

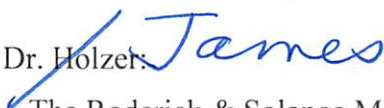
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March 7, 2017

Dr. James V.M.L. Holzer  
Deputy Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane, SW  
STOP-0655  
Washington, DC 20528-0655

**Re: Freedom of Information Act Request re Forms I-407 and I-275**

Dear Dr. Holzer:

The Roderick & Solange MacArthur Justice Center and Muslim Advocates (“Requestors”) submit this letter to The Privacy Office at the U.S. Department of Homeland Security (“DHS”) as a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.* We ask that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E) and that we be granted a fee waiver. We also ask that you refer the requests contained in this letter to U.S. Customs & Border Protection (“CBP”) and the Transportation Security Administration (“TSA”), as appropriate.

**I. Background**

On January 27, 2017, President Donald Trump issued an executive order, Executive Order 13769 (“Executive Order I”), barring persons from seven Muslim-majority countries – Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen – from entering the United States for 90 days, indefinitely blocking refugees from Syria from entering the United States, and prohibiting all refugees from entering the United States for 120 days.<sup>1</sup>

Numerous publications indicate that, in implementing President Trump’s Executive Order I, CBP officials coerced individuals into signing forms that resulted in the withdrawal of applications for admission or the relinquishment of lawful permanent resident status.<sup>2</sup> Lawsuits

<sup>1</sup> Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

<sup>2</sup> See, e.g., Justin Bachman, *Airlines Scramble to Adjust to Trump’s New World: Carriers seek clarity as passenger lawyers say American border officers are pressuring green card holders*, Bloomberg (Jan. 30, 2017, 3:11 PM), <https://www.bloomberg.com/news/articles/2017-01-30/airlines-scramble-to-adjust-to-trump-s-new-world>; Dahlia Lithwick, *The Travelers Trapped in Horrific Limbo by Trump’s Immigration Order: Judicial stays couldn’t protect everyone detained at U.S. airports*, Slate (Jan. 29, 2017, 2:24 PM), [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2017/01/court\\_rulings\\_couldn\\_t\\_protect\\_everyone\\_detained\\_because\\_of\\_trump\\_s\\_immigration.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2017/01/court_rulings_couldn_t_protect_everyone_detained_because_of_trump_s_immigration.html); Leslie Berestein Rojas, *LAX Immigration Agents asked Detainees to Sign Away Their Legal Residency Status, Attorneys say*, KQED News (Jan. 30, 2017),

have made similar allegations. In one suit, petitioner Khanon Mahindokht Azad alleges that, while detained at LAX airport, CBP officials pressured her to sign a form, I-275 (entitled “Withdrawal of Application for Admission/Consular Notification”), agreeing to withdraw her application for admission into the United States. Azad refused to sign the form.<sup>3</sup> In another, petitioners Tareq Aqel Mohammad Aziz and Anmar Aqel Mohammed Aziz allege that, while detained at Dulles airport, CBP officials compelled them to sign a form, I-407 (entitled “Record of Abandonment of Lawful Permanent Resident Status”), agreeing to abandon their lawful permanent resident status. According to the Aziz brothers, CBP officials falsely informed them that, if they did not sign the form, they would be barred from entering the United States for five years.<sup>4</sup> Both lawsuits allege that, in addition to Azad and the Aziz brothers, other unidentified individuals were pressured into withdrawing their applications for admission or otherwise relinquishing their claims for lawful status in the United States.<sup>5</sup>

On March 6, 2017, President Donald Trump issued another executive order (“Executive Order II”) scheduled to go into effect on March 16, 2017 that replaces Executive Order I but again generally bars persons from six Muslim-majority countries – Iran, Libya, Somalia, Sudan, Syria, and Yemen – from entering the United States on new visas for 90 days and reinstates the prohibition on all refugees from entering the United States for 120 days.<sup>6</sup> Although Executive Order II indicates that individuals whose visas were marked revoked or marked canceled as a result of Executive Order I will be allowed to obtain “a travel document confirming that the individual is permitted to travel to the United States and seek entry,” Executive Order II fails to specify what form this travel document will take; nor does Executive Order II identify whether visas marked revoked or marked canceled include coerced “voluntary” withdrawals of applications for admission and/or “voluntary” relinquishments of lawful permanent resident status. Additionally, it is currently unclear whether and to what extent enforcement of Executive Order II will include activities not expressly addressed by the text of Executive Order II, as occurred with the enforcement of Executive Order I.

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<https://ww2.kqed.org/news/2017/01/30/lax-immigration-agents-asked-detainees-to-sign-away-their-legal-residency-status-attorneys-say/>; *Lives Rewritten With the Stroke of a Pen*, N.Y. Times, (Jan. 29, 2017),

[https://www.nytimes.com/interactive/2017/01/29/nyregion/detainees-trump-travel-ban.html?\\_r=0](https://www.nytimes.com/interactive/2017/01/29/nyregion/detainees-trump-travel-ban.html?_r=0); Rachel Kurzius, *Dulles Border Officials Coerced As Many As 60 People Into Signing Away Rights, Lawsuit Says*, DCist (Jan. 30, 2017, 3:45 PM), [http://dcist.com/2017/01/constitutionnal\\_crisis\\_at\\_dulles\\_as.php](http://dcist.com/2017/01/constitutionnal_crisis_at_dulles_as.php).

<sup>3</sup> First Amended Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, *Azad v. Trump*, No. 2:17-cv-00706 (C.D. Cal. Jan. 29, 2017),

[https://www.aclusocal.org/sites/default/files/filed\\_amended\\_habeas\\_pet\\_complaint\\_012917.pdf](https://www.aclusocal.org/sites/default/files/filed_amended_habeas_pet_complaint_012917.pdf).

<sup>4</sup> First Amended Petition for Writ of Habeas Corpus and Class Complaint for Declaratory and Injunctive Relief, *Aziz v. Trump*, No. 1:17-cv-116 (E.D. Va. Jan. 30, 2017), <https://www.justice4all.org/wp-content/uploads/2017/01/Aziz-v.-Trump-Amended-Complaint-Booker-Affidavit.pdf>.

<sup>5</sup> First Amended Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, *Azad v. Trump*, No. 2:17-cv-00706 (C.D. Cal. Jan. 29, 2017),

[https://www.aclusocal.org/sites/default/files/filed\\_amended\\_habeas\\_pet\\_complaint\\_012917.pdf](https://www.aclusocal.org/sites/default/files/filed_amended_habeas_pet_complaint_012917.pdf); First Amended Petition for Writ of Habeas Corpus and Class Complaint for Declaratory and Injunctive Relief, *Aziz v. Trump*, No. 1:17-cv-116 (E.D. Va. Jan. 30, 2017), <https://www.justice4all.org/wp-content/uploads/2017/01/Aziz-v.-Trump-Amended-Complaint-Booker-Affidavit.pdf>.

<sup>6</sup> Executive Order II is available at: <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>.

## II. Request for Information

The Requestors request disclosure of the following records<sup>7</sup> that were prepared, received, transmitted, collected and/or maintained by DHS, CBP,<sup>8</sup> and/or the TSA<sup>9</sup>:

1. Any and all records created on or after March 26, 2015 concerning general guidance on the use of Form I-407 (e.g., DHS, CBP, and TSA equivalents of, and updates to, unclassified State Department memorandum titled “Worldwide Deployment of New USCIS Form I-407, Record of Abandonment of Lawful Permanent Resident Status”).<sup>10</sup>
2. Any and all records created on or after January 24, 2017 concerning a January 27, 2017 State Department memorandum,<sup>11</sup> signed by Deputy Assistant Secretary Edward Ramotowski, that revoked visas held by individuals from Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen.<sup>12</sup>
3. Any and all records created on or after January 24, 2017 related to the use of Forms I-275 and I-407 in connection with Executive Order I, including, but not limited to:
  - a. Records concerning guidance on the use of Forms I-275 and/or I-407;

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<sup>7</sup> The term “records” includes all records or communications preserved in electronic or written form, including but not limited to correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, legal and policy memoranda, minutes or notes of meetings and phone calls, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, text communications between phones or other electronic devices (including, but not limited to, communications sent via SMA or other text, Blackberry Messenger, iMessage, WhatsApp, Signal, Gchat, or Twitter direct message), training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

<sup>8</sup> The term “CBP” means CBP Headquarters offices, including any divisions, subdivisions or sections therein; CBP field operations offices, including any divisions, subdivisions or sections therein; CBP offices at ports of entry, including any divisions, subdivisions or sections therein; and/or any other CBP organizational structures.

<sup>9</sup> The term “TSA” means TSA Headquarters offices, including any divisions, subdivisions, or sections therein.

<sup>10</sup> This State Department memorandum is available at:

[https://travel.state.gov/content/dam/visas/policy\\_updates/Worldwide%20Deployment%20of%20New%20USCIS%20Form%20I-407,%20Record%20of%20Abandonment%20of%20Lawful%20Permanent%20Resident%20Status.pdf](https://travel.state.gov/content/dam/visas/policy_updates/Worldwide%20Deployment%20of%20New%20USCIS%20Form%20I-407,%20Record%20of%20Abandonment%20of%20Lawful%20Permanent%20Resident%20Status.pdf)

<sup>11</sup> This State Department memorandum is available at: <http://www.politico.com/f/?id=00000159-f6bd-d173-a959-ffff671a0001>.

<sup>12</sup> See Maria Sacchetti & Milton Valencia, *With visas revoked, travelers barred entry despite court order*, The Boston Globe (Feb. 1, 2017), <https://www.bostonglobe.com/metro/2017/02/01/document-filed-boston-court-reveals-visas-were-revoked-for-people-from-banned-countries/D6NBbEBA1HrF4IUrJjulJl/story.html> (“A State Department memo had revoked their visas Friday, the same day that Trump issued his order barring immigrants from Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen from the United States for 90 days. The previously undisclosed memo was filed by lawyers for the US government in a federal lawsuit in Boston challenging the ban.”).

- b. Records reflecting the number of individuals from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen who arrived at U.S. airports from January 27, 2017 to date who subsequently signed Form I-275;
  - c. Records reflecting the number of individuals from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen who arrived at U.S. airports from January 27, 2017 to date who subsequently signed Form I-407;
  - d. Records concerning individuals who, while detained pursuant to Executive Order I, signed Form I-275, including any and all communications made with airline carriers or other outside entities concerning these individuals;
  - e. Records concerning individuals who, while detained pursuant to Executive Order I, signed Form I-407, including any and all communications made with airline carriers or other outside entities concerning these individuals;
  - f. Any and all e-mail communications among, between, or cc'ing CBP personnel at Headquarters, Office of Field Operations, and/or Office of Intelligence, sent or received on or after January 24, 2017 containing any of the following words or terms: "I-275," "I 407," "Withdrawal of Application for Admission/Consular Notification," "Record of Abandonment of Lawful Permanent Resident Status."
4. Any and all records created on or after February 27, 2017 that pertain to Executive Order II and are otherwise responsive to Requests 1-3 above.
5. Any and all records created on or after February 27, 2017 regarding the development and implementation of § 12(d) of Executive Order II, which addresses visas marked revoked or marked canceled as a result of Executive Order I.

### **III. Application for Expedited Processing**

Expedited processing of this request is warranted because: (1) there is an "urgency to inform the public about an actual or alleged Federal Government activity" by organizations, like the MacArthur Justice Center and Muslim Advocates, "primarily engaged in disseminating information," 5 U.S.C. § 552(a)(6)(E)(i) & (v)(II); (2) the request concerns "[t]he loss of substantial due process rights," 6 C.F.R. § 5.5(e)(1)(iii); 5 U.S.C. § 552(a)(6)(E)(ii); and (3) the request concerns "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence," 6 C.F.R. § 5.5(e)(1)(iv); 5 U.S.C. § 552(a)(6)(E)(ii).

Early reports about Executive Order I's implementation have raised serious due process concerns,<sup>13</sup> giving rise to "questions about the government's integrity" and an "urgency to inform the public." Given the similarities between Executive Order I and Executive Order II, these serious due process concerns persist. Further, attorneys and other services providers need to understand the relevant policies, procedures, and practices to effectively serve and advise the population of individuals potentially affected by Executive Order II. The requested records seek to inform the public about an urgent issue implicating thousands of individuals' due process rights, namely, CBP's interpretation, implementation, and enforcement of Executive Order I and Executive Order II.

These expediency concerns are heightened by Executive Order II's ten-day delay before it goes into effect. The very moment it is enforced, Executive Order II promises to present some of the same serious due process concerns that Executive Order I presented. Thus, attorneys, other service providers, and the public urgently need these important public documents.

Given the foregoing, the MacArthur Justice Center and Muslim Advocates have satisfied the requirements for expedited processing of this Request.

#### **IV. Application for Waiver or Limitation of Fees**

The Requestors request a waiver of document search, review, and duplication 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 a waiver of search fees on the grounds that the Requestors 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).

*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 the Requestors.*

As discussed above, news accounts underscore the substantial public interest in the records sought through this Request. Given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance.

The Requestors are not filing this Request to further their commercial interest. Any information disclosed by the Requestors as a result of this FOIA Request will be made 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

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<sup>13</sup> See, e.g., Rachel Kurzius, *Dulles Border Officials Coerced As Many As 60 People Into Signing Away Rights, Lawsuit Says*, DCist, (Jan. 30, 2017), [http://dcist.com/2017/01/constitutional\\_crisis\\_at\\_dulles\\_as.php](http://dcist.com/2017/01/constitutional_crisis_at_dulles_as.php).

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FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (internal 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 fees on the grounds that the Requestors 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). The Requestors meet the statutory and regulatory definitions of “representative[s] of the news media” because they gather information, exercise editorial discretion in selecting and organizing documents, and “distribute the resulting work to the public.” *Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). The Requestors are therefore “representative[s] of the news media” for the same reasons they are “primarily engaged in [the] dissemination of information.” 5 U.S.C. § 552(a)(4)(A)(ii)(II), (6)(E)(v)(II).

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the Requestors’ to be “representative[s] of the news media” as well. Requestor Muslim Advocates, for instance, joined with the American Civil Liberties Union in disseminating the records obtained from the CBP in response to a joint 2010 FOIA request.<sup>14</sup> Additionally, in 2009, Muslim Advocates pursued FOIA litigation against the FBI that resulted in public disclosure of previously withheld information.<sup>15</sup> *Cf. 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 a “public interest law firm,” a news media requester).<sup>16</sup>

On account of these factors, fees associated with responding to FOIA requests should be waived for the requestors as “representative[s] of the news media.”

\* \* \*

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the Requestors request that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, Requestors 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.

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<sup>14</sup> See ACLU, *Invasive Questioning at the Border* (last visited Mar. 2, 2017, 7:00 PM), <https://www.aclu.org/invasive-questioning-border?redirect=free-speech-national-security-racial-justice-religion-belief/invasive-questioning-border>.

<sup>15</sup> See Muslim Advocates, *Press Advisory: U.S. Department of Justice Continues to Cloak Public Access to Guidelines on FBI Surveillance of Mosques & Communities* (Oct. 15, 2009), [https://d3n8a8pro7vhmx.cloudfront.net/muslimadvocates/pages/191/attachments/original/1361200382/10-15-09\\_Amended\\_Complaint\\_Press\\_Release.pdf?1361200382](https://d3n8a8pro7vhmx.cloudfront.net/muslimadvocates/pages/191/attachments/original/1361200382/10-15-09_Amended_Complaint_Press_Release.pdf?1361200382).

<sup>16</sup> Courts have found these organizations to be “representative[s] of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information / public education activities. *See, e.g., Judicial Watch, Inc.*, 133 F. Supp. 2d at 53–54.



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Pursuant to applicable statutes and regulations, the Requestors expect a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii).

If the Request is denied in whole or in part, the Requestors ask that you justify all deletions by reference to specific FOIA exemptions. The Requestors expect the release of all segregable portions of otherwise exempt material. The Requestors reserve the right to appeal a decision to withhold any information or deny a waiver of fees.

Additionally, in order to avoid delays in receiving records, Requestors request that records be produced seriatim as they become available. Due to the exigent circumstances surrounding this request, Requestors are amenable to narrowing the request if it would accelerate production.

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

Mary Ellen Callahan  
Jenner & Block LLP  
1099 New York Avenue NW  
Suite 900  
Washington, DC 20001

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Sincerely,



Mary Ellen Callahan