

Exhibit B



www.caircoalition.org

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VIA EMAIL: ICE-FOIA@dhs.gov

May 4, 2022

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

Re: Freedom of Information Act Request for ICE Policies and Practices Regarding the Custody of Non-Citizens Granted Withholding of Removal or Protection Under the Convention Against Torture

Dear ICE FOIA Office:

This is a request made under the Freedom of Information Act by Capital Area Immigrants' Rights Coalition ("CAIR") Coalition. CAIR Coalition seeks records from U.S. Immigration and Customs Enforcement ("ICE") regarding its policies and practices pertaining to the custody of non-citizens granted withholding of removal or protection under the Convention Against Torture in immigration court.

CAIR Coalition seeks the expedited processing of this request and a fee waiver. *See* 5 U.S.C. §§ 552(a)(6)(E) and 552(a)(4)(A)(iii).

I. Records Requested

CAIR Coalition requests that your office provide a copy of the following documents:

- 1) A memorandum, directive, email, or other communication issued by Acting ICE Director Tae Johnson on or about June 7, 2021 and titled "REMINDER: Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal, or Convention Against Torture Protection, and DHS has Appealed"
- 2) Any memorandum, directive, email, or other communication issued by an ICE official between January 1, 2004 and the date of this FOIA request that cites to or otherwise references any of the following documents:
 - a. "Detention Policy Where an Immigration Judge has Granted Asylum and ICE has Appealed," issued by Assistant Secretary Michael J. Garcia on February 4, 2004
 - b. "Reminder on Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal or CAT," issued by Andrew R. Strait on March 6, 2012
 - c. "REMINDER: Detention Policy Where an Immigration Judge has Granted Asylum, Withholding of Removal, or Convention Against Torture Protection, and DHS has Appealed," issued by Acting ICE Director Tae Johnson on or about June 7, 2021
- 3) Any memorandum, directive, email, or other communication issued between January 1, 2004 and the date of this FOIA request by an ICE official working within ICE's



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Washington Field Office or Baltimore Field Office or otherwise within ICE's Virginia or Maryland Areas of Responsibility that articulates a policy or provides guidance to other ICE officials regarding the custody or release of non-citizens who have been granted withholding of removal or protection under the Convention Against Torture in immigration court.

- 4) Any memorandum, directive, email, or other communication issued between January 1, 2004 and the date of this FOIA request by an ICE official working within ICE's Washington Field Office or Baltimore Field Office or otherwise within ICE's Virginia or Maryland Areas of Responsibility that articulates a policy or provides guidance to other ICE officials regarding the custody or release of non-citizens detained during the 90-day removal period under 8 U.S.C. § 1231(a)(2) (INA § 241(a)(2)).

To the extent possible, please disclose all records in connection with this FOIA request in electronic form. Please send these records by email or on media such as a CD or DVD.

If the request is denied in whole or in part, CAIR Coalition asks that ICE provide substantial justification for all redactions by reference to specific FOIA exemptions and an index including a description of all withheld documents. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert denied*. 415 U.S. 977 (1979). CAIR Coalition expects ICE to release all segregable portions of otherwise exempt material, as required by 5 U.S.C. § 552(b).

II. Requestor Information

CAIR Coalition is a 501(c)(3) nonprofit organization that provides legal services to non-citizens in ICE custody, including services administered through the Executive Office of Immigration Review's Office of Legal Access Programs. Originally started as a project of the Washington Lawyer's Committee for Civil Rights and Urban Affairs, CAIR Coalition became an independent non-profit organization in 1999. CAIR Coalition consists of the Detained Adults Program, the Detained Children's Program, and the Immigration Impact Lab.

CAIR Coalition's mission is to ensure equal justice for all immigrant adults and children at risk of detention and deportation in the D.C. region and beyond through direct legal representation, know your rights presentations, impact litigation, advocacy, and the enlistment and training of attorneys to defend immigrants. We are driven in our pursuit of a vision for equal justice for all immigrants at risk of detention and deportation by our understanding of the grave human costs of the American detention and deportation system.

III. Request for a Waiver of Fees

CAIR Coalition requests that ICE waive all fees associated with this request. Such a request is warranted on the grounds that disclosure of the information contained in the requested record is in the public interest and 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



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requestor.” 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(1). Disclosure of this information is in the public interest of understanding if and in what circumstances ICE will continue to detain non-citizens after they are granted relief from removal. As previously indicated, CAIR Coalition is a nonprofit organization recognized as a 501(c)(3) entity by the Internal Revenue Service that provides legal services and information to immigrant populations and information to the public on immigration issues.

Disclosure of the requested information also will contribute to “understanding of a reasonably broad audience of persons.” 28 C.F.R. § 16.10(k)(2)(ii)(B). The requested information will be used to better equip pro bono practitioners—both at CAIR Coalition and at other pro bono organizations assisting detained non-citizens in similar circumstances. As a provider of legal services to detained non-citizens, CAIR Coalition has the necessary expertise, capacity, and intention to review, analyze, and synthesize this information and make it accessible to a broad audience of attorneys and clients in immigration proceedings.

CAIR Coalition also has the capacity to effectively convey the information to a broad audience as CAIR Coalition's website, which is available to the public, receives more than 10,000 monthly visitors, and information available on the website is shared and re-posted on other websites with large audiences. CAIR Coalition also will circulate a summary of information disclosed through this request in its list serv, in which approximately 2,500 attorneys participate. Additionally, CAIR Coalition shares information in its newsletter, which is directly distributed to 6,000 recipients. Further information on CAIR Coalition’s organization and the services CAIR Coalition provides is available on our website at www.caircoalition.org. CAIR Coalition has no commercial interest in the information to be obtained under this FOIA request and may make the information publicly available at no cost through our website.

Given that FOIA's fee waiver requirements are to be “liberally construed in favor of waivers for noncommercial requesters,” a waiver of all fees is justified and warranted in this instance. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (quotation omitted).

If ICE will not grant a fee waiver to CAIR Coalition, please notify us in advance if the fees will exceed \$50.00.

IV. Request for a Limitation of Search and Review Fees

CAIR Coalition also requests a limitation of search and review fees as “representatives of the media” pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media”) and 28 C.F.R. § 16.10(c)(1)(i) (search fees shall not be charged to “representatives of the news media”).

CAIR Coalition is “a representative of the news media” within the meaning of the statute and applicable regulations. *See* 5 U.S.C. § 552(a)(4)(A)(ii) (defined as “any . . . entity that gathers



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information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience,”); *Nat. Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1397 (D.C. Cir. 1989) (same); *Electronic Privacy Info. Ctr. v. Dep’t of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) (non-profit that published information in a wide variety of sources on topics of privacy and civil liberties qualified as representative of news media for FOIA purposes).

The statutory definition does not require that the requestor be a member of the traditional media. “[A]s methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Cause of Action v. F.T.C.*, 799 F.3d 1108, 1125 (D.C. Cir. Aug. 25, 2015) (disagreeing “with the suggestion that a public interest advocacy organization cannot satisfy the statute’s . . . criterion” and remanding for reconsideration). Accordingly, courts have found that non-traditional news media outlets (such as, for example, the ACLU—a nationwide nonprofit civil rights organization) can qualify as representatives of the news media for the purposes of FOIA. *See ACLU of Washington v. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at *10 (D. Wash. Mar. 10, 2011) (finding that the ACLU qualifies as a “representative of the news media”) *recons. on other grounds*, *ACLU v. Dep’t of Justice*, 2011 WL 1900140 (D. Wash. May 19, 2011).

V. Request for Expedited Processing

CAIR Coalition requests Track 1 expedited treatment for this FOIA request. There is a compelling need for expedited processing, namely, an “urgency to inform the public concerning the actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). CAIR Coalition is aware of several individuals who have been or are currently detained by ICE after being granted withholding of removal or protection under the Convention Against Torture, and these individuals need information about ICE’s policies and practices in order to understand the basis for their detention and advocate for their release. This need is especially significant during the COVID-19 pandemic, which puts detained individuals at particular risk.

VI. Address for Production or Response

Please respond and furnish any information and documents as soon as they are identified, to:

Austin Rose
Equal Justice Works Fellow
CAIR Coalition
1025 Connecticut Ave NW, Suite 701
Washington, DC 20036
202-788-2509
Austin.rose@caircoalition.org



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CAIR Coalition reserves the right to appeal a decision to: withhold any requested information, to deny expedited processing, or to deny the requested waiver of fees. CAIR Coalition looks forward to your response to our request for expedited processing within ten business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Notwithstanding our request for expedited processing, we alternatively look forward to your response to this request within twenty business days, as required under 5 U.S.C. § 552(a)(6)(A)(i).

Thank you in advance for your time and attention in replying to this FOIA request.

Sincerely,

Austin Rose
Equal Justice Works Fellow
CAIR Coalition
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