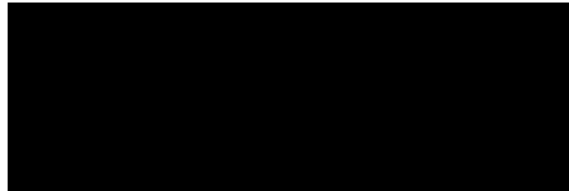
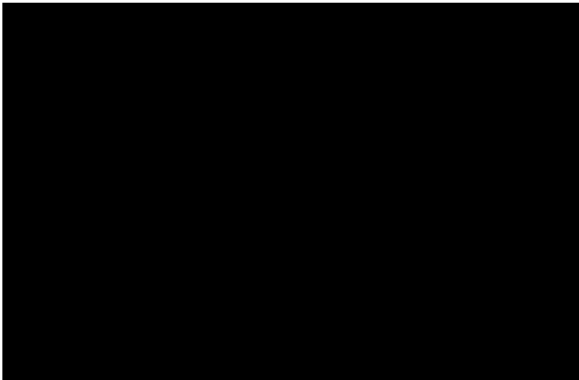
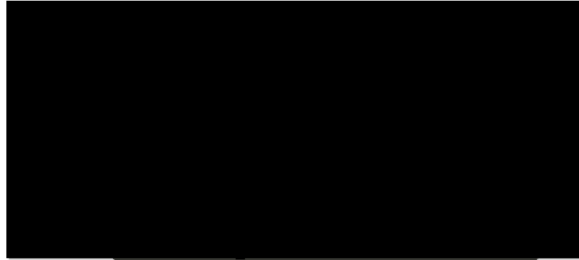




June 28, 2016

**VIA FEDERAL EXPRESS AND ELECTRONIC MAIL**



**RE: FOIA Request to U.S. Department of Justice and Federal Bureau of Investigation  
Regarding Complete Official 911 Transcript of Attack at Pulse Nightclub in  
Orlando, Florida.**

Dear Sirs or Madams:

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

The Request is made by the American Center for Law and Justice (“ACLJ”) on behalf of over 66,000 Americans who want the administration to name the enemy we face.<sup>1</sup> The ACLJ respectfully seeks expedited processing and a waiver of fees related to this Request as set forth in an accompanying memorandum.

As described in the numbered requests below, this Request seeks records pertaining to the transcript of the 911 call initiated at 2:35 a.m. on June 12, 2016, by the person initially identified by the FBI on June 20, 2016, as “shooter” and “[OM]” and later identified on June 21, 2016, as Omar Mateen<sup>2</sup> during the attack at the Pulse nightclub in Orlando, Florida; and specifically,

- A. The complete, unedited, unredacted *and untranslated* transcript of that call;
- B. The decision to translate certain phrases from Arabic into English which were originally followed by the notation on June 20, 2016, of “[in Arabic],” and later changed on June 21, 2016, to “[Arabic]”;
- C. The decision to redact or omit certain portions of said transcript originally marked as “[omitted]”; and,
- D. The subsequent decision to include the omitted portions of said transcript.

### Background

Pursuant to DOJ FOIA regulation 28 C.F.R. §16.3(b), this Background addresses “the date, title or name, author, recipient, subject matter of the record[s]” requested, to the extent known.

*On June 20, 2016*, as part of its *Investigative Update Regarding Pulse Nightclub Shooting*, the FBI Tampa Press Office released a redacted or partial transcript of the June 12, 2016, 911 call initiated by Omar Mateen, as follows:

2:35 a.m.: Shooter contacted a 911 operator from inside Pulse. The call lasted approximately 50 seconds, the details of which are set out below:

*Orlando Police Dispatcher (OD)*  
*Shooter (OM)*

OD: Emergency 911, this is being recorded.

OM: In the name of God the Merciful, the beneficial [*in Arabic*]

OD: What?

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<sup>1</sup> The 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 with respect to international affairs, and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring the ongoing viability of freedom and liberty in the United States and around the world.

<sup>2</sup> *Investigative Update Regarding Pulse Nightclub Shooting*, FBI (June 20, 2016), <https://www.fbi.gov/tampa/press-releases/2016/investigative-update-regarding-pulse-nightclub-shooting> (revised June 21, 2016); Joint Statement From Justice Department and FBI Regarding Transcript Related to the Orlando Terror Attack, Dept. of Justice, Office of Public Affairs (June 20, 2016), <https://www.justice.gov/opa/pr/joint-statement-justice-department-and-fbi-regarding-transcript-related-orlando-terror-attack>.

OM: Praise be to God, and prayers as well as peace be upon the prophet of God [*in Arabic*]. I let you know, I'm in Orlando and I did the shootings.

OD: What's your name?

OM: My name is I pledge of allegiance to [*omitted*].

OD: Ok, What's your name?

OM: I pledge allegiance to [*omitted*] may God protect him [*in Arabic*], on behalf of [*omitted*].

OD: Alright, where are you at?

OM: In Orlando.

OD: Where in Orlando?

[*End of call.*]<sup>3</sup>

The FBI introduced its "Investigative Update" with the following:

ORLANDO—In order to provide an update on the progress of the investigation into the Pulse nightclub shooting, the FBI is releasing an excerpt from the timeline of events inside the Pulse nightclub during the early morning hours of Sunday, June 12, 2016. Out of respect for the victims of this horrific tragedy, law enforcement will not be releasing audio of the shooter's 911 calls at this time, nor will law enforcement be releasing audio or transcripts of the calls made by victims at the Pulse nightclub during the incident. *Furthermore, the name of the shooter and that of the person/group to whom he pledged allegiance are omitted.*<sup>4</sup>

On June 19, 2016, appearing on NBC's "Meet the Press," Attorney General Loretta Lynch explained the Department's rationale for altering portions of the transcript:

LORETTA LYNCH:

Yes, I'll be going to Orlando on Tuesday to continue my briefings in the case. Actually though what we are announcing tomorrow is that the F.B.I. is releasing a partial transcript of the killer's calls with law enforcement from inside the club. These are the calls with the Orlando P.D. negotiating team who were trying to ascertain who he was, where he was, and why he was doing this, all the while the rescue operations were continuing. That'll be coming out tomorrow and I'll be headed to Orlando on Tuesday.

CHUCK TODD:

Including the hostage negotiation part of this?

LORETTA LYNCH:

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<sup>3</sup> *Investigative Update Regarding Pulse Nightclub Shooting*, FBI (June 20, 2016), <https://www.fbi.gov/tampa/press-releases/2016/investigative-update-regarding-pulse-nightclub-shooting> (unrevised version as released June 20, 2016).

<sup>4</sup> *Id.* (emphasis added).

Yes. It will be primarily a partial transcript of his calls with the hostage negotiators.

CHUCK TODD:

You say partial. What's being left out?

LORETTA LYNCH:

Well, what we're not going to do is further proclaim this individual's pledges of allegiance to terrorist groups and further his propaganda.

CHUCK TODD:

So we're not going to hear him talk about those things?

LORETTA LYNCH:

We will hear him talk about some of those things, but we're not going to hear him make his ascertains of allegiance and that. This will not be audio. This will be a printed transcript. But it will begin to capture the back and forth between him and the negotiators. We're trying to get as much information about this investigation out as possible. As you know, because the killer is dead, we have a bit more leeway there. And so we will be producing that information tomorrow.<sup>5</sup>

CNN quoted the Attorney General as saying, "The reason why we're going to limit these transcripts is to avoid re-victimizing those people that went through this horror. But it will contain the substance of [Omar Mateen's] conversations."<sup>6</sup>

According to The Hill, "[a]fter coming under withering criticism, the law enforcement agency reversed course on Monday and released the complete text of the call — a decision the White House said was made without its input."<sup>7</sup> And, "[t]he Justice Department and FBI said Monday the redactions were intended to prevent ISIS from using the shooting for propaganda purposes."<sup>8</sup>

Accordingly, as of *June 21, 2016*, the FBI Tampa Press Office's "Investigative Update Regarding Pulse Nightclub Shooting" now reads, in pertinent part, as follows:

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<sup>5</sup> Transcript, *Meet the Press*, NBC (June 19, 2016), <http://www.nbcnews.com/meet-the-press/meet-press-june-19-2016-n595186>.

<sup>6</sup> Tom LoBianco, *Lynch: Authorities to Release Limited Transcripts of Calls With Orlando Shooter*, CNN (updated 10:53 AM ET, June 19, 2016), <http://www.cnn.com/2016/06/19/politics/orlando-shooting-transcripts/>.

<sup>7</sup> Jordan Fabian, *White House: Redaction Decision Was All Justice*, THE HILL (June 21, 2016), <http://thehill.com/policy/national-security/284301-white-house-redaction-decision-was-all-justice>.

<sup>8</sup> *Id.*

2:35 a.m.: Shooter contacted a 911 operator from inside Pulse. The call lasted approximately 50 seconds, the details of which are set out below:

*Orlando Police Dispatcher (OD)*

*Omar Mateen (OM)*

OD: Emergency 911, this is being recorded.

OM: *In the name of God the Merciful, the beneficent* [Arabic]

OD: What?

OM: *Praise be to God, and prayers as well as peace be upon the prophet of God* [Arabic]. I wanna let you know, I'm in Orlando and I did the shootings.

OD: What's your name?

OM: My name is I pledge of allegiance to Abu Bakr al-Baghdadi of the Islamic State.

OD: Ok, What's your name?

OM: I pledge allegiance to Abu Bakr al-Baghdadi may God protect him [Arabic], on behalf of the Islamic State.

OD: Alright, where are you at?

OM: In Orlando.

OD: Where in Orlando?

[End of call.]<sup>9</sup>

The introductory paragraph of the Investigative Update was also revised, as follows:

ORLANDO—In order to provide an update on the progress of the investigation into the Pulse nightclub shooting, the FBI is releasing an excerpt from the timeline of events inside the Pulse nightclub during the early morning hours of Sunday, June 12, 2016. Out of respect for the victims of this horrific tragedy, law enforcement will not be releasing audio of the shooter's 911 calls at this time, nor will law enforcement be releasing audio or transcripts of the calls made by victims at the Pulse nightclub during the incident. (See joint statement from DOJ.)<sup>10</sup>

**On June 21, 2016**, the Department of Justice Office of Public Affairs released a joint statement with the FBI, which was introduced as follows:

The Department of Justice and the Federal Bureau of Investigation (FBI) issued the following statement regarding the FBI's release of the transcript related to the Orlando shooting:

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<sup>9</sup> *Investigative Update Regarding Pulse Nightclub Shooting*, FBI (June 20, 2016, as revised June 21, 2016), <https://www.fbi.gov/tampa/press-releases/2016/investigative-update-regarding-pulse-nightclub-shooting> (accessed June 22, 2016, 12:45 pm).

<sup>10</sup> *Id.*

“The purpose of releasing the partial transcript of the shooter's interaction with 911 operators was to provide transparency, while remaining sensitive to the interests of the surviving victims, their families, and the integrity of the ongoing investigation. We also did not want to provide the killer or terrorist organizations with a publicity platform for hateful propaganda. Unfortunately, the unreleased portions of the transcript that named the terrorist organizations and leaders have caused an unnecessary distraction from the hard work that the FBI and our law enforcement partners have been doing to investigate this heinous crime. As much of this information had been previously reported, we have re-issued the complete transcript to include these references in order to provide the highest level of transparency possible under the circumstances.”<sup>11</sup>

The transcript of Omar Mateen’s 911 call on June 12, 2016, as stated in the revised DOJ Office of Public Affairs release, reads as follows:

2:35 a.m.: Shooter contacted a 911 operator from inside Pulse. The call lasted approximately 50 seconds, the details of which are set out below:

(OD) Orlando Police Dispatcher

(OM) Omar Mateen

OD: Emergency 911, this is being recorded.

OM: In the name of God the Merciful, the beneficent [Arabic]

OD: What?

OM: Praise be to God, and prayers as well as peace be upon the prophet of God [Arabic]. I wanna let you know, I’m in Orlando and I did the shootings.

OD: What’s your name?

OM: My name is I pledge of allegiance to Abu Bakr al-Baghdadi of the Islamic State.

OD: Ok, What’s your name?

OM: I pledge allegiance to Abu Bakr al-Baghdadi may God protect him [Arabic], on behalf of the Islamic State.

OD: Alright, where are you at?

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<sup>11</sup> Joint Statement From Justice Department and FBI Regarding Transcript Related to the Orlando Terror Attack, Dept. of Justice, Office of Public Affairs (June 20, 2016), <https://www.justice.gov/opa/pr/joint-statement-justice-department-and-fbi-regarding-transcript-related-orlando-terror-attack>.

OM: In Orlando.

OD: Where in Orlando?

[End of call.]<sup>12</sup>

In all versions of the transcript of the 911 call initiated at 2:35 am on June 12, 2016, by Omar Mateen, released by the DOJ and the FBI, certain words and phrases uttered by Omar Mateen in Arabic have been translated into English.

### **Records Requested**

For purposes of this Request, the term “record” is “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.

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 “DOJ official” includes, but is not limited to, any person who is (1) employed by or on behalf of the U.S. Department of Justice in any capacity; (2) contracted for services by or on behalf of the U.S. Department of Justice in any capacity; or (3) appointed by the President of the United States to serve in any capacity at the U.S. Department of Justice. For purposes of this Request, the term “FBI official” includes, but is not limited to, any person who is (1) employed by or on behalf of the Federal Bureau of Investigation in any capacity; (2) contracted for services by or on behalf of the Federal Bureau of Investigation in any capacity; or (3) appointed by the President of the United States to serve in any capacity at the Federal Bureau of Investigation.

**For purposes of this Request, the timeframe of records requested herein is June 12, 2016, to the date this Request is received.**

Pursuant to FOIA, 5 U.S.C. § 552 et seq., ACLJ hereby requests that the U.S. Department of Justice and/or the Federal Bureau of Investigation produce the following within twenty (20) business days:

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<sup>12</sup> *Id.*

### **Records regarding translation of certain words and phrases:**

1. The complete, unedited, unredacted transcript, containing the untranslated Arabic words and phrases recorded therein, of the 911 call initiated at 2:35 a.m. on June 12, 2016, by the person initially identified by the FBI as “shooter” and “[OM]” and later identified as Omar Mateen, during the attack at the Pulse nightclub in Orlando, Florida, as to which the FBI released a partial transcript on June 20, 2016, and the FBI and DOJ jointly reissued a complete transcript on June 21, 2016, with words and phrases uttered by Omar Mateen so translated.
2. Any and all records reflecting or containing any discussion of the decision to translate into English words and phrases uttered by Omar Mateen during the 911 call initiated at 2:35 a.m. on June 12, 2016, during the attack at the Pulse nightclub in Orlando, Florida, as to which the FBI released a partial transcript on June 20, 2016, with certain words and phrases so translated, and the FBI and DOJ jointly reissued a complete transcript on June 21, 2016, with words and phrases uttered by Omar Mateen so translated.
3. Any and all records created, written, sent, received or reviewed by any DOJ official, any FBI official, or any other person, in connection with or regarding in any way the decision to translate into English words and phrases uttered by Omar Mateen during the 911 call initiated at 2:35 a.m. on June 12, 2016, during the attack at the Pulse nightclub in Orlando, Florida, as to which the FBI released a partial transcript on June 20, 2016, and the FBI and DOJ jointly reissued a complete transcript on June 21, 2016, with words and phrases uttered by Omar Mateen so translated.
4. Any and all records reflecting any briefing which occurred in which any DOJ official, any FBI official, or any other person, participated where the decision was discussed or made to translate into English words or phrases uttered by Omar Mateen during the 911 call initiated at 2:35 a.m. on June 12, 2016, during the attack at the Pulse nightclub in Orlando, Florida, as to which the FBI released a partial transcript on June 20, 2016, and the FBI and DOJ jointly reissued a complete transcript on June 21, 2016, with words and phrases uttered by Omar Mateen so translated.

For purposes of clarity, Requests 1, 2, and 3 above seek the recorded words *as uttered* by Omar Mateen *in the Arabic language he used*, as marked by “[in Arabic]” in the FBI’s Investigative Update Regarding Pulse Nightclub Shooting posted on the FBI’s website on June 20, 2016, and as marked by “[Arabic]” in the complete transcript reissued by the DOJ and the FBI on June 21, 2016.

This Request does **NOT** seek any audio recording of the 911 call initiated by Omar Mateen at 2:35 a.m. on June 12, 2016, or any other audio recording.



This Request seeks **ONLY** the transcript of the 911 call initiated by Omar Mateen at 2:35 a.m. on June 12, 2016, and does **NOT** seek a transcript of any 911 call made by any other person at any other time.

**Records regarding decision to omit certain words, phrases, names, and/or titles:**

5. Any and all records reflecting or containing any discussion of the decision to omit any words, phrases, names and/or titles uttered by Omar Mateen during the 911 call initiated at 2:35 a.m. on June 12, 2016, during the attack at the Pulse nightclub in Orlando, Florida, as to which the FBI released a partial transcript on June 20, 2016, and the FBI and DOJ jointly reissued a complete transcript on June 21, 2016.
6. Any and all records created, written, sent, received or reviewed by any DOJ official, any FBI official, or any person, in connection with or regarding in any way the decision to omit any words, phrases, names and/or titles uttered by Omar Mateen during the 911 call initiated at 2:35 a.m. on June 12, 2016, during the attack at the Pulse nightclub in Orlando, Florida, as to which the FBI released a partial transcript on June 20, 2016, and the FBI and DOJ jointly reissued a complete transcript on June 21, 2016.
7. Any and all records reflecting any briefing which occurred in which any DOJ official, any FBI official, or any other person, participated where the decision was discussed or made to omit any words, phrases, names and/or titles uttered by Omar Mateen during the 911 call initiated at 2:35 a.m. on June 12, 2016, during the attack at the Pulse nightclub in Orlando, Florida, as to which the FBI released a partial transcript on June 20, 2016, and the FBI and DOJ jointly reissued a complete transcript on June 21, 2016.

**Records regarding decision to include certain words, phrases, names, and/or titles initially omitted:**

8. Any and all records reflecting or containing any discussion of the decision to include any words, phrases, names and/or titles uttered by Omar Mateen during the 911 call initiated at 2:35 a.m. on June 12, 2016, during the attack at the Pulse nightclub in Orlando, Florida, in the complete transcript jointly reissued by the FBI and DOJ on June 21, 2016, such words, phrases, names and/or titles having been initially omitted from the partial transcript released by the FBI on June 20, 2016.
9. Any and all records created, written, sent, received or reviewed by any DOJ official, any FBI official, or any person, in connection with or regarding in any way the decision to include any words, phrases, names and/or titles uttered by Omar Mateen during the 911 call initiated at 2:35 a.m. on June 12, 2016, during the attack at the Pulse nightclub in Orlando, Florida, in the complete transcript

jointly reissued by the FBI and DOJ on June 21, 2016, such words, phrases, names and/or titles having been initially omitted from the partial transcript released by the FBI on June 20, 2016.

10. Any and all records reflecting any briefing(s) that occurred in which any DOJ official, any FBI official, or any other person, participated where the decision was discussed or made to include any words, phrases, names and/or titles uttered by Omar Mateen during the 911 call initiated at 2:35 a.m. on June 12, 2016, during the attack at the Pulse nightclub in Orlando, Florida, in the complete transcript jointly reissued by the FBI and DOJ on June 21, 2016, such words, phrases, names and/or titles having been initially omitted from the partial transcript released by the FBI on June 20, 2016.

## CONCLUSION

As you are undoubtedly aware, President Obama's Freedom of Information Act Memorandum of January 21, 2009, declares:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. . . .<sup>13</sup>

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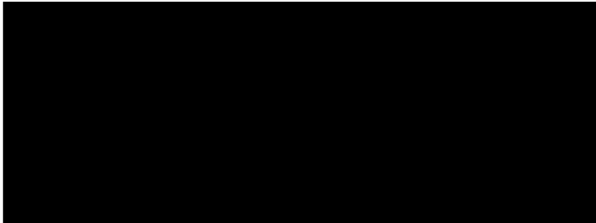
<sup>13</sup> President Barack Obama, Memorandum For the Heads of Executive Departments and Agencies Re: Freedom of Information Act (Jan. 21, 2009), *available at* [https://www.whitehouse.gov/the\\_press\\_office/FreedomofInformationAct](https://www.whitehouse.gov/the_press_office/FreedomofInformationAct).

As such, if this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions.

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. 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:

Jay Alan Sekulow, Chief Counsel  
Colby M. May, Senior Counsel  
Craig L. Parshall, Special Counsel  
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,

Handwritten signature of Jay Alan Sekulow in black ink.

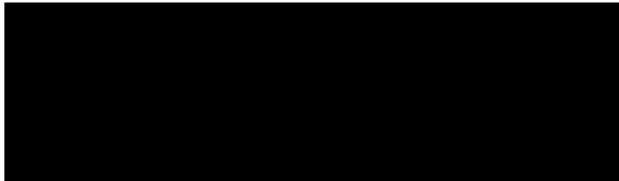
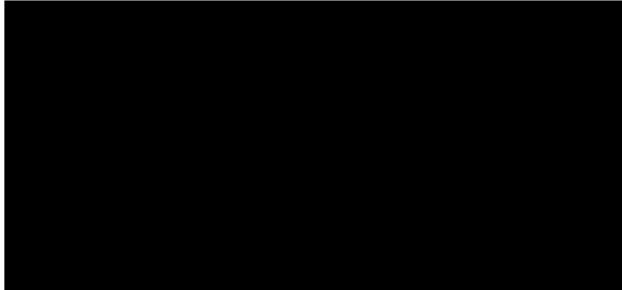
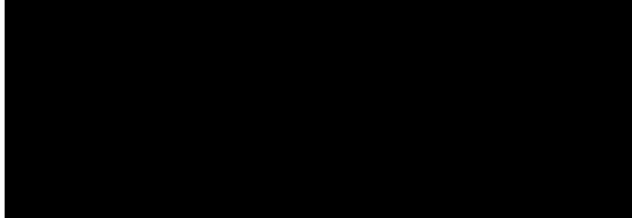
Jay Alan Sekulow  
Chief Counsel

Handwritten signature of Colby M. May, Esq. in black ink.

Colby M. May, Esq.  
Senior Counsel



June 28, 2016



**RE: FOIA Request to U.S. Department of Justice and Federal Bureau of Investigation Regarding Complete Official 911 Transcript of Attack at Pulse Nightclub in Orlando, Florida.**

**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 Justice (“DOJ”) and Federal Bureau of Investigation (“FBI”).

**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, European Union law, and human rights 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 also 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,” *id.* § (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,” *id.* § (a)(4)(A)(iii). The ACLJ qualifies for a fee waiver as a “representative of the news media,” *id.*, § (a)(4)(A)(ii)(II), and because the information sought is “not for a commercial purpose,” *id.* § (a)(4)(A)(iii). Moreover, the ACLJ intends to widely disseminate 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,” *id.* § (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](http://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. In 2015, the ACLJ sent 15,000,000 pieces of mail.

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 Fee Waiver Standards Set Forth Under DOJ Regulations Promulgated Under FOIA:**

Under 28 C.F.R. § 16.10(c)(1)(i), “[r]equests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees.” *Id.* And, “[n]o search fees will be charged for requests by educational institutions (unless the records are sought for a commercial use), noncommercial scientific institutions, or representatives of the news media.” *Id.* § 16.10(d). Moreover:

Records responsive to a request shall be furnished without charge or at a reduced rate below the rate established under paragraph (c) of this section, where a component determines, based on all available information, that the requester has demonstrated that:

- (i) Disclosure of the requested 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
- (ii) Disclosure of the information is not primarily in the commercial interest of the requester.

*Id.* § 16.10(k)(1).

The DOJ, in making its determination, considers the following four factors regarding “whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government”:

- (i) The subject of the request must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.
- (ii) Disclosure of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such

understanding where nothing new would be added to the public's understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, components shall not make value judgments about whether the information at issue is "important" enough to be made public.

*Id.* § 16.10(k)(2)(i)-(iv).

Under section 16.10(k)(3), the DOJ, in making its determination, considers the following two factors regarding "whether disclosure of the requested information is 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.

*Id.* 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 DOJ's factors as listed above, qualifying the ACLJ for a waiver of fees, as set forth below.

**§ 16.10(k)(2)(i) The subject of the request must concern identifiable operations or activities of the Federal Government.**

The ACLJ has requested information and records specifically concerning DOJ and FBI actions surrounding the editing, alterations and manipulation of publically released information concerning the statements of Omar Mateen while he was attacking and killing Americans. Within this request, the unaltered/untranslated transcript of the words actually uttered by Omar

Mateen and all participation in such DOJ/FBI briefings, meetings and communications by the DOJ/FBI and any of its personnel, and all other DOJ/FBI actions related to translating and omitting certain portions thereof, is relevant.

**§ 16.10(k)(2)(ii) Disclosure of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities.**

The ACLJ’s request will contribute and provide meaningful understanding of United States Government operations or activities within the DOJ and FBI. With respect to the request for the transcript containing the untranslated words or phrases as uttered by Omar Mateen seeks information not currently released to the public and will most certainly inform and increase public knowledge (1) about what the attacker actually said in the language in which he said it while killing Americans and (2) why the words or phrases were translated by DOJ/FBI. With respect to the decisions to omit and then include portions of the 911 call transcript, the information requested will reveal who was involved, what transpired, when communications and actions occurred, and why the 911 call transcript was altered and manipulated. The request will also reveal what involvement, if any, any other agency or governmental officials were involved.

**§ 16.10(k)(2)(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area as well as the requester’s ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.**

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 whether official statements to the press, the actions those statements identify, and the alterations and manipulation of information released, violate pertinent law or regulations. The ACLJ, together with its affiliate, the European Center for Law & Justice (“ECLJ”), focuses on protecting freedom and other human rights at European institutions as well as internationally. Additionally, the ECLJ is a non-governmental organization with Special Consultative Status with the UN Economic and Social Council (ECOSOC).

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](http://www.aclj.org)), email list, radio programs, television programs, press releases, and regular mailing list, as described above. The audience to which the ACLJ intends to disseminate the requested information is reasonably broad. 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. Also as described above, the ACLJ qualifies as a representative of the news media and as such, it is presumed that this consideration is satisfied.

**§ 16.10(k)(2)(iv) The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, components shall not make value judgments about whether the information at issue is "important" enough to be made public.**

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 whether the DOS complied with applicable law and regulations concerning its talks with Iran, its statements to the press concerning those talks, and its alteration and manipulation of official video records of those statements. Where current media reports, though extensive in number, on the subject of this request address the DOJ and FBI's decision to omit then include, and otherwise alter via translations, certain portions of the 911 call transcript, the records requested will provide authoritative sources for what actually happened, who was involved, and why. Moreover, no media source, to requester's knowledge, has obtained or released Omar Mateen's actual words as uttered in the Arabic language and as so recorded in the 911 call transcript.

**§ 16.10(k)(3)(i) Components shall identify any commercial interest of the requester, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure.**

As explained and described throughout this Memorandum, the American Center for Law & Justice is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law and the public dissemination of information by way of its numerous media platforms. The information sought by the ACLJ is in furtherance of its not-for-profit mission statement. The ACLJ has no commercial interest in the information sought or its dissemination thereof.

**§ 16.10(k)(3)(ii) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure. Components ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester.**

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 DOJ's attendant regulation, 28 C.F.R. § 16.5(e). As defined by statute, a "compelling need" is one "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)(II). According to 28 C.F.R. § 16.5(e)(1):

(e) Expedited processing. (1) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve:

....

(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;

....

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

*Id.* The DOJ's regulation, 28 C.F.R. § 16.5(e)(3), provides:

A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an "urgency to inform" the public on the topic. As a matter of administrative discretion, a component may waive the formal certification requirement.

*Id.*

Pursuant to 28 C.F.R. § 16.5(e)(3), the requester is one whose primary professional activity or occupation is information dissemination, though it is not the requester's sole

occupation. 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](http://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.

As mentioned above, 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).

Clearly, the requester satisfies the requirement of being one "whose primary professional activity or occupation is information dissemination." 28 C.F.R. § 16.5(e)(3).

Also pursuant to 28 C.F.R. § 16.5(e)(3), the requester "must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally." *Id.* And, "[t]he existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an 'urgency to inform' the public on the topic." *Id.*

The ACLJ's FOIA request qualifies as compelling under the second statutory definition stated above and as one of particular urgency under the DOJ's regulations, because the ACLJ has an urgency to inform the public about the United States government

activity that could seriously undermine the integrity of the United States in its response to attacks perpetrated by persons pledging allegiance to the Islamic State and its ability to preserve justice and accountability in the arena of human rights protected under domestic and international law. 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 the Nation in its response to attacks perpetrated by those pledging allegiance to the Islamic State — which is a currently pressing issue, as Islamic State members have threatened more attacks. The actions of some of the highest-ranking officials in the United States are now under close scrutiny with regard to the DOJ and FBI’s manipulation of publically released information concerning such attacks. 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. *Numerous* media and press articles have been published on major and minor news outlets, which have not been cited or included herein for purposes of not burdening the request-recipients with excess paper.

Without the immediate release of the information requested, the American public will remain in the dark with respect to its own government’s response to attacks perpetrated by persons pledging allegiance to the Islamic State, and who knew what when with regard to its official decisions to manipulate and/or omit certain pieces of information to the press and to the public, 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 both domestically and internationally, and confuse the public about what these attackers actually say when they carry out their attacks, as delay likely indicates an attempt to cover up information or to shift or avoid blame or culpability. Thus, governmental accountability in justice and integrity serve as significant public interests at stake. The records requested herein are the subject of current and ongoing media reporting. This is a current, ongoing issue and the public’s right to now is best served by expedited processing.

As noted in the ACLJ’s FOIA request, President Obama’s Freedom of Information Act Memorandum of January 21, 2009, declares that accountability and openness ought to prevail with regard to FOIA requests:

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, “sunlight is said to be the best of disinfectants.”

In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

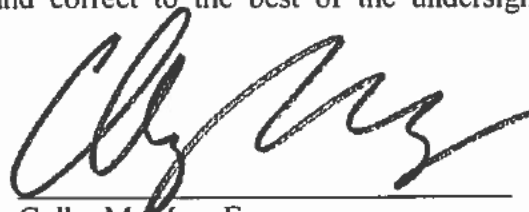
The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. . . .<sup>1</sup>

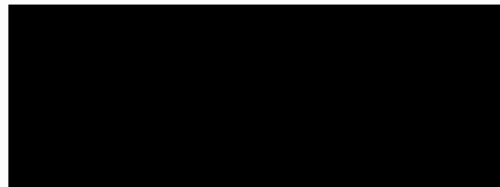
Accordingly, ACLJ respectfully submits a request for waiver of fees and expedited processing of its contemporaneously submitted FOIA request.

### 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, media reports, 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.



Colby M. May, Esq.  
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American Center for Law and Justice



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<sup>1</sup> President Barack Obama, Memorandum for the Heads of Executive Departments and Agencies Re: Freedom of Information Act, Jan. 21, 2009, *available at* [https://www.whitehouse.gov/the\\_press\\_office/FreedomofInformationAct](https://www.whitehouse.gov/the_press_office/FreedomofInformationAct).