

border crossers. Moreover, the ACLU and MIRC intend to publish responsive records and develop reports or analyses regarding USBP's enforcement practices.

Finally, disclosure will contribute "significantly" to the public's understanding of U.S. Border Patrol detention policies and practices. As noted, issues surrounding CBP arrest and detention policies and practices have garnered significant and sustained public and media attention, yet much remains unknown about this critical civil and human rights issue.

The Requesters have thus established, "with reasonable specificity[,] that [their] request pertains to operations of the government," and "the informative value of a request depends not on there being certainty of what the documents will reveal, but rather on the requesting party having explained with reasonable specificity how those documents would increase public knowledge of the functions of the government." *Citizens for Responsibility and Ethics in Washington v. Department of Health and Human Services*, 481 F. Supp. 2d 99, 107–109 (D.D.C. 2006).

#### **B. The ACLU and MIRC qualify as representatives of the news media.**

At a minimum, should a total fee waiver be denied, "fees should be limited to reasonable standard charges for document duplication" because the ACLU and MIRC are "representative[s] of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

The ACLU and MIRC both meet the statutory and regulatory definitions of a "representative of the news media" because each 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. 522(a)(4)(A)(ii); 6 C.F.R. § 5.11 (b)(6); *see also Nat'l Security Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that "gathers information from a variety of sources," 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). The ACLU and MIRC are "representatives of the news media" for the same reasons that they are "primarily engaged in the dissemination of information." *See Electronic Privacy Information Center*, 241 F. Supp. 2d at 10–15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for FOIA purposes); *ACLU v. Department of Justice*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be "primarily engaged in disseminating information").<sup>30</sup> Courts have found other organizations whose mission, function,

<sup>30</sup> On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU. For example, in May 2012, the Bureau of Prisons granted a fee waiver to the ACLU for a FOIA request seeking documents concerning isolated confinement of prisoners in BOP custody. In March 2012, the Department of Justice Criminal Division granted a fee waiver to the ACLU for a FOIA request seeking records about the government's access to the contents of individuals' private electronic communications. In June 2011, the National Security Division of the Department of Justice granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the

publishing, and public education activities are similar in kind to the Requesters to be “representatives of the news media.” *See, e.g., Judicial Watch, Inc. v. Dep’t of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester). Indeed various federal courts have specifically held that the ACLU is a “representative of the news media.” *See, e.g., Service Women’s Action Network v. Department of Defense*, 888 F. Supp. 2d 282, 287–88 (D. Conn. 2012) (holding that that the national ACLU and ACLU of Connecticut are “representatives of the news media”); *American Civil Liberties Union of Washington v. Department of Justice*, No. C09–0642RSL, 2011 WL 887731, at \*10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

### **C. Mr. Boyce and Dr. Oglesby Qualify as Researchers at an Educational Institution**

Geoffrey Alan Boyce is a doctoral candidate in the School of Geography and Development, at the University of Arizona, which is an educational institution. From 2011-2013 he was a National Science Foundation Graduate Research Fellow. He has conducted research supported by the National Science Foundation, the Tinker Foundation, the ConfluenCenter for Creative Inquiry, and the University of Arizona Social and Behavioral Sciences Research Institute. His research work has covered a number of topics, including international relations, transnational migration and U.S. immigration policy. He has had peer-reviewed work published (or accepted for publication) in scholarly journals including: *Geopolitics; Area; Territory, Politics and Governance; the Arizona Journal for Interdisciplinary Studies*; as well as the University of Georgia Press. Mr. Boyce has professional training in qualitative and mixed-methods research; statistical data analysis; and Geographic Information Systems (GIS).

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PATRIOT Act. In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody. In January 2009, the CIA granted a fee waiver with respect to the same request. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. The Department of Justice granted a fee waiver to the ACLU with regard to the same FOIA request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in November of 2006. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU with regard to a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The Department of Justice did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the Office of Information and Privacy in the Department of Justice—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

Dr. Elizabeth Oglesby is an Associate Professor in the School of Geography and Development and the Center for Latin American Studies at the University of Arizona. Dr. Oglesby's research focuses on issues related to immigration, globalization and labor, human rights, and Central America. Dr. Oglesby has published peer-reviewed work in a number of scholarly venues including *Environment and Planning D: Space and Polity*; *Geoforum*; and Duke University Press. Dr. Oglesby has also served as editor of the *Central America Report*, a weekly bulletin of economic and political news analysis published by Inforpress Centroamericana in Guatemala City; an associate editor for the *NACLA Report on the Americas*, the largest circulating English-language publication of Latin American affairs; and a correspondent for *Latinamerica Press*, a hemispheric news service based in Lima, Peru.

Beginning in the late 1990s Dr. Oglesby served as a consultant to the Guatemalan Commission for Historical Clarification (Truth Commission) of the United Nations Office of Project Services in Guatemala City, serving as the assistant to the coordinator of the final report, the coordinator of historical and regional context materials, and a member of the writing team of the final report. In 2013, Dr. Oglesby served as an expert witness in the trial of former Guatemalan President Efraín Ríos Montt, who was charged with genocide and crimes against humanity for presiding over the deaths of 1,700 Maya in 1982-83. Dr. Oglesby's present research examines the transnational affects of immigration enforcement activity on host and sending communities in Guatemala, Mexico and the United States.

Mr. Boyce and Dr. Oglesby intend to analyze the documents obtained through this FOIA request, and subject the information these contain to spatial and statistical analysis, to examine enforcement patterns; how these may or may not unevenly concentrate on specific regions and populations; and whether or not USBP enforcement activities in the Detroit Sector differ meaningfully from patterns observed in other USBP enforcement sectors. Mr. Boyce and Dr. Oglesby will publish scholarly work based on the analysis conducted on the documents obtained through this FOIA request. This analysis will be relevant to scholars in a number of academic fields who study patterns and practices of immigration and law enforcement in the United States. These fields include geography, anthropology, sociology, criminology, area studies and migration studies.

Both Mr. Boyce and Dr. Oglesby qualify as researchers at an educational institution under the Freedom of Information Act and its implementing regulations. *See* 28 C.F.R. § 16.11(b)(4). Thus, they should not be charged search or review fees for this Request. *Id.*

**D. Disclosure of the information requested is not in the commercial interest of the Requesters.**

Disclosure of the information requested is not in the commercial interest of the ACLU, MIRC, Mr. Boyce or Dr. Oglesby.

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For the foregoing reasons, a fee waiver or limitation should be granted. A fee waiver would also fulfill Congress's legislative intent in amending FOIA, namely to ensure that the Act

is liberally construed in favor of granting waivers for noncommercial requesters and to effectuate disclosure of documents of public importance. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (internal quotation marks and 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 *Department of Air Force v. Rose*, 425 U.S. 352, 361 (1991)).

Should a total waiver be denied, fees should be “limited to reasonable standard charges for document duplication,” as the Requesters are non-profit institutions and educational researchers seeking such records not for a commercial purpose, but rather to disclose such records through the news media, and put them to use for research purposes. 5 U.S.C. § 552(a)(4)(A)(ii)(II). While it is permissible to charge document duplication fees to educational institutions and representatives of the news media, Requesters are seeking documents in an electronic format. Hence there should be no, or at most, negligible document duplication costs.

If a fee waiver is denied, the Requesters are prepared to pay fees up to \$100.00. We ask that you inform us first if fees in excess of \$100.00 may be charged, though we reserve the right to appeal a denial of fee waivers.

The Requesters certify that the above information is true and correct to the best of the requesters’ knowledge. 6 C.F.R. § 5.5(d)(3).

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Pursuant to the applicable statute and regulations, we expect a determination regarding expedited processing within ten (10) days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(d)(4). We further expect your reply to the Request itself within twenty (20) days, as required under 5 U.S.C. § 552(a)(6)(A)(i). If the Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material. In addition, we request that you provide an estimated date on which you will complete the processing of this request. 5 U.S.C. § 552(a)(7)(B). We reserve the right to appeal a decision to withhold any information.

Please furnish the requested records electronically to all of the following:

Geoffrey Boyce  
Tel: 520-621-5096  
Fax: 520-621-2889  
[gboyce@email.arizona.edu](mailto:gboyce@email.arizona.edu)  
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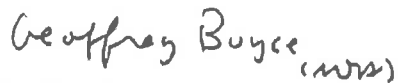
Miriam Aukerman  
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Susan Reed  
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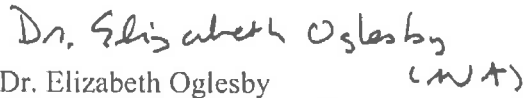
Should you need to communicate with us regarding this Request, please contact us by email or phone at the addresses listed above.

Thank you in advance for your prompt assistance.

Sincerely,

 (ms)

Geoffrey Boyce  
School of Geography and Development  
The University of Arizona

 (ms)

Dr. Elizabeth Oglesby  
School of Geography and Development  
The University of Arizona



Miriam Aukerman  
ACLU of Michigan

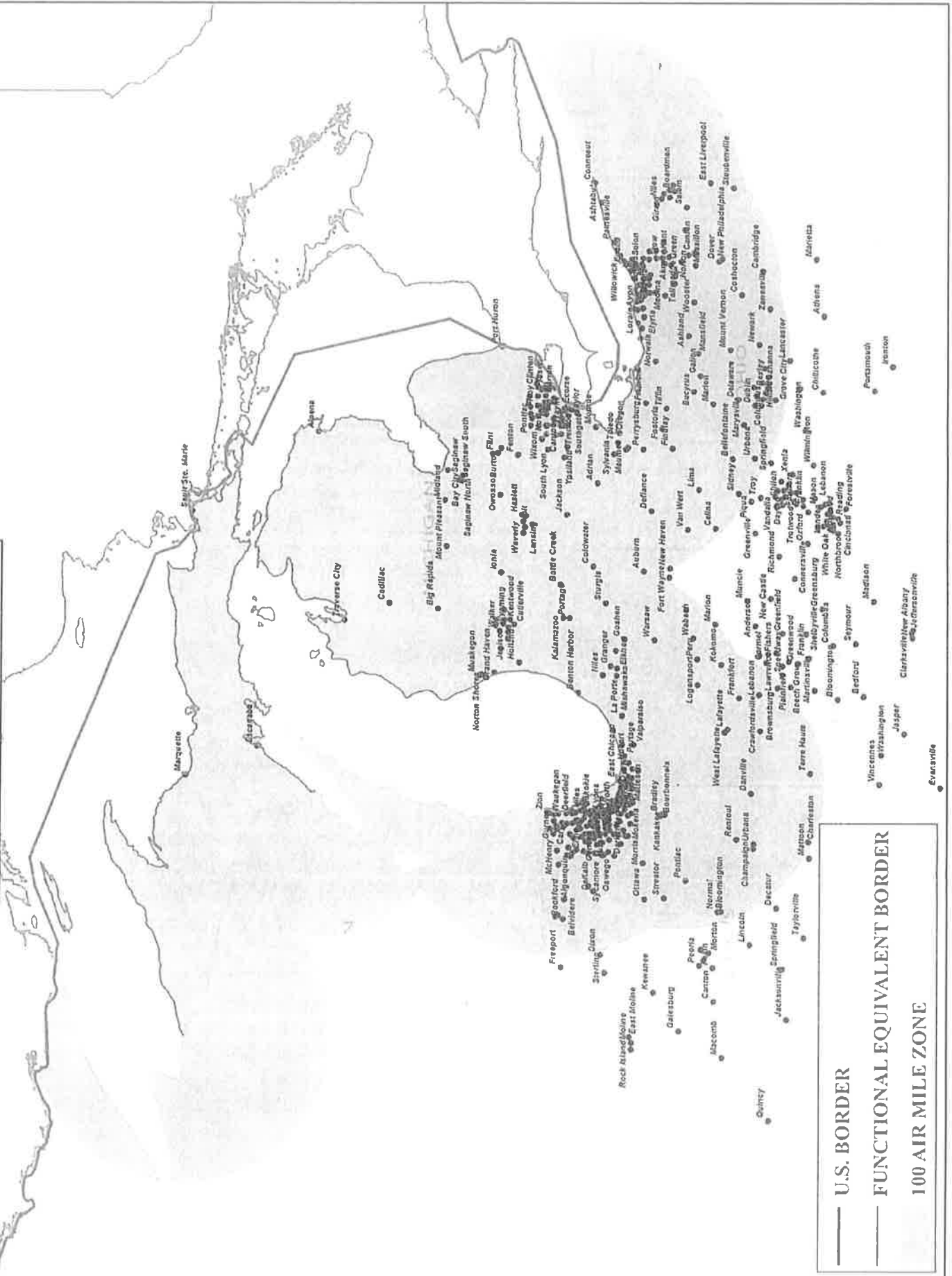
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Susan Reed  
Michigan Immigrant Rights Center

## **EXHIBIT A**

**100 Air Mile Zone**

FUNCTIONAL EQUIVALENT U.S. BORDER



— U.S. BORDER  
- - - FUNCTIONAL EQUIVALENT BORDER  
100 AIR MILE ZONE