

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

April 12, 2017

Submitted Online and by FedEx; Return Receipt Requested

U.S. Customs and Border Protection
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**Re: Request Under Freedom of Information Act
(Expedited Processing & Fee Waiver / Limitation Requested)**

To Whom It May Concern:

This letter constitutes a request for records made pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and its relevant implementing regulations, 6 C.F.R. § 5 *et seq.*, by the Council on American-Islamic Relations – Connecticut ("CAIR-CT"), and Make the Road New York ("MRNY") (hereinafter collectively referred to as "Requestors").

The Requestors make this request for records related to the policy, procedures, and practices of United States Customs and Border Protection ("CBP") with respect to the screening and search of individuals arriving at U.S. ports of entry and at preclearance locations. The Requestors, non-profit organizations serving immigrant communities, are concerned that in recent months, CBP has been targeting actual or perceived members of particular religious, ethnic, racial, and/or other groups for special treatment in the course of screening, inspecting, questioning, and processing individuals arriving at U.S. ports of entry and at preclearance locations. Given the widespread media coverage of President Trump's immigration policies and executive orders, as well as numerous demonstrations that have been held to protest these policies, the Requestors believe these records will contribute significantly to public understanding of the operations or activities of the government.

The Requestors are concerned that such targeting may result both from policies, procedures, or directives issued by supervising officials and from the discretion of individual officers. Therefore, Requestors seek two types of information, as further detailed in Part I:

1. Policies, practices, training material, communications, and informal understandings related to the search, screening, and processing of individuals by CBP at ports of entry

and preclearance locations, as well as those related to the custody conditions during such search, screening, and processing.

2. Numerical data and statistics showing the number of individuals who have been subject to heightened screening procedures, visa revocations, waivers of enforcement, and complaints of treatment, disaggregated by nationality of individuals and other demographic characteristics. Requestors do not seek records of individuals processed by CBP, but rather aggregated data or reports summarizing total numbers disaggregated by nationality and other demographic characteristics.

I. Requested Records¹

1. Any and all policy guidance, directives, memoranda, operational resources, or other similar records created, modified, sent, received, and/or collected on or after November 8, 2016 which relate or refer in any way to any of the following:
 - a. Executive Order No. 13,769, entitled, "Protecting the Nation From Foreign Terrorist Entry Into the United States," 82 Fed. Reg. 8,977 (Jan. 27, 2017) ("EO 1").
 - b. Executive Order 13,780, entitled, "Protecting the Nation From Foreign Terrorist Entry Into the United States," 82 Fed. Reg. 13,209 (Mar. 6, 2017) ("EO 2").
 - c. The memorandum dated March 6, 2017 entitled, "Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits, Ensuring Enforcement of All Laws for Entry Into the United States, and Increasing Transparency Among Departments and Agencies of the Federal Government and for the American People," 82 Fed. Reg. 16,279.
 - d. The screening and search of individuals arriving at U.S. ports of entry and preclearance locations. This includes, but is not limited to, any and all such records relating to guidance, instructions, and/or training as to:
 - i. Inadmissibility determinations;
 - ii. "No board" recommendations issued to carriers and host governments;
 - iii. Specialized carrier- or host government-specific screening or security measures;
 - iv. The type of questioning individuals may be subjected to during primary screening, secondary screening, extended questioning, enforcement examinations, or similar heightened screening procedures;

¹ The term "records" as used herein includes, but is not limited to: text communications between phones or other electronic devices (including, but not limited to, communications sent via SMS or other text, Blackberry Messenger, iMessage, WhatsApp, Facebook, Signal, Gchat, Twitter direct message, or similar forms of communication); e-mails; images, video, and audio recorded on cell phones; voicemail messages; social-media posts; instructions; directives; guidance documents; formal and informal presentations; training documents; bulletins; alerts; updates; advisories; reports; legal and policy memoranda; contracts or agreements; minutes or notes of meetings and phone calls; and memoranda of understanding.

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- v. When secondary screening, extended questioning, enforcement examinations, or similar heightened screening procedures may be used;
 - vi. When CBP officers may request to search contents of cell phones and other electronics;
 - vii. When screening criteria based on physical appearance, garb, place of birth, actual or perceived religion, language, political opinion, ideology, port of embarkation, or citizenship may be used.
- e. Threat assessment advisories or other documents directing CBP screening priorities.
- f. The conditions in which individuals arriving at ports of entry or embarking from preclearance locations are processed, held in CBP custody, held for secondary inspection, subjected to inspection by CBP, or questioned by CBP, including, but not limited to, any and all such records related to:
- i. The length of time for which individuals may be processed, detained, held for additional screening or processing, held in CBP custody, held under inspection by CBP, or are questioned by CBP;
 - ii. The ability of individuals being held or processed by CBP, undergoing inspection by CBP, or being questioned by CBP to contact others, either in person or by telephone, including attorneys and family members;
 - iii. Provisions for access to legal counsel while individuals are being held or processed by CBP, undergoing inspection by CBP, or being questioned by CBP, including, but not limited to:
 - 1. The ability of an attorney to be present during their client's interactions with CBP;
 - 2. The ability of an individual to contact their attorney via telephone or text message during interactions with CBP;
 - 3. The role that attorneys may play during their client's interactions with CBP.
 - iv. Handling of attorney requests to consult with clients held or processed by CBP, undergoing inspection by CBP, or being questioned by CBP, including:
 - 1. Denials of attorney requests to consult with clients held or processed by CBP, undergoing inspection by CBP, or being questioned by CBP;
 - 2. Grants of attorney requests to consult with clients held or processed by CBP, undergoing inspection by CBP, or being questioned by CBP.
 - v. Policies governing advising and securing withdrawal of applications for admission or entry to the United States.
 - vi. Provision of food, water, sanitary facilities, medical care, and other necessities during the time that individuals are in CBP custody, undergoing inspection by CBP, or being questioned by CBP.
- g. Case-by-case waivers of suspension of admission pursuant to Section 3(g) of EO 1, including, but not limited to, guidance, instruction, training, or advice, such as policy guidance, directives, memoranda, staff emails, and training materials regarding the implementation or interpretation of that Executive Order.

- ii. Numerical data and statistics sufficient to show the number of individuals who withdrew their application for admission or entry or who voluntarily departed the country, aggregated per week.
- b. Rates of case-by-case waivers of suspension of admissions pursuant to Section 3(g) of EO 1 or Section 3(c) of EO 2 including, but not limited to:
 - i. Numerical data and statistics sufficient to show the numbers of waivers of suspension of admissions pursuant to Section 3(g) of EO 1 considered and granted at the border, disaggregated by nationality or country of origin of arriving individuals, aggregated per week;
 - ii. Numerical data and statistics sufficient to show the numbers of waivers of suspension of admissions pursuant to Section 3(c) of EO 2 considered and granted at the border, disaggregated by nationality or country of origin of arriving individuals, aggregated per week.
- c. Rates of application of secondary and heightened screening at ports of entry and overseas preclearance sites, including, but not limited to:
 - i. Numerical data and statistics sufficient to show the number of individuals referred to secondary screening, disaggregated by country of origin, port of embarkation, and whether their names appeared on a previously compiled watch list, including the No Fly List, the Terrorist Screening Database Terrorist Watchlist, the Secondary Screening Security Screening List, or any similar list, aggregated per week;
 - ii. Numerical data and statistics sufficient to show the number of individuals who have been subject to heightened screening procedures, visa revocations, waivers of enforcement, and complaints of treatment, disaggregated by country of origin, port of embarkation, and whether their names appeared on a previously compiled watch list, including the No Fly List, the Terrorist Screening Database Terrorist Watchlist, the Secondary Screening Security Screening List, or any similar list, aggregated per week.
- d. Supervisory oversight of inspections and questioning of applicants for admission at ports of entry and at preclearance locations, including, but not limited to:
 - i. Numerical data and statistics sufficient to show the number of complaints of mistreatment or violations of law or agency policy by CBP officers, aggregated per week;
 - ii. Numerical data and statistics sufficient to show the rate of discipline of CBP officers for mistreatment of individuals or violations of law or agency policy by CBP officers, aggregated per week.
- e. Duration for which individuals arriving at ports of entry or embarking from preclearance locations are held in CBP custody, undergo inspection by CBP, or are questioned by CBP, including, but not limited to, records sufficient to show: the average length of time for which individuals are detained or held for additional screening or processing, placed in secondary screening, held in CBP custody, are under inspection by CBP, or are questioned by CBP, aggregated per week.

5. All records created, sent, received, referenced, and/or used in fulfilling and/or responding to this Request.

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We request that searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of our Request be conducted. This includes, but is not limited to, the personal email accounts and work phones of all employees and former employees who may have sent or received emails, text messages, or other communications regarding the subject matter of this Request, as well as all institutional, shared, group, duty, task force, and all other joint and/or multi-user email accounts, work phones, and/or other digital or analog means of communication which may have been utilized by each such employee or former employee. Additionally, for each relevant email account identified, all storage areas are included in this Request, including, but not limited to, the inbox “folder” (and all subfolders therein), sent folder, deleted folder, outbox folder, and all relevant archive files.

Please search all records regarding agency business. You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.² It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; Requestors have a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.³

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered CBP’s prior FOIA practices unreasonable. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.⁴ Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now

² See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149-50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955-56 (D.C. Cir. 2016).

³ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

⁴ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), available at <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), available at <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

maintain emails in a form that is reasonably likely to be more complete than individual custodians' files. For example, a custodian may have deleted a responsive email from his or her email program, but CBP's archiving tools would capture that email under Capstone. Accordingly, the Requestors insist that CBP use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. Requestors are available to work with you to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

If any records responsive or potentially responsive to the Request have been destroyed, our Request includes, but is not limited to, any and all records relating or referring to the destruction of those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

With respect to the form of production, CAIR-CT and MRNY request that responsive electronic records be provided electronically in their native file format, if possible, except that aggregated data be provided in searchable Microsoft Excel spreadsheets, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, CAIR-CT and MRNY request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

II. Application for Expedited Processing

The Requestors ask for expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). There is a "compelling need" for the information, as defined by the statute, because the Requestors are organizations "primarily engaged in disseminating information" and have an "urgency to inform the public about actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II). The Requestors also independently seek expedited processing because the records involve "[a] matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affect public confidence." 6 C.F.R. § 5.5(e)(1)(iv).

A. Requestors are organizations primarily engaged in disseminating information in order to inform the public about actual or alleged government activity

Dissemination of information to the public is a critical and substantial component of Requestors' missions and work. The Requestors distribute information and research they gather to the public through various publications, educational sessions, and electronic communications, thus qualifying them as organizations "primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (explaining that non-profit public-interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" is "primarily engaged in disseminating information").

CAIR-CT is a non-profit 501(c)(3) organization dedicated to presenting an Islamic perspective on issues of importance to the American public. CAIR-CT's mission is to enhance

the understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding. CAIR works to promote civil rights by mediating on behalf of Muslims who have experienced discrimination, helps elected officials to understand policy issues related to Islam and Muslims, and monitors legislation and government activities. As the Connecticut chapter of a national organization, CAIR-CT specifically works on behalf of Connecticut's more than 150,000 Muslims.

As part of its policy advocacy and monitoring of news media and public policy, CAIR-CT publishes news and alerts regarding issues affecting the Muslim community, including "Action Alerts" and press releases regarding legal issues affecting Muslims.⁵ CAIR-CT also conducts trainings and educational workshops addressing interactions with law enforcement and other government officials, including regular trainings at local masajid and Islamic centers throughout Connecticut aimed at educating people on issues affecting the Muslim community. CAIR-CT also works with local and national media to ensure that an accurate image of Islam and Muslims is presented to the American public.

MRNY is a non-profit 501(c)(3) organization dedicated to empowering immigrant, Latino, and working-class communities in New York City. As an integral part of its mission, MRNY educates the public about civil-rights issues affecting working-class and immigrant communities through electronic newsletters, reports, fact sheets, trainings, curricula, classes, and other educational and informational material. MRNY also disseminates information and analyses on pending and proposed legislation, engages in public policy advocacy, and mobilizes community members to advocate to their legislators.

As part of its organizing and public-policy advocacy efforts, MRNY conducts research on issues affecting the community it serves and conducts substantial outreach to policymakers and the media. MRNY regularly conducts research and publishes reports, fact sheets, and other informational material on issues important to the immigrant, Latino, and working class communities it serves. MRNY also conducts educational workshops on the risks and benefits of applying for renewed Deferred Action for Childhood Arrivals ("DACA") applications. Additionally, MRNY frequently releases media statements, and disseminates information about local, state, and national issues to its thousands of members and to the public at large.

MRNY also directly educates members of the New York community through classes and trainings and may find information obtained through this request useful in its educational activities. Among other activities, MRNY: (1) conducts "Know Your Rights" trainings on subjects such as what to do when encountering law enforcement, with the goal of increasing the

⁵ See, e.g., *CAIR Community Alert: Khatibs Urged to Address Post-Election Concerns in Muslim Community During Jummah Prayers*, COUNCIL ON AMERICAN-ISLAMIC RELATIONS (Nov. 11, 2016), <http://www.cair.com/press-center/american-muslim-news/13883-cair-community-alert-khatibs-urged-to-address-post-election-concerns-in-muslim-community-during-jummah-prayers.html>; *CAIR Asks GOP to Repudiate Islamophobic Remarks of Delaware Lawmaker Who Walked Out Before Muslim Prayer*, COUNCIL ON AMERICAN-ISLAMIC RELATIONS (Apr. 6, 2017), <http://www.cair.com/press-center/press-releases/14259-cair-asks-gop-to-repudiate-islamophobic-remarks-of-delaware-lawmaker-who-walked-out-before-muslim-prayer.html>.

community's ability to enforce their own rights while building their practical knowledge of the laws that affect them most; (2) educates thousands of immigrants and their families about deportation relief options and available services; and (3) provides comprehensive skills training to hundreds of low-income New Yorkers each year on leadership skills, media advocacy, civics, community and electoral organizing, and strategic policy advocacy.

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

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). The question of discriminatory policies being applied to individuals perceived to be Muslims or members of other targeted groups has been the subject of extensive media coverage in almost every major media outlet. In addition to numerous lawsuits,⁶ the public has expressed its concern and engagement with this issue through numerous large protests.⁷

On January 27, 2017, President Donald J. Trump issued an executive order that indefinitely blocked refugees from Syria from entering the United States, barred all refugees for 120 days, and prohibited individuals from seven predominantly Muslim countries – Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen – from entering the United States for 90 days.⁸ By the following day, January 28, 2017, CBP officials across the country had detained an estimated 100 to 200 individuals at airports throughout the United States.⁹ Soon thereafter, Judge Donnelly of the Eastern District of New York issued a nationwide order in *Darweesh v. Trump*, that prohibited the government from removing any detained travelers from the seven banned countries who had been legally authorized to enter the United States.¹⁰ Meanwhile, protests erupted at airports across the country as volunteer attorneys stood by to assist detained travelers and their families.¹¹

⁶ *See, e.g., Legal Challenges Mount Against Trump's Travel Ban*, N.Y. TIMES (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/legal-challenges-mount-against-trumps-travel-ban.html>.

⁷ *See, e.g., Thousands Protest Against Trump Travel Ban in Cities and Airports Nationwide*, GUARDIAN (Jan. 29, 2017), <https://www.theguardian.com/us-news/2017/jan/29/protest-trump-travel-ban-muslims-airports>.

⁸ Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Feb. 1, 2017).

⁹ *See, e.g., Michael D. Shear et al., Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide*, N.Y. TIMES (Jan. 28, 2017), <https://www.nytimes.com/2017/01/28/us/refugees-detained-at-us-airports-prompting-legal-challenges-to-trumps-immigration-order.html>.

¹⁰ Decision and Order, *Darweesh v. Trump*, No. 17 Civ. 480 (AMD) (E.D.N.Y. Jan. 28, 2017), <https://www.aclu.org/legal-document/darweesh-v-trump-decision-and-order>.

¹¹ *See, e.g., Peter Baker, Travelers Stranded and Protests Swell Over Trump Order*, N.Y. TIMES (Jan. 29, 2017), <https://www.nytimes.com/2017/01/29/us/politics/white-house-official-in-reversal-says-green-card-holders-wont-be-barred.html>.

Several days later, Judge Robart of the Western District of Washington issued a nationwide order suspending enforcement of President Trump's executive order.¹² That decision was affirmed by the Ninth Circuit.¹³ In response, President Trump issued a second executive order, revoking the first executive order, banning travel from certain predominantly Muslim countries, and suspending the refugee program.¹⁴ Prior to its taking effect on March 16, 2017, federal district courts in Hawaii and Maryland blocked the order's sections affecting travel and refugees, citing that the order was likely motivated by an intent to discriminate against Muslims.¹⁵

Despite the suspension of the executive orders, news organizations have reported that Muslim travelers, both U.S. citizens and non-citizens, have been detained and interrogated about their religious beliefs at U.S. airports.¹⁶ Similarly, civil liberties groups have filed complaints alleging that CBP has subjected Muslim travelers to additional questioning and demanded that they unlock phones and other electronic devices for search.¹⁷ Other outlets cite evidence that the executive orders, though suspended, have emboldened federal officers to "act more aggressively."¹⁸ These incidents have caused many to forgo travel for fear that they will be stopped and questioned based upon their heritage or country of birth.¹⁹

¹² Temporary Restraining Order, *Washington v. Trump*, No. C17-0141JLR (W.D. Wash. Feb. 3, 2017), <https://www.clearinghouse.net/chDocs/public/IM-WA-0029-0005.pdf>.

¹³ Order, *Washington v. Trump*, No. 17-35105 (9th Cir. Feb. 9, 2017), <https://www.clearinghouse.net/chDocs/public/IM-WA-0029-0067.pdf>.

¹⁴ Exec. Order No. 13,780, 82 Fed. Reg. 13209 (Mar. 6, 2017).

¹⁵ Matt Zapotosky, *Second Federal Judge Blocks Revised Trump Travel Ban*, WASH. POST (Mar. 16, 2017), https://www.washingtonpost.com/local/social-issues/second-federal-judge-blocks-revised-trump-travel-ban/2017/03/16/dc47cd1e-0a2a-11e7-93dc-00f9bdd74ed1_story.html?utm_term=.0889b847b191.

¹⁶ See, e.g., Alex Kane, *Even Muslim-American Citizens Have Been Caught in The Net of Trump's Travel Ban*, NATION (Mar. 23, 2017), <https://www.thenation.com/article/even-muslim-american-citizens-have-been-caught-in-the-net-of-trumps-travel-ban/>; *Former NC Police Chief Detained at JFK for 90 Minutes*, N.Y. TIMES (Mar. 19, 2017), <https://www.nytimes.com/aponline/2017/03/19/us/ap-us-former-police-chief-detained.html>; Garrett Epps, *Papers, Please*, ATLANTIC (Feb. 27, 2017), <https://www.theatlantic.com/politics/archive/2017/02/papers-please/517887/>.

¹⁷ Murtaza Hussain, *Complaints Describe Border Agents Interrogating Muslim Americans, Asking For Social Media Accounts*, INTERCEPT (Jan. 14, 2017), <https://theintercept.com/2017/01/14/complaints-describes-border-agents-interrogating-muslim-americans-asking-for-social-media-accounts/>.

¹⁸ Dana Milbank, *Do Vigilantes See Trump Giving Them a Wink And a Nod?*, WASH. POST (Mar. 1, 2017), https://www.washingtonpost.com/opinions/under-trumps-command-the-skies-become-decidedly-less-friendly/2017/03/01/7a1d9126-fed3-11e6-99b4-9e613afeb09f_story.html.

¹⁹ Kristina Jovanovski, *Canada's Largest School Board Will End Class Trips To The U.S. Due To Trump's Travel Restrictions*, L.A. TIMES (Mar. 30, 2017), <http://www.latimes.com/world/la-fg-canada-travel-20170324-story.html>.

Accordingly, the Requestors seek to supplement the public record and to inform the public about CBP's policies and practices in subjecting individuals at ports of entry to heightened questioning and screening procedures. Extensive media coverage and public protests demonstrate that this is a topic of great import and general concern, about which it is urgent that the public remain informed. *See* 6 C.F.R. § 5.5(e)(3) (noting that "existence of numerous articles published on a given subject" can support urgency to inform public for purposes of expedited processing).

- C. *The records sought relate to a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence*

The records sought should also be processed on an expedited basis because they are related to a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. *See* 6 C.F.R. § 5.5(e)(1)(iv). Extensive news reporting has been dedicated to the application of heightened screening procedures to individuals arriving at airports and perceived by CBP officers as belonging to targeted groups. *See supra* Section II.B. Further, because of perceived discriminatory application of screening procedures, questions have been raised about the integrity of both CBP officials²⁰ and the president himself.²¹ These "possible questions," in and of themselves, render expedited processing appropriate. *See Am. Civil Liberties Union v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 31 (D.D.C. 2004) (under identical expedited processing provision in Justice Department regulation, government integrity was implicated where "suggestions of possible violations of privacy rights" were raised by civil rights groups, members of Congress, and private citizens (citing 28 C.F.R. § 16.5(d)(1)(iv))).

Given the foregoing, the Requestors have satisfied the requirements for expedited processing of this Request on two independent grounds.

III. Application for Waiver or Limitation of Fees

The Requestors request a waiver of document search, review, and duplications fees on the grounds that disclosure of the requested records is in the public interest and because disclosure 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." 5 U.S.C. § 552(a)(4)(A)(iii). The Requestors also request waiver of search and review fees on the

²⁰ *See, e.g.*, Edward Helmore & Alan Yuhas, *Border Agents Defy Courts on Trump Travel Ban, Congressmen and Lawyers Say*, GUARDIAN (Jan. 30, 2017), <https://www.theguardian.com/us-news/2017/jan/29/customs-border-protection-agents-trump-muslim-country-travel-ban>; *Muslims Claim Homeland Security Pulled Their Travel Documents*, DAILY BEAST (Mar. 9, 2017), <http://www.thedailybeast.com/articles/2017/03/09/is-dhs-targeting-muslim-travelers-by-revoking-their-global-entry.html>.

²¹ *See* Benjamin Wittes & Quinta Jurecic, *What Happens When We Don't Believe the President's Oath?*, LAWFARE (Mar. 3, 2017), <https://www.lawfareblog.com/what-happens-when-we-dont-believe-presidents-oath>.

grounds that the Requestors qualify as “representatives of the news media” and the records are not sought for commercial use. *Id.* § 552(a)(4)(A)(ii)(II).

A. The Request 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 Requestors

As discussed above, widespread media coverage and public demonstrations underscore the continued public interest in the records sought through this Request. While much coverage has been dedicated to President Trump’s executive orders, there has been relatively less attention devoted to the particular policies and practices CBP officers at ports of entry have adopted to implement the orders, or to effectuate the immigration-related policy statements of the Trump Administration. Until now, the public has received only anecdotal reports of CBP imposing increased screening requirements and detaining individuals at airports who appear to be from specific religious or ethnic groups.²² The records sought will contribute significantly to the public’s understanding of the government’s operations by providing insight into whether CBP is specifically targeting individuals of particular religious or ethnic groups as a matter of policy or if CBP is engaging in a pattern of discrimination against particular religious or ethnic groups. The records will also inform the public about how CBP selects individuals for secondary screening, extended questioning, enforcement examinations, or other heightened screening procedures at ports of entry, and the type of treatment individuals selected for these procedures can expect, all of which otherwise occurs out of the public’s view.

The Requestors are not filing this request to further their commercial interests. Any information disclosed to the Requestors as a result of this FOIA request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress’s legislative intent in amending the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (quotation marks omitted)).

B. The Requestors are representatives of the news media and the records are not sought for commercial use

The Requestors also request a waiver of search and review fees on the grounds that they qualify as “representative[s] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). As demonstrated above, the Requestors meet the statutory definition of a “representative of the news media” because they are entities “that gather[] information of potential interest to a segment of the public, [use their] editorial skills to turn the raw materials into a distinct work, and distribute[] that work to an audience.” *Id.* § 552(a)(4)(A)(ii)(III). In construing the term, “[i]t is critical that the phrase ‘representative of the news media’ be broadly interpreted if the act is to work as expected.” *Nat’l Sec. Archive v. U.S.*

²² *See, e.g., Former NC Police Chief Detained at JFK for 90 Minutes*, N.Y. TIMES (March 19, 2017), <https://www.nytimes.com/aponline/2017/03/19/us/ap-us-former-police-chief-detained.html>; Garrett Epps, *Papers, Please*, THE ATLANTIC (Feb. 27, 2017), <https://www.theatlantic.com/politics/archive/2017/02/papers-please/517887/>.

Dep't of Defense, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (citations omitted). Here, for example, MRNY releases hundreds of press advisories each year, which distill information the organization has gathered and are disseminated to other news organizations and interested parties. The media advisories are also made publicly available on MRNY's website. *See Press Advisories*, Make the Road New York, http://www.maketheroadny.org/archive_type.php?ID=1 (Mar. 26, 2017). MRNY also publishes numerous policy reports to the public.²³

Moreover, courts have found other organizations whose missions, functions, publications, and public education activities are similar in kind to the Requestors' to be "representatives of the news media" as well. *See, e.g., Serv. Women's Action Network v. U.S. Dep't of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (finding that requestors, including organization that "empower[ed] current service women and female veterans through advocacy initiatives and community programs," were representatives of news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *Elec. Privacy Info. Ctr. v. U.S. Dep't of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003) (finding non-profit public-interest group that disseminated electronic newsletter and published books was "representative of the news media" for purposes of the FOIA); *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as "public interest law firm," to be news-media requester). In each of these cases, the court has found these organizations to be "representatives of the news media" even though the requesting organizations also engage in litigation and advocacy activities beyond their dissemination of information and public education activities.

* * *

Pursuant to 5 U.S.C. § 552(a)(6)(E)(ii)(I), the Requestors expect a determination regarding expedited processing within ten days. If this request for records is denied in whole or in part, please justify all deletions and omissions by reference to specific FOIA exemptions. We expect CBP to release all segregable portions of otherwise exempt material. For example, we expect CBP to redact names of individuals for whom privacy waivers are not enclosed, if such redaction is required by the Privacy Act or other law, and to release any otherwise disclosable records as redacted.

²³ *See, e.g., The \$ 3.4 Trillion: The Cost of Mass Incarceration and Criminalization and How Justice Reinvestment Can Build a Better Future for All*, Make the Road New York et al. (Oct. 17, 2016), <http://www.maketheroadny.org/report.php?ID=4355>; *Where's My Seat? How School Overcrowding Disproportionately Impacts Immigrant Communities in New York City*, Make the Road New York (Nov. 24, 2015), <http://www.maketheroadny.org/report.php?ID=4178>; *Lost in Translation: Report Card on Nassau County Agencies' Compliance with Language Access Executive Orders*, Make the Road New York (Aug. 18, 2014), <http://www.maketheroadny.org/report.php?ID=3649>; *Consumer Abuse and Environmental Hazards in New York City's Car Wash Industry*, Make the Road New York (Dec. 12, 2013), <http://www.maketheroadny.org/report.php?ID=3275>; *The Committee for Better Banks Report: The State of the Bank Employee on Wall Street*, Make the Road New York (Dec. 5, 2013), <http://www.maketheroadny.org/report.php?ID=3201>.

Freedom of Information Act Request
April 12, 2017

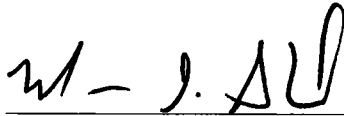
We reserve the right to appeal any decision relating to this FOIA request, including, but not limited to, the decision to withhold any information, or to deny expedited processing, or to deny a waiver or reduction of fees.

Thank you in advance for your timely consideration of this request. Please furnish records as soon as they are identified to the undersigned at:

Muneer Ahmad
Jerome N. Frank Legal Services Organization
Yale Law School
127 Wall Street
New Haven, CT 06511

We certify that the information provided supporting the request for expedited processing is true and correct to the best of our knowledge and belief.

Sincerely,



Muneer Ahmad
Jerome N. Frank Legal Services Organization
Yale Law School
127 Wall Street
New Haven, CT 06511

Adam Bradlow
David Chen
Jordan Laris Cohen
Susanna D. Evarts
Amit Jain
Clare Kane
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Joseph Meyers
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