



February 25, 2021

Office of Information Programs and Services (IPS)
A/GIS/IPS/RL
U.S. Department of State, State Annex 2 (SA-2)
515 22nd Street, NW
Washington, DC 20522-8100
Telephone: (202) 261-8484
Facsimile: (202) 261-8579

RE: FOIA Request Regarding Current Government Officials Conducting Shadow Diplomacy With Iran, While They Were Not Government Officials

To Whom it May Concern:

This letter is a request ("Request") in accordance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the corresponding department/agency implementing regulations.

The Request is made by the American Center for Law and Justice ("ACLJ")¹ on behalf of its members. The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

To summarize, this Request seeks records pertaining to the U.S. Department of State's knowledge and efforts surrounding the breaking story that current government officials, like former Secretary of State John Kerry, conducted shadow diplomacy with Iran and its surrogates, or even advancing pro-Iran causes, all while these officials were not members or representatives of the U.S. government.

Background

Pursuant to State Department FOIA regulation 22 C.F.R. § 171.4(b), this Background addresses "the subject, timeframe, names of any individuals involved, a contract number (if applicable), and reasons why the requester believes the Department may have records on the subject of the request." 22 C.F.R. § 171.4(b).

¹The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.

According to a recent exclusive report by *the Washington Times*:

President Trump in 2019 sought to open a back channel of communication with top Iranian officials and saw the U.N. General Assembly meeting in September as a potential opportunity to defuse escalating tension with Tehran, but the effort failed.

Two months earlier, however, a different back channel was thriving in New York. Iran's smooth, English-speaking foreign minister, Mohammad Javad Zarif, met with Robert Malley, who was President Obama's Middle East adviser, in an apparent bid to undermine the Trump team and lay the groundwork for post-Trump relations.²

According to the story, "One of those was former Secretary of State John F. Kerry, who met with Mr. Zarif during the Trump years. So did Obama-era Energy Secretary Ernest Moniz. They, along with Mr. Malley, were top U.S. negotiators of the 2015 Joint Comprehensive Plan of Action (JCPOA)."³ And, "Mr. Kerry and Mr. Malley are now in the Biden administration, Mr. Kerry as a climate adviser and Mr. Malley poised to play a major role in U.S.-Iranian relations from his perch as special envoy for Iran policy at the State Department."⁴

Some foreign policy analysts argue that the shadow diplomacy between Mr. Zarif and the former Obama team was particularly striking because Iran at the time was backing plots to kill Americans stationed in neighboring Iraq and the regime was funneling money, including funds it received from sanctions relief under the JCPOA, to terrorist organizations Hamas and Hezbollah.⁵

The story continues:

Although details of Mr. Zarif's face-to-face conversations with leading Democrats remain murky, one former senior U.S. official told *The Times* that the Iranian foreign minister held meetings throughout the Trump years, in 2017, 2018 and 2019, before the administration halted his visa in 2020.

The underlying goals of Mr. Zarif's meetings, the official said, was "to devise a political strategy to undermine the Trump administration" and to continue building up a reservoir of support for the JCPOA, or another deal like it, that could be drawn up if a Democrat returned to the White House in 2021.

² Ben Wolfgang & Guy Taylor, *EXCLUSIVE: Biden team colluded with Iran to foil Trump diplomacy*, WASH. TIMES (Feb. 21, 2021), <https://www.washingtontimes.com/news/2021/feb/21/john-kerry-held-backchannel-talks-iran-javad-zarif/>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

Mr. Kerry has publicly acknowledged meeting with Mr. Zarif at least twice during the early years of the Trump administration.⁶

Finally:

“America is not just a government in the White House. America is a collection of public opinion, pressure groups and studies. These factors are pushing politics forward,” Mr. Zarif told a May 2018 meeting with members of the Iranian Parliament, as quoted by the Al Arabiya news channel.

One of the central organizations in the web, according to numerous sources, is the National Iranian American Council (NIAC).

The group, whose website says it engages in “direct lobbying efforts” in Washington, has long supported a softer diplomatic approach toward Iran. It called the appointment of Mr. Malley to the Biden administration “a major step in putting U.S. diplomacy back in the hands of genuine professionals.”⁷

Former Secretary of State Kerry has a history of these type of unofficial meetings. In 2018, for example, we learned that Kerry communicated with the leader of the Palestinian Authority (PA):

While the White House has confirmed that since the Jerusalem Declaration there has been a complete disconnect between the Palestinian Authority and the Trump administration, it turns out that the previous administration has maintained contact with PA officials.

Maariv reported that former US secretary of state John Kerry met in London with a close associate of PA President Mahmoud Abbas, Hussein Agha, for a long and open conversation about a variety of topics. Agha apparently reported details of the conversation to senior PA officials in Ramallah. A senior PA official confirmed to Maariv that the meeting took place.⁸

This meeting, and the comments reportedly made therein, made international headlines.⁹

⁶ *Id.*

⁷ *Id.*

⁸ Ben Caspit/Maariv, *Kerry to Abbas Confidante: ‘Stay Strong and Do Not Give In to Trump*, JERUSALEM POST (Jan. 24, 2018, 8:08), <http://www.jpost.com/Arab-Israeli-Conflict/Kerry-to-Abbas-confidante-Stay-strong-and-do-not-give-in-to-Trump-539643>.

⁹ *See also*, <https://nypost.com/2021/02/22/officials-with-ties-to-biden-have-reportedly-been-meeting-with-iran-to-undermine-trump/>; <https://www.foxnews.com/politics/john-kerry-iran-michael-flynn-logan-act>; <https://www.cnn.com/2018/05/05/politics/john-kerry-iran-deal>; <https://www.bostonglobe.com/news/nation/2018/05/04/kerry-quietly-seeking-salvage-iran-deal-helped-craft/2fTkGON7xvaNbO0YbHECUL/story.html>; <https://www.foxnews.com/politics/john-kerry-under-fire-for-reported-shadow-diplomacy-to-save-iran-deal>; <https://www.wsj.com/articles/trump-blasts-kerrys-shadow-diplomacy-on-iran-nuclear-deal-1525717617>.

Records Requested

For purposes of this Request, the term “record” means “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government *or private* account or server, consistent with the holdings of *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016) (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the term “briefing” includes, but is not limited to, any in-person meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person.

For purposes of this Request, the term “DOS official” includes, but is not limited to, any person who is (1) employed by or on behalf of the DOS, any Mission of the United States, or any Delegation of the United States, in any capacity; (2) contracted for services by or on behalf of the DOS, any Mission of the United States, or any Delegation of the United States, in any capacity; (3) appointed by the President of the United States to serve in any capacity at or within the DOS, any Mission of the United States, or any Delegation of the United States; or (4) any such person’s staff, agent or employee; all without regard to the component, bureau, or office in which that person serves.

For purposes of this Request, all sources, documents, letters, reports, briefings, articles and press releases cited in this Request are incorporated by reference as if fully set forth herein.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is November 8, 2016, to the date this request is processed.

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, ACLJ hereby requests that the DOS produce the following:

1. **All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DOS official or employee that regard in any way John Kerry, Robert Malley, or Ernest Moniz, and Mohammad Javad Zarif or U.S. relations with Iran**, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon

copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

2. **All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DOS official or employee that regard in any way any U.S. person or entity conveying Iranian positions**, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

3. **All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DOS official or employee that regard in any way any potential U.S. policy on Iran that was contrary to the Trump Administration's policy on Iran**, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

4. **All records, communications or briefings created, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by any DOS official or employee that regard in any way the National Iranian American Council (NIAC)**, including but not limited to any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

CONCLUSION

If this Request is denied in whole or in part, the ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions and provide any judicially required explanatory information, including but not limited to, a *Vaughn* Index.

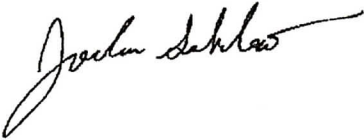
Moreover, as explained in an accompanying memorandum, the ACLJ is entitled to expedited processing of this Request as well as a waiver of all fees associated with it. The ACLJ reserves the right to appeal a decision to withhold any information sought by this request and/or to deny the separate application for expedited processing and waiver of fees.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director
Benjamin P. Sisney, Senior Litigation Counsel
American Center for Law and Justice

I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,



Jordan Sekulow
Executive Director



Benjamin P. Sisney
Senior Litigation Counsel



February 25, 2021

Office of Information Programs and Services (IPS)
A/GIS/IPS/RL
U.S. Department of State, State Annex 2 (SA-2)
515 22nd Street, NW
Washington, DC 20522-8100
Telephone: (202) 261-8484
Facsimile: (202) 261-8579

RE: FOIA Request Regarding Current Government Officials Conducting Shadow Diplomacy With Iran, While They Were Not Government Officials

MEMORANDUM IN SUPPORT OF REQUESTED FEE WAIVER AND EXPEDITED PROCESSING

The American Center for Law and Justice ("ACLJ") respectfully submits this Memorandum for fee waiver and expedited processing in support of its Freedom of Information Act Request ("FOIA") request to the U.S. Department of State ("DOS").

I. FEE WAIVER REQUEST

The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ's mission is to educate, promulgate, conciliate, and where necessary, litigate, to ensure that those rights are protected under the law. The ACLJ regularly monitors governmental activity with respect to governmental accountability. The ACLJ and its globally affiliated organizations are committed to ensuring the ongoing viability of freedom and liberty in the United States and around the world. By focusing on U.S. constitutional law and international law, the ACLJ and its affiliated organizations are dedicated to the concept that freedom and liberty are universal, God-given, and inalienable rights that must be protected. Additionally, the ACLJ and its affiliated organizations support training law students from around the world in order to protect religious liberty and safeguard human rights and dignity.

The ACLJ requests a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii). Under this section, fees may be waived or reduced if the requester falls within a category established under § (a)(4)(A)(ii), which includes a "representative of the news media," § (a)(4)(A)(ii)(II), and if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester," § (a)(4)(A)(iii). The ACLJ qualifies for a fee waiver as a "representative of the news media," § (a)(4)(A)(ii)(II), and because the information sought is "not for a commercial purpose," § (a)(4)(A)(iii). Moreover, the ACLJ intends to widely disseminate

★

[REDACTED]

the information obtained to the public because as explained in detail *infra*, “it is likely to contribute significantly to the public understanding of the operations or activities of the government,” § (a)(4)(A)(iii), agency, and actors mentioned in the FOIA request.

A. The ACLJ Qualifies as a News Media Representative.

The ACLJ qualifies as a “representative of the news media,” as defined under 5 U.S.C. § 552(a)(4)(A)(ii), because the ACLJ, for the purposes explained above, “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.” *Id.* The ACLJ’s audience is generally comprised of those interested in our mission and legal activities as described above. The ACLJ reaches a vast audience through a variety of media outlets, including the Internet (World Wide Web page, www.aclj.org), radio, television, press releases, and direct mailings to our supporters.

For example, the ACLJ’s Internet site received an average of 822,000 unique visitors per month in 2015, with 22,000,000 page views. Our current email list holds 1,050,000 active names (actual list size is 2,340,690). In 2015, the ACLJ sent 278,000,000 emails.

The ACLJ’s radio audience consists of more than 1,150,000 estimated daily listeners on 873 radio stations nationwide, including SiriusXM satellite radio. Additionally, the ACLJ hosts a weekly television program, *Sekulow*, broadcast on eight networks: Cornerstone Television, Daystar Television Network, AngelOne, KAZQ, TBN, VTN, The Walk TV, and HisChannel. *See* <http://aclj.org/radio-tv/schedule> (listing schedule).

The ACLJ also disseminates news and information to over 1,000,000 addresses on its mailing lists.

Moreover, our Chief Counsel, Jay Sekulow, has regularly appeared on various news and talk show programs to discuss the issues and events important to the ACLJ and its audiences. These include shows on FOX News, MSNBC, CNN, ABC, CBS, and NBC. In addition to television programs, Jay Sekulow has also appeared on national radio broadcasts. Beyond broadcast outlets, Jay Sekulow’s comments appear regularly in the nation’s top newspapers, in print and online editions, including but not limited to the Wall Street Journal, New York Times, Washington Times, Washington Post, L.A. Times, and USA Today. His comments also appear in major national newswire services that include, but are not limited to, Associated Press, Reuters, and Bloomberg.

B. The ACLJ’s FOIA Request Meets Standards Set Forth Under DOS Regulations Promulgated Under FOIA.

Under 22 C.F.R. § 171.17(a), the DOS will reduce or waive fees normally charged for processing FOIA requests,

where it is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

Id. The DOS, in making its determination, considers the following four factors under section 171.17(a)(1) regarding “whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government”:

- (i) The subject of the request, i.e., whether the subject of the requested records concerns the operations or activities of the government;
- (ii) The informative value of the information to be disclosed, i.e., whether the disclosure is likely to contribute to an understanding of government operations or activities;
- (iii) The contribution to an understanding of the subject by the general public likely to result from disclosure, i.e., whether disclosure of the requested information will contribute to public understanding, including whether the requester has expertise in the subject area as well as the intention and ability to disseminate the information to the public; and
- (iv) The significance of the contribution to public understanding, i.e., whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

§ 171.17(a)(1)(i)-(iv).

The DOS, in making its determination, considers the following two factors under section 171.17(a)(2) regarding “whether disclosure of the information is not primarily in the commercial interest of the requester”:

- (i) The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,
- (ii) The primary interest in disclosure, i.e., whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

§ 171.17(a)(2)(i)-(ii).

As the U.S. Court of Appeals for the D.C. Circuit has noted, “Congress amended FOIA to ensure that it is ‘liberally construed in favor of waivers for noncommercial requesters.’” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (citing *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 CONG. REC. 27, 190 (1986) (Sen. Leahy))).

The ACLJ’s FOIA request meets the DOS’s factors as listed above, qualifying the ACLJ for a waiver of fees, as set forth below.

§ 171.17(a)(1)(i): The subject of the request concerns the operations or activities of the government.

The ACLJ has requested information and records pertaining to the DOS's knowledge and efforts surrounding the breaking story that current government officials, like former Secretary of State John Kerry, conducted shadow diplomacy with Iran and its surrogates, or even advancing pro-Iran causes, all while these officials were not members or representatives of the U.S. government. The Request seeks all records indicating what DOS officials knew and what efforts were made concerning the facts as reported in this story. The "Background" section of the underlying FOIA request is incorporated herein by reference. Within this request, all participation in such DOS briefings, meetings and communications by the DOS and any of its personnel, and all other DOS actions related thereto, are relevant to shed light on identifiable activities of the government.

§ 171.17(a)(1)(ii): The requested information has significant informative value and disclosure is likely to contribute to an understanding of government operations or activities.

The ACLJ's request will contribute and provide meaningful understanding of United States Government operations or activities undertaken by and within the DOS. The Request will reveal records indicating what DOS officials knew and what efforts they made regarding the reported facts of this story. The records will show how and what DOS officials communicated about the underlying facts. The request will also reveal what involvement, if any, any other agency or governmental officials have had in these efforts. This information will allow the American public to hold its government officials accountable if it is discovered that DOS officials – or any other government official who interacted with DOS officials – violated relevant law, regulations or ethics rules or agreements, or advanced policy inconsistent with that desired by the American public.

§ 171.17(a)(1)(iii): Disclosure of the requested information will significantly contribute to an understanding of the subject by the general public, and the requester has expertise in the subject area as well as the intention and ability to disseminate the information to the public.

Releasing the requested information to the ACLJ will contribute "significantly" to the public's understanding of United States Government operations and activities. The ACLJ has researched and litigated to uphold governmental transparency and accountability. The ACLJ is qualified to analyze and assess the adequacy or propriety of DOS officials' actions in this regard.

The ACLJ intends to release the information, once analyzed and assessed, to the public through its numerous media outlets. Those outlets include but are not limited to its Internet website (www.aclj.org), email list, radio programs, television programs, press releases, and regular mailing list, as described above. The ACLJ has been disseminating relevant information concerning fundamental and constitutional freedoms and governmental accountability since its founding in 1990, and has since then expanded its work and notoriety on an international level, achieving

credibility in a wide range of media outlets, as described above.

§ 171.17(a)(1)(iv): Disclosure of the requested information will contribute significantly to public understanding of government operations or activities.

Releasing the information described above will significantly contribute to the public's understanding through ACLJ review and assessment of the materials and information, and subsequent dissemination of the information to the public. Such review, assessment, and dissemination will help the public understand what DOS officials knew and what they did in connection with the facts as reported in the breaking news story.

§ 171.17(a)(2)(i): The requester has no commercial interest that would be furthered by the requested disclosure.

The ACLJ has no commercial interest in the information sought or its dissemination thereof. The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The information sought by the ACLJ is in furtherance of its not-for-profit mission statement.

§ 171.17(a)(2)(ii): The requester's primary and in fact, only, interest in disclosure of the requested information is non-commercial.

Again, the ACLJ has no commercial interest in the information sought or its dissemination thereof. Rather, its interest is purely to further its not-for-profit mission. Therefore, its interest cannot be founded "primarily" in a commercial interest. This is especially so because the ACLJ cannot operate for a commercial purpose under its grant of 501(c)(3) tax-exempt status.

For these reasons, the ACLJ is entitled to a fee waiver.

II. EXPEDITED PROCESSING REQUEST

The ACLJ seeks expedited processing of its request under 5 U.S.C. § 552(a)(6)(E), and the DOS's attendant regulation, 22 C.F.R. § 171.12(b). As defined by statute, a "compelling need" is one

- (I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
- (II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

5 U.S.C. § 552(a)(6)(E)(v). The DOS's regulation provides the nearly identical definition when

defining a “compelling need” with regard to section II above, under 28 C.F.R. 171.12(b)(2), stating that “news media requesters,” such as the ACLJ, “normally qualify”:

(2) The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. *News media requesters would normally qualify*; however, other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public, not just a particular segment or group.

(i) Urgently needed. The information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. Information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the breaking nature of the story.

(ii) Actual or alleged Federal Government activity. The information concerns some actions taken, contemplated, or alleged by or about the government of the United States, or one of its components or agencies, including the Congress.

Id. (emphasis added).

Pursuant to both 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. 171.12(b)(2), the ACLJ is “primarily engaged in disseminating information.” As detailed above under Section I(A) concerning the requester’s qualification as a news media representative:

- (1) The ACLJ reaches a vast audience through a variety of media outlets, including the Internet (World Wide Web page, www.aclj.org), radio, television, press releases, and direct mailings to our supporters.
- (2) The ACLJ’s Internet site received an average of 822,000 unique visitors per month in 2015, with 22,000,000 page views. Our current email list holds 1,050,000 active names (actual list size is 2,340,690). In 2015, the ACLJ sent 278,000,000 emails.
- (3) The ACLJ’s radio audience consists of more than 1,150,000 estimated daily listeners on 873 radio stations nationwide, including SiriusXM satellite radio. Additionally, the ACLJ hosts a weekly television program, *Sekulow*, broadcast on eight networks: Cornerstone Television, Daystar Television Network, AngelOne, KAZQ, TBN, VTN, The Walk TV, and HisChannel. See <http://aclj.org/radio-tv/schedule> (listing schedule).
- (4) The ACLJ also disseminates news and information to over 1,000,000 addresses on its mailing lists. In 2015, the ACLJ sent 15,000,000 pieces of mail.
- (5) ACLJ Chief Counsel, Jay Sekulow, has regularly appeared on various news and talk show programs to discuss the issues and events important to the ACLJ and its audiences. These include shows on FOX News, MSNBC, CNN, ABC, CBS, and NBC. In addition to television programs, Jay Sekulow has also appeared on national radio broadcasts. Beyond broadcast outlets, Jay Sekulow’s comments

appear regularly in the nation's top newspapers, in print and online editions, including but not limited to the Wall Street Journal, New York Times, Washington Times, Washington Post, L.A. Times, and USA Today. His comments also appear in major national newswire services that include, but are not limited to, Associated Press, Reuters, and Bloomberg.

The District Court for the District of Columbia found that a non-profit public interest group, not unlike the ACLJ, qualified as “representative of the news media” where the group disseminated an electronic newsletter and published books. *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003).

The ACLJ’s FOIA request qualifies as compelling under the second statutory definition stated above as well as under the DOS’s regulations, because it has an urgency to inform the public about United States government activity in connection with the alarming facts revealed in the breaking news story about non-government officials conducting diplomacy undercutting then-Administration policy, where at least some of those individuals are no government officials again. “The information has a particular value that will be lost if not disseminated quickly,” 28 C.F.R. 171.12(b)(2)(i), because these issues are currently being reported and are currently before the public. As one district court recently explained, the required “compelling need” and “urgency to inform” are determined by three factors:

(1) [W]hether 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.

ACLU v. United States DOJ, 321 F. Supp. 2d 24, 29 (D.D.C. 2004) (citing *Al-Fayed v. CIA*, 254 F.3d 300, 310 (2002)).

Such is the case presented by the ACLJ’s FOIA request. The ACLJ’s request is based upon an urgency to inform the American public because a delay in review of the information would compromise the integrity of United States government officials and actors with respect to a reported story gaining significant coverage (as evidenced by the voluminous reporting of media organizations).¹ As mentioned in the ACLJ’s request, which is incorporated by reference as if fully set forth herein, the press is currently and actively reporting on these very issues.

¹ See, e.g., Ben Wolfgang & Guy Taylor, *EXCLUSIVE: Biden team colluded with Iran to foil Trump diplomacy*, WASH. TIMES (Feb. 21, 2021), <https://www.washingtontimes.com/news/2021/feb/21/john-kerry-held-backchannel-talks-iran-javad-zarif/>; see also <https://nypost.com/2021/02/22/officials-with-ties-to-biden-have-reportedly-been-meeting-with-iran-to-undermine-trump/>; <https://www.foxnews.com/politics/john-kerry-iran-michael-flynn-logan-act>; <https://www.cnn.com/2018/05/05/politics/john-kerry-iran-deal>; <https://www.bostonglobe.com/news/nation/2018/05/04/kerry-quietly-seeking-salvage-iran-deal-helped-craft/2fTkGON7xvaNbO0YbHECUL/story.html>; <https://www.foxnews.com/politics/john-kerry-under-fire-for-reported-shadow-diplomacy-to-save-iran-deal>; <https://www.wsj.com/articles/trump-blasts-kerrys-shadow-diplomacy-on-iran-nuclear-deal-1525717617>.

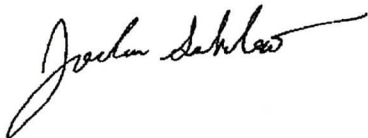
Without the immediate release of the information requested, the American public will remain in the dark with respect to its own government's actions concerning former-now-current government officials interacting with foreign individuals or nations to undercut the then-Administration's policies; and thus cannot hold their government officials accountable. Moreover, a delay in releasing the information prolongs justice and serves only to further embarrass the United States internationally, and confuse the public, as delay likely indicates an attempt to cover up negligence or to shift or avoid blame or culpability. An expedited response will allow the DOS to swiftly disprove the harmful and damaging allegations and negative publicity currently dominating media reports. Thus, governmental accountability in honoring obligations and commitments, justice, and integrity serve as significant public interests at stake. The requested documents must be released *now* so that the American people can decide if the government's decisions were acceptable and its response is adequate.

Accordingly, the ACLJ respectfully submits a request for waiver of fees and expedited processing of its contemporaneously submitted FOIA request.

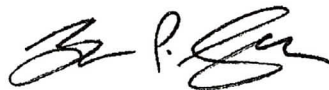
III. CERTIFICATION

In satisfaction of certification requirements under 5 U.S.C. § 552(a)(6)(E)(vi) and corresponding regulations, the ACLJ incorporates by reference herein all relevant facts and information as stated in the ACLJ's FOIA request in support thereof and certifies that the information provided and stated herein is true and correct to the best of the undersigned's knowledge and belief.

Respectfully submitted,



Jordan Sekulow
Executive Director



Benjamin P. Sisney
Senior Litigation Counsel