February 25, 2020

VIA CERTIFIED MAIL

Dr. James V.M.L. Holzer
Deputy Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, DC 20032

U.S. Department of State
Office of Information Programs and Services
2201 C Street NW, Suite B266
Washington, DC 20520-0000

Sabrina Burroughs
U.S. Customs and Border Protection
FOIA Officer/ Public Liaison
1300 Pennsylvania Avenue NW, Room 3.3D
Washington, DC 20229

Re: Freedom of Information Act Request Regarding January 31, 2020 Proclamation 9983 on Improving Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry

To Whom It May Concern:

Muslim Advocates and the NAACP-Legal Defense & Educational Fund ("Requestors") submit this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.* for documents, communications, and all other materials related to President Donald Trump's January 31, 2020 Proclamation 9983 on Improving Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry and the worldwide review undertaken in 2019 prior to the enactment of Proclamation 9983.

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 request that you refer the requests contained in this letter to any other component agency of the U.S. Department of Homeland Security ("DHS") or the U.S. Department of State ("DOS"), or any other agency as appropriate.

I. Background

On January 27, 2017, President Trump issued Executive Order 13,769, titled "Protecting the Nation from Foreign Terrorist Entry into the United States" ("First Executive Order").[1] The First Executive Order temporarily banned entry into the United States of individuals from seven predominantly Muslim countries—Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.[2] It also suspended the entire United States Refugee Admissions Program, and indefinitely barred entry of Syrian refugees.[3] This came to be known as the Muslim Ban.

Following legal challenges to the First Executive Order, President Trump issued a new Muslim Ban on March 6, 2017 ("Second Executive Order").[4] The Second Executive Order removed Iraq from the list of banned nations and permitted the grant of case-by-case waivers for individuals whose entry the Executive Order would have otherwise suspended.[5]

Following injunctions on the Second Executive Order from the Fourth and Ninth Circuits in 2017,[6] a "worldwide review" was undertaken to assess what "additional information would be needed from each foreign country to assess adequately whether their nationals seeking to enter the United States pose a security or safety threat."[7] This "worldwide review" ostensibly resulted in Presidential Proclamation 9645 ("Proclamation 9645") which was issued on September 24, 2017. Proclamation 9645 barred nationals of eight countries from entry into the U.S.: Chad,[8] Iran, Libya, North Korea, Syria, Venezuela,[9] and Yemen.[10] There was near-perfect overlap

[1] Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).
[2] *Id.* §§ 3(c), 5(a), (c).
[3] *Id.*
[4] Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017).
[5] *Id.* §§ 3(c), 4.
[6] *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 572 (4th Cir.), *as amended* (May 31, 2017), *as amended* (June 15, 2017), *cert. granted,* 137 S. Ct. 2080 (2017), *and vacated and remanded sub nom. Trump v. Int'l Refugee Assistance*, 138 S. Ct. 353 (2017).
[7] Pres. Proclamation 9645, 82 Fed. Reg. 45161 (Sept. 24, 2017).
[8] Chad was removed from the list of banned countries on April 10, 2018 pursuant to Presidential Proclamation 9723, 83 Fed. Reg. 15937.
[9] As opposed to the other named countries, the Proclamation only bars the entry into the United States of certain Venezuelan government officials "involved in screening and vetting procedures" and their immediate family members on non-immigrant business and/or tourist visas. *Id.* § 2(f)(ii).
[10] Pres. Proclamation 9645 § 1(g).

between the countries whose nationals are banned before and after the "worldwide review" by Proclamation 9645. On June 26, 2018, the Supreme Court, on review of a preliminary injunction against Proclamation 9645, concluded that Proclamation 9645 did not violate the Immigration and Nationality Act § 212(f) based on the evidence before the Court.[11] The Court further held that plaintiffs had not demonstrated they were likely to succeed on the merits of their claim that Proclamation 9645 violated the First Amendment's Establishment Clause.[12] This decision permitted Proclamation 9645 to go into full effect.

On January 31, 2020, the President issued Proclamation 9983 on Improving Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry (hereinafter "Proclamation 9983").[13] Proclamation 9983 expands the Ban by barring individuals from Eritrea, Myanmar, Kyrgyzstan, and Nigeria from receiving immigrant visas to travel to the United States.[14] It further prevents individuals from Tanzania and Sudan to receive diversity visas to travel to the United States.[15] Most of these countries have significant to majority Muslim populations. Four of the banned countries are in Africa; the other two are in Asia.

Proclamation 9983 targets nationals from Africa's most populous country, Nigeria, and approximately one-quarter of the entire population of Africa, for disfavored treatment. It likewise targets for disfavored treatment an additional 180 million Muslims worldwide beyond the 130 million Muslims already targeted by Presidential Proclamation 9645.

Proclamation 9983's new restrictions follow comments by the President that Nigerians, after seeing the United States, would never "go back to their huts,"[16] and asking in reference to African countries and Haiti, "Why do we want all these people from shithole countries coming here?," suggesting that the U.S. should instead have more immigrants from countries like Norway.[17] The new restrictions similarly follow the President's campaign promise for a "total

---

[11] *See Trump v. Hawaii*, No. 17-965, 585 U.S. ___ (2018).
[12] *See id.*
[13] Pres. Procl. 9983, 85 Fed. Reg. 6699 (Feb. 5, 2020), available at https://www.federalregister.gov/documents/2020/02/05/2020-02422/improving-enhanced-vetting-capabilities-and-processes-for-detecting-attempted-entry-into-the-united.
[14] *Id.*
[15] *Id.*
[16] Michael D. Shear & Julie Hirschfeld Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda*, N.Y. TIMES (Dec. 23, 2017), https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html?_r=0.
[17] Ali Vitali, Kasie Hunt and Frank Thorp V, *Trump referred to Haiti and African nations as 'shithole' countries*, NBC NEWS (Jan. 11, 2018), https://www.nbcnews.com/politics/white-house/trump-referred-haiti-african-countries-shithole-nations-n836946.

and complete shutdown of all Muslims entering the United States."[18] The President provided additional gloss on the travel restrictions by acknowledging that he was using countries as proxies for religion, stating, "People were so upset when I used the word Muslim. 'Oh, you can't use the word Muslim. Remember this. And I'm okay with that, because I'm talking territory instead of Muslim."[19]

Proclamation 9983 states that these additional travel restrictions came into being following consultation with senior officials, including the Acting Secretary of Homeland Security, the Secretary of State, and the Secretary of Defense.[20] According to Proclamation 9983, these officials made their recommendations in a January 2020 proposal that relied on a "worldwide review" conducted pursuant to Proclamation 9645 by DHS from March 2019 until September 2019.[21] Proclamation 9983 states that the Secretary of State and Secretary of Homeland Security "shall coordinate to update guidance, if necessary, to implement this proclamation as to nationals of the six countries identified in section 1(b) of this proclamation, consistent with the provisions of this section."

The January 2020 report recommended restrictions on fewer countries than recommended in the September 2019 worldwide review.[22] In addition to recommending entry restrictions on Myanmar, Sudan, Tanzania, Kyrgyzstan, Nigeria, and Eritrea, the January 2020 report further informed the President that five other countries had performed below the DHS requirements but nonetheless advised that these countries not be covered by a new ban.[23] While the January 2020 report does not identify those other countries, reports suggest that at least one of those other countries was in Europe.[24] Because the worldwide review and DHS reports were purportedly critical in selecting significantly Muslim, African, and Asian countries to be targeted by Proclamation 9983, they are essential to assessing the stated grounds for Proclamation 9983.

The only way for nationals of the countries covered by Proclamation 9983 to travel to the United States on an immigrant or diversity visa is through a waiver grant as described in Proclamation 9645. Visa applicants bear the burden of establishing that they should be granted a waiver.[25] Nonetheless, starting with the Second Executive Order, the government has made

---

[18] Jessica Taylor, *Trump Calls For 'Total And Complete Shutdown Of Muslims Entering' U.S.*, NPR (Dec. 7, 2015), https://www.npr.org/2015/12/07/458836388/trump-calls-for-total-and-complete-shutdown-of-muslims-entering-u-s.

[19] *Meet the Press – July 24, 2016 Transcript*, NBC NEWS (Jul. 24, 2016), available at https://www.nbcnews.com/meet-the-press/meet-press-july-24-2016-n615706.

[20] *See* Pres. Procl. 9983.

[21] *Id.*

[22] *Id.*

[23] *Id.* Proclamation 9983 does not identify these five additional countries.

[24] Natasha Frost, *Belarus is perplexed by Trump's proposed travel ban*, QUARTZ (Jan. 23, 2020), https://qz.com/1789425/why-is-belarus-being-considered-for-a-us-travel-ban/.

[25] *See* Pres. Procl. 9645 § 3(c).

extremely limited information regarding the waiver process available to applicants and the information made available has largely been through FOIA disclosures or litigation. Since a waiver grant is now the sole means by which a national of the countries banned by Proclamation 9983 may enter the United States on the covered visas, the records requested herein would provide information that is critically and urgently important to the public.

II. Request for Records

The Requestors seek release of the following:

1) Records that concern guidance, interpretation, implementation, or enforcement of Proclamation 9983 by DHS, Customs & Border Patrol ("CBP"), the Department of State, or any component agency of the federal government, including, but not limited to:

    a) Cables, presentations, practices, policies, guidance, internal correspondence, and procedures relating to criteria for assessing visa applications in light of Proclamation 9983;

    b) Cables, presentations, practices, policies, guidance, internal correspondence, and procedures relating to criteria for assessing individual waiver requests dated on or after January 31, 2020;

    c) Cables, presentations, practices, policies, guidance, internal correspondence, and procedures dated on or after January 31, 2020, regarding how officers should determine that an individual's waiver request be granted;

    d) Internal guidance or correspondence dated on or after January 31, 2020 instructing consular or other officers on how to assess whether denial of an individual's entry "would cause undue hardship"; or when "his or her entry would not pose a threat to national security"; or when his or her entry "would be in the national interest";

    e) The processes for accepting and adjudicating waiver requests under Proclamation 9983;

    f) Deidentified data from databases maintained by DOS like VOIS and CCD showing the following information about immigrant visa seekers from Eritrea, Myanmar, Kyrgyzstan, and Nigeria starting from February 21, 2020 until the date the response to this FOIA is complete:

        (1) Country of origin;

(2) Visa type sought;
(3) Whether visa was denied or granted;
(4) Whether waiver was denied or granted;
(5) Whether individual satisfied the undue hardship prong;
(6) Whether individual satisfied national interest prong;
(7) Whether security processing was requested by consular official;
(8) Whether consular official consulted with countries-of-concern-inquiries@state.gov before making waiver determination; and
(9) Current status of application.

g) Deidentified data from databases maintained by DOS like VOIS and CCD showing the following information about diversity visa seekers from Tanzania and Sudan starting from February 21, 2020 until the date the response to this FOIA is complete:

(1) Country of origin;
(2) Visa type sought;
(3) Whether visa was denied or granted;
(4) Whether waiver was denied or granted;
(5) Whether individual satisfied the undue hardship prong;
(6) Whether individual satisfied national interest prong;
(7) Whether security processing was requested by consular official;
(8) Whether consular official consulted with countries-of-concern-inquiries@state.gov before making waiver determination; and
(9) Current status of application.

h) Cables, presentations, practices, policies, guidance, internal correspondence, and procedures dated on or after January 31, 2020 regarding procedures for administrative and security processing for waivers under Proclamation 9983;

i) All correspondence to and from consular posts to countries-of-concern-inquiries@state.gov regarding waiver requests pursuant to Proclamation 9983;

j) Practices, policies, guidance, internal correspondence, and procedures used by countries-of-concern-inquiries@state.gov to assess whether a waiver request meets the undue hardship, national interest, and national security prongs of the waiver process under either Proclamation 9645 or Proclamation 9983; and

k) All materials from the Foreign Affairs Manual related to the implementation of Proclamation 9983.

2) Records that concern the worldwide review undertaken by DHS pursuant to Proclamation 9645, including but not limited to:

   a) DHS' 180-day reports on whether the interests of the United States require the suspension of or limitation on entry of certain classes of foreign nationals from September 24, 2017 until the date that the response to this Request is completed;

   b) Records of the statistical information consolidated by DHS on operational encounters with foreign nationals that according to the Proclamation, "speaks to the frequency with which a country's nationals commit offenses while in the United States or otherwise develop grounds for inadmissibility under the Immigration and Nationality Act (INA)."

   c) A list of the "worst-performing countries" referenced in Proclamation 9983 that DHS identified for interagency review;

   d) A copy of the report referenced in Proclamation 9983 submitted on September 13, 2019 by the Acting Secretary of Homeland Security the suspension of, or limitation on, the entry of certain classes of nationals from certain countries;

   e) A copy the worldwide review referenced in Proclamation 9983 that DHS conducted pursuant to Proclamation 9645 between March 2019 and September 2019;

   f) All records relied upon by DHS in creating, or in connection with, the September 2019 worldwide review;

   g) All records related to the assessment model developed by the Secretary of Homeland Security in consultation with the Secretary of State and the Director of National Intelligence;

   h) A copy of the January 2020 proposal referenced in Proclamation 9983 submitted to the President by senior officials that recommended visa restrictions on certain countries;

   i) A list of the five "poorly performing" countries that the January 2020 proposal recommended not be subject to travel restrictions;

   j) Records related to the recommendations that the five "poorly performing countries" identified in the January 2020 proposal not be subject to travel restrictions;

k) Records relating to any consideration by DOS, Department of Defense or National Intelligence officials of whether the "foreign policy interests" that purportedly resulted in the exclusion of these five "poorly performing countries" from the new travel restrictions also applied to any of the six countries that were included in the new restrictions;

l) The name of and records related to the country that per Proclamation 9983 "made sufficient improvements in its information-sharing and identity-management practices and was removed from consideration for travel restrictions";

m) Any cables sent to U.S. diplomatic posts related to the worldwide review;

n) Copies of instructions to foreign governments regarding the requirements that must be met to avoid travel restrictions;

o) Any communications between DHS, DOS, Department of Defense, or National Intelligence officials about imposing new travel or immigration restrictions for nationals of any of the new countries identified in Proclamation 9983 prior to the beginning of the "worldwide review" that occurred between March 2019 and September 2019; and

p) Any communications between DHS, DOS, Department of Defense, or National Intelligence officials communicated regarding statements by President Trump indicating a desire to ban or limit immigration or travel by persons from one or more African nations, Asian nations, nations with large Muslim populations, and/or that President Trump has a preference for immigrants from Europe or from one or more European countries over immigrants from non-European countries.

3) Records describing the processing of this request, including but not limited to records sufficient to identify the search terms used and the search queries conducted; records sufficient to identify the locations and custodians searched; any tracking sheets used to track the processing of this request; and any FOIA questionnaires or certifications completed by individual custodians or components used to determine whether they possess responsive materials or to describe how they conducted searches.

III. Description of Processing

The terms "records" is intended to be construed in the broadest possible sense and includes without limitation 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. No category of material should be omitted from search, collection, and production.

Please search all records regarding agency business. Please do not rely solely on custodian-driven searches; the government-wide requirements to manage information electronically by the end of 2016 have rendered it unreasonable to rely exclusively on custodian-driven searches.[26] However, please do perform custodian-driven searches; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts. Please do not exclude searches of files or emails in the personal custody of agency 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.[27] Please do not omit such searches merely because the agency has policies and procedures requiring officials to move records to official systems within a certain period of time; separate searches are still necessary in case the policies or procedures were not followed.[28] Please use the most up-to-date technologies to search for responsive information and take steps to ensure that

[26] 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), https://www.archives.gov/files/records-mgmt/m-12-18.pdf.

[27] *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).

[28] *See* Order, *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, *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)), ECF No. 31.

the most complete repositories of information are searched.[29] Requestors are available to work with you to craft appropriate search terms, if necessary.

Please produce records in electronic form. Where possible, please provide responsive material in electronic format by email to nimra@muslimadvocates.org and SSpital@naacpldf.org. Please furnish any responsive material being sent by mail to:

Nimra H. Azmi
MUSLIM ADVOCATES
P.O. Box 34440
Washington, DC 20043

Please produce electronic records in their native format. 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. In particular, please produce electronic files in a format that contains the original metadata of the files.[30] If the records cannot be produced in their native format, please (1) provide an explanation why the records cannot be so produced; and (2) please produce records electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

Please produce documents as they become available. Requestors prefer a rolling production. We would be happy to discuss a search priority and schedule for production.

If you withhold records or parts of records, please provide the justification for the withholding. If it is your position that any portion of the requested records is exempt from disclosure, please provide an index of those records as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), and describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA."[31] Please ensure that the *Vaughn* index "describe[s] each document or portion thereof withheld, and for each withholding . . . discuss[es] the consequences of disclosing the sought-after

[29] For example: agencies that have adopted the 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 the agency's archiving tools would capture that email under Capstone.
[30] As a non-exhaustive list of examples: Microsoft Excel spreadsheets are to be produced as files that open in Excel, with all original data and formulas intact; Microsoft Word documents are to be produced in the same file format they are stored in, such that they contain all tracked changes and comments present in the documents; and emails are to be produced with all metadata fields intact, including but not limited to the date and time the email was sent, the full names and email addresses of all recipients, any data contained in the bcc: field, and all attachments.
[31] *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

information."[32] Please also "supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'"[33]

If you withhold portions of a record, please produce all segregable portions. In the event some portions of the requested records are, in your view, properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.[34] Please state claims of non-segregability with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

DOS, DHS, CBP, and all other relevant components of DHS and DOS are obliged to search all such field offices that are reasonably expected to produce relevant information. *See, e.g., Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990); *Marks v. U.S. Dep't of Justice*, 578 F.2d 261, 263 (9th Cir. 1978) (agency not required to search all of its field offices because request did not ask for a search beyond the agency's central files); *see also Am. Immigration Council v. U.S. Dep't of Homeland Sec.*, 950 F. Supp. 2d 221, 230 (D.D.C. 2013).

Due to the expedited nature of the relevant events and interpretations, we request that searches of all electronic information include the personal email accounts and work phones of all employees and former employees who may have sent or received emails or text messages regarding the subject matter of this Request.

To the extent that our Request encompasses records responsive or potentially responsive to the Request that have been destroyed, our Request should be interpreted to include, 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.

III. Application for Waiver of Fees

The Requestors seek a waiver of document search, review, and duplication fees on the grounds that disclosure is in the public interest because it is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the

[32] *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis in original).
[33] *Id*. at 224 (citing *Mead Data Central, Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).
[34] *Mead Data Central, Inc.*, 566 F.2d at 261.

commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). If the waiver request is not granted, Requestors request that fees be limited to reasonable standard charges for document duplication because Requestor Muslim Advocates qualifies as a representative of the news media and the records sought are not for commercial use. *Id.* § 552(4)(A)(ii)(II).

A. Disclosure Is in the Public Interest

As an initial matter, the public interest in Proclamation 9983 and the Muslim Ban in general is evident. The first three versions of the Muslim Ban were the subject of litigation, including a case that reached the Supreme Court and widespread media attention. Proclamation 9983, as an extension of that policy, is a matter of the utmost public interest.[35] Like its predecessors, Proclamation 9983 has created significant media coverage about its nature, the effect it will have on immigration to the United States, concern for the reasoning behind it including concerns of constitutionality, and the consequences of the ban on national security.[36] As such, Proclamation 9983 implicates issues of the highest public concern. Proclamation 9983 has further raised widespread apprehension among communities of impacted individuals, who are worried about how Proclamation 9983 will be implemented and whether the countries selected were selected at least in part due to anti-Muslim, anti-Black, or anti-African animus, or as a result of a preference for white immigrants from European countries.[37] Major civil rights organizations around the country, including Requestors, have likewise expressed their

[35] *See, e.g.,* Liz Robbins, *'Your Visa Is Approved,' They were Told. And Then It Wasn't.* THE N. Y. TIMES (Jan. 17, 2018), https://nyti.ms/2FNJmOm; Sam Levin, *Tears, despair and shattered hopes: the families torn apart by Trump's travel ban*, THE GUARDIAN (Jan. 8, 2018, 5:00 PM), https://www.theguardian.com/us-news/2018/jan/08/trump-travel-ban-families-affected-first-month; Esther Yu Hsi Lee, *Trump's Muslim ban has put this Stage 3 cancer patient in an impossible situation*, THINKPROGRESS (Jan. 12, 2018), https://thinkprogress.org/iranian-cyberknife-cancer-treatment-4576199d430e/; Michael D. Shear, *New Order Indefinitely Bars Almost All Travel From Seven Countries*, N.Y. TIMES (Sept. 24, 2017), https://www.nytimes.com/2017/09/24/us/politics/new-order-bars-almost-all-travel-from-seven-countries.html.

[36] *See, e.g., Trump Says He Plans to Expand Muslim Ban*, BBC (Jan. 22, 2020), https://www.bbc.com/news/world-us-canada-51210953; Zolan Kanno-Youngs, *Trump Administration Adds Six Countries to Travel Ban*, N.Y. TIMES (Jan. 31, 2020), https://www.nytimes.com/2020/01/31/us/politics/trump-travel-ban.html; Jamelle Bouie, *The Racism at the Heart of Trump's 'Travel Ban'*, N.Y. TIMES (Feb. 4, 2020), https://www.nytimes.com/2020/02/04/opinion/trump-travel-ban-nigeria.html.

[37] *See, e.g.,* Kristi Eaton, *In Oklahoma*, *A Myanmar refugee worries about Trump's expanded travel ban*, NBC NEWS (Feb. 10, 2020, 1:46 PM EST), https://www.nbcnews.com/news/asian-america/oklahoma-myanmar-refugee-community-worries-about-trump-s-expanded-travel-n1132821; Jason Burke, *Trump travel ban extension leaves Africans angry and disappointed*, THE GUARDIAN (Feb. 6, 2020, 3:00 PM), https://www.theguardian.com/us-news/2020/feb/06/trump-travel-ban-africa-eritrea-nigeria-sudan-tanzania; Carmel Delshad, *Nigerians Shocked By Trump's New Immigration Restrictions*, NPR (Feb. 5, 2020, 5:00 AM), https://www.npr.org/2020/02/05/802533815/nigerians-shocked-by-trumps-new-immigration-restrictions.

condemnation of Proclamation 9983's expansion of travel restrictions to additional African, Muslim, and Asian countries.[38]

The specific information about the waiver process sought is of the greatest importance, because the waiver process is the only way for an individual seeking entry into the United States to overcome the absolute prohibitions on immigrant and/or diversity visa travel contained in Proclamation 9983. Additionally, information requested related to the "worldwide review" and DHS' reports are essential to understanding how and why the countries selected for inclusion in Proclamation 9983 were chosen and why other allegedly similarly non-compliant countries were not included. Since the information in these documents has the potential to either reveal or confirm the absence of government misconduct, these records are inherently in the public interest. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1313-14 (D.C. Cir. 2003) ("[T]he public is always well served when it knows how government activities, particularly matters touching on legal and ethical questions, have been conducted.").

B. Requestor Muslim Advocates Is A Representative of the News Media for Purposes of FOIA

Even if a waiver is not granted, fees should be "limited to reasonable standard charges for document duplication" because Muslim Advocates is a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(4)(A)(ii)(II). Other organizations similar to Requestor Muslim Advocates in mission, function, and educational activities have been found by courts to be representatives of the news media. *See Elec. Privacy Info. Ctr. v. Dep't of Defense*, 241 F. Supp. 2d 5, 10–15 (D.D.C. 2003) (a non-profit educational organization qualified under the news media category); *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (a nonprofit research organization qualified under the news media category).

Finally, Requestors do not seek to use the information requested for commercial use, 22 C.F.R. § 171.16(a)(2), and do not have a commercial interest that would be furthered by the disclosure. Requestor Muslim Advocates is a 501(c)(3) non-profit organization. Its primary interest in the disclosure of information is to educate the public and advocate for the rights of

[38] *See, e.g.,* Press Release, Muslim Advocates, *Muslim Advocates Condemns Expanded Muslim Ban* (Jan. 31, 2020), https://muslimadvocates.org/2020/01/muslim-advocates-condemns-expanded-muslim-ban/; Press Release, NAACP-LDF, *LDF Responds to the Administration's Expanded Muslim Ban Announcement* (Jan. 31, 2020), https://www.naacpldf.org/press-release/ldf-responds-to-the-trump-administrations-expanded-muslim-ban-announcement; Press Release, Center for Constitutional Rights, *Trump's Goal: To End All Non-White Immigration to the U.S., Says Center for Constitutional Rights* (Jan. 31, 2020), https://ccrjustice.org/home/press-center/press-releases/trump-s-goal-end-all-non-white-immigration-us-says-center; Press Release, ACLU, *ACLU Comment on Trump Expansion of Muslim Ban* (Jan. 31, 2020), https://www.aclu.org/press-releases/aclu-comment-trump-expansion-muslim-ban.

Americans to be free from racial and religious profiling. *Id.* § 171.16(a)(2)(i)-(ii). Any information disclosed to the Requestor as a result of this FOIA request will be made available to the public at no cost through a combination of outreach to media outlets and Requestor Muslim Advocates' website. Granting a fee waiver for this Request would fulfill Congress's legislative intent in amending the FOIA. *See Judicial Watch, Inc.*, 326 F.3d at 1312 ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (internal quotation marks omitted)). Because these factors weigh in favor of a fee waiver, fees associated with responding to FOIA requests should be waived for Requestor as a "representative of the news media."

IV. Application for Expedited Processing

The Requestors request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). There is a "compelling need" for these records as defined in the statute because: (1) 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 (2) 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).

Muslim Advocates and LDF are engaged in the dissemination of information as a primary part of their mission. Through their respective websites, outreach to media organizations, advocacy in government, and presentations to the public, Muslim Advocates and LDF help shine a light on government practices that affect Black communities, Muslim communities, immigrant communities, and others.

As discussed above, Proclamation 9983 has received widespread media interest as well as attention from Muslim, Burmese, Kyrgyzstani, and African communities along with concern from civil rights stakeholders. Now that its restrictions are in effect, increasing public knowledge of the impact of the restrictions is of the utmost urgent importance. The requested records seek to inform the public about urgent issues implicating thousands of individuals' due process rights—namely, the interpretation, implementation, and enforcement of Proclamation 9983—and concerns of unconstitutional bias in federally promulgated policy. These records will also serve to educate impacted communities as well as the broader public about the implications of Proclamation 9983's restrictions. Moreover, release of these documents is time-sensitive. As demonstrated by multiple executive orders and proclamations related to the Muslim Ban since 2017, the policies can change suddenly and without significant notice.

Given the foregoing, the Requestors have satisfied the requirements for expedited processing of this Request. 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); 6 C.F.R. § 5.5(e)(4).

If the Request is denied in whole or in part, the Requestors ask that you justify all denials 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 to 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.

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

Very truly yours,

Nimra H. Azmi
Staff Attorney
Muslim Advocates
nimra@muslimadvocates.org
(202) 897-2564

Samuel Spital
Director of Litigation
NAACP Legal Defense & Educational Fund, Inc.
40 Rector St., 5th Floor
New York, NY 10006
(212) 965-2200