

Exhibit B



November 4, 2020

VIA ELECTRONIC MAIL AND USPS PRIORITY MAIL

National Records Center (NRC)
FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010

uscis.foia@uscis.dhs.gov

Re: Freedom of Information Act (FOIA) Request for FOIA Policy Guidance
on Form CBP 93

Dear FOIA Officer:

The Safe Passage Project ("SPP") and the Benjamin N. Cardozo School of Law ("Cardozo Law") (together, "Requestors") submit this letter as a request for information 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 pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

Request for Information

The Requestors seek disclosure of the following records¹ that were prepared, received, transmitted, collected and/or maintained by U.S. Citizenship & Immigration Services ("USCIS"), including but not limited to records prepared,

¹ The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to training manuals, correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, 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.

received, transmitted, collected and/or maintained at USCIS Headquarters and at USCIS Regional Offices, District Offices, and Field Offices:

- (1) Any guidance memoranda or other policy guidance to USCIS FOIA officers/employees (to include, employees of the National Records Center) regarding the disclosure/redaction of records pertaining to the “Unaccompanied Alien Child Screening Addendum,” “CBP Form 93,” and/or “suggested trafficking questions.”

Request for Expedited Processing

Expedited processing is warranted because there is “an urgency to inform the public about an actual or alleged federal government activity” and the request is made by entities “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

Requestors’ own experience, as well as first-hand reports from children² and their attorneys indicate that CBP is failing to include CBP Form 93’s in their responses to FOIA requests for CBP records relating to individual “unaccompanied alien children” (“UC’s”, also known as “UAC’s”). CBP also routinely redacts the vast majority of each Form 93 it does produce. This deprives the public of the opportunity to understand how CBP conducts its screening and made determinations pursuant to these forms, and it denies UCs and their attorneys the opportunity to present a full defense of the child in removal proceedings and access benefits under the Trafficking Victims Assistance Program. Accordingly, access to the Form 93 and to CBP’s policies regarding disclosure are critical not only to understanding CBP’s processes with respect to UCs, but also CBP’s compliance with its transparency obligations.

Under the Trafficking Victims Protection Reauthorization Act of 2008, CBP has the duty to screen UC’s for both fear of return to their home country and for experiences of human trafficking, and those screenings are documented via CBP Form 93. CBP also has the duty to notify sister agencies, including the Department of Health and Human Services and U.S. Immigration and Customs Enforcement, when they identify UC’s with fear of return or human trafficking experiences, and those notifications are likewise documented in CBP Form 93. There are reports from children and their attorneys that CBP agents are not properly or adequately

² The term “children” as used herein includes all individuals under 18 years old.

screening all UC's for fear of return/experiences of human trafficking, and that CBP is failing to timely notify its sister agencies of UC's with fear of return/human trafficking experiences. These reports confirm a disturbing trend dating back to at least 2015, when the U.S. Government Accountability Office found that CBP agents "who screen UC[s] have not consistently applied the required screening criteria or documented the rationales for decisions resulting from screening. . . . [A]gents made inconsistent screening decisions, had varying levels of awareness about how they were to assess certain screening criteria, and did not consistently document the rationales for their decisions."³ There is an "urgency to inform the public about [this] actual or alleged governmental activity" because (1) exposure of this practice to public scrutiny could cause the agency to improve its screening practices, thereby sparing UC's from being repatriated to their home country despite having a fear of return or from being denied benefits as survivors of human trafficking; and (2) would increase CBP's transparency and accountability to the public in regards to their duties towards UC's under the TVPRA of 2008.

Furthermore, there is intense and sustained public interest in issues relating to unaccompanied children and their treatment at the border, both by U.S. government officials and criminal actors, including human traffickers/smugglers. *See, e.g.*, Catherine E. Shoichet, "8,800 migrant kids were kicked out of the US under coronavirus border restrictions," *CNN.com* (last updated Sept. 11, 2020), available at <https://www.cnn.com/2020/09/11/politics/migrant-children-expelled/index.html>; Kids in Need of Defense (KIND), "The Border, Trafficking, and Risks to Unaccompanied Children— Understanding the Impact of U.S. Policy on Children's Safety" (Nov. 14, 2019), available at https://supportkind.org/wp-content/uploads/2019/11/KIND_Child-trafficking-at-border-paper-11-14-19-FINAL2.pdf; Paulina Villegas, "Detentions of Child Migrants at the U.S. Border Surges to Record Levels," *The New York Times* (last updated Nov. 5, 2019), available at <https://www.nytimes.com/2019/10/29/world/americas/unaccompanied-minors-border-crossing.html>

The Requestors are "primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II); see also 6 C.F.R. § 5.5(d)(3). The Safe Passage Project is a highly-focused nonprofit immigration legal services organization that provides free lawyers to refugee and immigrant children in the New York City area who face

³ U.S. Government Accountability Office, "UNACCOMPANIED ALIEN CHILDREN: Actions Needed to Ensure Children Receive Required Care in DHS Custody" (July 14, 2015), p. 2, available at <https://www.gao.gov/assets/680/671393.pdf>.

deportation back to life-threatening situations, despite their strong legal claim to stay in the US. It disseminates information about these issues facing refugee and immigrant children to governments, policy makers, and the general public. The SPP also conducts trainings about these issues with law firms, non-profit organizations and government agencies. The SPP also manages a large pro bono program, where mentor attorneys supervise the pro bono attorney volunteers and provide them up-to-date information and best practices in representing UC's in their immigration proceedings. The SPP publishes a newsletter distributed via email, maintains a blog, releases information via social media platforms, and regularly shares its findings through print and televised media platforms, as well as its website, www.safepassageproject.org.

For its part, the Immigration Justice Clinic has a long track record of obtaining and analyzing data from government agencies and publishing studies and evaluations to educate the public about the way that the U.S. immigration enforcement and adjudication systems function.⁴ It disseminates these materials by publishing them on websites, circulating them on listservs, and sharing them with media.

Upon receipt of the records requested, the Requestors will review them carefully and will disseminate newsworthy information through the channels available to them.

Request for Waiver of Fees

The requestors ask that all fees associated with this FOIA request be waived. We are entitled to a waiver of all costs because disclosure of the information 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). See also 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of the institution). In addition, the

⁴ See, e.g., New York Immigrant Representation Study Steering Committee (including Lindsay Nash), *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings – New York Immigrant Representation Study Report: Part 1*, 33 Cardozo L. Rev. 358 (2011) (analyzing and reporting on ICE and EOIR data regarding the rates of representation and success in various EOIR proceedings for noncitizens facing removal in the New York area); Peter L. Markowitz, *et al.*, Cardozo Immigration Justice Clinic, *Constitution on ICE* (2009), *available at* http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/immigrationlaw-741/IJC_ICEHome-Raid-Report%20Updated.pdf (reporting on documents released by the Department of Homeland Security (DHS) in response to FOIA request regarding home raids).

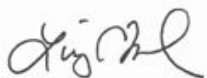
Requestors have the ability to widely disseminate the requested information. *See* *Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003).

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities. The records requested relate directly to governmental operations or activities; all are directly traceable to CBP's satisfaction of its duties under the TVPRA. Release of these records will contribute significantly to public understanding of the CBP's treatment of UC's, specifically in regards to screening for fear of return and experiences of trafficking. Because the Form CBP 93 ends up in a child's A-file (maintained by USCIS), CBP has generally refused to disclose these forms as part of their response to a child's FOIA request. Therefore, USCIS is best suited to provide copies of these forms to individual requestors; however, due to USCIS' heavy redactions of these forms in individual cases, it is nearly impossible for individuals and their advocates to determine whether CBP officials complied with their obligations under the TVPRA, and whether or not they concluded that the child was a victim of trafficking. Disclosure of the FOIA policy regarding the CBP 93 will thus better inform the public as to the justifications for these redactions.

The SPP and Cardozo Law are also "representative[s] of the news media" within the meaning of the statute and applicable regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii) (defining a representative of the news media as an entity that "gathers information of potential interest to a segment of the public" and "uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience"); *see also* *Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1397 (D.C. Cir. 1989) (same); 6 C.F.R. § 5.11(b)(6) (defining representative of the news media as "any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public").

Thank you for your prompt attention to this matter.

Sincerely,



Lindsay Nash

Assistant Clinical Professor of Law

Kathryn O. Greenberg Immigration Justice Clinic, Co-Director

Benjamin N. Cardozo School of Law

55 Fifth Avenue, Rm. 1108
New York, NY 10003
lindsay.nash@yu.edu
Tel:646-592-6538

A handwritten signature in red ink, appearing to read 'AR', is positioned above the contact information for Alexandra Rizio.

Alexandra Rizio
Managing Attorney, Training and Partnerships
Safe Passage Project
185 West Broadway
New York, NY 10013
arizio@safepassageproject.org
(212) 324-6558