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Via Certified Mail & E-Mail

Kevin Krebs, Assistant Director, FOIA/Privacy Staff
Executive Office for United States Attorneys
Department of Justice
600 E Street, NW, Room 7300
Washington, DC 20530-0001
usao.foia.requests@usdoj.gov

Re: FOIA Request and Request for Expedited Processing & Fee Waiver

Dear Mr. Krebs,

This is a Freedom of Information Act (FOIA) request on behalf of the Brennan Center for Justice at NYU School of Law and Charles Kurzman, a professor of sociology at the University of North Carolina at Chapel Hill who researches terrorism-related issues. The Brennan Center and Prof. Kurzman seek records of terrorism-related cases in the National Caseload Data maintained by the Executive Office for United States Attorneys. We also seek expedited processing and a fee waiver.

This request is in accordance with 5 U.S.C. § 552 et seq., and the implementing regulations of the Department of Justice (DOJ), 28 C.F.R. Part 16.

Terrorism is one of the highest priorities of the Department of Justice,¹ and a subject of intense policy debate and public interest. According to recent Congressional testimony by FBI Director Christopher Wray, the federal government has made approximately 176 arrests related to domestic terrorism over the previous year.² By way of comparison, the federal government has publicly charged 145 people in recent years in terrorism cases related to the self-proclaimed “Islamic State,” according to Deputy Attorney General Rod Rosenstein.³ The Department of Justice has periodically released detailed information on several hundred international terrorism-related prosecutions, including the names of defendants.⁴

There is an urgent need to understand and analyze all terrorism-related cases in order to discern if or how the Department of Justice prosecutes instances of international terrorism differently from instances of domestic terrorism. Concern about disparate treatment of these categories of terrorism has been raised by a variety of observers,⁵ including Senator Claire McCaskill, who asked at a hearing of the Senate Committee on Homeland Security and Governmental Affairs “whether or not the level of investigation and response matches the level of threat as it relates to these two types of terrorists that want to do harm to American citizens.”⁶ The release of docket numbers for terrorism-related cases will allow the examination of criminal complaints and other

¹ *The Fiscal Year 2018 Department of Justice Budget Request: Hearing Before the Subcomm. on Commerce, Justice, Science, and Related Agencies, H. Comm. on Appropriations*, 114th Cong. (2017) (statement for the record of Rod J. Rosenstein, Deputy Att’y Gen.), available at <http://docs.house.gov/meetings/AP/AP19/20170613/105999/HHRG-115-AP19-Wstate-RosensteinR-20170613.PDF>.

² *Threats to the Homeland: Hearing Before S. Comm. on Homeland Sec. and Gov’t Affairs*, 114th Cong. (2017) (statement for the record of Christopher Wray, Dir., Fed. Bureau of Investigations), available at <https://www.hsgac.senate.gov/hearings/09/18/2017/threats-to-the-homeland>.

³ Rod J. Rosenstein, Deputy Att’y Gen., Remarks at the 10th Annual Utah National Security and Anti-Terrorism Conference (August 30, 2017) (transcript available at <https://www.justice.gov/opa/speech/deputy-attorney-general-rosenstein-delivers-remarks-10th-annual-utah-national-security-0>).

⁴ DEP’T OF JUSTICE, NATIONAL SECURITY DIVISION STATISTICS ON UNSEALED INTERNATIONAL TERRORISM AND TERRORISM-RELATED CONVICTIONS, 9/11/01 - 3/18/10, available at <https://www.hsdl.org/?view&did=25289> (updated Aug. 26, 2016); DEP’T OF JUSTICE, NATIONAL SECURITY DIVISION STATISTICS ON UNSEALED INTERNATIONAL TERRORISM AND TERRORISM-RELATED CONVICTIONS, 9/11/01 – 12/31/11, available at <http://fas.org/irp/agency/doj/doj060612-stats.pdf> (updated June 6, 2012); DEP’T OF JUSTICE, NATIONAL SECURITY DIVISION CHART OF PUBLIC/UNSEALED TERRORISM AND TERRORISM-RELATED CONVICTIONS 9/11/01-12/31/14, available at https://web.archive.org/web/20160906022314/http://www.sessions.senate.gov/public/_cache/files/e93b5041-ae9-4289-acd2-ee46822c402e/06.14.16-doj-nsd-list.pdf (updated August 7, 2015); DEP’T OF JUSTICE, NATIONAL SECURITY DIVISION CHART OF PUBLIC/UNSEALED TERRORISM AND TERRORISM-RELATED CONVICTIONS, 9/11/01-12/31/15, [hereinafter “2015 DOJ/NSD TERRORISM-RELATED CONVICTIONS”] available at <http://www.humanrightsfirst.org/sites/default/files/NSD-Terrorism-Related-Convictions.pdf> (updated August 26, 2016).

⁵ See, e.g., Naomi Braine, *Terror Network or Lone Wolf? Disparate Legal Treatment of Muslims and the Radical Right*, PUBLIC EYE MAG., 4-10, Spring 2015, available at <https://www.politicalresearch.org/wp-content/uploads/downloads/2015/06/Public-Eye-Magazine-Spring-2015.pdf>; Scott Sullivan, *Prosecuting Domestic Terrorism as Terrorism*, JUST SECURITY (Aug. 18, 2017), <https://www.justsecurity.org/44274/prosecuting-domestic-terrorism-terrorism/>; Daniel Byman, *Should We Treat Domestic Terrorists the Way We Treat ISIS?*, FOREIGN AFFAIRS (Oct. 3, 2017), <https://www.foreignaffairs.com/articles/united-states/2017-10-03/should-we-treat-domestic-terrorists-way-we-treat-isis>.

⁶ *Threats to the Homeland: Hearing Before S. Comm. on Homeland Sec. and Gov’t Affairs*, 114th Cong. (2017) (opening statement for the record of Ranking Member Sen. Claire McCaskill), available at <http://www.hsgac.senate.gov/download/opening-statement-mccaskill-2017-09-27>.

public court documents, which will permit a comparison of possible differences in terrorism prosecutions, including what activities the Department of Justice considers terrorism, what charges are brought, and what sentences are sought.

We therefore request the following records:

(1) All records in the Legal Information Office Network System (LIONS) database involving public charges that are marked with at least one of the following program categories under the heading of “Terrorism”:⁷

- 071 International Terrorism Incidents Which Impact U.S.
- 072 Domestic Terrorism
- 073 Terrorism Related Hoaxes
- 076 Terrorist Financing
- 077 Export Enforcement Terrorism-Related
- 07H Critical Infrastructure Protection

(2) For each record identified in (1), we specifically request data contained in the following four LIONS field names:

- Program Category (i.e., “PROG_CAT”)
- USAO Number (i.e., “CASEID”)⁸
- District (i.e., “DISTRICT”)⁹
- Court Number (i.e., “COURT NUMBER”)¹⁰

⁷ EXEC. OFFICE FOR U.S. ATTORNEYS, DEP’T OF JUSTICE, **ERROR! MAIN DOCUMENT ONLY.**LEGAL INFORMATION OFFICE NETWORK SYSTEM (LIONS), APPENDIX A – CODE LIST at A-77 to A-79 (June 2017), available at <https://www.justice.gov/usao/file/787346/download>; see also EXEC. OFFICE FOR UNITED STATES ATTORNEYS, DEP’T OF JUSTICE, **ERROR! MAIN DOCUMENT ONLY.**LEGAL INFORMATION OFFICE NETWORK SYSTEM (LIONS) USER’S MANUAL, RELEASE 5.4.2 at 5-11 (Aug. 2016) [hereinafter “LIONS USER’S MANUAL”], available at <https://www.justice.gov/usao/file/835096/download>.

⁸ The USAO Number (also referred to as USAOID) is a number “generated by LIONS when a matter or case is opened. It is used to track the case throughout its life, including appeals.” LIONS USER’S MANUAL, *supra* note 7, at 5-9. When combined with District, this information permits search for case information in the publicly available National Caseload Data on the website of the Executive Office for United States Attorneys. *National Caseload Data*, EXEC. OFFICE FOR U.S. ATTORNEYS, <https://www.justice.gov/usao/resources/foia-library/national-caseload-data> (last visited Jan. 16, 2018) [hereinafter “*National Caseload Data*”].

⁹ This two- or three-letter code designates the district associated with each case (for example, AK for Alaska, ALM for Alabama-Middle, ALN for Alabama-North, and ALS for Alabama-South). When combined with the USAO Number, this information permits search for case information in the publicly available National Caseload Data on the website of the Executive Office for United States Attorneys. See *National Caseload Data* *supra* note 8.

¹⁰ This information permits search for case documents in the Public Access to Court Electronic Records (PACER) Case Locator service maintained by the Administrative Office of the U.S. Courts. PACER, <https://www.pacer.gov> (last visited Jan. 16, 2018). Court Number is defined by the Executive Office for United States Attorneys as “the docket number assigned to the criminal action by the court.” LIONS USER’S MANUAL, *supra* note 7, at 5-13.

Fee Waiver Request

We hereby request a waiver of all search, review, and duplication fees associated with this request. The requesters are eligible for a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. §§ 5.11(d) and (k), and for a waiver of all fees, including duplication fees, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k)(1).

First, the requesters plan to analyze, publish, and publicly disseminate information obtained from this request. The requested records are not for commercial use and will be disclosed to the public at no cost. Second, the requesters are exempt from search and review fees as noncommercial scientific institutions, educational institutions, and representatives of the news media.

The Brennan Center is a non-profit, non-partisan public policy and law institute at the NYU School of Law that conducts research and disseminates to the public information about issues affecting justice and democracy. It is engaged in social science research and therefore meets the definition of a noncommercial scientific institution entitled to a waiver of search and review fees. As a noncommercial requester, the Brennan Center also qualifies for waivers as an “educational institution” pursuant to 6 C.F.R. §§ 5.11(d). The Brennan Center qualifies as an educational institution because it is affiliated with the NYU School of Law, which is plainly an educational institution under the definition provided in 6 C.F.R. § 5.11(d)(1); see also *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989). Finally, the Brennan Center qualifies for a waiver as a representative of the news media under 5 U.S.C. § 552(a)(4)(A)(ii)(II) based on its track record of regularly publishing reports and papers.

Charles Kurzman is a professor of sociology at the University of North Carolina at Chapel Hill, an “educational institution” under the definition provided in 6 C.F.R. § 5.11(d)(1) entitled to a waiver of all fees. Prof. Kurzman is engaged in social science research and therefore also meets the definition of a noncommercial scientific requester entitled to a waiver of search and review fees. Furthermore, Prof. Kurzman qualifies as a “representative of the news media” because he “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); see also *supra*, Part III; *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11. Prof. Kurzman has a track record of analyzing similar court records involving international terrorism and publishing reports of this analysis in scholarly and mass-media outlets to increase public understanding of violent extremism. He posts his data analysis on his public website, where it is available for free. He will receive no compensation for the publication of scholarly articles that analyze the requested information. Prof. Kurzman makes this request as part of his continuing scholarly activities to contribute to academic and public understanding of terrorism and government operations to combat terrorism.

Finally, the public interest in disclosure of the requested information is considerable and the requesters are entitled to a waiver of all fees, including duplication fees, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k)(1). Terrorism is among the highest priorities of government policy, and the requested records concern the operations or activities of the government, namely the handling of domestic terrorism cases by the United States Attorneys.

This connection to the federal government is “direct and clear, not remote or attenuated.” See 6 C.F.R. § 5.11(k)(2)(i). Disclosure is therefore in the public interest because it is likely to contribute significantly to public understanding of how the government is prosecuting cases involving domestic terrorism. See 6 C.F.R. §§ 5.11(k)(2)(ii) and (iii). For example, the requested docket numbers will facilitate the examination of each case’s criminal complaint, which contains information on the government’s investigation of the defendant. Currently available information allows only a tally of the total number of domestic terrorism cases, not an understanding of the circumstances of each domestic terrorism case. Moreover, disclosure is not primarily in the requesters’ commercial interests. See 6 C.F.R. § 5.11(k)(3). As stated above, the Brennan Center plans to make any information disclosed as a result of this request available to the public at no cost. A fee waiver would therefore fulfill Congress’s legislative intent that FOIA be “liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 CONG. REC. 27, 190 (1986) (Statement of Sen. Leahy)).

Request for Expedited Processing

The Brennan Center and Prof. Kurzman request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and implementing regulation 6 C.F.R. § 5.5(d). There is a “compelling need” for these records because the information requested is urgently required by an academic researcher who is “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); 6 C.F.R. § 5.5(d)(1)(ii). Furthermore, the requesters urgently require the information sought by this request in order to inform the public of federal government activity. See 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(d)(1)(ii).

The urgency of the request is underscored by the ongoing nature of terrorism-related threats to public safety, the widespread public concern over these threats, and the considerable federal resources that continue to be deployed to address these threats. Indeed, on January 16, the Department of Justice released a report on individuals convicted of “international terrorism and terrorism-related offenses” in an effort to justify the President’s travel ban on individuals from predominantly Muslim countries.¹¹ This request merely seeks disclosure of similar data for individuals convicted of domestic terrorism. Systematic research and understanding of the government’s actions in this field will remain incomplete without the information specified in this request.

¹¹ DEP’T OF HOMELAND SEC & DEP’T OF JUSTICE, EXECUTIVE ORDER 13780: PROTECTING THE NATION FROM FOREIGN TERRORIST ENTRY INTO THE UNITED STATES INITIAL SECTION 11 REPORT (Jan. 2018), *available at* <https://www.justice.gov/opa/press-release/file/1026436/download>.

Response Requested in 10 days

Your attention to this request is appreciated, and we will anticipate your determination of our request within ten (10) calendar days pursuant to 28 C.F.R. 16.5(d)(4). Should you have any questions regarding this request, please contact us at your earliest convenience.

Sincerely,



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