

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

April 12, 2017

By FedEx; Return Receipt Requested

Office of Information Programs and Services
A/GIS/IPS/RL
U.S. Department of State
Washington, DC 20522-8100
Facsimile: (202) 261-8579

**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, 22 C.F.R. § 171.10 *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 Department of State ("DOS") with respect to the screening and visa issuances of individuals applying abroad. The Requestors, non-profit organizations serving immigrant communities, are concerned that in recent months, DOS has been targeting actual or perceived members of particular religious, ethnic, racial, and/or other groups for special treatment in the process of screening, inspecting, questioning, and processing individuals applying for a visa at U.S. consulates or other processing centers abroad. 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. As a result, Requestors seek two types of information, as further detailed in Part I:

1. Policies, practices, training material, communications, and informal understandings related to the criteria and/or grounds to be considered during visa application adjudications, visa revocations, and consideration of refugee applications, including case-by-case waivers pursuant to recent Executive Orders.
 2. Numerical data and statistics showing the number of individuals who have been subject to additional scrutiny, visa revocations, waivers of enforcement, or unfavorable treatment, disaggregated by nationality of individual and other demographic characteristics.
- Requestors do not seek records of individuals processed by DOS, 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. Policies, procedures, and practices governing visa applications or adjudications, including but not limited to the grounds and/or criteria for granting visa interviews and granting, denying, holding, and/or leaving unadjudicated visa applications.
 - b. Policies, procedures, and practices governing revocation of approved visas, including but not limited to the grounds and/or criteria for revoking approved visas.
 - c. Policies, procedures, and practices related to 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," published at 82 Fed. Reg. 16,279.
 - d. Case-by-case waivers of suspension of refugee admissions pursuant to Section 5(e) of Executive Order No. 13,769 entitled, "Protecting the Nation From Foreign Terrorist Entry Into the United States," (Jan. 27, 2017) ("EO 1"), including but not limited to records concerning:
 - i. The grounds for such waivers, and
 - ii. Guidance to DOS officials and staff members concerning the criteria for eligibility for such waivers.
 - e. Case-by-case waivers of suspension of refugee admissions pursuant to Section 6(c) of Executive Order No. 13,780 entitled, "Protecting the Nation From Foreign Terrorist Entry Into the United States," 82 Fed. Reg. 13,209 (Mar. 6, 2017) ("EO 2"), including but not limited to records concerning:
 - i. The grounds for such waivers, and
 - ii. Guidance to DOS officials and staff members concerning the criteria for eligibility for such waivers.

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 form 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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- f. Policies, procedures, and practices governing refugee application grants and adjudications.
 - g. Records sufficient to disclose the following information about the screening and visa-issuance evaluation of individuals applying outside the United States. This includes, but is not limited to, any and all such records conveying guidance or instructions as to:
 - i. Specialized carrier- or host-government-specific screening or security measures, and
 - ii. The type of questioning individuals may be subjected to when applying for a visa while abroad.
 - h. Supervisory oversight of interviews of visa applicants at all overseas locations, including, but not limited to, any and all such records related to:
 - i. Complaints of mistreatment or violations of law or agency policy by DOS officers;
 - ii. Discipline of DOS officers for mistreatment of individuals or violations of law or agency policy by DOS officers;
 - iii. Discipline or supervisory oversight of DOS officers for mistreatment or violations of law or agency policy.
 - i. All talking points, such as those described in the DOS directive, "New Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry Into the United States – Guidance to Visa-Issuing Posts," State Dep't Cable No. 17 STATE 23338, ¶ 1 (Mar. 10, 2017) ("Mar. 10 DOS Cable"), distributed to DOS field offices from November 8, 2016 to the date this request is fulfilled.
 - j. All operational resources distributed to DOS field offices from November 8, 2016 to the date this request is fulfilled.
 - k. All records related to planned or scheduled circuit rides, including but not limited to their location, timing, and interviewing priorities.
2. Any and all training memos, manuals, powerpoint presentations, guidance, or other similar records created, modified, sent, received, and/or collected on or after November 8, 2016 that relate to any of the topics listed in paragraphs 1(a)-(k), above.
 3. Any and all e-mails and/or text communications between phones or other electronic devices, received or sent by any of the following individuals, on or after November 8, 2016, that relate to any of the topics listed in paragraphs 1(a)-(k), above:
 - a. John Kerry, former Secretary of State;
 - b. Rex Tillerson, Secretary of State;
 - c. Tony Blinken, former Deputy Secretary of State;
 - d. Heather Higginbottom, former Deputy Secretary of State for Management and Resources, DOS;
 - e. Thomas A. Shannon Jr., acting Under Secretary for Political Affairs, DOS;
 - f. Patrick F. Kennedy, former Under Secretary for Management, DOS;
 - g. D. Bruce Wharton, Under Secretary for Public Diplomacy and Public Affairs, DOS;

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- h. Rose Gottemoeller, former Under Secretary for Arms Control and International Security, DOS;
- i. Sarah Sewall, former Under Secretary for Civilian Security, Democracy, and Human Rights, DOS;
- j. Catherine A. Novelli, former Under Secretary for Economic Growth, Energy, and the Environment, DOS;
- k. Simon Henshaw, acting Assistant Secretary of State for Bureau of Population, Refugees, and Migration, DOS;
- l. Anne C. Richard, former Assistant Secretary of State for Bureau of Population, Refugees, and Migration, DOS;
- m. David T. Donahue, acting Assistant Secretary of State for Consular Affairs, DOS;
- n. Michele T. Bond, former Assistant Secretary of State for Consular Affairs, DOS;
- o. Kristie A. Kenney, former Counselor of the Department, DOS;
- p. Rashad Hussain, former Special Envoy to the Organization of Islamic Cooperation, DOS;
- q. Donald E. Booth, former U.S. Special Envoy to Sudan and South Sudan, DOS;
- r. Michael Ratney, acting U.S. Special Envoy for Syria, DOS;
- s. Shaarik Zafar, former Special Representative to Muslim Communities, DOS;
- t. Any other individuals who served in any of the aforementioned positions at any point on or after November 8, 2016;
- u. Any individual who served as the seniormost official in the Office of the Chief of Staff, DOS, at any point on or after November 8, 2016;
- v. Any individual who served as the seniormost official in a DOS field office or consulate, at any point on or after November 8, 2016;

4. Records sufficient to show the following:

- a. Disaggregated by country of residence, nationality, race, ethnicity, gender, age, and religion, of both petitioner and beneficiary, and by consulate, where available:
 - i. The number of visa applications submitted from November 8, 2015 to the date this request is fulfilled, organized by week and current status of visa application;
 - ii. The number of visa interviews in which the visa was granted from November 8, 2015 to the date this request is fulfilled, organized by week and date of original visa application;
 - iii. The number of visa interviews conducted from November 8, 2015 to the date this request is fulfilled, organized by week, date of original visa application, and current status of the application;
 - iv. The number of visa applications approved from November 8, 2015 to the date this request is fulfilled, organized by week and original date of application;
 - v. The number of visa applications left unprocessed, held, or otherwise not granted from November 8, 2015 to the date this request is fulfilled, organized by week of submission, whether an interview was conducted, and identified by the current status of the application;

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- vi. The number of approved visas revoked by DOS officers from November 8, 2015 to the date this request is fulfilled, organized by week of revocation, date of initial visa issuance, as well as the reason(s) why such visas were denied as stated on the applicable Notice of Ineligibility (if recorded);
- vii. The number of individuals who have contacted DOS field offices or headquarters for assistance with obtaining new travel documents to replace travel documents revoked under EO 1, as described in the Mar. 10 DOS Cable, ¶ 18;
 - 1. The status of the requests described above, broken down by the same demographic information and date(s) of contact and any response given.
- b. Disaggregated by location, nationality, gender, age, and religion of applicant, and by consulate, where available:
 - i. The number of applications for refugee status submitted from November 8, 2015 to the date this request is fulfilled, organized by week of submission;
 - ii. The number of refugee applications granted by DOS (including grants of parole) from November 8, 2015 to the date this request is fulfilled, organized by week the application was granted and the date of initial application;
 - iii. The number of refugee applications denied by DOS (including “No Decision” or “Not Qualified”) from November 8, 2015 to the date this request is fulfilled, organized by week of denial and the date of initial application, as well as the reason(s) why such applications were denied as stated on the applicable Notice of Ineligibility (if recorded);
 - iv. The number of individual, case-by-case waivers of suspension of refugee admissions pursuant to Section 5(e) of EO 1, from January 27, 2017 until the date this request is fulfilled, organized by date waiver was granted;
 - v. The number of individual, case-by-case waivers of suspension of refugee admissions pursuant to Section 6(c) of EO 2, from March 16, 2017 until the date this request is fulfilled, organized by date waiver was granted.

5. The following memoranda, directives, and documents:

- a. The key for all refusal codes for visa-application determinations;
- b. All advisory opinions, including Security Advisory Opinions, and requests for advisory opinions, including Security Advisory Opinions, submitted by field office staff members from November 8, 2016 to the date this request is fulfilled;
- c. Copies of any and all guidance regarding issuance procedures for Iraqi nationals, as explained in the Mar. 10 DOS Cable, ¶ 15;
- d. All emails sent from countries-of-concern-inquiries@state.gov and all responses (if any) to those emails, as described in paragraph 14 of the Mar. 10 DOS Cable;
- e. Records sufficient to disclose the average number of visa interviews per consular adjudicator per day, from November 8, 2015 to the date this request is fulfilled, broken down weekly by consular office, and including information about the average approval, deferral, or denial rates; and

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

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 DOS’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

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), <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),

National Archives and Records Agency (NARA) Capstone program, or similar policies, now 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 DOS's archiving tools would capture that email under Capstone. Accordingly, the Requestors insist that DOS 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).

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' mission 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 with 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

Accordingly, the Requestors seek to supplement the public record and to inform the public about DOS's policies and practices in subjecting individuals 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).

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 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 DOS officers have adopted to implement the orders, or to effectuate the immigration-related policy statements of the Trump Administration. The records sought will contribute significantly to the public's understanding of the

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.

government's operations by providing insight into whether DOS is specifically targeting individuals of particular religious or ethnic groups as a matter of policy or if DOS is engaging in a pattern of discrimination against particular religious or ethnic groups.

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. 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.¹⁶

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

¹⁶ *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>.

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“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 DOS to release all segregable portions of otherwise exempt material. For example, we expect DOS 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.

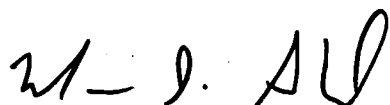
We reserve the right to appeal any decision relating to this FOIA request, including, but not limited to, the decision to withhold any information, or to deny expedited processing, or to deny a waiver or reduction of fees.

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

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New Haven, CT 06511

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