

EXHIBIT B



Request Number: 2023-ICFO-05899

Details of Request

(Read only details of request)

CANCEL

Request Description: See attached letter (also pasted below) December 7, 2022 Freedom of Information Act Request U.S. Immigration and Customs Enforcement Freedom of Information Act Office 500 12th Street, S.W., Stop 5009 Washington, D.C. 20536-5009 VIA SecureRelease Portal RE: Freedom of Information Act ("FOIA") Request Dear Immigration and Customs Enforcement FOIA Officer, I, Lindsay Nash, am an associate professor of law at the Benjamin N. Cardozo School of Law, and I submit this letter as a request for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, et seq. I ask that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E), and that I be granted a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A) (iii). Records Requested For purposes of academic research and public education, I request all records reflecting agency guidance and requirements regarding administrative subpoenas issued by Immigration and Customs Enforcement ("ICE"). Specifically, I request that you provide all agency guidance, standards, or requirements (collectively "guidance") regarding the issuance of administrative subpoenas by ICE officers and recording related to the administrative subpoenas that ICE officers issue. "Administrative subpoena" refers to subpoenas issued via Form I-138 as well as any similar or predecessor subpoenas that are issued by ICE officers. For the sake of clarity as your office

Fee Waiver Requested? : Pending Decision

Reason for Fee Waiver: Request of Waiver of Fees I ask that all fees associated with this FOIA request be waived. I am 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)



fulfills this request, please note: 1. This request covers all guidance issued from 2003 to the present. 2. The guidance that this request seeks includes the standards, procedures, and requirements for issuing civil and criminal subpoenas and any limitations on the issuance of these subpoenas. This should include any limitations on the issuance of subpoenas to obtain information from sensitive locations including (but not limited to) schools, churches, foster care agencies, etc. 3. This guidance should also include any requirements and standards that officers must follow in recording the issuance of these subpoenas and any responses to these subpoenas. 4. This request covers any form in which this guidance is issued, which may include, but is not limited to, training materials, policy statements, internal memoranda, internal directives, emails, and manuals. Please provide all information in searchable pdf files. If any abbreviations or acronyms are used, please provide a record that defines the abbreviations and acronyms. Please construe this as an ongoing FOIA request, so that any records that come within the possession of the agency prior to your final response to this FOIA Request should also be considered within the Request's scope. If you believe that ICE does not have or cannot provide any portion of the requested records, please provide the remainder of the requested records. This request is specific and narrowly tailored. However, if you believe that this information will be burdensome to produce as requested, please contact me using the contact information below as I may be willing to modify aspects of this request. Expedited Processing Expedited processing is warranted because there is "an urgency to inform the public about an actual or

(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 institution). In the alternative, if a full fee waiver is not granted, I seek all applicable reductions in fees pursuant to 6 C.F.R. § 5.11(d). Further, fees are limited to only reasonable duplication costs when the request is not for commercial purposes and "the request is made by an educational or noncommercial scientific institution." 5 U.S.C. § 522(a)(4)(A)(ii)(II). As a professor at an educational institution, I request that if the fee waiver is not granted, fees be limited to duplication costs only. I further ask that, if no fee waiver is granted and the fees exceed \$200.00, the agency please contact me to obtain consent to incur additional fees.



alleged federal government activity,” and the request is made by an individual employed by an entity that is “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II). This request demonstrates that both criteria are satisfied. 6 C.F.R. § 5.5(d)(3). There is an urgent need to obtain the information sought in the instant request which, at this point, is not publicly available. As one example, in recent years, ICE has—explicitly and pointedly—used administrative subpoenas as a tool to retaliate against localities that have adopted policies designed to foster trust in their communities by ensuring that residents’ information is maintained as confidential. Specifically, ICE has attempted to use these subpoenas to force certain localities that resisted its attempts to draw them into immigration enforcement to provide confidential information notwithstanding local laws that prevented it, and these cities have understandably raised serious—and as yet unanswered—questions about the legal and policy basis for these subpoenas. While it is clear that ICE uses this tool and has used issued subpoenas to localities even before early 2020, there is no public information about when and to what extent ICE uses this tool to compel state and local governments to provide information and records in their possession, and as a result, the public is denied a meaningful opportunity to participate in policymaking at the federal, state, and local level. Moreover, although ICE recently issued guidance regarding the issuance of subpoenas to members of the press, it has not shared guidance regarding its issuance or use of subpoenas in other contexts. The widespread public interest in ICE-issued administrative subpoenas is evident in media reports and internet postings.

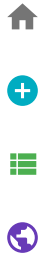
Expedited Processing?: Pending Decision

Reason 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 an individual employed by an entity that is “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II). This request demonstrates that both criteria are satisfied. 6 C.F.R. § 5.5(d)(3). There is an urgent need to obtain the information sought in the instant request which, at this point, is not publicly available. As one example, in recent years, ICE has—explicitly and pointedly—used administrative subpoenas as a tool to retaliate against localities that have adopted



Indeed, the public interest—and the stakes—were made clear in the wake of ICE’s issuance of an administrative subpoena to attempt to compel journalists to reveal their sources in late 2020. However, despite the intense interest, additional information in this respect is critical for a meaningful public debate, particularly given the public’s inability to otherwise know what whether their confidential information is being sought through these subpoenas and the evident confusion within localities and other entities to whom the government sends such subpoenas. Without access to the requested records, the public and policymakers will lack information necessary to participate in the debate about these governmental activities. Because I have published numerous articles, public facing-reports, and other public education materials, I am considered to be “primarily engaged in disseminating information,” and this request warrants expedited processing. 5 U.S.C. § 552(a)(6)(E)(v)(II); see also 6 C.F.R. § 5.5(d)(3). The Department of Homeland Security’s (“DHS”) regulations specifically provide that “information dissemination . . . need not be [a requestor’s] sole occupation.” 6 C.F.R. § 5.5(d)(3). The Kathryn O Greenberg Immigration Justice Clinic (which I co-direct) is also primarily engaged in disseminating information and has published reports and other materials using records obtained via FOIA requests, meaning that, as part of the Clinic, I am well positioned to analyze the records produced and working within an institution with a demonstrated **track** record of doing so. As such, this request meets the standard for expedited processing. Request of Waiver of Fees I ask that all fees associated with this FOIA request be waived. I am entitled to a waiver

policies designed to foster trust in their communities by ensuring that residents’ information is maintained as confidential. Specifically, ICE has attempted to use these subpoenas to force certain localities that resisted its attempts to draw them into immigration enforcement to provide confidential information notwithstanding local laws that prevented it, and these cities have understandably raised serious—and as yet unanswered—questions about the legal and policy basis for these subpoenas. While it is clear that ICE uses this tool and has used issued subpoenas to localities even before early 2020, there is no public information about when and to what extent ICE uses this tool to compel state and local governments to provide information and records in their possession, and as a result, the public is denied a meaningful opportunity to participate in policymaking at the federal, state, and local level. Moreover, although ICE recently issued guidance regarding the issuance of subpoenas to members of the press, it has not shared guidance regarding its issuance or use of subpoenas in other contexts. The widespread public interest in ICE-issued administrative subpoenas is evident in media reports and internet postings. Indeed, the public interest—and the stakes—were made clear in the wake of ICE’s issuance of an administrative subpoena to attempt to compel journalists to reveal their sources in late 2020. However, despite the intense interest, additional information in this respect is critical for a meaningful public debate, particularly given the public’s inability to otherwise know what whether their confidential information is being sought through these subpoenas and the evident confusion within localities and other entities to whom the government



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 institution). In the alternative, if a full fee waiver is not granted, I seek all applicable reductions in fees pursuant to 6 C.F.R. § 5.11(d). Further, fees are limited to only reasonable duplication costs when the request is not for commercial purposes and “the request is made by an educational or noncommercial scientific institution.” 5 U.S.C. § 522(a)(4)(A)(ii)(II). As a professor at an educational institution, I request that if the fee waiver is not granted, fees be limited to duplication costs only. I further ask that, if no fee waiver is granted and the fees exceed \$200.00, the agency please contact me to obtain consent to incur additional fees. Certification I certify that the foregoing is true and correct. See 6 C.F.R. § 5.5(d)(3). If you have any questions regarding this request, please contact me, Lindsay Nash, at my daytime phone number (646) 592-6538, or via email at lindsay.nash@yu.edu. Thank you in advance for your timely cooperation. Please furnish copies of all information to Lindsay Nash Benjamin N. Cardozo School of Law Kathryn O. Greenberg Immigration Justice Clinic 55 Fifth Avenue, 11th Floor New York, New York 10003 Sincerely, Lindsay Nash Benjamin N. Cardozo School of Law 55 Fifth Avenue, Rm. 1108 New York, New York 10003 Tel: (646) 592-6538 Fax: (212) 790-0256 lindsay.nash@yu.edu

sends such subpoenas. Without access to the requested records, the public and policymakers will lack information necessary to participate in the debate about these governmental activities. Because I have published numerous articles, public facing-reports, and other public education materials, I am considered to be “primarily engaged in disseminating information,” and this request warrants expedited processing. 5 U.S.C. § 552(a)(6)(E)(v)(II); see also 6 C.F.R. § 5.5(d)(3). The Department of Homeland Security’s (“DHS”) regulations specifically provide that “information dissemination . . . need not be [a requestor’s] sole occupation.” 6 C.F.R. § 5.5(d)(3). The Kathryn O Greenberg Immigration Justice Clinic (which I co-direct) is also primarily engaged in disseminating information and has published reports and other materials using records obtained via FOIA requests, meaning that, as part of the Clinic, I am well positioned to analyze the records produced and working within an institution with a demonstrated **track** record of doing so. As such, this request meets the standard for expedited processing. I certify that the foregoing is true and correct.

Agency: Department of Homeland Security

Component: U.S. Immigration & Customs Enforcement

Processing Track: Simple

Request Type: FOIA Request

Submitted Date: 12/07/2022

Request Status: Searching for Records

Identity: Not Requested by Agency

Verification Status:



Files uploaded by user

Search



File Name

Attachment Type

No attachments to display

5 rows |< < 0-0 of 0 > >|

[SUPPORT](#)

[LICENSES](#)

[PRIVACY NOTICE](#)

[COOKIE NOTICE](#)

[COOKIESETTINGS](#)

[GOVERNMENT SYSTEM NOTICE](#)

© 2023 Powered by Deloitte