. It also disseminates information through social media channels, including its Instagram account, which has about 15,000 followers;¹⁷ and its Twitter account, which has about 23,200 followers.¹⁸ ACLU NorCal often disseminate descriptions and analysis of information obtained through FOIA requests through these various publication channels. These extensive publication activities make ACLU NorCal a “representative of the news media” under the FOIA and relevant regulations.

Courts have found other organizations whose missions, functions, publishing, and public education activities are similar in kind to ACLU NorCal’s to be “representative[s] of the news media.” *See, e.g., Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 288 (D. Conn. 2012) (finding that nonprofit public interest groups, including the Service Women’s Action Network, the ACLU, and the ACLU of Connecticut were “representatives of the news media” for FOIA purposes); *ACLU of Wash. v. U.S. Dep’t of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington was a “representative of the news media” for FOIA purposes); *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Def.*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003) (finding nonprofit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for FOIA purposes); *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that the National Security Archive was a “representative of the news media” for FOIA purposes); *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding that Judicial Watch, a self-described “public interest law firm,” was a “representative of the news media” for FOIA purposes).

As stated, the requested records are not sought for commercial use. As a representative of the news media, we plan to analyze and disseminate the information disclosed from this FOIA

¹⁴ ACLU of Northern California, ACLU Report Reveals that Sheriffs in California’s Central Valley Have Developed Shadow ICE Notification and Transfer Systems, Circumventing State Law (Feb. 9, 2022),

<https://www.aclunc.org/news/aclu-report-reveals-sheriffs-california-s-central-valley-have-developed-shadow-ice>.

¹⁵ ACLU of Northern California, ACLU of Northern California Launches Gold Chains: The Hidden History of Slavery in California (Nov. 14, 2019), <https://www.aclunc.org/news/aclu-northern-california-launches-gold-chains-hidden-history-slavery-california>.

¹⁶ Available at <https://www.aclunc.org/blog>.

¹⁷ Available at https://www.instagram.com/aclu_norcal/.

¹⁸ Available at https://twitter.com/ACLU_NorCal.

request to the public at no cost. Because of these factors, a fee waiver here would fulfill Congress's legislative intent in amending the FOIA. *See Judicial Watch, Inc.*, 326 F.3d at 1312. Recognizing this, on numerous occasions ACLU NorCal has not been charged fees associated with responding to FOIA requests.¹⁹

IV. Expedited Processing Request

ACLU NorCal 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* 6 C.F.R. § 5.5(e)(1)(ii).

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

ACLU NorCal is "primarily engaged in disseminating information" within the meaning of 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii). As explained above, ACLU NorCal has the ability and intention to widely disseminate through various sources, including newsletters, news briefings, reports, know-your-rights handbooks, press releases, and other materials, the records and information received through this request. These materials will be available to the public at no cost.

Further, ACLU NorCal is a non-profit organization and an affiliate of the ACLU, a national organization that works to protect civil liberties of all people, including the safeguarding of the basic constitutional rights to privacy, free expression, and due process of law. ACLU NorCal is responsible for serving the population of northern California and ACLU NorCal staff persons are frequent spokespersons in television and print media and make public presentations at meetings and events. ACLU NorCal plans to analyze and disseminate to the public the information gathered through this Request at no cost, and the records are not sought for any commercial purpose.

Dissemination of information about actual or alleged governmental activity is a critical and substantial component of the ACLU NorCal's mission and work. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are among ACLU NorCal's primary activities and substantial components of our work. *See ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C.

¹⁹ For example, ICE granted ACLU NorCal a fee waiver in two FOIA requests filed in March 2018, one seeking information on ICE's use of automated license plate reader systems and the other seeking communications between ICE and California law enforcement agencies. The Department of Homeland Security also granted ACLU NorCal a fee waiver in a FOIA request filed in February 2019 seeking information concerning the criminal investigation and surveillance of refugees. U.S. Citizenship and Immigration Services, a component of ICE, granted ACLU NorCal a fee waiver in a January 2023 FOIA request seeking records related to the situational exceptions to the Terrorism-Related Inadmissibility Grounds.

2004) (finding that nonprofit 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” is “primarily engaged in disseminating information”) (internal quotation marks omitted). Courts have found that organizations with similar missions as ACLU NorCal that engage in information-dissemination activities similar to ACLU NorCal are “primarily engaged in disseminating information” for purposes of requesting expedited processing under the FOIA. *See, e.g., Leadership Conf. on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11. And as explained above, ACLU NorCal intends to distribute the information obtained through this FOIA request via our website and other available publication channels.

ACLU NorCal actively disseminates and frequently garners extensive media coverage of the information it obtains about actual or alleged government activity through FOIA and California’s statutory counterpart, the California Public Records Act.²⁰ It does so through a heavily visited website (averaging between 7,500 and 10,000 visitors per week) and a paper newsletter distributed to over 78,000 members.

B. The records sought are urgently needed to inform the public about actual or alleged government activity and are of exceptional media interest

The records we request are “urgen[tly]” needed “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). Recent complaints regarding civil rights abuses at California ICE detention facilities have prompted public attention, including pressure from more than a dozen California members of Congress to investigate a complaint filed by individuals detained at Mesa Verde ICE Processing Center and Golden State Annex.²¹ This Congressional ask followed a separate letter from October 2021 (“October 2021 Congressional letter”), signed by twenty-four members of Congress, calling for the “immediate termination of contracts” at three other immigration detention facilities in California (separate from the two facilities mentioned in the September 2022 Congressional letter).²² Of the five facilities mentioned in the September 2022 and October 2021 Congressional letters, four remain open and are subjects of the Request. Separately, individuals detained at immigration detention facilities in California have filed at least three complaints with the Department of Homeland Security Office for Civil Rights and Civil Liberties in the past five months alone.²³

²⁰ ACLU of Northern California, ACLU of Northern California et al. v. ICE (Apr. 13, 2021), <https://www.aclunc.org/our-work/legal-docket/aclu-northern-california-et-al-v-ice>; ACLU of Northern California, Documents Reveal ICE Using Driver Location Data From Local Police for Deportations (Mar. 13, 2019), <https://www.aclunc.org/blog/documents-reveal-ice-using-driver-location-data-local-police-deportations>.

²¹ Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>.

²² Representative Lofgren, Letter to Secretary Mayorkas (Oct. 21, 2021), available at <https://lofgren.house.gov/sites/lofgren.house.gov/files/CA%20ICE%20Detention%20Letter.pdf>.

²³ Press Release, ACLU of Northern California, Civil Rights Groups File Complaint Against ICE and Contractors for Violating First Amendment Rights of People in Immigration Detention (Aug. 26, 2021), <https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-amendment>; Press Release, California Collaborative for Immigrant Justice, Detained Leaders file simultaneous

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
Page 9

Furthermore, a lawsuit²⁴ filed on February 23, 2023 reflects swift and ongoing retaliation by ICE and its contractors. The lawsuit alleges that ICE and their private contractor, the GEO Group, unlawfully retaliated against individuals detained at Mesa Verde ICE Processing Center and Golden State Annex, “with the purpose of chilling their peaceful, First-Amendment-protected protest.”²⁵ Conditions at immigration detention facilities have become a matter of widespread and exceptional media interest, as well as public attention. Since the launch of the hunger strike on February 17, 2023, many news outlets have reported on detention conditions at immigration facilities and public response to the hunger strike in California in print, radio, and video formats.²⁶

federal complaints against ICE, Gro Group & MTC (Sept. 13, 2022), <https://www.ccijustice.org/post/detained-leaders-file-simultaneous-federal-complaints-against-ice-geo-group-mtc>; ACLU of Northern California et al., *CRCL Complaint Re: Sexually Abusive Pat-Downs Against Individuals in Immigration Detention at Mesa Verde Detention Facility* (Jan. 17, 2023), <https://www.aclunc.org/sites/default/files/Mesa%20Verde%20Complaint%20only%2001.23.pdf>.

²⁴ *Mendez v. ICE*, No. 3:23-cv-00829 (N.D. Cal. filed Feb. 23, 2023) available at

https://www.aclunc.org/sites/default/files/Mendez_v._ICE_Complaint.pdf.

²⁵ *Id.* at 1.

²⁶ Farida Jhabvala Romero, ‘Until We Drop’: Immigrant Detainees on Hunger Strike Sue ICE, Detention Contractor for Alleged Retaliation, KQED (Feb. 23, 2023), <https://www.kqed.org/news/11941677/until-we-drop-hunger-strike-enters-second-week-as-immigrants-in-ice-detention-protest-conditions>; Asylum Seekers at Two California ICE Detention Centers Hold Hunger Strike, Democracy Now! (Feb. 20, 2023),

https://www.democracynow.org/2023/2/20/headlines/asylum_seekers_at_two_california_ice_detention_centers_hold_hunger_strike; Jonathan Lewis, *Hunger Strike by 84 Detained CA Immigrants Demands Fair Living/Working Conditions*, Davis Vanguard (Feb. 19, 2023),

<https://www.davisvanguard.org/2023/02/hunger-strike-by-84-detained-ca-immigrants-demands-fair-living-working-conditions/>; Ishani Desai, *Nearly 100 Mesa Verde, Golden State Annex detainees launch hunger strike*, Bakersfield.com (Feb. 17, 2023),

https://www.bakersfield.com/news/nearly-100-mesa-verde-golden-state-annex-detainees-launch-hunger-strike/article_03ae529a-af3b-11ed-a4cb-f3a341464227.html; Yesenia Amaro, *ICE says it takes misconduct allegations seriously. Central Valley hunger strikes continue*, Fresno Bee (Feb. 23, 2023),

<https://www.fresnobee.com/news/local/article272572709.html>; Vania Patino, *Civil Rights activists demand transparency from ICE detention facilities*, 23ABC (Feb. 22, 2023),

<https://www.turnto23.com/news/local-news/civil-rights-activists-demand-transparency-from-ice-detention-facilities>; Joshua Yeager, *Detainees at Kern County ICE facilities organize hunger strike*, KVPR (Feb. 23, 2023), <https://www.kvpr.org/local-news/2023-02-23/inmates-at-kern-county-ice-facilities-organize-hunger-strike>; Eric Burkett, *Immigrants claim ICE retribution for hunger strike over poor conditions*, Courthouse News (Feb. 24, 2023),

<https://www.courthousenews.com/immigrants-claim-ice-retribution-for-hunger-strike-over-poor-conditions/>; *Grupo de migrantes detenidos en centros de procesamiento de ICE en California inician huelga de hambre: esto exigen*, Univision (Feb. 18, 2023),

<https://www.univision.com/shows/noticiero-univision/grupo-de-migrantes-detenidos-en-centros-de-procesamiento-de-ice-en-california-inician-huelga-de-hambre-esto-exigen-video>; *Migrantes detenidos en California realizan huelga de hambre por malos tratos en los centros de reclusion*, Latinus (Feb. 18, 2023),

<https://latinus.us/2023/02/18/migrantes-detenidos-california-realizan-huelga-hambre-malos-tratos-centros-reclusion/>; Aleja Hertzler-McCain, *Detained immigrants launch hunger strike at two California facilities*, National Catholic Reporter (Feb. 28, 2023),

<https://www.ncronline.org/news/detained-immigrants-launch-hunger-strike-two-california-facilities>; Dalu Okoli, *Mesa Verde ICE detainees protest alleged inhumane living conditions*, KGET (Feb. 27, 2023),

<https://www.kget.com/news/local-news/mesa-verde-ice-detainees-protest-inhumane-living-conditions/>; Brian Osgood, *‘Slavery wages’ prompt hunger strike at ICE detention Facilities*, Al Jazeera (Mar. 3, 2023),

<https://www.aljazeera.com/news/2023/3/3/hunger-strike-at-ice-detention-facilities-protest-slavery>; Yesenia Amaro, *Hunger strikers sent from Central Valley detention centers to El Paso, supporters say*, Fresno Bee (Mar. 8, 2023),

<https://www.fresnobee.com/news/local/article272896745.html>; Tyche Hendricks, *ICE Abruptly Transfers 4 Detainee Hunger Strikers From California to Texas, Sparking Fears of Force-Feeding*, KQED (Mar. 9, 2023),

<https://www.kqed.org/news/11943030/ice-abruptly-transfers-4-detainee-hunger-strikers-from-california-to-texas-sparking-fears-of-force-feeding>; Tyche Hendricks, *With Detainee Hunger Strike in Third Week, ICE Is Failing to Review Requests for Freedom, Advocates Say*, KQED (Mar. 3, 2023), <https://www.kqed.org/news/11942414/with->

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO

39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

Media coverage of conditions at these facilities has spanned numerous outlets, including Spanish-language outlets such as Univision, which is the United States' largest provider of Spanish-language content. These news articles highlight the failures of ICE and its contractors to adequately care for those in their custody. Media outlets have continued to publish stories detailing the horrific conditions of confinement and individuals' failed attempts to seek recourse at the facility level as the hunger strike continues. Media coverage of the hunger strike has also highlighted the public interest in these issues, including multiple rallies held at different locations across California in support of the hunger strikers.²⁷ Members of the public have shown a sustained and urgent demand for accountability and transparency regarding conditions at California ICE detention centers through their support for the hunger strikers, and calls from hundreds of individuals to members of congress to facilitate an investigation.²⁸

There is an urgent need to inform the public regarding the volume of grievances filed at California ICE detention facilities. Moreover, the records sought in this Request should be readily accessible to ICE and easy to locate through mandated facility-maintained grievance logs that are subject to regular inspection by the Field Office Director and ICE Headquarters staff and reviewed during ICE/ERO-initiated facility inspections.²⁹ The agency is therefore unlikely to expend undue resources locating the records requested to fulfill this Request.

Should you determine that expedited processing is not warranted, while reserving our right to appeal that decision, Requestor expects a response within the twenty-day time limit set forth under 5 U.S.C. § 552(a)(6)(A)(i).

* * *

[detainee-hunger-strike-in-third-week-ice-is-failing-to-review-requests-for-freedom-advocates-say](#); Madison Weil, *Rally held outside detention center downtown in support of detainees on hunger strike*, ABC 10 (Mar. 5, 2023), <https://www.10news.com/news/local-news/san-diego-news/rally-held-outside-detention-center-downtown-in-support-of-detainees-on-hunger-strike>; Mary Paronyan, *Four Mesa Verde hunger strikers transferred to Texas*, BakersfieldNow (Mar. 9, 2023), <https://bakersfieldnow.com/news/local/four-mesa-verde-hunger-strikers-transferred-to-texas>.

²⁷Vada Hepner, *Supporters rally on day 17 of Mesa Verde, Golden State Annex hunger strike*, The Californian (Mar. 5, 2023), https://www.bakersfield.com/news/supporters-rally-on-day-17-of-mesa-verde-golden-state-annex-hunger-strike/article_c14e06ba-bbb6-11ed-a5ce-9f11769b42b8.html; Joshua Yeager, *Detainees call for closure of ICE detention centers in Valley amid hunger strike, lawsuit*, KVPR (Feb. 28, 2023), <https://www.kvpr.org/local-news/2023-02-28/detainees-call-for-closure-of-ice-detention-centers-in-valley-amid-hunger-strike-lawsuit>; Telemundo Valle Central, *Protestas en apoyo a migrantes en McFarland* (Feb. 27, 2023), <https://www.kget.com/telemundo/noticias/protestas-en-apoyo-a-migrantes-en-mcfarland/>; Mary Paronyan, *Kern residents protest and go on hunger strike at Mesa Verde ICE Processing Center*, BakersfieldNow (Mar. 5, 2023), <https://bakersfieldnow.com/news/local/kern-residents-and-ice-inmates-go-on-hunger-strike>.

²⁸California Collaborative for Immigrant Justice, *Detained Individuals Forced to Pause Hunger Strike at CA Immigration Detention Facilities* (Mar. 29, 2023), <https://www.ccijjustice.org/post/detained-individuals-forced-to-pause-hunger-strike-at-ca-immigration-detention-facilities>

²⁹ PBNDS, Section 6.2 (D), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>; PBNDS, Section 6.2 (H), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
Page 11

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, ideally in electronic format, to:

Sana Singh
American Civil Liberties Union of Northern California
39 Drumm St
San Francisco, CA 94111

or via electronic mail to ssingh@aclunc.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 below if you have any questions or wish to obtain further information about the nature of the records in which we are interested.

Sincerely,



Sana A. Singh
ssingh@aclunc.org
(415) 293-6360

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

Exhibit 7



Northern
California

May 4, 2023

Via USPS Certified Mail, Email, and Secure Release Portal

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009
E-mail: ice-foia@dhs.gov

Re: FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities (Fee Waiver and Expedited Processing Requested)

Dear FOIA Officer:

I write on behalf of the American Civil Liberties Union of Northern California (“ACLU NorCal” or “Requestor”) to request records related to grievances filed at California immigration detention facilities. This request (“Request”) is made pursuant to the Freedom of Information Act, 5 U.S.C. § 522 *et seq.*, implementing regulations 6 C.F.R. § 5.1 *et seq.*, and any other applicable regulations.

We ask that you direct this request to all appropriate offices, components, divisions, and/or directorates within Immigration and Customs Enforcement (“ICE”), including but not limited to the ICE Office of Professional Responsibility and the ICE Office of Detention Oversight divisions of ICE.

ACLU NorCal further 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

The ongoing detention of individuals in immigration detention facilities with documented patterns of inhumane treatment and conditions raises serious civil and human rights and civil liberties concerns. As of April 2023, immigration detention facilities in California house nearly two thousand individuals—the third largest population of people in immigration detention in the

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
Page 2

country.¹ These individuals are detained across six² detention facilities, which operate through contracts between U.S. Immigration and Customs Enforcement (“ICE”) and private detention contractors.³ The abuses at immigration detention facilities in California have been well documented in complaints filed with the Office for Civil Rights and Civil Liberties (“CRCL”),⁴ lawsuits,⁵ medical journals,⁶ and other government agencies.⁷

In the past year, there have been reports of inadequate medical care, unsanitary living conditions, inadequate COVID-19 prevention, and the overuse of solitary confinements, among other concerning complaints.⁸ The repeated reports of such abuses lead to the conclusion that private contractors at ICE facilities have a pattern of failing to meet the basic needs of populations in detention. This conclusion has been supported by outside regulators, including a finding in

¹ Transactional Records Access Clearinghouse, *Detention Facilities Average Daily Population*, <https://trac.syr.edu/immigration/detentionstats/facilities.html> (last visited May 3, 2023).

² U.S. Immigration and Customs Enforcement, *Detention Facilities*, <https://www.ice.gov/detention-facilities?state=3&office=&name=> (last visited May 3, 2023).

³ U.S. Immigration and Customs Enforcement, *FOIA Library – Detention Facility Contracts*, <https://www.ice.gov/foia/library> (last visited May 3, 2023).

⁴ Press Release, ACLU of Northern California, Civil Rights Groups File Complaint Against ICE and Contractors for Violating First Amendment Rights of People in Immigration Detention (Aug. 26, 2021),

<https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-amendment>; Press Release, California Collaborative for Immigrant Justice, Detained Leaders file simultaneous federal complaints against ICE, Gro Group & MTC (Sept. 13, 2022), <https://www.ccijjustice.org/post/detained-leaders-file-simultaneous-federal-complaints-against-ice-geo-group-mtc>; ACLU of Northern California et al., CRCL Complaint Re: Sexually Abusive Pat-Downs Against Individuals in Immigration Detention at Mesa Verde Detention Facility (Jan. 17, 2023),

<https://www.aclunc.org/sites/default/files/Mesa%20Verde%20Complaint%20only%2001.23.pdf>

⁵ Farida Jhabvala Romero, *ICE Detainees Making \$1 a Day Sue Over Alleged Wage Theft*, KQED (July 16, 2022), <https://www.kqed.org/news/11919749/ice-detainees-making-1-a-day-sue-over-alleged-wage-theft>; Andrea Castillo, *ICE held a man in solitary confinement for more than a year. He’s suing under a new California law*, LA Times (Oct. 14, 2021), <https://www.latimes.com/california/story/2021-10-14/ice-lawsuit-california-solitary-confinement-detention-citizen>; Press Release, Lawyers’ Committee For Civil Rights, Groundbreaking COVID-19 Settlement to Yield Protections for Immigrants Detained by ICE, Limit Re-detention for People Released (Jan. 27, 2022), https://lccrsf.org/pressroom_posts/groundbreaking-covid-19-settlement-to-yield-protections-for-immigrants-detained-by-ice-limit-re-detention-for-people-released/;

⁶ Altaf Saadi et al., *Cumulative Risk of Immigration Prison Conditions on Health Outcomes Among Detained Immigrants in California*, Journal of Racial and Ethnic Health Disparities (Nov. 29, 2021),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8628823/>

⁷ DHS Office of Inspector General, *Early Experiences with COVID-19 at ICE Detention Facilities* (June 18, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-42-Jun20.pdf>; DHS Office of Inspector General, *Management Alert—Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California* (Sept. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>; DHS Office of Inspector General, *ICE Needs to Address Prolonged Administrative Segregation and Other Violations at the Imperial Regional Detention Facility* (Dec. 18, 2020), <https://www.oig.dhs.gov/reports/2021/ice-needs-address-prolonged-administrative-segregation-and-other-violations-imperial-regional-detention-facility/oig-21-12-dec20>; DHS Office of Inspector General, *Capping Report: Observations of Unannounced Inspections of ICE Facilities in 2019* (July 1, 2020), <https://www.oig.dhs.gov/reports/2020/capping-report-observations-unannounced-inspections-ice-facilities-2019/oig-20-45-jul20>.

⁸ Jaclyn Diaz, *GEO Group sickened ICE detainees with hazardous chemicals for months, a lawsuit says*, NPR (Mar. 25, 2023), <https://www.npr.org/2023/03/25/1165890634/geo-group-lawsuit-adelanto-ice-detainees-chemical-exposure>; Jessica De Nova, *Immigrants suing Adelanto ICE operations company claim they were sprayed with toxic chemical*, KABC (March 28, 2023), <https://abc7.com/immigrants-detainees-adelanto-ice-facility-sprayed-with-toxic-chemical/13038078/>.

January 2023 by the California Division of Occupational Safety and Health of six violations of state code at Golden State Annex, leading to a fine of over \$100,00 levied against the GEO Group.⁹ Furthermore, individuals who have spoken up about these horrific conditions have faced retaliation including solitary confinement, sexually abusive pat-downs, revocation of commissary access, and retaliatory transfers.¹⁰

While advocates on the outside have attempted to bring attention to the abuses in immigration detention in California, individuals in detention have diligently utilized the grievance systems available at the facilities to draw attention to their substandard living conditions. These grievance systems are an essential tool for documenting the conditions in facilities and are often the only way individuals in detention can assert their civil and human rights.¹¹ A functioning grievance system is mandated at all facilities in California by the 2011 Operations Manual ICE Performance-Based National Detention Standards (“PBNDS”).¹²

Conditions at immigration facilities in California have continued to deteriorate and on February 17, 2023, approximately eighty-two detained immigrants launched a hunger strike to protest inhumane conditions at Mesa Verde ICE Processing Center and Golden State Annex – two of the facilities the Request seeks records from.¹³ Many individuals remained on strike for weeks, putting their safety and well-being on the line to raise awareness about the horrendous conditions in detention. These individuals faced brutal retaliation, including use of physical force, disconnected phone lines, and the unjustified transfer of seven individuals to El Paso, Texas.¹⁴ The grievance logs sought in the Request directly reflect the conditions that led individuals in detention to take such drastic collective action and put their health at risk. The public has an urgent need to know about the conditions at immigration detention facilities that drove these individuals to this action immediately. Given the historical pattern of abuse at detention facilities, ACLU NorCal, the

⁹ Andrea Castillo, *California fines detention center operator \$100,000 over immigrants’ working conditions*, LA Times (Jan. 30, 2023), <https://www.latimes.com/politics/story/2023-01-30/detained-immigrants-alleged-unsafe-working-conditions-at-california-facility-fine>.

¹⁰ Freedom for Immigrants, Trafficked & Tortured: Mapping ICE Transfers, (Feb. 2023), <https://www.freedomforimmigrants.org/trafficked-and-tortured-report>; Kate Morrissey, *ICE Detainees allege retaliation after speaking out about medical conditions at Otay Mesa Detention Center*, The San Diego Union-Tribune (Mar. 3, 2023), <https://www.sandiegouniontribune.com/news/immigration/story/2023-03-03/ice-detainees-allege-retaliation-after-speaking-out-about-medical-conditions-at-otay-mesa-detention-center>.

¹¹ Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>; Gabe Ortiz, *Lawmakers Urge Probe into Allegations of Abuse and Retaliation at Private Detention Facilities*, Daily KOS (Sept. 19, 2022), https://www.dailykos.com/stories/2022/9/19/2123837/-Lawmakers-urge-probe-into-allegations-of-abuse-and-retaliation-at-private-detention-facilities?utm_campaign=recent.

¹² ICE Performance-Based National Detention Standards 2011 (hereinafter, “PBNDS”), Section 6.2, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

¹³ Press Release: Seventy-seven Detained Immigrants Launch Hunger Strike at Two Central Valley Facilities, Protest Unpaid Labor and Inhumane Conditions, <https://www.aclunc.org/news/seventy-seven-detained-immigrants-launch-hunger-strike-two-central-valley-facilities-protest>.

¹⁴ ACLU of Northern California, *After Hours of Violent Abuse, ICE and GEO Group Abruptly Transfer Four Mesa Verde Hunger Strikers to Texas* (Mar. 8, 2023), <https://www.aclunc.org/news/after-hours-violent-abuse-ice-and-geo-group-abruptly-transfer-four-mesa-verde-hunger-strikers>.

immigrant community we serve, and the public have an urgent need to know about the grievance process in the immigration detention facilities across the state.

II. Records Requested

ACLU NorCal requests the following records held by ICE from the period of April 1, 2023 to April 30, 2023:

1. A copy of the detainee grievance log maintained by facility staff at Adelanto ICE Processing Center in accordance with PBNDS Section 6.2 (D);
2. A copy of the detainee grievance log maintained by facility staff at Desert View Annex in accordance with PBNDS Section 6.2 (D);
3. A copy of the detainee grievance log maintained by facility staff at Golden State Annex in accordance with PBNDS Section 6.2 (D);
4. A copy of the detainee grievance log maintained by facility staff at Imperial Regional Detention Facility in accordance with PBNDS Section 6.2 (D);
5. A copy of the detainee grievance log maintained by facility staff at Mesa Verde ICE Processing Center in accordance with PBNDS Section 6.2 (D); and
6. A copy of the detainee grievance log maintained by facility staff at Otay Mesa Detention Center in accordance with PBNDS Section 6.2 (D).

III. Fee Waiver Request

ACLU NorCal requests that any fees associated with responding to this FOIA Request be waived pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k). Pursuant to those provisions, fees should be waived or reduced if disclosure is (1) “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Here, disclosure meets both tests.

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

Disclosure of the records in this Request is in the public interest. As described above, there are concerning reports of abusive living conditions at immigration detention facilities across California. However, very little is currently known about the number and frequency of grievances filed by individuals in immigration detention facilities across the state. ACLU NorCal is not aware of any publicly available and regularly updated records of grievances filed at immigration detention facilities. The ways in which the substandard living conditions at immigration detention

facilities have profound effects on people's lives has been the subject of significant media attention.¹⁵

Records on grievances filed at immigration detention facilities are of critical interest to the public, particularly for U.S. citizens and permanent residents with undocumented family members. As of 2019, more than 3 million Californian U.S. citizens and permanent residents lived in mixed-status families with undocumented relatives.¹⁶ Given the ongoing and widespread media attention to this issue, the records sought by the Request will significantly contribute to the public understanding of the operations and activities of ICE detention facilities and will be of interest to a broad interest. *See* 6 C.F.R. § 5.11(k)(1)(i), (k)(2)(iii). This is critical information to mixed-status families, immigration advocacy groups, legislators, and the public at large. ACLU NorCal plans to disseminate to the public, at no cost, the information and records disclosed from this FOIA Request.

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

In filing this request, ACLU NorCal does not seek to further any commercial interest. ACLU NorCal is a 501(c)(3) nonprofit organization and therefore has no commercial interest. We intend to widely disseminate to the public any relevant information obtained through this FOIA request. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k). ACLU NorCal frequently publishes information and records implicating civil rights issues to the public, at no cost. The primary purpose of doing so is public education and government accountability—not commercial.

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.'") (citation omitted); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that "disclosure, not secrecy, is the dominant objective of the Act," quoting *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

C. ACLU NorCal also qualifies for a fee waiver because it is a representative of the news media, and the records are not sought for commercial use

ACLU NorCal is also entitled to a waiver of search fees because we qualify as "a representative of the news media" and the records are not sought for commercial use. 5 U.S.C.

¹⁵ Andrea Castillo, *California Fines Detention Center Operator \$100,000 Over Immigrants' Working Conditions*, LA Times (Jan. 30, 2023), <https://www.latimes.com/politics/story/2023-01-30/detained-immigrants-alleged-unsafe-working-conditions-at-california-facility-fine>; Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>; Andrea Castillo, *Abuse Reports From Detained Black Immigrants Disproportionately High, Advocacy Groups Say*, LA Times (Oct. 27, 2022), <https://www.latimes.com/politics/story/2022-10-27/racism-and-abuse-of-detained-black-immigrants-disproportionately-high-report-says>; Farida Jhabvala Romero, *ICE Overusing Solitary Confinement in California, Lawmakers Worry*, KQED (Aug. 26, 2022), <https://www.kqed.org/news/11923753/ice-overusing-solitary-confinement-in-california-lawmakers-worry>.

¹⁶ California Immigrant Data Portal, *Mixed-Status Families*, <https://immigrantdataca.org/indicators/mixed-status-families> (last visited Jan. 30, 2023).

§ 552(a)(4)(A)(ii)(II); 22 C.F.R. §§ 171.16(a)(1)(iii), (a)(2). ACLU NorCal 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); see *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (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 NorCal’s communications department is a division of a nonprofit 501(c)(3) organization and is a “representative of the news media.” It regularly publishes newsletters, news briefings, reports, know-your-rights handbooks, press releases, and other materials that are distributed 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. Examples of recent publications includes a report entitled *Collusion in California’s Central Valley: The Case for Ending Sheriff Entanglement with ICE*,¹⁷ and the podcast series “Gold Chains: The Hidden History of Slavery in California,” which has exceeded 5,500 downloads.¹⁸ ACLU NorCal’s communications department also disseminates information through the website <https://www.aclunc.org/>, which averages between 7,500 and 10,000 visitors per week and includes a widely read blog,¹⁹ where original editorial content reporting on and analyzing civil rights and civil liberties news is posted frequently. The website addresses civil liberties issues in depth and features civil liberties issues on which ACLU NorCal is focused, including immigrants’ rights. ACLU NorCal staff members are frequent spokespersons in television, print, and radio media and make public presentations at meetings and events. Further, ACLU NorCal’s communications department issues a triannual newsletter, which is distributed to over 78,000 subscribers by mail. It also disseminates information through social media channels, including its Instagram account, which has about 15,000 followers;²⁰ and its Twitter account, which has about 23,200 followers.²¹ ACLU NorCal often disseminate descriptions and analysis of information obtained through FOIA requests through these various publication channels. These extensive publication activities make ACLU NorCal a “representative of the news media” under the FOIA and relevant regulations.

Courts have found other organizations whose missions, functions, publishing, and public education activities are similar in kind to ACLU NorCal’s to be “representative[s] of the news media.” See, e.g., *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 288 (D. Conn. 2012) (finding that nonprofit public interest groups, including the Service Women’s Action

¹⁷ ACLU of Northern California, ACLU Report Reveals that Sheriffs in California’s Central Valley Have Developed Shadow ICE Notification and Transfer Systems, Circumventing State Law (Feb. 9, 2022),

<https://www.aclunc.org/news/aclu-report-reveals-sheriffs-california-s-central-valley-have-developed-shadow-ice>.

¹⁸ ACLU of Northern California, ACLU of Northern California Launches Gold Chains: The Hidden History of Slavery in California (Nov. 14, 2019), <https://www.aclunc.org/news/aclu-northern-california-launches-gold-chains-hidden-history-slavery-california>.

¹⁹ Available at <https://www.aclunc.org/blog>.

²⁰ Available at https://www.instagram.com/aclu_norcal/.

²¹ Available at https://twitter.com/ACLU_NorCal.

Network, the ACLU, and the ACLU of Connecticut were “representatives of the news media” for FOIA purposes); *ACLU of Wash. v. U.S. Dep’t of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington was a “representative of the news media” for FOIA purposes); *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Def.*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003) (finding nonprofit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for FOIA purposes); *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that the National Security Archive was a “representative of the news media” for FOIA purposes); *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding that Judicial Watch, a self-described “public interest law firm,” was a “representative of the news media” for FOIA purposes).

As stated, the requested records are not sought for commercial use. As a representative of the news media, we plan to analyze and disseminate the information disclosed from this FOIA request to the public at no cost. Because of these factors, a fee waiver here would fulfill Congress’s legislative intent in amending the FOIA. *See Judicial Watch, Inc.*, 326 F.3d at 1312. Recognizing this, on numerous occasions ACLU NorCal has not been charged fees associated with responding to FOIA requests.²²

IV. Expedited Processing Request

ACLU NorCal 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* 6 C.F.R. § 5.5(e)(1)(ii).

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

ACLU NorCal is “primarily engaged in disseminating information” within the meaning of 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii). As explained above, ACLU NorCal has the ability and intention to widely disseminate through various sources, including newsletters, news briefings, reports, know-your-rights handbooks, press releases, and other materials, the

²² For example, ICE granted ACLU NorCal a fee waiver in two FOIA requests filed in March 2018, one seeking information on ICE’s use of automated license plate reader systems and the other seeking communications between ICE and California law enforcement agencies. The Department of Homeland Security also granted ACLU NorCal a fee waiver in a FOIA request filed in February 2019 seeking information concerning the criminal investigation and surveillance of refugees. U.S. Citizenship and Immigration Services, a component of ICE, granted ACLU NorCal a fee waiver in a January 2023 FOIA request seeking records related to the situational exceptions to the Terrorism-Related Inadmissibility Grounds.

records and information received through this request. These materials will be available to the public at no cost.

Further, ACLU NorCal is a non-profit organization and an affiliate of the ACLU, a national organization that works to protect civil liberties of all people, including the safeguarding of the basic constitutional rights to privacy, free expression, and due process of law. ACLU NorCal is responsible for serving the population of northern California and ACLU NorCal staff persons are frequent spokespersons in television and print media and make public presentations at meetings and events. ACLU NorCal plans to analyze and disseminate to the public the information gathered through this Request at no cost, and the records are not sought for any commercial purpose.

Dissemination of information about actual or alleged governmental activity is a critical and substantial component of the ACLU NorCal's mission and work. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are among ACLU NorCal's primary activities and substantial components of our work. *See ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding that nonprofit 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" is "primarily engaged in disseminating information") (internal quotation marks omitted). Courts have found that organizations with similar missions as ACLU NorCal that engage in information-dissemination activities similar to ACLU NorCal are "primarily engaged in disseminating information" for purposes of requesting expedited processing under the FOIA. *See, e.g., Leadership Conf. on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11. And as explained above, ACLU NorCal intends to distribute the information obtained through this FOIA request via our website and other available publication channels.

ACLU NorCal actively disseminates and frequently garners extensive media coverage of the information it obtains about actual or alleged government activity through FOIA and California's statutory counterpart, the California Public Records Act.²³ It does so through a heavily visited website (averaging between 7,500 and 10,000 visitors per week) and a paper newsletter distributed to over 78,000 members.

B. The records sought are urgently needed to inform the public about actual or alleged government activity and are of exceptional media interest

The records we request are "urgen[tly]" needed "to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II). Recent complaints regarding civil rights abuses at California ICE detention facilities have prompted public attention, including pressure from more than a dozen California members of Congress to investigate a complaint filed by individuals detained at Mesa Verde ICE Processing Center and Golden State

²³ ACLU of Northern California, *ACLU of Northern California et al. v. ICE* (Apr. 13, 2021), <https://www.aclunc.org/our-work/legal-docket/aclu-northern-california-et-al-v-ice>; ACLU of Northern California, Documents Reveal ICE Using Driver Location Data From Local Police for Deportations (Mar. 13, 2019), <https://www.aclunc.org/blog/documents-reveal-ice-using-driver-location-data-local-police-deportations>.

Annex.²⁴ This Congressional ask followed a separate letter from October 2021 (“October 2021 Congressional letter”), signed by twenty-four members of Congress, calling for the “immediate termination of contracts” at three other immigration detention facilities in California (separate from the two facilities mentioned in the September 2022 Congressional letter).²⁵ Of the five facilities mentioned in the September 2022 and October 2021 Congressional letters, four remain open and are subjects of the Request. Separately, individuals detained at immigration detention facilities in California have filed at least three complaints with the Department of Homeland Security Office for Civil Rights and Civil Liberties in the past five months alone.²⁶

Furthermore, the facts alleged in a lawsuit²⁷ filed on February 23, 2023 reflects swift and ongoing retaliation by ICE and its contractors. The lawsuit alleged that ICE and their private contractor, the GEO Group, unlawfully retaliated against individuals detained at Mesa Verde ICE Processing Center and Golden State Annex, “with the purpose of chilling their peaceful, First-Amendment-protected protest.”²⁸ Conditions at immigration detention facilities have become a matter of widespread and exceptional media interest, as well as public attention. Since the February 17, 2023 launch of the hunger strike, which ultimately lasted thirty-five days, many news outlets have reported on detention conditions at immigration facilities and public response to the hunger strike in California in print, radio, and video formats.²⁹ Media coverage of conditions at these

²⁴ Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>.

²⁵ Representative Lofgren, Letter to Secretary Mayorkas (Oct. 21, 2021), available at <https://lofgren.house.gov/sites/lofgren.house.gov/files/CA%20ICE%20Detention%20Letter.pdf>.

²⁶ Press Release, ACLU of Northern California, Civil Rights Groups File Complaint Against ICE and Contractors for Violating First Amendment Rights of People in Immigration Detention (Aug. 26, 2021), <https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-amendment>; Press Release, California Collaborative for Immigrant Justice, Detained Leaders file simultaneous federal complaints against ICE, Geo Group & MTC (Sept. 13, 2022), <https://www.ccijustice.org/post/detained-leaders-file-simultaneous-federal-complaints-against-ice-geo-group-mtc>; ACLU of Northern California et al., *CRCL Complaint Re: Sexually Abusive Pat-Downs Against Individuals in Immigration Detention at Mesa Verde Detention Facility* (Jan. 17, 2023), <https://www.aclunc.org/sites/default/files/Mesa%20Verde%20Complaint%20only%2001.23.pdf>.

²⁷ *Mendez v. ICE*, No. 3:23-cv-00829 (N.D. Cal. filed Feb. 23, 2023) available at https://www.aclunc.org/sites/default/files/Mendez_v._ICE_Complaint.pdf.

²⁸ *Id.* at 1.

²⁹ Farida Jhabvala Romero, ‘Until We Drop’: Immigrant Detainees on Hunger Strike Sue ICE, Detention Contractor for Alleged Retaliation, KQED (Feb. 23, 2023), <https://www.kqed.org/news/11941677/until-we-drop-hunger-strike-enters-second-week-as-immigrants-in-ice-detention-protest-conditions>; Asylum Seekers at Two California ICE Detention Centers Hold Hunger Strike, Democracy Now! (Feb. 20, 2023), https://www.democracynow.org/2023/2/20/headlines/asylum_seekers_at_two_california_ice_detention_centers_hold_hunger_strike; Jonathan Lewis, *Hunger Strike by 84 Detained CA Immigrants Demands Fair Living/Working Conditions*, Davis Vanguard (Feb. 19, 2023), <https://www.davisvanguard.org/2023/02/hunger-strike-by-84-detained-ca-immigrants-demands-fair-living-working-conditions/>; Ishani Desai, *Nearly 100 Mesa Verde, Golden State Annex detainees launch hunger strike*, Bakersfield.com (Feb. 17, 2023), https://www.bakersfield.com/news/nearly-100-mesa-verde-golden-state-annex-detainees-launch-hunger-strike/article_03ae529a-af3b-11ed-a4cb-f3a341464227.html; Yesenia Amaro, *ICE says it takes misconduct allegations seriously. Central Valley hunger strikes continue*, Fresno Bee (Feb. 23, 2023), <https://www.fresnobee.com/news/local/article272572709.html>; Vania Patino, *Civil Rights activists demand transparency from ICE detention facilities*, 23ABC (Feb. 22, 2023), <https://www.turnto23.com/news/local-news/civil-rights-activists-demand-transparency-from-ice-detention-facilities>; Joshua Yeager, *Detainees at Kern*

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
 Page 10

facilities has spanned numerous outlets, including Spanish-language outlets such as Univision, which is the United States' largest provider of Spanish-language content. These news articles highlight the failures of ICE and its contractors to adequately care for those in their custody. Media outlets have continued to publish stories detailing the horrific conditions of confinement and individuals' failed attempts to seek recourse at the facility level as the hunger strike continues. Media coverage of the hunger strike has also highlighted the public interest in these issues, including multiple rallies held at different locations across California in support of the hunger strikers.³⁰ Members of the public have shown a sustained and urgent demand for accountability and transparency regarding conditions at California ICE detention centers through their support

County ICE facilities organize hunger strike, KVPR (Feb. 23, 2023), <https://www.kvpr.org/local-news/2023-02-23/inmates-at-kern-county-ice-facilities-organize-hunger-strike>; Eric Burkett, *Immigrants claim ICE retribution for hunger strike over poor conditions*, Courthouse News (Feb. 24, 2023), <https://www.courthousenews.com/immigrants-claim-ice-retribution-for-hunger-strike-over-poor-conditions/>; *Grupo de migrantes detenidos en centros de procesamiento de ICE en California inician huelga de hambre: esto exigen*, Univision (Feb. 18, 2023), <https://www.univision.com/shows/noticiero-univision/grupo-de-migrantes-detenidos-en-centros-de-procesamiento-de-ice-en-california-inician-huelga-de-hambre-esto-exigen-video>; *Migrantes detenidos en California realizan huelga de hambre por malos tratos en los centros de reclusion*, Latinus (Feb. 18, 2023), <https://latinus.us/2023/02/18/migrantes-detenidos-california-realizan-huelga-hambre-malos-tratos-centros-reclusion/>; Aleja Hertzler-McCain, *Detained immigrants launch hunger strike at two California facilities*, National Catholic Reporter (Feb. 28, 2023), <https://www.ncronline.org/news/detained-immigrants-launch-hunger-strike-two-california-facilities>; Dalu Okoli, *Mesa Verde ICE detainees protest alleged inhumane living conditions*, KGET (Feb. 27, 2023), <https://www.kget.com/news/local-news/mesa-verde-ice-detainees-protest-inhumane-living-conditions/>; Brian Osgood, *'Slavery wages' prompt hunger strike at ICE detention Facilities*, Al Jazeera (Mar. 3, 2023), <https://www.aljazeera.com/news/2023/3/3/hunger-strike-at-ice-detention-facilities-protest-slavery>; Yesenia Amaro, *Hunger strikers sent from Central Valley detention centers to El Paso, supporters say*, Fresno Bee (Mar. 8, 2023), <https://www.fresnobee.com/news/local/article272896745.html>; Tyche Hendricks, *ICE Abruptly Transfers 4 Detainee Hunger Strikers From California to Texas, Sparking Fears of Force-Feeding*, KQED (Mar. 9, 2023), <https://www.kqed.org/news/11943030/ice-abruptly-transfers-4-detainee-hunger-strikers-from-california-to-texas-sparking-fears-of-force-feeding>; Tyche Hendricks, *With Detainee Hunger Strike in Third Week, ICE Is Failing to Review Requests for Freedom, Advocates Say*, KQED (Mar. 3, 2023), <https://www.kqed.org/news/11942414/with-detainee-hunger-strike-in-third-week-ice-is-failing-to-review-requests-for-freedom-advocates-say>; Madison Weil, *Rally held outside detention center downtown in support of detainees on hunger strike*, ABC 10 (Mar. 5, 2023), <https://www.10news.com/news/local-news/san-diego-news/rally-held-outside-detention-center-downtown-in-support-of-detainees-on-hunger-strike>; Mary Paronyan, *Four Mesa Verde hunger strikers transferred to Texas*, BakersfieldNow (Mar. 9, 2023), <https://bakersfieldnow.com/news/local/four-mesa-verde-hunger-strikers-transferred-to-texas>.

³⁰Vada Hepner, *Supporters rally on day 17 of Mesa Verde, Golden State Annex hunger strike*, The Californian (Mar. 5, 2023), https://www.bakersfield.com/news/supporters-rally-on-day-17-of-mesa-verde-golden-state-annex-hunger-strike/article_c14e06ba-bbb6-11ed-a5ce-9f11769b42b8.html; Joshua Yeager, *Detainees call for closure of ICE detention centers in Valley amid hunger strike, lawsuit*, KVPR (Feb. 28, 2023), <https://www.kvpr.org/local-news/2023-02-28/detainees-call-for-closure-of-ice-detention-centers-in-valley-amid-hunger-strike-lawsuit>; Telemundo Valle Central, *Protestas en apoyo a migrantes en McFarland* (Feb. 27, 2023), <https://www.kget.com/telemundo/noticias/protestas-en-apoyo-a-migrantes-en-mcfarland/>; Mary Paronyan, *Kern residents protest and go on hunger strike at Mesa Verde ICE Processing Center*, BakersfieldNow (Mar. 5, 2023), <https://bakersfieldnow.com/news/local/kern-residents-and-ice-inmates-go-on-hunger-strike>.

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
 39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
Page 11

for the hunger strikers, and calls from hundreds of individuals to members of Congress to facilitate an investigation.³¹

There is an urgent need to inform the public regarding the volume of grievances filed at California ICE detention facilities. Moreover, the records sought in this Request should be readily accessible to ICE and easy to locate through mandated facility-maintained grievance logs that are subject to regular inspection by the Field Office Director and ICE Headquarters staff and reviewed during ICE/ERO-initiated facility inspections.³² The agency is therefore unlikely to expend undue resources locating the records requested to fulfill this Request.

Should you determine that expedited processing is not warranted, while reserving our right to appeal that decision, Requestor expects a response within the twenty-day time limit set forth under 5 U.S.C. § 552(a)(6)(A)(i).

³¹California Collaborative for Immigrant Justice, Detained Individuals Forced to Pause Hunger Strike at CA Immigration Detention Facilities (Mar. 29, 2023), <https://www.ccijustice.org/post/detained-individuals-forced-to-pause-hunger-strike-at-ca-immigration-detention-facilities>

³² PBNDS, Section 6.2 (D), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>; PBNDS, Section 6.2 (H), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
Page 12

* * *

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, ideally in electronic format, to:

Sana Singh
American Civil Liberties Union of Northern California
39 Drumm St
San Francisco, CA 94111

or via electronic mail to ssingh@aclunc.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 below if you have any questions or wish to obtain further information about the nature of the records in which we are interested.

Sincerely,



Sana A. Singh
ssingh@aclunc.org
(415) 293-6360

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

Exhibit 8



Northern
California

June 5, 2023

Via USPS Certified Mail, Email, and Secure Release Portal

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009
E-mail: ice-foia@dhs.gov

Re: FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities (Fee Waiver and Expedited Processing Requested)

Dear FOIA Officer:

I write on behalf of the American Civil Liberties Union of Northern California (“ACLU NorCal” or “Requestor”) to request records related to grievances filed at California immigration detention facilities. This request (“Request”) is made pursuant to the Freedom of Information Act, 5 U.S.C. § 522 *et seq.*, implementing regulations 6 C.F.R. § 5.1 *et seq.*, and any other applicable regulations.

We ask that you direct this request to all appropriate offices, components, divisions, and/or directorates within Immigration and Customs Enforcement (“ICE”), including but not limited to the ICE Office of Professional Responsibility and the ICE Office of Detention Oversight divisions of ICE.

ACLU NorCal further 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

The ongoing detention of individuals in immigration detention facilities with documented patterns of inhumane treatment and conditions raises serious civil and human rights and civil liberties concerns. As of May 2023, immigration detention facilities in California house nearly two thousand individuals—the third largest population of people in immigration detention in the

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
Page 2

country.¹ These individuals are detained across six² detention facilities, which operate through contracts between U.S. Immigration and Customs Enforcement (“ICE”) and private detention contractors.³ The abuses at immigration detention facilities in California have been well documented in complaints filed with the Office for Civil Rights and Civil Liberties (“CRCL”),⁴ lawsuits,⁵ medical journals,⁶ and other government agencies.⁷

In the past year, there have been reports of inadequate medical care, unsanitary living conditions, inadequate COVID-19 prevention, and the overuse of solitary confinements, among other concerning complaints.⁸ Most recently, in May 2023, individuals detained at Mesa Verde ICE Processing Facility reported abdominal pain and other symptoms associated with bacterial infections. Soon after, several individuals reported to advocates that they tested positive with

¹ Transactional Records Access Clearinghouse, *Detention Facilities Average Daily Population*, <https://trac.syr.edu/immigration/detentionstats/facilities.html> (last visited June 1, 2023).

² U.S. Immigration and Customs Enforcement, *Detention Facilities*, <https://www.ice.gov/detention-facilities?state=3&office=&name=> (last visited June 1, 2023).

³ U.S. Immigration and Customs Enforcement, *FOIA Library – Detention Facility Contracts*, <https://www.ice.gov/foia/library> (last visited June 1, 2023).

⁴ Press Release, ACLU of Northern California, Civil Rights Groups File Complaint Against ICE and Contractors for Violating First Amendment Rights of People in Immigration Detention (Aug. 26, 2021),

<https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-amendment>; Press Release, California Collaborative for Immigrant Justice, Detained Leaders file simultaneous federal complaints against ICE, Gro Group & MTC (Sept. 13, 2022), <https://www.ccijjustice.org/post/detained-leaders-file-simultaneous-federal-complaints-against-ice-geo-group-mtc>; ACLU of Northern California et al., CRCL Complaint Re: Sexually Abusive Pat-Downs Against Individuals in Immigration Detention at Mesa Verde Detention Facility (Jan. 17, 2023),

<https://www.aclunc.org/sites/default/files/Mesa%20Verde%20Complaint%20only%2001.23.pdf>

⁵ Farida Jhabvala Romero, *ICE Detainees Making \$1 a Day Sue Over Alleged Wage Theft*, KQED (July 16, 2022), <https://www.kqed.org/news/11919749/ice-detainees-making-1-a-day-sue-over-alleged-wage-theft>; Andrea Castillo, *ICE held a man in solitary confinement for more than a year. He’s suing under a new California law*, LA Times (Oct. 14, 2021), <https://www.latimes.com/california/story/2021-10-14/ice-lawsuit-california-solitary-confinement-detention-citizen>; Press Release, Lawyers’ Committee For Civil Rights, Groundbreaking COVID-19 Settlement to Yield Protections for Immigrants Detained by ICE, Limit Re-detention for People Released (Jan. 27, 2022), https://lccrsf.org/pressroom_posts/groundbreaking-covid-19-settlement-to-lead-protections-for-immigrants-detained-by-ice-limit-re-detention-for-people-released/;

⁶ Altaf Saadi et al., *Cumulative Risk of Immigration Prison Conditions on Health Outcomes Among Detained Immigrants in California*, Journal of Racial and Ethnic Health Disparities (Nov. 29, 2021),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8628823/>

⁷ DHS Office of Inspector General, *Early Experiences with COVID-19 at ICE Detention Facilities* (June 18, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-42-Jun20.pdf>; DHS Office of Inspector General, *Management Alert—Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California* (Sept. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>; DHS Office of Inspector General, *ICE Needs to Address Prolonged Administrative Segregation and Other Violations at the Imperial Regional Detention Facility* (Dec. 18, 2020), <https://www.oig.dhs.gov/reports/2021/ice-needs-address-prolonged-administrative-segregation-and-other-violations-imperial-regional-detention-facility/oig-21-12-dec20>; DHS Office of Inspector General, *Capping Report: Observations of Unannounced Inspections of ICE Facilities in 2019* (July 1, 2020), <https://www.oig.dhs.gov/reports/2020/capping-report-observations-unannounced-inspections-ice-facilities-2019/oig-20-45-jul20>.

⁸ Jaclyn Diaz, *GEO Group sickened ICE detainees with hazardous chemicals for months, a lawsuit says*, NPR (Mar. 25, 2023), <https://www.npr.org/2023/03/25/1165890634/geo-group-lawsuit-adelanto-ice-detainees-chemical-exposure>; Jessica De Nova, *Immigrants suing Adelanto ICE operations company claim they were sprayed with toxic chemical*, KABC (March 28, 2023), <https://abc7.com/immigrants-detainees-adelanto-ice-facility-sprayed-with-toxic-chemical/13038078/>.

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
 Page 3

Helicobacter Pylori (“H. Pylori”) after tests were conducted at the facility. H. Pylori is a bacteria that attacks the protective lining of the stomach, which in turn causes swelling of the stomach lining and can lead to sores or ulcers and a variety of unpleasant, painful symptoms. H. Pylori infection can be spread by fecal contamination in the water source.⁹ The presence and rapid spread of this infection at Mesa Verde raises grave concerns about the safety of drinking water at the facility. The repeated reports of such abuses lead to the conclusion that private contractors at ICE facilities have a pattern of failing to meet the basic needs of populations in detention. This conclusion has been supported by outside regulators, including a finding in January 2023 by the California Division of Occupational Safety and Health of six violations of state code at Golden State Annex, leading to a fine of over \$100,000 levied against the GEO Group.¹⁰ Furthermore, individuals who have spoken up about these horrific conditions have faced retaliation including solitary confinement, sexually abusive pat-downs, revocation of commissary access, and retaliatory transfers.¹¹

While advocates on the outside have attempted to bring attention to the abuses in immigration detention in California, individuals in detention have diligently utilized the grievance systems available at the facilities to draw attention to their substandard living conditions. These grievance systems are an essential tool for documenting the conditions in facilities and are often the only way individuals in detention can assert their civil and human rights.¹² A functioning grievance system is mandated at all facilities in California by the 2011 Operations Manual ICE Performance-Based National Detention Standards (“PBNDS”).¹³ In May 2023, master’s degree students at the UCLA Luskin School of Public Affairs released a report detailing conditions at Mesa Verde ICE Processing Center and Golden State Annex.¹⁴ Through qualitative interviews with individuals at these facilities, the report describes inadequate living standards, poor food quality, and deplorable working conditions. Conditions reported include an “unsanitary living environment” with “moldy showers, extreme dorm temperatures, and dead insects and rodents on dorm floors”. The findings also discuss poor food quality, including “uncooked, unappetizing,

⁹ Johns Hopkins Medicine, *Helicobacter Pylori*, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/helicobacter-pylori>, (last visited June 1, 2023).

¹⁰ Andrea Castillo, *California fines detention center operator \$100,000 over immigrants’ working conditions*, LA Times (Jan. 30, 2023), <https://www.latimes.com/politics/story/2023-01-30/detained-immigrants-alleged-unsafe-working-conditions-at-california-facility-fine>.

¹¹ Freedom for Immigrants, Trafficked & Tortured: Mapping ICE Transfers, (Feb. 2023), <https://www.freedomforimmigrants.org/trafficked-and-tortured-report>; Kate Morrissey, *ICE Detainees allege retaliation after speaking out about medical conditions at Otay Mesa Detention Center*, The San Diego Union-Tribune (Mar. 3, 2023), <https://www.sandiegouniontribune.com/news/immigration/story/2023-03-03/ice-detainees-allege-retaliation-after-speaking-out-about-medical-conditions-at-otay-mesa-detention-center>.

¹² Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>; Gabe Ortiz, *Lawmakers Urge Probe into Allegations of Abuse and Retaliation at Private Detention Facilities*, Daily KOS (Sept. 19, 2022), https://www.dailykos.com/stories/2022/9/19/2123837/-Lawmakers-urge-probe-into-allegations-of-abuse-and-retaliation-at-private-detention-facilities?utm_campaign=recent.

¹³ ICE Performance-Based National Detention Standards 2011 (hereinafter, “PBNDS”), Section 6.2, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

¹⁴ Kamal Cheema, et al., *One Dollar a Day: Labor Conditions Within California Immigrant Detention Centers*, (May 2023), <https://sites.google.com/g.ucla.edu/mpp-applied-policy-project/home>.

expired” food as well as cockroaches found in the food. The report notes that these individuals have utilized the grievance system to seek redress for these untenable conditions and have “expressed a feeling of hopelessness... as their grievances were often marked unfounded, or took multiple levels of appeal in order to find a resolution”. Furthermore, the report reveals that individuals who have submitted multiple grievances have reported being more likely to be written up as a retaliatory measure.

Conditions at immigration facilities in California have continued to deteriorate and on February 17, 2023, approximately eighty-two detained immigrants launched a hunger strike to protest inhumane conditions at Mesa Verde ICE Processing Center and Golden State Annex – two of the facilities the Request seeks records from.¹⁵ Many individuals remained on strike for weeks, putting their safety and well-being on the line to raise awareness about the horrendous conditions in detention. These individuals faced brutal retaliation, including use of physical force, disconnected phone lines, and the unjustified transfer of seven individuals to El Paso, Texas.¹⁶ The grievance logs sought in the Request directly reflect the conditions that led individuals in detention to take such drastic collective action and put their health at risk. The public has an urgent need to know about the conditions at immigration detention facilities that drove these individuals to this action immediately. Given the historical pattern of abuse at detention facilities, ACLU NorCal, the immigrant community we serve, and the public have an urgent need to know about the grievance process in the immigration detention facilities across the state.

II. Records Requested

ACLU NorCal requests the following records held by ICE from the period of May 1, 2023 to May 31, 2023:

1. A copy of the detainee grievance log maintained by facility staff at Adelanto ICE Processing Center in accordance with PBNDS Section 6.2 (D);
2. A copy of the detainee grievance log maintained by facility staff at Desert View Annex in accordance with PBNDS Section 6.2 (D);
3. A copy of the detainee grievance log maintained by facility staff at Golden State Annex in accordance with PBNDS Section 6.2 (D);
4. A copy of the detainee grievance log maintained by facility staff at Imperial Regional Detention Facility in accordance with PBNDS Section 6.2 (D);
5. A copy of the detainee grievance log maintained by facility staff at Mesa Verde ICE Processing Center in accordance with PBNDS Section 6.2 (D); and

¹⁵ Press Release: Seventy-seven Detained Immigrants Launch Hunger Strike at Two Central Valley Facilities, Protest Unpaid Labor and Inhumane Conditions, <https://www.aclunc.org/news/seventy-seven-detained-immigrants-launch-hunger-strike-two-central-valley-facilities-protest>.

¹⁶ ACLU of Northern California, After Hours of Violent Abuse, ICE and GEO Group Abruptly Transfer Four Mesa Verde Hunger Strikers to Texas (Mar. 8, 2023), <https://www.aclunc.org/news/after-hours-violent-abuse-ice-and-geo-group-abruptly-transfer-four-mesa-verde-hunger-strikers>.

6. A copy of the detainee grievance log maintained by facility staff at Otay Mesa Detention Center in accordance with PBNDS Section 6.2 (D).

III. Fee Waiver Request

ACLU NorCal requests that any fees associated with responding to this FOIA Request be waived pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k). Pursuant to those provisions, fees should be waived or reduced if disclosure is (1) “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Here, disclosure meets both tests.

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

Disclosure of the records in this Request is in the public interest. As described above, there are concerning reports of abusive living conditions at immigration detention facilities across California. However, very little is currently known about the number and frequency of grievances filed by individuals in immigration detention facilities across the state. ACLU NorCal is not aware of any publicly available and regularly updated records of grievances filed at immigration detention facilities. The ways in which the substandard living conditions at immigration detention facilities have profound effects on people’s lives has been the subject of significant media attention.¹⁷

Records on grievances filed at immigration detention facilities are of critical interest to the public, particularly for U.S. citizens and permanent residents with undocumented family members. As of 2019, more than 3 million Californian U.S. citizens and permanent residents lived in mixed-status families with undocumented relatives.¹⁸ Given the ongoing and widespread media attention to this issue, the records sought by the Request will significantly contribute to the public understanding of the operations and activities of ICE detention facilities and will be of interest to a broad interest. *See* 6 C.F.R. § 5.11(k)(1)(i), (k)(2)(iii). This is critical information to mixed-status families, immigration advocacy groups, legislators, and the public at large. ACLU NorCal plans

¹⁷ Andrea Castillo, *California Fines Detention Center Operator \$100,000 Over Immigrants’ Working Conditions*, LA Times (Jan. 30, 2023), <https://www.latimes.com/politics/story/2023-01-30/detained-immigrants-alleged-unsafe-working-conditions-at-california-facility-fine>; Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>; Andrea Castillo, *Abuse Reports From Detained Black Immigrants Disproportionately High, Advocacy Groups Say*, LA Times (Oct. 27, 2022), <https://www.latimes.com/politics/story/2022-10-27/racism-and-abuse-of-detained-black-immigrants-disproportionately-high-report-says>; Farida Jhabvala Romero, *ICE Overusing Solitary Confinement in California, Lawmakers Worry*, KQED (Aug. 26, 2022), <https://www.kqed.org/news/11923753/ice-overusing-solitary-confinement-in-california-lawmakers-worry>.

¹⁸ California Immigrant Data Portal, *Mixed-Status Families*, <https://immigrantdataca.org/indicators/mixed-status-families> (last visited Jan. 30, 2023).

to disseminate to the public, at no cost, the information and records disclosed from this FOIA Request.

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

In filing this request, ACLU NorCal does not seek to further any commercial interest. ACLU NorCal is a 501(c)(3) nonprofit organization and therefore has no commercial interest. We intend to widely disseminate to the public any relevant information obtained through this FOIA request. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k). ACLU NorCal frequently publishes information and records implicating civil rights issues to the public, at no cost. The primary purpose of doing so is public education and government accountability—not commercial.

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.’”) (citation omitted); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that “disclosure, not secrecy, is the dominant objective of the Act,” quoting *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

C. ACLU NorCal also qualifies for a fee waiver because it is a representative of the news media, and the records are not sought for commercial use

ACLU NorCal is also entitled to a waiver of search fees because we qualify 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); 22 C.F.R. §§ 171.16(a)(1)(iii), (a)(2). ACLU NorCal 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); *see Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (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 NorCal’s communications department is a division of a nonprofit 501(c)(3) organization and is a “representative of the news media.” It regularly publishes newsletters, news briefings, reports, know-your-rights handbooks, press releases, and other materials that are distributed 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. Examples of recent publications includes a report entitled *Collusion in California’s Central Valley: The Case for Ending Sheriff Entanglement with ICE*,¹⁹ and the podcast series “Gold Chains: The Hidden History

¹⁹ ACLU of Northern California, ACLU Report Reveals that Sheriffs in California’s Central Valley Have Developed Shadow ICE Notification and Transfer Systems, Circumventing State Law (Feb. 9, 2022), <https://www.aclunc.org/news/aclu-report-reveals-sheriffs-california-s-central-valley-have-developed-shadow-ice>.

of Slavery in California,” which has exceeded 5,500 downloads.²⁰ ACLU NorCal’s communications department also disseminates information through the website <https://www.aclunc.org/>, which averages between 7,500 and 10,000 visitors per week and includes a widely read blog,²¹ where original editorial content reporting on and analyzing civil rights and civil liberties news is posted frequently. The website addresses civil liberties issues in depth and features civil liberties issues on which ACLU NorCal is focused, including immigrants’ rights. ACLU NorCal staff members are frequent spokespersons in television, print, and radio media and make public presentations at meetings and events. Further, ACLU NorCal’s communications department issues a triannual newsletter, which is distributed to over 78,000 subscribers by mail. It also disseminates information through social media channels, including its Instagram account, which has about 15,000 followers;²² and its Twitter account, which has about 23,200 followers.²³ ACLU NorCal often disseminate descriptions and analysis of information obtained through FOIA requests through these various publication channels. These extensive publication activities make ACLU NorCal a “representative of the news media” under the FOIA and relevant regulations.

Courts have found other organizations whose missions, functions, publishing, and public education activities are similar in kind to ACLU NorCal’s to be “representative[s] of the news media.” *See, e.g., Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 288 (D. Conn. 2012) (finding that nonprofit public interest groups, including the Service Women’s Action Network, the ACLU, and the ACLU of Connecticut were “representatives of the news media” for FOIA purposes); *ACLU of Wash. v. U.S. Dep’t of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington was a “representative of the news media” for FOIA purposes); *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Def.*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003) (finding nonprofit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for FOIA purposes); *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that the National Security Archive was a “representative of the news media” for FOIA purposes); *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding that Judicial Watch, a self-described “public interest law firm,” was a “representative of the news media” for FOIA purposes).

As stated, the requested records are not sought for commercial use. As a representative of the news media, we plan to analyze and disseminate the information disclosed from this FOIA request to the public at no cost. Because of these factors, a fee waiver here would fulfill Congress’s legislative intent in amending the FOIA. *See Judicial Watch, Inc.*, 326 F.3d at 1312. Recognizing

²⁰ ACLU of Northern California, ACLU of Northern California Launches Gold Chains: The Hidden History of Slavery in California (Nov. 14, 2019), <https://www.aclunc.org/news/aclu-northern-california-launches-gold-chains-hidden-history-slavery-california>.

²¹ Available at <https://www.aclunc.org/blog>.

²² Available at https://www.instagram.com/aclu_norcal/.

²³ Available at https://twitter.com/ACLU_NorCal.

this, on numerous occasions ACLU NorCal has not been charged fees associated with responding to FOIA requests.²⁴

IV. **Expedited Processing Request**

ACLU NorCal 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* 6 C.F.R. § 5.5(e)(1)(ii).

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

ACLU NorCal is “primarily engaged in disseminating information” within the meaning of 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii). As explained above, ACLU NorCal has the ability and intention to widely disseminate through various sources, including newsletters, news briefings, reports, know-your-rights handbooks, press releases, and other materials, the records and information received through this request. These materials will be available to the public at no cost.

Further, ACLU NorCal is a non-profit organization and an affiliate of the ACLU, a national organization that works to protect civil liberties of all people, including the safeguarding of the basic constitutional rights to privacy, free expression, and due process of law. ACLU NorCal is responsible for serving the population of northern California and ACLU NorCal staff persons are frequent spokespersons in television and print media and make public presentations at meetings and events. ACLU NorCal plans to analyze and disseminate to the public the information gathered through this Request at no cost, and the records are not sought for any commercial purpose.

Dissemination of information about actual or alleged governmental activity is a critical and substantial component of the ACLU NorCal’s mission and work. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are among ACLU NorCal’s primary activities and substantial components of our work. *See ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding that nonprofit 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” is “primarily engaged in disseminating information”)

²⁴ For example, ICE granted ACLU NorCal a fee waiver in two FOIA requests filed in March 2018, one seeking information on ICE’s use of automated license plate reader systems and the other seeking communications between ICE and California law enforcement agencies. The Department of Homeland Security also granted ACLU NorCal a fee waiver in a FOIA request filed in February 2019 seeking information concerning the criminal investigation and surveillance of refugees. U.S. Citizenship and Immigration Services, a component of ICE, granted ACLU NorCal a fee waiver in a January 2023 FOIA request seeking records related to the situational exceptions to the Terrorism-Related Inadmissibility Grounds.

(internal quotation marks omitted). Courts have found that organizations with similar missions as ACLU NorCal that engage in information-dissemination activities similar to ACLU NorCal are “primarily engaged in disseminating information” for purposes of requesting expedited processing under the FOIA. *See, e.g., Leadership Conf. on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11. And as explained above, ACLU NorCal intends to distribute the information obtained through this FOIA request via our website and other available publication channels.

ACLU NorCal actively disseminates and frequently garners extensive media coverage of the information it obtains about actual or alleged government activity through FOIA and California’s statutory counterpart, the California Public Records Act.²⁵ It does so through a heavily visited website (averaging between 7,500 and 10,000 visitors per week) and a paper newsletter distributed to over 78,000 members.

B. The records sought are urgently needed to inform the public about actual or alleged government activity and are of exceptional media interest

The records we request are “urgen[tly]” needed “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). Recent complaints regarding civil rights abuses at California ICE detention facilities have prompted public attention, including pressure from more than a dozen California members of Congress to investigate a complaint filed by individuals detained at Mesa Verde ICE Processing Center and Golden State Annex.²⁶ This Congressional ask followed a separate letter from October 2021 (“October 2021 Congressional letter”), signed by twenty-four members of Congress, calling for the “immediate termination of contracts” at three other immigration detention facilities in California (separate from the two facilities mentioned in the September 2022 Congressional letter).²⁷ Of the five facilities mentioned in the September 2022 and October 2021 Congressional letters, four remain open and are subjects of the Request. Separately, individuals detained at immigration detention facilities in California have filed at least three complaints with the Department of Homeland Security Office for Civil Rights and Civil Liberties in the past nine months alone.²⁸

²⁵ ACLU of Northern California, *ACLU of Northern California et al. v. ICE* (Apr. 13, 2021), <https://www.aclunc.org/our-work/legal-docket/aclu-northern-california-et-al-v-ice>; ACLU of Northern California, Documents Reveal ICE Using Driver Location Data From Local Police for Deportations (Mar. 13, 2019), <https://www.aclunc.org/blog/documents-reveal-ice-using-driver-location-data-local-police-deportations>.

²⁶ Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>.

²⁷ Representative Lofgren, Letter to Secretary Mayorkas (Oct. 21, 2021), available at <https://lofgren.house.gov/sites/lofgren.house.gov/files/CA%20ICE%20Detention%20Letter.pdf>.

²⁸ Press Release, ACLU of Northern California, Civil Rights Groups File Complaint Against ICE and Contractors for Violating First Amendment Rights of People in Immigration Detention (Aug. 26, 2021), <https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-amendment>; Press Release, California Collaborative for Immigrant Justice, Detained Leaders file simultaneous federal complaints against ICE, Gro Group & MTC (Sept. 13, 2022), <https://www.ccijjustice.org/post/detained-leaders-file-simultaneous-federal-complaints-against-ice-geo-group-mtc>; ACLU of Northern California et al., *CRCL Complaint Re: Sexually Abusive Pat-Downs Against Individuals in Immigration Detention at Mesa Verde Detention*

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
Page 10

Furthermore, the facts alleged in a lawsuit²⁹ filed on February 23, 2023 reflects swift and ongoing retaliation by ICE and its contractors. The lawsuit alleged that ICE and their private contractor, the GEO Group, unlawfully retaliated against individuals detained at Mesa Verde ICE Processing Center and Golden State Annex, “with the purpose of chilling their peaceful, First-Amendment-protected protest.”³⁰ Conditions at immigration detention facilities have become a matter of widespread and exceptional media interest, as well as public attention. Since the February 17, 2023 launch of the hunger strike, which ultimately lasted thirty-five days, many news outlets have reported on detention conditions at immigration facilities and public response to the hunger strike in California in print, radio, and video formats.³¹ Media coverage of conditions at these

Facility (Jan. 17, 2023),

https://www.aclunc.org/sites/default/files/Mesa%20Verde%20Complaint%20only%20_01.23.pdf.

²⁹ *Mendez v. ICE*, No. 3:23-cv-00829 (N.D. Cal. filed Feb. 23, 2023) available at

https://www.aclunc.org/sites/default/files/Mendez_v._ICE_Complaint.pdf.

³⁰ *Id.* at 1.

³¹ Farida Jhabvala Romero, ‘Until We Drop’: Immigrant Detainees on Hunger Strike Sue ICE, Detention Contractor for Alleged Retaliation, KQED (Feb. 23, 2023), <https://www.kqed.org/news/11941677/until-we-drop-hunger-strike-enters-second-week-as-immigrants-in-ice-detention-protest-conditions>; Asylum Seekers at Two California ICE Detention Centers Hold Hunger Strike, Democracy Now! (Feb. 20, 2023), https://www.democracynow.org/2023/2/20/headlines/asylum_seekers_at_two_california_ice_detention_centers_hold_hunger_strike; Jonathan Lewis, Hunger Strike by 84 Detained CA Immigrants Demands Fair Living/Working Conditions, Davis Vanguard (Feb. 19, 2023), <https://www.davisvanguard.org/2023/02/hunger-strike-by-84-detained-ca-immigrants-demands-fair-living-working-conditions/>; Ishani Desai, Nearly 100 Mesa Verde, Golden State Annex detainees launch hunger strike, Bakersfield.com (Feb. 17, 2023), https://www.bakersfield.com/news/nearly-100-mesa-verde-golden-state-annex-detainees-launch-hunger-strike/article_03ae529a-af3b-11ed-a4cb-f3a341464227.html; Yesenia Amaro, ICE says it takes misconduct allegations seriously. Central Valley hunger strikes continue, Fresno Bee (Feb. 23, 2023), <https://www.fresnobee.com/news/local/article272572709.html>; Vania Patino, Civil Rights activists demand transparency from ICE detention facilities, 23ABC (Feb. 22, 2023), <https://www.turnto23.com/news/local-news/civil-rights-activists-demand-transparency-from-ice-detention-facilities>; Joshua Yeager, Detainees at Kern County ICE facilities organize hunger strike, KVPR (Feb. 23, 2023), <https://www.kvpr.org/local-news/2023-02-23/inmates-at-kern-county-ice-facilities-organize-hunger-strike>; Eric Burkett, Immigrants claim ICE retribution for hunger strike over poor conditions, Courthouse News (Feb. 24, 2023), <https://www.courthousenews.com/immigrants-claim-ice-retribution-for-hunger-strike-over-poor-conditions/>; Grupo de migrantes detenidos en centros de procesamiento de ICE en California inician huelga de hambre: esto exigen, Univision (Feb. 18, 2023), <https://www.univision.com/shows/noticiero-univision/grupo-de-migrantes-detenido-en-centros-de-procesamiento-de-ice-en-california-inician-huelga-de-hambre-esto-exigen-video>; Migrantes detenidos en California realizan huelga de hambre por malos tratos en los centros de reclusión, Latinus (Feb. 18, 2023), <https://latinus.us/2023/02/18/migrantes-detenido-california-realizan-huelga-hambre-malos-tratos-centros-reclusion/>; Aleja Hertzler-McCain, Detained immigrants launch hunger strike at two California facilities, National Catholic Reporter (Feb. 28, 2023), <https://www.ncronline.org/news/detained-immigrants-launch-hunger-strike-two-california-facilities>; Dalu Okoli, Mesa Verde ICE detainees protest alleged inhumane living conditions, KGET (Feb. 27, 2023), <https://www.kget.com/news/local-news/mesa-verde-ice-detainees-protest-inhumane-living-conditions/>; Brian Osgood, ‘Slavery wages’ prompt hunger strike at ICE detention Facilities, Al Jazeera (Mar. 3, 2023), <https://www.aljazeera.com/news/2023/3/3/hunger-strike-at-ice-detention-facilities-protest-slavery>; Yesenia Amaro, Hunger strikers sent from Central Valley detention centers to El Paso, supporters say, Fresno Bee (Mar. 8, 2023), <https://www.fresnobee.com/news/local/article272896745.html>; Tyche Hendricks, ICE Abruptly Transfers 4 Detainee Hunger Strikers From California to Texas, Sparking Fears of Force-Feeding, KQED (Mar. 9, 2023), <https://www.kqed.org/news/11943030/ice-abruptly-transfers-4-detainee-hunger-strikers-from-california-to-texas-sparking-fears-of-force-feeding>; Tyche Hendricks, With Detainee Hunger Strike in Third Week, ICE Is Failing to Review Requests for Freedom, Advocates Say, KQED (Mar. 3, 2023), <https://www.kqed.org/news/11942414/with-detainee-hunger-strike-in-third-week-ice-is-failing-to-review-requests-for-freedom-advocates-say>; Madison Weil, Rally held outside detention center downtown in support of detainees on hunger strike, ABC 10 (Mar. 5, 2023),

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO

39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

facilities has spanned numerous outlets, including Spanish-language outlets such as Univision, which is the United States' largest provider of Spanish-language content. These news articles highlight the failures of ICE and its contractors to adequately care for those in their custody. Media outlets have continued to publish stories detailing the horrific conditions of confinement and individuals' failed attempts to seek recourse at the facility level as the hunger strike continues. Media coverage of the hunger strike has also highlighted the public interest in these issues, including multiple rallies held at different locations across California in support of the hunger strikers.³² Members of the public have shown a sustained and urgent demand for accountability and transparency regarding conditions at California ICE detention centers through their support for the hunger strikers, and calls from hundreds of individuals to members of Congress to facilitate an investigation.³³

There is an urgent need to inform the public regarding the volume of grievances filed at California ICE detention facilities. Moreover, the records sought in this Request should be readily accessible to ICE and easy to locate through mandated facility-maintained grievance logs that are subject to regular inspection by the Field Office Director and ICE Headquarters staff and reviewed during ICE/ERO-initiated facility inspections.³⁴ The agency is therefore unlikely to expend undue resources locating the records requested to fulfill this Request.

Should you determine that expedited processing is not warranted, while reserving our right to appeal that decision, Requestor expects a response within the twenty-day time limit set forth under 5 U.S.C. § 552(a)(6)(A)(i).

*

*

*

<https://www.10news.com/news/local-news/san-diego-news/rally-held-outside-detention-center-downtown-in-support-of-detainees-on-hunger-strike>; Mary Paronyan, *Four Mesa Verde hunger strikers transferred to Texas*, BakersfieldNow (Mar. 9, 2023), <https://bakersfieldnow.com/news/local/four-mesa-verde-hunger-strikers-transferred-to-texas>.

³²Vada Hepner, *Supporters rally on day 17 of Mesa Verde, Golden State Annex hunger strike*, The Californian (Mar. 5, 2023), https://www.bakersfield.com/news/supporters-rally-on-day-17-of-mesa-verde-golden-state-annex-hunger-strike/article_c14e06ba-bbb6-11ed-a5ce-9f11769b42b8.html; Joshua Yeager, *Detainees call for closure of ICE detention centers in Valley amid hunger strike, lawsuit*, KVPR (Feb. 28, 2023), <https://www.kvpr.org/local-news/2023-02-28/detainees-call-for-closure-of-ice-detention-centers-in-valley-amid-hunger-strike-lawsuit>; Telemundo Valle Central, *Protestas en apoyo a migrantes en McFarland* (Feb. 27, 2023), <https://www.kget.com/telemundo/noticias/protestas-en-apoyo-a-migrantes-en-mcfarland/>; Mary Paronyan, *Kern residents protest and go on hunger strike at Mesa Verde ICE Processing Center*, BakersfieldNow (Mar. 5, 2023), <https://bakersfieldnow.com/news/local/kern-residents-and-ice-inmates-go-on-hunger-strike>.

³³California Collaborative for Immigrant Justice, *Detained Individuals Forced to Pause Hunger Strike at CA Immigration Detention Facilities* (Mar. 29, 2023), <https://www.ccijustice.org/post/detained-individuals-forced-to-pause-hunger-strike-at-ca-immigration-detention-facilities>

³⁴ PBNDs, Section 6.2 (D), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>; PBNDs, Section 6.2 (H), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
Page 12

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, ideally in electronic format, to:

Sana Singh
American Civil Liberties Union of Northern California
39 Drumm St
San Francisco, CA 94111

or via electronic mail to ssingh@aclunc.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 below if you have any questions or wish to obtain further information about the nature of the records in which we are interested.

Sincerely,



Sana A. Singh
ssingh@aclunc.org
(415) 293-6360

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

Exhibit 9

From: ice-foia@ice.dhs.gov
To: [Sana Singh](#)
Subject: ICE FOIA 2023-ICFO-15587
Date: Thursday, March 2, 2023 9:17:36 AM

03/02/2023

Sana Singh
39 Drumm Street
San Francisco, California 94111

RE: ICE FOIA Case Number 2023-ICFO-15587

Dear Requester:

This acknowledges receipt of your 3/1/2023, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for A copy of the detainee grievance logs maintained by facility staff at Adelanto ICE Processing Center, Desert View Annex, Golden State Annex, Imperial Regional Detention Facility, Mesa Verde ICE Processing Center and Otay Mesa Detention Center. Your request was received in this office on 3/1/2023.

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.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester, you will be charged 10 cents per page for duplication; the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have 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, Fernando Pineiro Jr. at the address above or (866) 633-1182. 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; or facsimile at 202-741-5769.

Your request has been assigned reference number **2023-ICFO-15587**. 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

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and any disclosure, copying, or distribution of this message, or the taking of any action based on it, by you is strictly prohibited.

Deloitte refers to a Deloitte member firm, one of its related entities, or Deloitte Touche Tohmatsu Limited ("DTTL"). Each Deloitte member firm is a separate legal entity and a member of DTTL. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

v.E.1

Exhibit 10

From: ice-foia@ice.dhs.gov
To: [Sana Singh](#)
Subject: ICE FOIA 2023-ICFO-20329
Date: Wednesday, April 12, 2023 5:37:18 AM

04/12/2023

Sana Singh
39 Drumm Street
San Francisco, California 94111

RE: ICE FOIA Case Number 2023-ICFO-20329

Dear Requester:

This acknowledges receipt of your 4/3/2023, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for:

- copies of the detainee grievance log maintained by various facilities from the period of March 1, 2023 to March 31, 2023 (see request for details).

Your request was received in this office on 4/3/2023.

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.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester, you will be charged 10 cents per page for duplication; the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have 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, Fernando Pineiro Jr. at the address above or (866) 633-1182. 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; or facsimile at 202-741-5769.

Your request has been assigned reference number 2023-ICFO-20329. 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

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and any disclosure, copying, or distribution of this message, or the taking of any action based on it, by you is strictly prohibited.

Deloitte refers to a Deloitte member firm, one of its related entities, or Deloitte Touche Tohmatsu Limited ("DTTL"). Each Deloitte member firm is a separate legal entity and a member of DTTL. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

v.E.1

Exhibit 11



Northern
California

May 9, 2023

Via USPS Certified Mail and Email

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
GILDFOIAAppeals@ice.dhs.gov

**Re: Freedom of Information Act Appeal
Appeal of ICE's Denial of Expedited Processing for FOIA Request #2023-ICFO-
20329**

To Whom It May Concern:

I write on behalf of the American Civil Liberties Union of Northern California ("ACLU NorCal" or "Requestor") to appeal the Immigration and Customs Enforcement ("ICE") denial of expedited processing for the Freedom of Information Act ("FOIA") Request No. 2023-ICFO-20329 (the "Request," attached as Exhibit A). The Request, dated April 3, 2023, seeks records held by ICE relating to grievances filed at ICE detention facilities in the state of California.

In an email dated April 12, 2023, ICE acknowledged receipt of our Request, stating it was received on April 3, 2023. The email did not address our Fee Waiver Request or Request for Expedited Processing. On April 28, 2023, ICE's secure release portal indicated that our request for expedited processing has been declined. We have not received in a writing the reasoning for this denial and request this decision in writing.

The Department of Homeland Security's FOIA regulations set forth the following four situations in which expedited processing will be granted:

- (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.

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

6 C.F.R. § 5.5(e)(1).

I. There is an urgent need to inform the public about the information sought in the Request.

The Request references three separate complaints filed with the Department of Homeland Security's Office for Civil Rights and Civil Liberties within the past two years, each of which includes pages upon pages of *specific, detailed*, and deeply troubling reports of conditions at immigration detention facilities within the state of California. Ex. A at 8.

Furthermore, reports of conditions coming out of two of these facilities were so troubling that sixteen members of Congress submitted a letter to the Department of Homeland Security ("September 2022 Congressional letter"), requesting a full and complete investigation into conditions at both facilities.¹ Ex. A at 8. This Congressional letter followed a separate letter from October 2021 ("October 2021 Congressional letter"), signed by twenty-four members of Congress, calling for the "*immediate termination* of contracts" at three other immigration detention facilities in California (separate from the two facilities mentioned in the September 2022 Congressional letter).² Such letters from Congressional representatives are not drafted lightly and certainly not based on "conclusory" evidence. Of the five facilities mentioned in the September 2022 and October 2021 Congressional letters, four remain open and are subjects of the Request.

As detailed in the Request, the records sought relate to grievances filed at detention centers across California. Grievances are one of the clearest glimpses into detention facilities as they provide individuals in detention a direct way to document problematic conditions of confinement. In fact, the express purpose of the grievance system established in ICE's 2011 Performance-Based National Detention Standards is to "ensure[] that all detainees are treated fairly."³ Therefore, the requested records are necessary to inform the public about conditions of confinement in immigration detention facilities across California.

In addition to the historical record of abuse at immigration detention facilities in California outlined in the Request and referenced above, new facts create an even greater urgency for the public to learn about conditions in immigration detention facilities in California. On February 17, 2023, approximately eighty-two detained immigrants launched a hunger strike to protest inhumane conditions at Mesa Verde ICE Processing Center and Golden State Annex – two of the facilities the Request seeks records from.⁴ Many individuals remained on strike for weeks, putting their safety and well-being on the line to raise awareness about the horrendous

¹ Representative Lofgren, Letter to Secretary Mayorkas and Acting Director Johnson (Sept. 14, 2022), available at <https://lofgren.house.gov/sites/lofgren.house.gov/files/9.14.22%20-%20ICE%20CA%20Facility%20Follow%20up%20Letter%20Final.pdf>.

² Representative Lofgren, Letter to Secretary Mayorkas (Oct. 21, 2021), available at <https://lofgren.house.gov/sites/lofgren.house.gov/files/CA%20ICE%20Detention%20Letter.pdf>.

³ ICE Performance-Based National Detention Standards 2011, Section 6, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

⁴ Press Release: Seventy-seven Detained Immigrants Launch Hunger Strike at Two Central Valley Facilities, Protest Unpaid Labor and Inhumane Conditions, <https://www.aclunc.org/news/seventy-seven-detained-immigrants-launch-hunger-strike-two-central-valley-facilities-protest>.

conditions in detention. These individuals faced brutal retaliation, including use of physical force, disconnected phone lines, and the unjustified transfer of seven individuals to El Paso, Texas.⁵ The grievance logs sought in the Request directly reflect the conditions that led individuals in detention to take such drastic collective action and put their health at risk. The public has an urgent need to know about the conditions at immigration detention facilities that drove these individuals to this action immediately.

II. The Request concerns a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

Since the launch of the hunger strike on February 17, 2023, many news outlets have reported on detention conditions at immigration facilities in California in print, radio, and video formats.⁶ Media coverage of conditions at these facilities has spanned numerous outlets, including Spanish-language outlets such as Univision, which is the United States' largest provider of Spanish-language content. These news articles highlight the failures of ICE and its contractors to adequately care for those in their custody. Media outlets have continued to publish stories detailing the horrific conditions of confinement and individuals' failed attempts to seek recourse at the facility level as the hunger strike continues. Media coverage of the hunger strike has also highlighted the public interest in these issues, including multiple rallies held at different

⁵ ACLU of Northern California, *After Hours of Violent Abuse, ICE and GEO Group Abruptly Transfer Four Mesa Verde Hunger Strikers to Texas* (Mar. 8, 2023), <https://www.aclunc.org/news/after-hours-violent-abuse-ice-and-geo-group-abruptly-transfer-four-mesa-verde-hunger-strikers>.

⁶ Farida Jhabvala Romero, *'Until We Drop': Immigrant Detainees on Hunger Strike Sue ICE, Detention Contractor for Alleged Retaliation*, KQED (Feb. 23, 2023), <https://www.kqed.org/news/11941677/until-we-drop-hunger-strike-enters-second-week-as-immigrants-in-ice-detention-protest-conditions>; *Asylum Seekers at Two California ICE Detention Centers Hold Hunger Strike*, Democracy Now! (Feb. 20, 2023), https://www.democracynow.org/2023/2/20/headlines/asylum_seekers_at_two_california_ice_detention_centers_hold_hunger_strike; Jonathan Lewis, *Hunger Strike by 84 Detained CA Immigrants Demands Fair Living/Working Conditions*, Davis Vanguard (Feb. 19, 2023), <https://www.davisvanguard.org/2023/02/hunger-strike-by-84-detained-ca-immigrants-demands-fair-living-working-conditions/>; Ishani Desai, *Nearly 100 Mesa Verde, Golden State Annex detainees launch hunger strike*, Bakersfield.com (Feb. 17, 2023), https://www.bakersfield.com/news/nearly-100-mesa-verde-golden-state-annex-detainees-launch-hunger-strike/article_03ae529a-af3b-11ed-a4cb-f3a341464227.html; Yesenia Amaro, *ICE says it takes misconduct allegations seriously. Central Valley hunger strikes continue*, Fresno Bee (Feb. 23, 2023), <https://www.fresnobee.com/news/local/article272572709.html>; Vania Patino, *Civil Rights activists demand transparency from ICE detention facilities*, 23ABC (Feb. 22, 2023), <https://www.turnto23.com/news/local-news/civil-rights-activists-demand-transparency-from-ice-detention-facilities>; Joshua Yeager, *Detainees at Kern County ICE facilities organize hunger strike*, KVPR (Feb. 23, 2023), <https://www.kvpr.org/local-news/2023-02-23/inmates-at-kern-county-ice-facilities-organize-hunger-strike>; Eric Burkett, *Immigrants claim ICE retribution for hunger strike over poor conditions*, Courthouse News (Feb. 24, 2023), <https://www.courthousenews.com/immigrants-claim-ice-retribution-for-hunger-strike-over-poor-conditions/>; *Grupo de migrantes detenidos en centros de procesamiento de ICE en California inician huelga de hambre: esto exigen*, Univision (Feb. 18, 2023), <https://www.univision.com/shows/noticiero-univision/grupo-de-migrantes-detenido-en-centros-de-procesamiento-de-ice-en-california-inician-huelga-de-hambre-esto-exigen-video>; *Migrantes detenidos en California realizan huelga de hambre por malos tratos en los centros de reclusión*, Latinus (Feb. 18, 2023), <https://latinus.us/2023/02/18/migrantes-detenido-california-realizan-huelga-hambre-malos-tratos-centros-reclusion/>.

locations across California in support of the hunger strikers.⁷ Members of the public have shown a sustained and urgent demand for accountability and transparency regarding conditions at California ICE detention centers through their support for the hunger strikers, and calls from hundreds of individuals to members of Congress to facilitate an investigation.⁸ On February 23, 2023, ACLU NorCal, along with the ACLU of Southern California and the California Collaborative for Immigrant Justice, hosted a congressional briefing for the California congressional delegation. The briefing outlined the abhorrent and intolerable conditions in immigration detention facilities throughout the state as well as the callous indifference of ICE and its contractors when individuals in detention attempted to utilize the grievance system to resolve issues with the facility. The briefing was attended by 13 Congressional offices.

Furthermore, the facts alleged in a lawsuit⁹ filed on February 23, 2023 reflects swift and ongoing retaliation by ICE and its contractors. The lawsuit alleged that ICE and their private contractor, the GEO Group, unlawfully retaliated against individuals detained at Mesa Verde ICE Processing Center and Golden State Annex, “with the purpose of chilling their peaceful, First-Amendment-protected protest.”¹⁰ The allegations of retaliation reflect unlawful and unconstitutional retaliation on the part of ICE and its contractor. According to the complaint, one facility staff member went so far as to say, “I don’t know why you’re starving yourself when ICE doesn’t care what happens to you.”¹¹ This pattern of behavior raises troubling questions about the integrity of ICE, its contractors, the Department of Homeland Security, and the entire federal immigration system in the face of such unlawful retaliation and cruel disregard for human suffering. In sum, the increased media interest in immigration detention facilities in California and the allegations of abuse by ICE and its contractors warrant a grant of expedited processing for records related to conditions of confinement.

*

*

*

For the foregoing reasons, as well as those set forth in the Request, ICE’s decision to deny expedited processing was an error. ACLU NorCal respectfully requests that ICE grant expedited processing and promptly process the Request.

⁷Vada Hepner, *Supporters rally on day 17 of Mesa Verde, Golden State Annex hunger strike*, The Californian (Mar. 5, 2023), https://www.bakersfield.com/news/supporters-rally-on-day-17-of-mesa-verde-golden-state-annex-hunger-strike/article_c14e06ba-bbb6-11ed-a5ce-9f11769b42b8.html; Joshua Yeager, *Detainees call for closure of ICE detention centers in Valley amid hunger strike, lawsuit*, KVPR (Feb. 28, 2023), <https://www.kvpr.org/local-news/2023-02-28/detainees-call-for-closure-of-ice-detention-centers-in-valley-amid-hunger-strike-lawsuit>; Telemundo Valle Central, *Protestas en apoyo a migrantes en McFarland* (Feb. 27, 2023), <https://www.kget.com/telemundo/noticias/protestas-en-apoyo-a-migrantes-en-mcfarland/>; Mary Paronyan, *Kern residents protest and go on hunger strike at Mesa Verde ICE Processing Center*, BakersfieldNow (Mar. 5, 2023) <https://bakersfieldnow.com/news/local/kern-residents-and-ice-inmates-go-on-hunger-strike>.

⁸California Collaborative for Immigrant Justice, *Detained Individuals Forced to Pause Hunger Strike at CA Immigration Detention Facilities* (Mar. 29, 2023), <https://www.ccijjustice.org/post/detained-individuals-forced-to-pause-hunger-strike-at-ca-immigration-detention-facilities>.

⁹ *Mendez v. ICE*, No. 3:23-cv-00829 (N.D. Cal. filed Feb. 23, 2023) available at https://www.aclunc.org/sites/default/files/Mendez_v._ICE_Complaint.pdf.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 14.

Appeal of ICE's Denial of Expedited Processing re FOIA Request #2023-ICFO-20329

Page 5

Thank you for your attention to this matter. Please furnish all responsive records, ideally in electronic format, to:

Sana Singh
American Civil Liberties Union of Northern California
39 Drumm St
San Francisco, CA 94111

or via electronic mail to ssingh@aclunc.org. Please email or call me at the contact information below if you have any questions.

Sincerely,



Sana A. Singh
ssingh@aclunc.org
(415) 293-6360

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

EXHIBIT A



Northern
California

April 3, 2023

Via USPS Certified Mail, Email, and Secure Release Portal

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009
E-mail: ice-foia@dhs.gov

Re: FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities (Fee Waiver and Expedited Processing Requested)

Dear FOIA Officer:

I write on behalf of the American Civil Liberties Union of Northern California (“ACLU NorCal” or “Requestor”) to request records related to grievances filed at California immigration detention facilities. This request (“Request”) is made pursuant to the Freedom of Information Act, 5 U.S.C. § 522 *et seq.*, implementing regulations 6 C.F.R. § 5.1 *et seq.*, and any other applicable regulations.

We ask that you direct this request to all appropriate offices, components, divisions, and/or directorates within Immigration and Customs Enforcement (“ICE”), including but not limited to the ICE Office of Professional Responsibility and the ICE Office of Detention Oversight divisions of ICE.

ACLU NorCal further 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

The ongoing detention of individuals in immigration detention facilities with documented patterns of inhumane treatment and conditions raises serious civil and human rights and civil liberties concerns. As of March 2023, immigration detention facilities in California house nearly two thousand individuals—the third largest population of people in immigration detention in the

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
 Page 2

country.¹ These individuals are detained across six² detention facilities, which operate through contracts between U.S. Immigration and Customs Enforcement (“ICE”) and private detention contractors.³ The abuses at immigration detention facilities in California have been well documented in complaints filed with the Office for Civil Rights and Civil Liberties (“CRCL”),⁴ lawsuits,⁵ medical journals,⁶ and other government agencies.⁷

In the past year, there have been reports of inadequate medical care, unsanitary living conditions, inadequate COVID-19 prevention, and the overuse of solitary confinements, among other concerning complaints. The repeated reports of such abuses lead to the conclusion that private contractors at ICE facilities have a pattern of failing to meet the basic needs of populations in detention. Furthermore, individuals who have spoken up about these horrific conditions have faced retaliation including solitary confinement, sexually abusive pat-downs, revocation of commissary access, and retaliatory transfers.

¹ Transactional Records Access Clearinghouse, *Detention Facilities Average Daily Population*, <https://trac.syr.edu/immigration/detentionstats/facilities.html> (last visited Mar. 30, 2023).

² U.S. Immigration and Customs Enforcement, *Detention Facilities*, <https://www.ice.gov/detention-facilities?state=3&office=&name=> (last visited Jan. 30, 2023).

³ U.S. Immigration and Customs Enforcement, *FOIA Library – Detention Facility Contracts*, <https://www.ice.gov/foia/library> (last visited Jan. 30, 2023).

⁴ Press Release, ACLU of Northern California, Civil Rights Groups File Complaint Against ICE and Contractors for Violating First Amendment Rights of People in Immigration Detention (Aug. 26, 2021), <https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-amendment>; Press Release, California Collaborative for Immigrant Justice, Detained Leaders file simultaneous federal complaints against ICE, Gro Group & MTC (Sept. 13, 2022), <https://www.ccijustice.org/post/detained-leaders-file-simultaneous-federal-complaints-against-ice-gro-group-mtc>; ACLU of Northern California et al., CRCL Complaint Re: Sexually Abusive Pat-Downs Against Individuals in Immigration Detention at Mesa Verde Detention Facility (Jan. 17, 2023), <https://www.aclunc.org/sites/default/files/Mesa%20Verde%20Complaint%20only%20-01.23.pdf>

⁵ Farida Jhabvala Romero, *ICE Detainees Making \$1 a Day Sue Over Alleged Wage Theft*, KQED (July 16, 2022), <https://www.kqed.org/news/11919749/ice-detainees-making-1-a-day-sue-over-alleged-wage-theft>; Andrea Castillo, *ICE held a man in solitary confinement for more than a year. He’s suing under a new California law*, LA Times (Oct. 14, 2021), <https://www.latimes.com/california/story/2021-10-14/ice-lawsuit-california-solitary-confinement-detention-citizen>; Press Release, Lawyers’ Committee For Civil Rights, Groundbreaking COVID-19 Settlement to Yield Protections for Immigrants Detained by ICE, Limit Re-detention for People Released (Jan. 27, 2022), https://lccrsf.org/pressroom_posts/groundbreaking-covid-19-settlement-to-yield-protections-for-immigrants-detained-by-ice-limit-re-detention-for-people-released/;

⁶ Altaf Saadi et al., *Cumulative Risk of Immigration Prison Conditions on Health Outcomes Among Detained Immigrants in California*, Journal of Racial and Ethnic Health Disparities (Nov. 29, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8628823/>

⁷ DHS Office of Inspector General, *Early Experiences with COVID-19 at ICE Detention Facilities* (June 18, 2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-42-Jun20.pdf>; DHS Office of Inspector General, *Management Alert—Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California* (Sept. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>; DHS Office of Inspector General, *ICE Needs to Address Prolonged Administrative Segregation and Other Violations at the Imperial Regional Detention Facility* (Dec. 18, 2020), <https://www.oig.dhs.gov/reports/2021/ice-needs-address-prolonged-administrative-segregation-and-other-violations-imperial-regional-detention-facility/oig-21-12-dec20>; DHS Office of Inspector General, *Capping Report: Observations of Unannounced Inspections of ICE Facilities in 2019* (July 1, 2020), <https://www.oig.dhs.gov/reports/2020/capping-report-observations-unannounced-inspections-ice-facilities-2019/oig-20-45-jul20>.

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
 39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

While advocates on the outside have attempted to bring attention to the abuses in immigration detention in California, individuals in detention have diligently utilized the grievance systems available at the facilities to draw attention to their substandard living conditions. These grievance systems are an essential tool for documenting the conditions in facilities and are often the only way individuals in detention can assert their civil and human rights.⁸ A functioning grievance system is mandated at all facilities in California by the 2011 Operations Manual ICE Performance-Based National Detention Standards (“PBNDS”).⁹

Conditions at immigration facilities in California have continued to deteriorate and on February 17, 2023, seventy-seven detained immigrants launched a hunger strike to protest inhumane conditions at Mesa Verde ICE Processing Center and Golden State Annex – two of the facilities the Request seeks records from.¹⁰ Several individuals remained on strike for weeks, putting their safety and well-being on the line to raise awareness about the horrendous conditions in detention. These individuals faced brutal retaliation, including use of physical force, disconnected phone lines, and the transfer of four individuals to El Paso Texas.¹¹ The grievance logs sought in the Request directly reflect the conditions that led individuals in detention to take such drastic collective action and put their health at risk. The public has an urgent need to know about the conditions at immigration detention facilities that drove these individuals to this action immediately. Given the historical pattern of abuse and ongoing action at detention facilities, ACLU NorCal, the immigrant community we serve, and the public have an urgent need to know about the grievance process in the immigration detention facilities across the state.

II. Records Requested

ACLU NorCal requests the following records held by ICE from the period of March 1, 2023 to March 31, 2023:

1. A copy of the detainee grievance log maintained by facility staff at Adelanto ICE Processing Center in accordance with PBNDS Section 6.2 (D);
2. A copy of the detainee grievance log maintained by facility staff at Desert View Annex in accordance with PBNDS Section 6.2 (D);

⁸ Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>; Gabe Ortiz, *Lawmakers Urge Probe into Allegations of Abuse and Retaliation at Private Detention Facilities*, Daily KOS (Sept. 19, 2022), https://www.dailykos.com/stories/2022/9/19/2123837/-Lawmakers-urge-probe-into-allegations-of-abuse-and-retaliation-at-private-detention-facilities?utm_campaign=recent.

⁹ ICE Performance-Based National Detention Standards 2011 (hereinafter, “PBNDS”), Section 6.2, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

¹⁰ Press Release: Seventy-seven Detained Immigrants Launch Hunger Strike at Two Central Valley Facilities, Protest Unpaid Labor and Inhumane Conditions, <https://www.aclunc.org/news/seventy-seven-detained-immigrants-launch-hunger-strike-two-central-valley-facilities-protest>.

¹¹ ACLU of Northern California, After Hours of Violent Abuse, ICE and GEO Group Abruptly Transfer Four Mesa Verde Hunger Strikers to Texas (Mar. 8, 2023), <https://www.aclunc.org/news/after-hours-violent-abuse-ice-and-geo-group-abruptly-transfer-four-mesa-verde-hunger-strikers>

3. A copy of the detainee grievance log maintained by facility staff at Golden State Annex in accordance with PBNDS Section 6.2 (D);
4. A copy of the detainee grievance log maintained by facility staff at Imperial Regional Detention Facility in accordance with PBNDS Section 6.2 (D);
5. A copy of the detainee grievance log maintained by facility staff at Mesa Verde ICE Processing Center in accordance with PBNDS Section 6.2 (D); and
6. A copy of the detainee grievance log maintained by facility staff at Otay Mesa Detention Center in accordance with PBNDS Section 6.2 (D).

III. Fee Waiver Request

ACLU NorCal requests that any fees associated with responding to this FOIA Request be waived pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k). Pursuant to those provisions, fees should be waived or reduced if disclosure is (1) “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Here, disclosure meets both tests.

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

Disclosure of the records in this Request is in the public interest. As described above, there are concerning reports of abusive living conditions at immigration detention facilities across California. However, very little is currently known about the number and frequency of grievances filed by individuals in immigration detention facilities across the state. ACLU NorCal is not aware of any publicly available and regularly updated records of grievances filed at immigration detention facilities. The ways in which the substandard living conditions at immigration detention facilities have profound effects on people’s lives has been the subject of significant media attention.¹²

Records on grievances filed at immigration detention facilities are of critical interest to the public, particularly for U.S. citizens and permanent residents with undocumented family members. As of 2019, more than 3 million Californian U.S. citizens and permanent residents lived in mixed-status families with undocumented relatives.¹³ Given the ongoing and widespread media attention

¹² Andrea Castillo, *California Fines Detention Center Operator \$100,000 Over Immigrants’ Working Conditions*, LA Times (Jan. 30, 2023), <https://www.latimes.com/politics/story/2023-01-30/detained-immigrants-alleged-unsafe-working-conditions-at-california-facility-fine>; Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>; Andrea Castillo, *Abuse Reports From Detained Black Immigrants Disproportionately High, Advocacy Groups Say*, LA Times (Oct. 27, 2022), <https://www.latimes.com/politics/story/2022-10-27/racism-and-abuse-of-detained-black-immigrants-disproportionately-high-report-says>; Farida Jhabvala Romero, *ICE Overusing Solitary Confinement in California, Lawmakers Worry*, KQED (Aug. 26, 2022), <https://www.kqed.org/news/11923753/ice-overusing-solitary-confinement-in-california-lawmakers-worry>.

¹³ California Immigrant Data Portal, *Mixed-Status Families*, <https://immigrantdata.org/indicators/mixed-status-families> (last visited Jan. 30, 2023).

to this issue, the records sought by the Request will significantly contribute to the public understanding of the operations and activities of ICE detention facilities and will be of interest to a broad interest. *See* 6 C.F.R. § 5.11(k)(1)(i), (k)(2)(iii). This is critical information to mixed-status families, immigration advocacy groups, legislators, and the public at large. ACLU NorCal plans to disseminate to the public, at no cost, the information and records disclosed from this FOIA Request.

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

In filing this request, ACLU NorCal does not seek to further any commercial interest. ACLU NorCal is a 501(c)(3) nonprofit organization and therefore has no commercial interest. We intend to widely disseminate to the public any relevant information obtained through this FOIA request. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k). ACLU NorCal frequently publishes information and records implicating civil rights issues to the public, at no cost. The primary purpose of doing so is public education and government accountability—not commercial.

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.’”) (citation omitted); OPEN Government Act of 2007, Pub. L. No. 110-175, § 2, 121 Stat. 2524 (finding that “disclosure, not secrecy, is the dominant objective of the Act,” quoting *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1992)).

C. ACLU NorCal also qualifies for a fee waiver because it is a representative of the news media, and the records are not sought for commercial use

ACLU NorCal is also entitled to a waiver of search fees because we qualify 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); 22 C.F.R. §§ 171.16(a)(1)(iii), (a)(2). ACLU NorCal 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); *see Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (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 NorCal’s communications department is a division of a nonprofit 501(c)(3) organization and is a “representative of the news media.” It regularly publishes newsletters, news briefings, reports, know-your-rights handbooks, press releases, and other materials that are distributed 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. Examples of recent publications includes a report entitled *Collusion in California’s Central Valley: The Case for*

Ending Sheriff Entanglement with ICE,¹⁴ and the podcast series “Gold Chains: The Hidden History of Slavery in California,” which has exceeded 5,500 downloads.¹⁵ ACLU NorCal’s communications department also disseminates information through the website <https://www.aclunc.org/>, which averages between 7,500 and 10,000 visitors per week and includes a widely read blog,¹⁶ where original editorial content reporting on and analyzing civil rights and civil liberties news is posted frequently. The website addresses civil liberties issues in depth and features civil liberties issues on which ACLU NorCal is focused, including immigrants’ rights. ACLU NorCal staff members are frequent spokespersons in television, print, and radio media and make public presentations at meetings and events. Further, ACLU NorCal’s communications department issues a triannual newsletter, which is distributed to over 78,000 subscribers by mail. It also disseminates information through social media channels, including its Instagram account, which has about 15,000 followers;¹⁷ and its Twitter account, which has about 23,200 followers.¹⁸ ACLU NorCal often disseminate descriptions and analysis of information obtained through FOIA requests through these various publication channels. These extensive publication activities make ACLU NorCal a “representative of the news media” under the FOIA and relevant regulations.

Courts have found other organizations whose missions, functions, publishing, and public education activities are similar in kind to ACLU NorCal’s to be “representative[s] of the news media.” *See, e.g., Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 288 (D. Conn. 2012) (finding that nonprofit public interest groups, including the Service Women’s Action Network, the ACLU, and the ACLU of Connecticut were “representatives of the news media” for FOIA purposes); *ACLU of Wash. v. U.S. Dep’t of Justice*, No. C09–0642RSL, 2011 WL 887731, at *10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington was a “representative of the news media” for FOIA purposes); *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Def.*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003) (finding nonprofit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for FOIA purposes); *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that the National Security Archive was a “representative of the news media” for FOIA purposes); *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding that Judicial Watch, a self-described “public interest law firm,” was a “representative of the news media” for FOIA purposes).

As stated, the requested records are not sought for commercial use. As a representative of the news media, we plan to analyze and disseminate the information disclosed from this FOIA

¹⁴ ACLU of Northern California, ACLU Report Reveals that Sheriffs in California’s Central Valley Have Developed Shadow ICE Notification and Transfer Systems, Circumventing State Law (Feb. 9, 2022),

<https://www.aclunc.org/news/aclu-report-reveals-sheriffs-california-s-central-valley-have-developed-shadow-ice>.

¹⁵ ACLU of Northern California, ACLU of Northern California Launches Gold Chains: The Hidden History of Slavery in California (Nov. 14, 2019), <https://www.aclunc.org/news/aclu-northern-california-launches-gold-chains-hidden-history-slavery-california>.

¹⁶ Available at <https://www.aclunc.org/blog>.

¹⁷ Available at https://www.instagram.com/aclu_norcal/.

¹⁸ Available at https://twitter.com/ACLU_NorCal.

request to the public at no cost. Because of these factors, a fee waiver here would fulfill Congress's legislative intent in amending the FOIA. *See Judicial Watch, Inc.*, 326 F.3d at 1312. Recognizing this, on numerous occasions ACLU NorCal has not been charged fees associated with responding to FOIA requests.¹⁹

IV. Expedited Processing Request

ACLU NorCal 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* 6 C.F.R. § 5.5(e)(1)(ii).

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

ACLU NorCal is "primarily engaged in disseminating information" within the meaning of 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii). As explained above, ACLU NorCal has the ability and intention to widely disseminate through various sources, including newsletters, news briefings, reports, know-your-rights handbooks, press releases, and other materials, the records and information received through this request. These materials will be available to the public at no cost.

Further, ACLU NorCal is a non-profit organization and an affiliate of the ACLU, a national organization that works to protect civil liberties of all people, including the safeguarding of the basic constitutional rights to privacy, free expression, and due process of law. ACLU NorCal is responsible for serving the population of northern California and ACLU NorCal staff persons are frequent spokespersons in television and print media and make public presentations at meetings and events. ACLU NorCal plans to analyze and disseminate to the public the information gathered through this Request at no cost, and the records are not sought for any commercial purpose.

Dissemination of information about actual or alleged governmental activity is a critical and substantial component of the ACLU NorCal's mission and work. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are among ACLU NorCal's primary activities and substantial components of our work. *See ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C.

¹⁹ For example, ICE granted ACLU NorCal a fee waiver in two FOIA requests filed in March 2018, one seeking information on ICE's use of automated license plate reader systems and the other seeking communications between ICE and California law enforcement agencies. The Department of Homeland Security also granted ACLU NorCal a fee waiver in a FOIA request filed in February 2019 seeking information concerning the criminal investigation and surveillance of refugees. U.S. Citizenship and Immigration Services, a component of ICE, granted ACLU NorCal a fee waiver in a January 2023 FOIA request seeking records related to the situational exceptions to the Terrorism-Related Inadmissibility Grounds.

2004) (finding that nonprofit 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” is “primarily engaged in disseminating information”) (internal quotation marks omitted). Courts have found that organizations with similar missions as ACLU NorCal that engage in information-dissemination activities similar to ACLU NorCal are “primarily engaged in disseminating information” for purposes of requesting expedited processing under the FOIA. *See, e.g., Leadership Conf. on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11. And as explained above, ACLU NorCal intends to distribute the information obtained through this FOIA request via our website and other available publication channels.

ACLU NorCal actively disseminates and frequently garners extensive media coverage of the information it obtains about actual or alleged government activity through FOIA and California’s statutory counterpart, the California Public Records Act.²⁰ It does so through a heavily visited website (averaging between 7,500 and 10,000 visitors per week) and a paper newsletter distributed to over 78,000 members.

B. The records sought are urgently needed to inform the public about actual or alleged government activity and are of exceptional media interest

The records we request are “urgen[tly]” needed “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). Recent complaints regarding civil rights abuses at California ICE detention facilities have prompted public attention, including pressure from more than a dozen California members of Congress to investigate a complaint filed by individuals detained at Mesa Verde ICE Processing Center and Golden State Annex.²¹ This Congressional ask followed a separate letter from October 2021 (“October 2021 Congressional letter”), signed by twenty-four members of Congress, calling for the “immediate termination of contracts” at three other immigration detention facilities in California (separate from the two facilities mentioned in the September 2022 Congressional letter).²² Of the five facilities mentioned in the September 2022 and October 2021 Congressional letters, four remain open and are subjects of the Request. Separately, individuals detained at immigration detention facilities in California have filed at least three complaints with the Department of Homeland Security Office for Civil Rights and Civil Liberties in the past five months alone.²³

²⁰ ACLU of Northern California, ACLU of Northern California et al. v. ICE (Apr. 13, 2021), <https://www.aclunc.org/our-work/legal-docket/aclu-northern-california-et-al-v-ice>; ACLU of Northern California, Documents Reveal ICE Using Driver Location Data From Local Police for Deportations (Mar. 13, 2019), <https://www.aclunc.org/blog/documents-reveal-ice-using-driver-location-data-local-police-deportations>.

²¹ Farida Jhabvala Romero, *California Lawmakers Call for Investigation Into Detainee Complaints of Solitary Confinement*, KQED (Sept. 15, 2022), <https://www.kqed.org/news/11925791/california-lawmakers-call-for-investigation-into-detainee-complaints-of-solitary-confinement>.

²² Representative Lofgren, Letter to Secretary Mayorkas (Oct. 21, 2021), available at <https://lofgren.house.gov/sites/lofgren.house.gov/files/CA%20ICE%20Detention%20Letter.pdf>.

²³ Press Release, ACLU of Northern California, Civil Rights Groups File Complaint Against ICE and Contractors for Violating First Amendment Rights of People in Immigration Detention (Aug. 26, 2021), <https://www.aclunc.org/news/civil-rights-groups-file-complaint-against-ice-and-contractors-violating-first-amendment>; Press Release, California Collaborative for Immigrant Justice, Detained Leaders file simultaneous

Furthermore, a lawsuit²⁴ filed on February 23, 2023 reflects swift and ongoing retaliation by ICE and its contractors. The lawsuit alleges that ICE and their private contractor, the GEO Group, unlawfully retaliated against individuals detained at Mesa Verde ICE Processing Center and Golden State Annex, “with the purpose of chilling their peaceful, First-Amendment-protected protest.”²⁵ Conditions at immigration detention facilities have become a matter of widespread and exceptional media interest, as well as public attention. Since the launch of the hunger strike on February 17, 2023, many news outlets have reported on detention conditions at immigration facilities and public response to the hunger strike in California in print, radio, and video formats.²⁶

federal complaints against ICE, Gro Group & MTC (Sept. 13, 2022), <https://www.ccijustice.org/post/detained-leaders-file-simultaneous-federal-complaints-against-ice-geo-group-mtc>; ACLU of Northern California et al., *CRCL Complaint Re: Sexually Abusive Pat-Downs Against Individuals in Immigration Detention at Mesa Verde Detention Facility* (Jan. 17, 2023), https://www.aclunc.org/sites/default/files/Mesa%20Verde%20Complalint%20only%20_01.23.pdf.

²⁴ *Mendez v. ICE*, No. 3:23-cv-00829 (N.D. Cal. filed Feb. 23, 2023) available at

https://www.aclunc.org/sites/default/files/Mendez_v._ICE_Complaint.pdf.

²⁵ *Id.* at 1.

²⁶ Farida Jhabvala Romero, ‘Until We Drop’: Immigrant Detainees on Hunger Strike Sue ICE, Detention Contractor for Alleged Retaliation, KQED (Feb. 23, 2023), <https://www.kqed.org/news/11941677/until-we-drop-hunger-strike-enters-second-week-as-immigrants-in-ice-detention-protest-conditions>; Asylum Seekers at Two California ICE Detention Centers Hold Hunger Strike, Democracy Now! (Feb. 20, 2023),

https://www.democracynow.org/2023/2/20/headlines/asylum_seekers_at_two_california_ice_detention_centers_hold_hunger_strike; Jonathan Lewis, *Hunger Strike by 84 Detained CA Immigrants Demands Fair Living/Working Conditions*, Davis Vanguard (Feb. 19, 2023),

<https://www.davisvanguard.org/2023/02/hunger-strike-by-84-detained-ca-immigrants-demands-fair-living-working-conditions/>; Ishani Desai, *Nearly 100 Mesa Verde, Golden State Annex detainees launch hunger strike*, Bakersfield.com (Feb. 17, 2023),

https://www.bakersfield.com/news/nearly-100-mesa-verde-golden-state-annex-detainees-launch-hunger-strike/article_03ae529a-af3b-11ed-a4cb-f3a341464227.html; Yesenia Amaro, *ICE says it takes misconduct allegations seriously. Central Valley hunger strikes continue*, Fresno Bee (Feb. 23, 2023),

<https://www.fresnobee.com/news/local/article272572709.html>; Vania Patino, *Civil Rights activists demand transparency from ICE detention facilities*, 23ABC (Feb. 22, 2023), <https://www.turnto23.com/news/local-news/civil-rights-activists-demand-transparency-from-ice-detention-facilities>; Joshua Yeager, *Detainees at Kern County ICE facilities organize hunger strike*, KVPR (Feb. 23, 2023),

<https://www.kvpr.org/local-news/2023-02-23/inmates-at-kern-county-ice-facilities-organize-hunger-strike>; Eric Burkett, *Immigrants claim ICE retribution for hunger strike over poor conditions*, Courthouse News (Feb. 24, 2023),

<https://www.courthousenews.com/immigrants-claim-ice-retribution-for-hunger-strike-over-poor-conditions/>; *Grupo de migrantes detenidos en centros de procesamiento de ICE en California inician huelga de hambre: esto exigen*, Univision (Feb. 18, 2023),

<https://www.univision.com/shows/noticiero-univision/grupo-de-migrantes-detenidos-en-centros-de-procesamiento-de-ice-en-california-inician-huelga-de-hambre-esto-exigen-video>; *Migrantes detenidos en California realizan huelga de hambre por malos tratos en los centros de reclusion*, Latinus (Feb. 18, 2023),

<https://latinus.us/2023/02/18/migrantes-detenidos-california-realizan-huelga-hambre-malos-tratos-centros-reclusion/>; Aleja Hertzler-McCain, *Detained immigrants launch hunger strike at two California facilities*, National Catholic Reporter (Feb. 28, 2023),

<https://www.ncronline.org/news/detained-immigrants-launch-hunger-strike-two-california-facilities>; Dalu Okoli, *Mesa Verde ICE detainees protest alleged inhumane living conditions*, KGET (Feb. 27, 2023), <https://www.kget.com/news/local-news/mesa-verde-ice-detainees-protest-inhumane-living-conditions/>; Brian Osgood, *‘Slavery wages’ prompt hunger strike at ICE detention Facilities*, Al Jazeera (Mar. 3, 2023),

<https://www.aljazeera.com/news/2023/3/3/hunger-strike-at-ice-detention-facilities-protest-slavery>; Yesenia Amaro, *Hunger strikers sent from Central Valley detention centers to El Paso, supporters say*, Fresno Bee (Mar. 8, 2023),

<https://www.fresnobee.com/news/local/article272896745.html>; Tyche Hendricks, *ICE Abruptly Transfers 4 Detainee Hunger Strikers From California to Texas, Sparking Fears of Force-Feeding*, KQED (Mar. 9, 2023), <https://www.kqed.org/news/11943030/ice-abruptly-transfers-4-detainee-hunger-strikers-from-california-to-texas-sparking-fears-of-force-feeding>; Tyche Hendricks, *With Detainee Hunger Strike in Third Week, ICE Is Failing to Review Requests for Freedom, Advocates Say*, KQED (Mar. 3, 2023), <https://www.kqed.org/news/11942414/with->

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO

39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
 Page 10

Media coverage of conditions at these facilities has spanned numerous outlets, including Spanish-language outlets such as Univision, which is the United States' largest provider of Spanish-language content. These news articles highlight the failures of ICE and its contractors to adequately care for those in their custody. Media outlets have continued to publish stories detailing the horrific conditions of confinement and individuals' failed attempts to seek recourse at the facility level as the hunger strike continues. Media coverage of the hunger strike has also highlighted the public interest in these issues, including multiple rallies held at different locations across California in support of the hunger strikers.²⁷ Members of the public have shown a sustained and urgent demand for accountability and transparency regarding conditions at California ICE detention centers through their support for the hunger strikers, and calls from hundreds of individuals to members of congress to facilitate an investigation.²⁸

There is an urgent need to inform the public regarding the volume of grievances filed at California ICE detention facilities. Moreover, the records sought in this Request should be readily accessible to ICE and easy to locate through mandated facility-maintained grievance logs that are subject to regular inspection by the Field Office Director and ICE Headquarters staff and reviewed during ICE/ERO-initiated facility inspections.²⁹ The agency is therefore unlikely to expend undue resources locating the records requested to fulfill this Request.

Should you determine that expedited processing is not warranted, while reserving our right to appeal that decision, Requestor expects a response within the twenty-day time limit set forth under 5 U.S.C. § 552(a)(6)(A)(i).

*

*

*

[detainee-hunger-strike-in-third-week-ice-is-failing-to-review-requests-for-freedom-advocates-say](#); Madison Weil, *Rally held outside detention center downtown in support of detainees on hunger strike*, ABC 10 (Mar. 5, 2023), <https://www.10news.com/news/local-news/san-diego-news/rally-held-outside-detention-center-downtown-in-support-of-detainees-on-hunger-strike>; Mary Paronyan, *Four Mesa Verde hunger strikers transferred to Texas*, BakersfieldNow (Mar. 9, 2023), <https://bakersfieldnow.com/news/local/four-mesa-verde-hunger-strikers-transferred-to-texas>.

²⁷Vada Hepner, *Supporters rally on day 17 of Mesa Verde, Golden State Annex hunger strike*, The Californian (Mar. 5, 2023), https://www.bakersfield.com/news/supporters-rally-on-day-17-of-mesa-verde-golden-state-annex-hunger-strike/article_c14e06ba-bbb6-11ed-a5ce-9f11769b42b8.html; Joshua Yeager, *Detainees call for closure of ICE detention centers in Valley amid hunger strike, lawsuit*, KVPR (Feb. 28, 2023), <https://www.kvpr.org/local-news/2023-02-28/detainees-call-for-closure-of-ice-detention-centers-in-valley-amid-hunger-strike-lawsuit>; Telemundo Valle Central, *Protestas en apoyo a migrantes en McFarland* (Feb. 27, 2023), <https://www.kget.com/telemundo/noticias/protestas-en-apoyo-a-migrantes-en-mcfarland/>; Mary Paronyan, *Kern residents protest and go on hunger strike at Mesa Verde ICE Processing Center*, BakersfieldNow (Mar. 5, 2023), <https://bakersfieldnow.com/news/local/kern-residents-and-ice-inmates-go-on-hunger-strike>.

²⁸California Collaborative for Immigrant Justice, *Detained Individuals Forced to Pause Hunger Strike at CA Immigration Detention Facilities* (Mar. 29, 2023), <https://www.ccijustice.org/post/detained-individuals-forced-to-pause-hunger-strike-at-ca-immigration-detention-facilities>

²⁹ PBNDS, Section 6.2 (D), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>; PBNDS, Section 6.2 (H), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
 39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

FOIA Request Regarding Grievances Filed at California Immigration Detention Facilities
Page 11

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, ideally in electronic format, to:

Sana Singh
American Civil Liberties Union of Northern California
39 Drumm St
San Francisco, CA 94111

or via electronic mail to ssingh@aclunc.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 below if you have any questions or wish to obtain further information about the nature of the records in which we are interested.

Sincerely,



Sana A. Singh
ssingh@aclunc.org
(415) 293-6360

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

Exhibit 12

From: ice-foia@ice.dhs.gov
To: [Sana Singh](#)
Subject: ICE FOIA 2023-ICAP-00294
Date: Thursday, May 11, 2023 7:47:12 AM

05/11/2023

Sana Singh
39 Drumm Street
San Francisco, California 94111

RE: ICE FOIA Case Number 2023-ICAP-00294

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, postmarked or electronically transmitted on 5/9/2023, was received on 5/9/2023.

The Government Information Law Division acknowledges your appeal request and is assigning it number 2023-ICAP-00294 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 Fernando Pineiro Jr., ICE FOIA Office/Public Liaison at (866) 633-1182 or at 500 12th St., SW Washington, DC 20536-5009.

Sincerely,

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

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and any disclosure, copying, or distribution of this message, or the taking of any action based on it, by you is strictly prohibited.

Deloitte refers to a Deloitte member firm, one of its related entities, or Deloitte Touche Tohmatsu Limited ("DTTL"). Each Deloitte member firm is a separate legal entity and a

member of DTTL. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

v.E.1

Exhibit 13

From: ICE-FOIA@ice.dhs.gov
To: [Sana Singh](#)
Subject: ICE FOIA 2023-ICFO-25150
Date: Monday, May 8, 2023 3:50:57 PM

05/08/2023

Sana Singh
39 Drumm Street
San Francisco, California 94111

RE: ICE FOIA Case Number 2023-ICFO-25150

Dear Requester:

This acknowledges receipt of your 5/4/2023, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for ACLU NorCal requests the following records held by ICE from the period of April 1, 2023 to April 30, 2023:

1. A copy of the detainee grievance log maintained by facility staff at Adelanto ICE Processing Center in accordance with PBNDS Section 6.2 (D);
2. A copy of the detainee grievance log maintained by facility staff at Desert View Annex in accordance with PBNDS Section 6.2 (D);
3. A copy of the detainee grievance log maintained by facility staff at Golden State Annex in accordance with PBNDS Section 6.2 (D);
4. A copy of the detainee grievance log maintained by facility staff at Imperial Regional Detention Facility in accordance with PBNDS Section 6.2 (D);
5. A copy of the detainee grievance log maintained by facility staff at Mesa Verde ICE Processing Center in accordance with PBNDS Section 6.2 (D); and
6. A copy of the detainee grievance log maintained by facility staff at Otay Mesa Detention Center in accordance with PBNDS Section 6.2 (D).. Your request was received in this office on 5/8/2023.

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.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester, you will be charged 10 cents per page for duplication; the first 100 pages are free, as are the first two hours of search time, after which you

will pay the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have 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, Fernando Pineiro Jr. at the address above or (866) 633-1182. 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; or facsimile at 202-741-5769.

Your request has been assigned reference number 2023-ICFO-25150. 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

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and any disclosure, copying, or distribution of this message, or the taking of any action based on it, by you is strictly prohibited.

Deloitte refers to a Deloitte member firm, one of its related entities, or Deloitte Touche Tohmatsu Limited ("DTTL"). Each Deloitte member firm is a separate legal entity and a member of DTTL. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

v.E.1

Exhibit 14

From: ice-foia@ice.dhs.gov
To: [Sana Singh](#)
Subject: ICE FOIA 2023-ICFO-28869
Date: Monday, June 5, 2023 5:47:14 PM

06/05/2023

Sana Singh
39 Drumm Street
San Francisco, California 94111

RE: ICE FOIA Case Number 2023-ICFO-28869

Dear Requester:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated 6/5/2023, your request for a waiver of all assessable FOIA fees, and your request for expedited treatment. Your request was received in this office on 6/5/2023. Specifically, you have requested ACLU NorCal requests the following records held by ICE from the period of May 1, 2023 to May 31, 2023:

1. A copy of the detainee grievance log maintained by facility staff at Adelanto ICE Processing Center in accordance with PBNDS Section 6.2 (D);
2. A copy of the detainee grievance log maintained by facility staff at Desert View Annex in accordance with PBNDS Section 6.2 (D);
3. A copy of the detainee grievance log maintained by facility staff at Golden State Annex in accordance with PBNDS Section 6.2 (D);
4. A copy of the detainee grievance log maintained by facility staff at Imperial Regional Detention Facility in accordance with PBNDS Section 6.2 (D);
5. A copy of the detainee grievance log maintained by facility staff at Mesa Verde ICE Processing Center in accordance with PBNDS Section 6.2 (D); and
6. A copy of the detainee grievance log maintained by facility staff at Otay Mesa Detention Center in accordance with PBNDS Section 6.2 (D)..

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.

ICE evaluates fee waiver requests under the legal standard set forth above and the fee waiver policy guidance issued by the Department of Justice on April 2, 1987, as incorporated into the Department

of Homeland Security's Freedom of Information Act regulations. These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. I have considered the following factors in my evaluation of your request for a fee waiver:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government";
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant";
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

Upon review of your request and a careful consideration of the factors listed above, I have determined to grant your request for a fee waiver.

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 Fernando Pineiro Jr. 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; or facsimile at 202-741-5769.

Your request has been assigned reference number **2023-ICFO-28869**. 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

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and any disclosure, copying, or distribution of this message, or the taking of any action based on it, by you is strictly prohibited.

Deloitte refers to a Deloitte member firm, one of its related entities, or Deloitte Touche

Tohatsu Limited ("DTTL"). Each Deloitte member firm is a separate legal entity and a member of DTTL. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

v.E.1

Exhibit 15



Northern
California

June 13, 2023

Via USPS Certified Mail and Email

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
GILDFOIAAppeals@ice.dhs.gov

**Re: Freedom of Information Act Appeal
Appeal of ICE's Denial of Expedited Processing for FOIA Request #2023-ICFO-
28869**

To Whom It May Concern:

I write on behalf of the American Civil Liberties Union of Northern California ("ACLU NorCal" or "Requestor") to appeal the Immigration and Customs Enforcement ("ICE") denial of expedited processing for the Freedom of Information Act ("FOIA") Request No. 2023-ICFO-28869 (the "Request," attached as Exhibit A). The Request, dated June 5, 2023, seeks records held by ICE relating to grievances filed at ICE detention facilities in the state of California.

In an email dated June 5, 2023, ICE acknowledged receipt of our Request, granted our fee waiver, and denied our request for expedited processing.

The Department of Homeland Security's FOIA regulations set forth the following four situations in which expedited processing will be granted:

- (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.

6 C.F.R. § 5.5(e)(1).

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

I. There is an urgent need to inform the public about the information sought in the Request.

The Request references three separate complaints filed with the Department of Homeland Security's Office for Civil Rights and Civil Liberties within the past two years, each of which includes pages upon pages of *specific, detailed*, and deeply troubling reports of conditions at immigration detention facilities within the state of California. Ex. A at 9.

Furthermore, reports of conditions coming out of two of these facilities were so troubling that sixteen members of Congress submitted a letter to the Department of Homeland Security ("September 2022 Congressional letter"), requesting a full and complete investigation into conditions at both facilities.¹ Ex. A at 9. This Congressional letter followed a separate letter from October 2021 ("October 2021 Congressional letter"), signed by twenty-four members of Congress, calling for the "*immediate termination* of contracts" at three other immigration detention facilities in California (separate from the two facilities mentioned in the September 2022 Congressional letter).² Such letters from Congressional representatives are not drafted lightly and certainly not based on "conclusory" evidence. Of the five facilities mentioned in the September 2022 and October 2021 Congressional letters, four remain open and are subjects of the Request.

As detailed in the Request, the records sought relate to grievances filed at detention centers across California. Grievances are one of the clearest glimpses into detention facilities as they provide individuals in detention a direct way to document problematic conditions of confinement. In fact, the express purpose of the grievance system established in ICE's 2011 Performance-Based National Detention Standards is to "ensure[] that all detainees are treated fairly."³ Therefore, the requested records are necessary to inform the public about conditions of confinement in immigration detention facilities across California.

In addition to the historical record of abuse at immigration detention facilities in California outlined in the Request and referenced above, new facts create an even greater urgency for the public to learn about conditions in immigration detention facilities in California. On February 17, 2023, approximately eighty-two detained immigrants launched a hunger strike to protest inhumane conditions at Mesa Verde ICE Processing Center and Golden State Annex – two of the facilities the Request seeks records from.⁴ Many individuals remained on strike for weeks, putting their safety and well-being on the line to raise awareness about the horrendous conditions in detention. These individuals faced brutal retaliation, including use of physical

¹ Representative Lofgren, Letter to Secretary Mayorkas and Acting Director Johnson (Sept. 14, 2022), available at <https://lofgren.house.gov/sites/lofgren.house.gov/files/9.14.22%20-%20ICE%20CA%20Facility%20Follow%20up%20Letter%20Final.pdf>.

² Representative Lofgren, Letter to Secretary Mayorkas (Oct. 21, 2021), available at <https://lofgren.house.gov/sites/lofgren.house.gov/files/CA%20ICE%20Detention%20Letter.pdf>.

³ ICE Performance-Based National Detention Standards 2011, Section 6, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

⁴ Press Release: Seventy-seven Detained Immigrants Launch Hunger Strike at Two Central Valley Facilities, Protest Unpaid Labor and Inhumane Conditions, <https://www.aclunc.org/news/seventy-seven-detained-immigrants-launch-hunger-strike-two-central-valley-facilities-protest>.

force, disconnected phone lines, and the unjustified transfer of seven individuals to El Paso, Texas.⁵ The grievance logs sought in the Request directly reflect the conditions that led individuals in detention to take such collective action and put their health at risk. The public has an urgent need to know about the conditions at immigration detention facilities that drove these individuals to this action immediately.

II. The Request concerns a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

Since the launch of the hunger strike on February 17, 2023, many news outlets have reported on detention conditions at immigration facilities in California in print, radio, and video formats.⁶ Media coverage of conditions at these facilities has spanned numerous outlets, including Spanish-language outlets such as Univision, which is the United States' largest provider of Spanish-language content. These news articles highlight the failures of ICE and its contractors to adequately care for those in their custody. Media outlets have continued to publish stories detailing the horrific conditions of confinement and individuals' failed attempts to seek recourse at the facility level as the hunger strike continues. Media coverage of the hunger strike has also highlighted the public interest in these issues, including multiple rallies held at different locations across California in support of the hunger strikers.⁷ Members of the public have shown

⁵ ACLU of Northern California, After Hours of Violent Abuse, ICE and GEO Group Abruptly Transfer Four Mesa Verde Hunger Strikers to Texas (Mar. 8, 2023), <https://www.aclunc.org/news/after-hours-violent-abuse-ice-and-geo-group-abruptly-transfer-four-mesa-verde-hunger-strikers>.

⁶ Farida Jhabvala Romero, 'Until We Drop': Immigrant Detainees on Hunger Strike Sue ICE, Detention Contractor for Alleged Retaliation, KQED (Feb. 23, 2023), <https://www.kqed.org/news/11941677/until-we-drop-hunger-strike-enters-second-week-as-immigrants-in-ice-detention-protest-conditions>; Asylum Seekers at Two California ICE Detention Centers Hold Hunger Strike, Democracy Now! (Feb. 20, 2023), https://www.democracynow.org/2023/2/20/headlines/asylum_seekers_at_two_california_ice_detention_centers_hold_hunger_strike; Jonathan Lewis, Hunger Strike by 84 Detained CA Immigrants Demands Fair Living/Working Conditions, Davis Vanguard (Feb. 19, 2023), <https://www.davisvanguard.org/2023/02/hunger-strike-by-84-detained-ca-immigrants-demands-fair-living-working-conditions/>; Ishani Desai, Nearly 100 Mesa Verde, Golden State Annex detainees launch hunger strike, Bakersfield.com (Feb. 17, 2023), https://www.bakersfield.com/news/nearly-100-mesa-verde-golden-state-annex-detainees-launch-hunger-strike/article_03ae529a-af3b-11ed-a4cb-f3a341464227.html; Yesenia Amaro, ICE says it takes misconduct allegations seriously. Central Valley hunger strikes continue, Fresno Bee (Feb. 23, 2023), <https://www.fresnobee.com/news/local/article272572709.html>; Vania Patino, Civil Rights activists demand transparency from ICE detention facilities, 23ABC (Feb. 22, 2023), <https://www.turnto23.com/news/local-news/civil-rights-activists-demand-transparency-from-ice-detention-facilities>; Joshua Yeager, Detainees at Kern County ICE facilities organize hunger strike, KVPR (Feb. 23, 2023), <https://www.kvpr.org/local-news/2023-02-23/inmates-at-kern-county-ice-facilities-organize-hunger-strike>; Eric Burkett, Immigrants claim ICE retribution for hunger strike over poor conditions, Courthouse News (Feb. 24, 2023), <https://www.courthousenews.com/immigrants-claim-ice-retribution-for-hunger-strike-over-poor-conditions/>; Grupo de migrantes detenidos en centros de procesamiento de ICE en California inician huelga de hambre: esto exigen, Univision (Feb. 18, 2023), <https://www.univision.com/shows/noticiero-univision/grupo-de-migrantes-detenidos-en-centros-de-procesamiento-de-ice-en-california-inician-huelga-de-hambre-esto-exigen-video>; Migrantes detenidos en California realizan huelga de hambre por malos tratos en los centros de reclusión, Latinus (Feb. 18, 2023), <https://latinus.us/2023/02/18/migrantes-detenidos-california-realizan-huelga-hambre-malos-tratos-centros-reclusion/>.

⁷Vada Hepner, Supporters rally on day 17 of Mesa Verde, Golden State Annex hunger strikeI, The Californian (Mar. 5, 2023), <https://www.bakersfield.com/news/supporters-rally-on-day-17-of-mesa-verde-golden-state-annex-hunger-strike>
American Civil Liberties Union Foundation of Northern California

a sustained and urgent demand for accountability and transparency regarding conditions at California ICE detention centers through their support for the hunger strikers, and calls from hundreds of individuals to members of Congress to facilitate an investigation.⁸ On February 23, 2023, ACLU NorCal, along with the ACLU of Southern California and the California Collaborative for Immigrant Justice, hosted a congressional briefing for the California congressional delegation. The briefing outlined the abhorrent and intolerable conditions in immigration detention facilities throughout the state as well as the callous indifference of ICE and its contractors when individuals in detention attempted to utilize the grievance system to resolve issues with the facility. The briefing was attended by 13 Congressional offices.

Furthermore, the facts alleged in a lawsuit⁹ filed on February 23, 2023 reflects swift and ongoing retaliation by ICE and its contractors. The lawsuit alleged that ICE and their private contractor, the GEO Group, unlawfully retaliated against individuals detained at Mesa Verde ICE Processing Center and Golden State Annex, “with the purpose of chilling their peaceful, First-Amendment-protected protest.”¹⁰ The allegations of retaliation reflect unlawful and unconstitutional retaliation on the part of ICE and its contractor. According to the complaint, one facility staff member went so far as to say, “I don’t know why you’re starving yourself when ICE doesn’t care what happens to you.”¹¹ This pattern of behavior raises troubling questions about the integrity of ICE, its contractors, the Department of Homeland Security, and the entire federal immigration in the face of such unlawful retaliation and cruel disregard for human suffering. In sum, the increased media interest in immigration detention facilities in California and the allegations of abuse by ICE and its contractors warrant a grant of expedited processing for records related to conditions of confinement.

*

*

*

For the foregoing reasons, as well as those set forth in the Request, ICE’s decision to deny expedited processing was an error. ACLU NorCal respectfully requests that ICE grant expedited processing and promptly process the Request.

Thank you for your attention to this matter. Please furnish all responsive records, ideally in electronic format, to:

[state-annex-hunger-strike/article_c14e06ba-bbb6-11ed-a5ce-9f11769b42b8.html](https://www.kvpr.org/local-news/2023-02-28/detainees-call-for-closure-of-ice-detention-centers-in-valley-amid-hunger-strike-lawsuit); Joshua Yeager, *Detainees call for closure of ICE detention centers in Valley amid hunger strike, lawsuit*, KVPR (Feb. 28, 2023), <https://www.kvpr.org/local-news/2023-02-28/detainees-call-for-closure-of-ice-detention-centers-in-valley-amid-hunger-strike-lawsuit>; Telemundo Valle Central, *Protestas en apoyo a migrantes en McFarland* (Feb. 27, 2023), <https://www.kget.com/telemundo/noticias/protestas-en-apoyo-a-migrantes-en-mcfarland/>; Mary Paronyan, *Kern residents protest and go on hunger strike at Mesa Verde ICE Processing Center*, BakersfieldNow (Mar. 5, 2023), <https://bakersfieldnow.com/news/local/kern-residents-and-ice-inmates-go-on-hunger-strike>.

⁸California Collaborative for Immigrant Justice, *Detained Individuals Forced to Pause Hunger Strike at CA Immigration Detention Facilities* (Mar. 29, 2023), <https://www.ccijustice.org/post/detained-individuals-forced-to-pause-hunger-strike-at-ca-immigration-detention-facilities>

⁹ *Mendez v. ICE*, No. 3:23-cv-00829 (N.D. Cal. filed Feb. 23, 2023) available at https://www.aclunc.org/sites/default/files/Mendez_v._ICE_Complaint.pdf.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 14.

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

Appeal of ICE's Denial of Expedited Processing re FOIA Request #2023-ICFO-28869
Page 5

Sana Singh
American Civil Liberties Union of Northern California
39 Drumm St
San Francisco, CA 94111

or via electronic mail to ssingh@aclunc.org. Please email or call me at the contact information below if you have any questions.

Sincerely,



Sana A. Singh
ssingh@aclunc.org
(415) 293-6360

American Civil Liberties Union Foundation of Northern California

FRESNO • SACRAMENTO • SAN FRANCISCO
39 Drumm St. San Francisco, CA 94111
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

Exhibit 16

From: ICE-FOIA@ice.dhs.gov
To: [Sana Singh](#)
Subject: ICE FOIA 2023-ICAP-00389, 2023-ICFO-28869
Date: Wednesday, June 14, 2023 9:48:40 AM

06/14/2023

Sana Singh
39 Drumm Street
San Francisco, California 94111

RE: ICE FOIA Case Number 2023-ICAP-00389, 2023-ICFO-28869

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, postmarked or electronically transmitted on 6/13/2023, was received on 6/13/2023.

The Government Information Law Division acknowledges your appeal request of and is assigning it number 2023-ICAP-00389 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 Fernando Pineiro Jr., ICE FOIA Office/Public Liaison at (866) 633-1182 or at 500 12th St., SW Washington, DC 20536-5009.

Sincerely,

Christopher Lanks
xActing Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
U.S. Department of Homeland Security

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and any disclosure, copying, or distribution of this message, or the taking of any action based on it, by you is strictly prohibited.

Deloitte refers to a Deloitte member firm, one of its related entities, or Deloitte Touche Tohmatsu Limited ("DTTL"). Each Deloitte member firm is a separate legal entity and a

member of DTTL. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

v.E.1