

EXHIBIT 3

**to Complaint for Declaratory
and Injunctive Relief**

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VIA ONLINE SUBMISSION – USCIS PORTAL

August 7, 2020

U.S. Citizenship & Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010

RE: Freedom of Information Act Request

Dear FOIA Officer:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, by Professor Julie Dahlstrom at Boston University School of Law. In accordance with 5 U.S.C. § 552(a)(6)(A)(i), I expect that you will respond to this Request within twenty working days, unless otherwise permitted by statute.

1. BACKGROUND

This Request seeks information relating to the discretionary adjudication of applications for T-1 nonimmigrant status under 8 C.F.R. § 214.11; 8 U.S.C. § 1101(a)(15)(T). In 2000, Congress established statutory protections for immigrant victims of human trafficking through the Victims of Trafficking and Violence Prevention Act ("TVPA"). 114 Stat. 1464. Pursuant to Section 101(a)(15)(T) of the Immigration and Nationality Act ("INA"), the Secretary of Homeland Security, in consultation with the Attorney General, may grant T nonimmigrant status to an immigrant who:

- A. "is a victim of a severe form of trafficking in persons";
- B. "is physically present in the United States on account of such trafficking";
- C. "has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime (unless under 18 when trafficking occurred or trauma exception applies)"; and
- D. "would suffer extreme hardship involving unusual and severe harm upon removal."¹

¹ See also 8 C.F.R. §214.11(b).

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Applicants must not be “inadmissible” under section 212(a) of the INA. If inadmissible, the Attorney General may waive most grounds of inadmissibility for T visa applicants if s/he determines that the activities rendering the person inadmissible: (1) were caused by, or were incident to, the severe trafficking; or (2) warrants the positive exercise of discretion pursuant to section 212(d)(3) of the INA.²

2. REQUEST FOR INFORMATION

Pursuant to FOIA, I request the following information:

- a) Any statistical analysis of applications for T-1 nonimmigrant status completed from January 1, 2017 through July 1, 2020, including statistical analyses of rejections, Requests for Evidence (“RFEs”), or Notices of Intent to Deny (“NOIDs”) involving applications for T-1 nonimmigrant status or statistical analyses of the time between submission and the issuance of a decision on an application for T-1 nonimmigrant status.
- b) The number of T-1 nonimmigrant application rejections during 2017, 2018, 2019, and in 2020 (through July 1, 2020). If the number of rejections by individual year is unavailable, then the total number of T-1 nonimmigrant application rejections between January 1, 2017 and July 1, 2020.
- c) The number of RFEs issued to T-1 nonimmigrant status applicants during 2017, 2018, 2019, and in 2020 (through July 1, 2020). If the number of RFEs by individual year is unavailable, then the total number of RFEs issued between January 1, 2017 and July 1, 2020.
- d) The number of NOIDs issued to T-1 nonimmigrant status applicants during 2017, 2018, 2019, and in 2020 (through July 1, 2020). If the number of NOIDs by individual year is unavailable, then the total number of NOIDs issued between January 1, 2017 and July 1, 2020.
- e) The number of Notices to Appear (“NTA”) issued to applicants whose T-1 nonimmigrant application was denied during 2017, 2018, 2019, and in 2020 (through July 1, 2020). If the number of NTAs by individual year is unavailable, then the total number of NTAs issued between January 1, 2017 and July 1, 2020.
- f) The number of Notices of Intent to Revoke (“NOIR”) issued to T-1 visa recipients during 2017, 2018, 2019, and in 2020 (through July 1, 2020). If the number of NOIRs by individual year is unavailable, then the total number of NOIRs issued between January 1, 2017 and July 1, 2020.

² 8 U.S.C. §§ 1182(d)(13)(B)(i)-(ii); see also 8 U.S.C. § 1182(d)(i).

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- g) Any and all policies, including orders, notices, directives, memoranda, checklists, templates, training materials, or other guidelines, issued between January 1, 2017 and July 1, 2020, that interpret or provide guidance concerning any requirements for T-1 nonimmigrant status, including the following requirements:
- 1) “is a victim of a severe form of trafficking in persons”;
 - 2) “is physically present in the United States on account of such trafficking”;
 - 3) “has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime (unless under 18 when trafficking occurred or trauma exception applies)”;
 - 4) “would suffer extreme hardship involving unusual and severe harm upon removal.”³
- h) Any and all policies, including orders, notices, directives, memoranda, checklists, templates, training materials, or other paperwork, issued between January 1, 2017 and July 1, 2020 concerning the consideration of T-1 nonimmigrant applicants who would be “inadmissible” under section 212(a) of the INA.
- i) Any and all policies, including orders, notices, directives, memoranda, checklists, templates, training materials, or other guidelines, issued between January 1, 2017 and July 1, 2020, concerning the adjudication of waivers for T-1 nonimmigrant applicants who would be “inadmissible” under section 212(a), including interpreting the following factors:
- 1) were caused by, or were incident to, the severe trafficking;
 - 2) warrants the positive exercise of discretion pursuant to section 212(d)(3) of the INA.⁴
- j) Any and all policies, including orders, notices, directives, memoranda, checklists, templates, training materials, or guidelines, issued between January 1, 2017 and July 1, 2020, concerning the adjudication of T-1 nonimmigrant status fee waiver applications.
- k) Any and all orders, notices, directives, memoranda, checklists, templates, training materials, or guidelines concerning USCIS’s July 15, 2020 policy regarding the exercise of discretion in USCIS adjudications.

³ 8 U.S.C. § 1101(a)(15)(T)(i)(I). A “severe form of trafficking” is defined in 22 U.S.C. § 7102 and Section 103 of the TVPA. These terms are further defined at 8 C.F.R. § 214.11(a).

⁴ 8 U.S.C. § 1182(d)(13)(B)(ii); 8 U.S.C. § 1182(d)(13)(B)(i); *see also* 8 U.S.C. § 1182(d)(i).

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2. THE REQUESTOR

I, Professor Julie Dahlstrom, teach and manage the Immigrants' Rights and Human Trafficking Program at Boston University School of Law, a 501(c)(3) educational institution. Therefore, I am an educational requestor under the provisions of the Freedom of Information Act, and request to be so classified. Boston University School of Law's clinical program advocates on behalf vulnerable immigrants in a broad range of complex legal proceedings before the immigration courts, immigration agencies, and state, local and federal courts.⁵ Boston University School of Law also collaborates with local, state, and national immigrants' rights and anti-trafficking organizations to advance protections for vulnerable immigrants and survivors of human trafficking. Under the direction of law school professors who practice and teach in the fields of immigration and human trafficking law, the clinical program provides substantive legal and lawyering skills training to law students. Boston University School of Law also provides training and technical assistance to lawyers, law enforcement, judges, advocates, and private attorneys assisting survivors of violent crime. I plan to use this information for future scholarly research, including but not limited to academic articles in law reviews and humanities publications, reports, books, and other public materials, made available through academic websites, and other publicly available mediums.

3. FEE WAIVER REQUEST

I hereby request a fee waiver because the information sought is "likely to contribute significantly to the public understanding of the operation or activities of the government and is not primarily in the commercial interests of the [Requestor]." *See* 5 U.S.C. § 552 (a)(4)(A)(ii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced charge when disclosure is in the public interest and is not primarily in the commercial interest of requestors). This Request meets all of the six factors that the Government has set forth to determine if fees should be waived or reduced. These factors are addressed below in two sub-categories—i.e., first, the public interest information, and second, the lack of commercial interest of the requestor.⁶

a. Disclosure of the Information is in the Public Interest

As set forth below, disclosure of the information is in the public interest because it will contribute significantly to the public understanding of how USCIS reviews, processes, and adjudicates humanitarian applications as a discretionary matter. More specifically:

⁵ <https://www.bu.edu/law/current-students/jd-student-resources/experiential-learning/clinics/immigrants-rights-human-trafficking-clinic/>

⁶ *See* Department of Justice Guide to the Freedom of Information Act § 3-17.100B ("DOJ FOIA Guide"), available at <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fee-waivers.pdf>; *see also* *Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial Requestors.'").

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- The requested documents “specifically concern identifiable ‘operations or activities of the government,’” namely USCIS’s adjudication of applications for T-1 non-immigrant status;⁷
- Disclosure of documents is “meaningfully informative in relation to the subject matter of the request.”⁸ The requested T-1 nonimmigrant application information is not already available to the public, and thus adds to the substantive understanding of the area of concern; and
- This Request furthers Boston University School of Law’s work to increase the public’s understanding of immigration law and policy, specifically as relevant to non-citizen victims of trafficking. Access to this information ensures fairness and transparency in the adjudication of humanitarian applications such as T-1 nonimmigrant status under 8 C.F.R. § 214.11; 8 U.S.C. § 1101(a)(15)(T) before USCIS. Moreover, such information is in the public interest as it affects a large population of individuals: tens of thousands of noncitizens with pending, approved, denied, or to be filed humanitarian applications, noncitizen and citizen victims of trafficking, immigration attorneys, and immigration advocates. *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”).
- In addition, this Request will contribute significantly to public understanding of government operations or activities. Boston University School of Law has the capacity to disseminate widely the requested information to the public. Boston University School of Law will review and analyze the information obtained through this Request, and publish practice advisories or related written materials to be shared with the public and organizational members. In addition, Boston University of School of Law regularly conducts national trainings and disseminates information to the public on the legal rights and remedies available to immigrant survivors of violence, especially those who have suffered domestic and intimate partner violence.

b. Disclosure of the Information is Not in the Commercial Interest of the Requestor

FOIA’s fee waiver requirements is to “be liberally construed in favor of waivers for noncommercial requesters.” *See Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received). A waiver of fees associated with this Request is warranted here because Boston University School of Law is a 501(c)(3) educational institution, which intends to publish responsive information to the public via its webpage and enhance the free legal services it provides to T-1 nonimmigrant applicants and other survivors of sexual and intimate violence. Boston University School of Law will also educate the public concerning the information it receives in response to this request

⁷ *See* DOJ FOIA Guide.

⁸ *Id.*

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through public appearances and trainings for attorneys, non-citizens, and interested members of the public generally. Accordingly, a fee waiver is appropriate here.

4. EXEMPTIONS

If USCIS concludes that statutory exemptions apply to any of the information requested, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided. *See* 5 U.S.C. § 552(b).

5. FORMAT OF PRODUCTION

I request that the documents be produced in a workable format, such as searchable portable document format (“PDF”), Microsoft Excel, Microsoft Word, and Microsoft Outlook.

Please email responsive documents to Julie Dahlstrom at jadahl@bu.edu or send via U.S. mail at the following address:

ATTN: Julie Dahlstrom
Boston University School of Law
765 Commonwealth Avenue
Boston, MA 02215
Tel.: (617) 353 - 2807

I certify that the information contained in this request is true and correct to the best of my knowledge. *See* 6 C.F.R. § 5.5(d)(3).

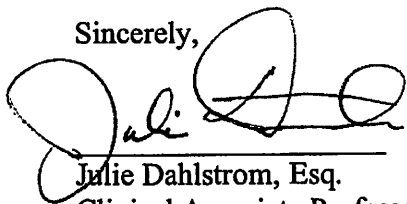
As set forth in 5 U.S.C. § 552(a)(6)(A)(i), and noted above, I expect to receive a reply within the statutorily mandated deadline of 20 working days of receipt of this letter. I am aware that I have the right to an administrative appeal if I do not receive an administrative determination from your agency within 20 working days. I would very much appreciate your prompt action and response to this request.

Thank you in advance for your attention to this request. If you have any questions regarding this request, please feel free to email or call me at the contact information below.

[Signature on Next Page]

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Sincerely,

A handwritten signature in black ink, appearing to read "Julie Dahlstrom", written over a horizontal line.

Julie Dahlstrom, Esq.
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