

February 19, 2020

SUBMITTED VIA FREEDOM OF INFORMATION ACT RECORDS SYSTEM

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010
Fax (802) 860-6908
uscis.foia@uscis.dhs.gov

Re: Freedom of Information Act Request for Records Regarding Adjudication
of Form I-485 and Form I-918

Dear U.S.:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, Safe Horizon, Inc. ("Safe Horizon") and ASISTA Immigration Assistance ("ASISTA") (collectively, "Requestors") respectfully request copies of public records maintained by United States Citizenship and Immigration Services ("USCIS").

This request seeks information relating to the relevance of an applicant's prior criminal contact in the adjudication of petitions for U nonimmigrant status ("U-visa") and applications for adjustment of status for U nonimmigrants based on an underlying U-visa under the Immigration and Nationality Act ("INA") § 245(m).

I. REQUESTORS

Safe Horizon is a nonprofit organization established to provide assistance, advocacy, and support to victims of violence, including domestic violence, child abuse, sexual assault, stalking, human trafficking, and other crimes. Safe Horizon's Immigration Law Project ("ILP") provides legal consultation and representation to low-income survivors of violence seeking immigration relief. ILP regularly coordinates with local police departments and prosecutors in seeking immigration relief for victims and witnesses of crimes.

ASISTA is a nonprofit organization established to increase public understanding of immigration law and policy and advocate for the fair and just administration of federal immigration laws, particularly as they relate to immigrant survivors of violence. ASISTA consults with immigration lawyers, law students, accredited representatives, and other

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advocates to help directly protect the legal rights of noncitizens; advocates for policy on behalf of immigrant survivors of violence; publishes educational materials; and runs training programs that educate the public, legal practitioners, government officials, and law enforcement officers about immigration law and practice.

II. REQUEST FOR INFORMATION

Beginning in or around Spring 2018, Requestors observed a shift in USCIS's adjudication of Form I-918, Petition for U Nonimmigrant Status, and Form I-485, Application to Register Permanent Residence or Adjust Status based on an underlying U-visa. First, Requestors observed an increase in Requests for Evidence from USCIS regarding applicants' prior criminal contact. For example, USCIS began issuing requests for applicants' arrest reports, police reports, sworn statements regarding circumstances of an arrest, and/or charging documents, particularly in situations where charges were never filed, charges were dismissed, and/or where the relevant records have been sealed. Second, Requestors observed that, if applicants did not provide the requested evidence, USCIS increasingly began denying their applications. And third, if such evidence was provided, Requestors observed that USCIS increasingly began issuing denials based on the substance of the evidence. Prior to this time, USCIS's practice—reflecting, as we understand it, USCIS's policy—generally was not to request this kind of evidence; if it did, providing the relevant certificate of disposition was sufficient to satisfy USCIS's request.

While it is clear that the prior USCIS practice is no longer in force, the extent and parameters of the change in practice and policy are not clear. No revised or new practice or policy has, at present, been publicly issued or described in any USCIS publication, announcement, advisory, or guidance document of any kind. As a result of the paucity of public information, many members of the public, including immigration lawyers, advocates for noncitizens, social workers, and law enforcement personnel, lack an understanding of the current practice and policy governing U-visa adjudications, what rationales underlie it, and how to develop best practices for their work that properly account for it.

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Accordingly, we request that you please produce any and all records¹ constituting, referring, or relating to:

1. Any USCIS policy² or policies issued or in effect at any time from 2015 to present referring or relating to the adjudication of U-visa petitions (Form I-918) or applications for adjustment of status (Form I-485) based on an underlying U-visa.
2. Any USCIS policy or policies issued or in effect at any time from 2015 to present referring or relating to the relevance of an applicant's prior criminal contact in the adjudication of U-visa petitions or applications for adjustment of status based on an underlying U-visa. Such criminal contact may include, for example, situations where charges were never filed against the applicant, situations where charges were filed and dismissed, situations where the applicant was acquitted at trial of some or all charges, situations where the applicant entered a plea, and/or situations where records have been sealed. This request encompasses policies with any reference to evidence of such contact including, without limitation, policies regarding: the weight to be granted such evidence; the absence of such evidence; the weight to be granted such absence; the withholding of such evidence by an applicant; the weight to be granted such withholding; any presumptions related to any of the above considerations; any effect of any of the above considerations on the exercise of discretion; and the procedures, protocols, or methods for review of such cases.
3. Any change or modification to any policy that falls under items 1 or 2, whether or not such change or modification is currently in force.
4. Any creation of any new policy that falls under items 1 or 2, whether or not such new policy is currently in force.

¹ The term "records" as used herein includes, but is not limited to: memoranda, advisories, agreements, directives, guidance documents, guidelines, templates, standards, instructions, notes, orders, policies, procedures, protocols, reports, rules, manuals, training materials, analyses, evaluations, studies, files, data, documents, communications, correspondence, letters, faxes, emails, email attachments, informal notes or memoranda, meeting minutes, meeting notes, meeting summaries, meeting agendas, phone transcripts, phone recordings, audiotapes, and videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing annotations or marginal notations.

² The term "policy" as used herein includes, but is not limited to, any statement, instruction, directive, advisory, agreement, or discussion of any policy, practice, procedure, method, standard, or rule, whether or not it is formal, final, official, authoritative, binding, mandatory, discretionary, or universal (across USCIS, or across applicant cases).

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5. Any abrogation of a previous policy that falls under items 1 or 2, whether or not such abrogation is currently in force.
6. Any proposed change, modification, creation, or abrogation of a policy that falls under items 1 or 2, whether or not such proposal was ever endorsed or adopted.
7. Any statement of any rationale underlying any of items 1–6, including but not limited to: any aim or goal of any policy or proposed policy, or any reason or purpose for proposing or adopting any policy or proposed policy.
8. Any quantitative or qualitative evaluation of any of items 1–7, either prospective or retrospective, including but not limited to:
 - a. any basis for the adoption or non-adoption of any policy;
 - b. any factors considered in the adoption or non-adoption of any policy;
 - c. any procedure or method for the adoption or non-adoption of any policy;
 - d. any cost-benefit analysis;
 - e. any identification, estimation, or accounting of affected parties;
 - f. any consequences of adoption or non-adoption of any policy;
 - g. any consequences on the number of visa applications submitted, granted, or denied, or the number of removals of noncitizens;
 - h. any evaluation of any effect on any other federal agency, or on the subject matter domain of any other federal agency;
 - i. any evaluation of any effect on any non-federal governmental body, including state governments, state government agencies, state Attorneys General, state prosecutors, local government, local district attorneys, or local law enforcement;
 - j. any evaluation of any effect on any non-governmental organization; or
 - k. any process, protocol, strategy, procedure, schematic, or standard for evaluation, or any investigations or evaluations begun or proposed but not completed.

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9. Any data, information, or measurements created for or used in connection with any of items 1–8, including but not limited to: census data, USCIS operating statistics (such as numbers of applications of any type received, processed, approved, or denied), or operating statistics of any other government agency.
10. Any method, strategy, or plan for implementing any of items 1–6.
11. Any communications referring or relating to any of items 1–10 including, but not limited to, communications involving:
 - a. Any USCIS personnel;
 - b. Kenneth T. (Ken) Cuccinelli, Acting Director, USCIS;
 - c. Mark Koumans, Deputy Director, USCIS;
 - d. Kathy Nuebel Kovarik, Chief of Staff and Acting Deputy Director, USCIS;
 - e. Joseph Edlow, Chief Counsel, Office of the Chief Counsel, USCIS;
 - f. Stephen Dove, Chief, Office of the Executive Secretariat, USCIS;
 - g. Robert Law, Chief, Office of Policy and Strategy, USCIS;
 - h. The U.S. Department of Homeland Security (“DHS”), including DHS field offices, and any DHS leadership or personnel;
 - i. U.S. Immigration & Customs Enforcement (“ICE”), including any ICE leadership or personnel;
 - j. U.S. Customs and Border Protection (“CBP”), including any CBP leadership or personnel;
 - k. The U.S. Department of Justice (DOJ), including the DOJ’s Executive Office for Immigration Review (EOIR), any immigration judge, or any other DOJ or EOIR leadership or personnel.
 - l. Any White House personnel, including any member of the President’s Administration or Cabinet, any Senior Advisor to the President, and any other White House advisor, acting official, or staff.

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- m. Any members of Congress or Congressional staff;
 - n. Any legal professionals, including immigration judges, immigration lawyers, other judges, or other lawyers;
 - o. Any journalists or members of the news media; and
 - p. Any policy institutions, think tanks, research organizations, and/or other non-governmental organizations.
12. Standard operating procedures for waivers of inadmissibility for U-visa applicants under INA § 212(d)(3) & § 212(d)(14) from years 2015 to present.
13. Standard operating procedures for adjustment of status applications under INA § 245(m) from years 2015 to present.

Please search for responsive records regardless of format, medium, or physical characteristics. Where possible, please produce records electronically, in a text-searchable format (*e.g.*, pdf). This request seeks records of any kind, including hard copies, electronic records, audiotapes, videotapes, photographs, scanned images, e-mails, or facsimiles. This request also seeks any attachments to such responsive records.

III. REQUEST FOR WAIVER OF FEES

We also request a fee waiver. A fee waiver is appropriate here because disclosure of the requested records “is likely to contribute significantly to the public understanding of the activities or operations of the government” and the requestors have no commercial interest in the records sought. 5 U.S.C. § 552(a)(4)(A)(iii); *see also Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (recognizing Congress’s intent that FOIA’s fee waiver provision “is to be liberally construed in favor of waivers for noncommercial requesters”). Likewise, disclosure of the requested records meets the two requirements for a waiver of fees set out in the USCIS FOIA Request Guide: it is (1) “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) “not primarily in the commercial interest of the requester.” USCIS, *Freedom of Information Act Request Guide*, July 10, 2019, at 23, https://www.uscis.gov/sites/default/files/files/nativedocuments/USCIS_FOIA_Request_Guide.pdf.

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A. *Disclosure of the Records Is in the Public Interest*

Disclosure of the requested information is in the public interest because it will contribute significantly to public understanding of how USCIS adjudicates U-visa petitions and adjustment of status applications for U nonimmigrants and the weight it places on prior criminal contact. This request furthers Requestors' work to increase the public understanding of immigration law and policy, specifically as relevant to noncitizen victims of crimes, such as domestic and intimate partner violence. Access to this information ensures fairness and transparency in the adjudication of humanitarian applications before USCIS. In addition, disclosure of the requested information is of great public interest given the high volume of U-visa petitions filed, the great importance of these visas to law enforcement and social work across the country, and the recent change in the adjudication of such petitions. *See* 6 C.F.R. § 5.11(k)(2)(iii) (stating that disclosure will contribute to public understanding when it affects a "reasonably broad audience of persons interested in the subject"). To take one example, the requested information is critically important to assist immigration attorneys and the affected non-citizen population in understanding how the current practice differs from past practice, what the rationale for this change was, and how to adjust best practices to comply with and account for the current state of federal immigration law.

Requestors have the intent and demonstrated ability to use this information for the direct benefit of members of the public, for the education of the public, and additionally to directly disseminate the requested information to a broad cross-section of the public.

- Safe Horizon, as discussed above, is the nation's leading nonprofit organization providing assistance, advocacy, and support to victims of violence, helping over 250,000 people annually. Safe Horizon frequently coordinates with police departments and prosecutors, such as the New York City Police Department and the Office of the District Attorney in all five counties of New York City, to facilitate the investigation and prosecution of crimes by providing its services, including immigration assistance, to victims and witnesses of crimes. Its Immigration Law Project provides direct legal services for immigrant survivors of violence; U-visas and U-visa-based adjustments of status are together the most common forms of relief sought by ILP on behalf of its clients. ILP provides services to its clients on either a pro bono or low-cost basis, and assists over 1,000 clients annually. In addition, ILP regularly conducts outreach, trainings, and presentations to community partners, members of law enforcement, elected officials, and other stakeholders on immigration law and policy-related issues. It actively engages in policy advocacy at the local, state, and national levels on immigration issues affecting its clients and is

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often sought out by, and quoted in, the press as an expert in the field of humanitarian-based immigration relief.

- ASISTA, as discussed above, is a nonprofit organization whose purpose is to increase public understanding of immigration law and policy, including by educating the public, the legal community, government officials, and law enforcement about changes in federal immigration law. Many of ASISTA's member organizations are nonprofits themselves, and ASISTA offers its services at a lower cost to nonprofit members. These services include assisting members of the public in complying with immigration law; training lawyers, domestic violence and sexual assault advocates, law enforcement personnel, and civil and criminal court judges in immigration law; directly assisting lawyers in individual immigration cases; and working closely with DHS to ensure the law is implemented as Congress intended. In addition, ASISTA undertakes significant educational and journalistic activities. It publishes and maintains a blog for updates on practice and advocacy in immigration law, publishes practice advisories for attorneys and others who work with immigrant crime survivors, develops and shares template comments for the field on emerging policy issues, and regularly solicits case examples from the field to inform the content of policy advocacy with DHS and other decision-makers. Through these activities, ASISTA regularly provides information to the general public, immigration law professionals, the media, DHS, and members of Congress contemplating legislative changes or hearings on emerging issues. In addition, ASISTA maintains an established network of over 500 organizations and individuals practicing immigration law. It regularly disseminates information about immigration law to these partner organizations, who use it to the benefit of their various activities, including public education, professional legal training, and direct client representation. ASISTA's website regularly publishes immigration-related information and news, and these online publications are widely available and circulated. From February 1, 2019 to October 21, 2019, it had over 122,583 pageviews from 33,542 unique visitors. ASISTA has previously disseminated information from prior FOIA requests to facilitate the sharing of this information with a broad public audience. *See, e.g.*, <https://asistahelp.org/impact-litigation-2/> (publication of records obtained through FOIA-related to petitions for U-visas where the underlying crime was California robbery).

Requestors will review and analyze the information obtained to provide better services to their immigrant clients; to provide better education and training to lawyers, accredited representatives, law enforcement personnel, and partner organizations working in immigration law; and to provide the information to the public on at least one publicly

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accessible website. For example, ASISTA will publish a practice advisory of such information and will disseminate that advisory through its website or its established networks. Additionally, Requestors have regular contact with national print and news media and plan to share with those outlets information they obtain from this FOIA request that is relevant to Requestors' public interest work.

B. Disclosure of the Records Is Not Primarily in the Commercial Interest of the Requestors

As discussed above, Requestors are both not-for-profit organizations. Neither organization will benefit commercially in any way from the information requested. Both organizations seek the requested information for the purposes of (1) improving the quality of the services they are able to provide to their clients and/or members, and (2) disseminating the information to the general public and to additional interested individuals and organizations. All use or dissemination of the information received in response to this FOIA request will be free of charge. To the extent the requested information is used or disseminated to any paying client or member of either organization, the amount of payment will not increase in any way as a consequence of the requested information being used or shared.

* * *

Requestors appreciate your timely attention to this request, and look forward to your reply within 20 business days, as required under 5 U.S.C. § 552(a)(6)(A)(i). If you expect a significant delay in responding to and fulfilling this request in full, please provide us with information regarding when we should expect the records to arrive, and please send responsive records seriatim as they become available.

Consistent with FOIA's objective of increasing the transparency of agency action, FOIA exemptions are construed narrowly and the agency bears the burden of justifying its decision to withhold documents. *See, e.g., AquAlliance v. U.S. Bureau of Reclamation*, 856 F.3d 101, 102–04 (D.C. Cir. 2017). For example, the deliberative process privilege of FOIA Exemption 5 applies only if the information at issue is both predecisional and deliberative. *See, e.g., Nat'l Ass'n Home Builders v. Norton*, 309 F.3d 26, 39 (D.C. Cir. 2002). If you deny any part or all of this request, please cite each specific exemption you believe justifies the refusal to release the specific information and notify us of the appeal procedures available to us under applicable law.

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Should you conclude that a complete waiver of fees is not warranted, we will pay up to \$25 for the processing of this request. If the estimated fees exceed this amount, please contact us to receive our permission prior to incurring any additional fees.

We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

If we may be of any assistance in facilitating this request, please contact us at:

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Sincerely,

/s/ Akiva Shapiro
Akiva Shapiro