

Marc Van Der Hout, Cal. Bar No. 80778
Johnny Sinodis, Cal. Bar No. 290402
Christine Raymond*
Van Der Hout LLP
360 Post Street, Suite 800
San Francisco, CA 94108
(415) 981-3000
ndca@vblaw.com

Amber Qureshi*
Matthew Vogel*†
National Immigration Project
1200 18th Street NW, Suite 700
Washington, DC 20036
(202) 470-2082
amber@nipnlg.org
matt@nipnlg.org

Diala Shamas*
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
(212) 614-6464
dshamas@ccrjustice.org

Golnaz Fakhimi*
Muslim Advocates
1032 15th Street N.W. #362
Washington, D.C. 20005
(202) 655-2969
golnaz@muslimadvocates.org

Attorneys for Plaintiff Van Der Hout LLP (continued on next page)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

VAN DER HOUT LLP,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY; U.S. DEPARTMENT OF
STATE,

Defendants.

No. 3:24-cv-1095

DECLARATION OF JOHNNY SINODIS

1 *[Caption Page Continued – Additional Attorneys for Plaintiff Van Der Hout LLP]*

2 Christopher Godshall-Bennett*
3 American-Arab Anti-Discrimination Committee
4 1705 DeSales Street, NW, Suite 500
5 Washington, D.C. 20036
6 (202) 244-2990
7 cgb@adc.org

8 * *Pro Hac Vice* application forthcoming
9 † not admitted in D.C.; working remotely from and admitted in Louisiana only

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 I, Johnny Sinodis, do hereby declare:

2 1. I am a partner at Van Der Hout LLP, which is located at 360 Post St., Suite 800,
3 San Francisco, California 94108. I have personal knowledge of each matter stated herein.

4 2. On October 27, 2023, Van Der Hout LLP submitted a request under the Freedom
5 of Information Act (“FOIA”) to the U.S. Department of Homeland Security (“DHS”) and the U.S.
6 Department of State (“DOS”). This request sought a copy of the Memorandum of Understanding
7 (“MOU”) that the United States signed with Israel specifying the conditions under which Israel
8 would be allowed to enter the Visa Waiver Program. A copy of this FOIA request is attached as
9 Exhibit A. As part of this request, Van Der Hout LLP also requested a fee waiver.

10 3. On November 17, 2023, DHS acknowledged receipt of the FOIA request via
11 email. A copy of this acknowledgement is attached as Exhibit B. In the acknowledgement, DHS
12 conditionally granted the fee waiver, and “invoke[d] a 10-day extension for [the] request pursuant
13 [to] 6 C.F.R. Part 5 § 5.5(c),” stating that the request sought “a voluminous amount of separate
14 and distinct records.” Since then, more than three months have passed without any additional
15 correspondence from DHS.

16 4. DOS, for its part, has yet to acknowledge the FOIA request, and it has likewise
17 failed to produce any records in response to the request.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed on this 23rd day of February 2024 in San Francisco, California.

20
21 /s/ Johnny Sinodis
22 Johnny Sinodis
23 Declarant
24
25
26
27
28

Exhibit A



360 Post Street, Suite 800
San Francisco, CA 94108

Phone: 415-981-3000
Fax: 415-981-3003
www.vblaw.com

VIA EMAIL
October 27, 2023

U. S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
2201 C Street N.W., Suite B266
Washington, D.C. 20520-0000
foiarequest@state.gov

U.S. Department of Homeland Security
Privacy Office, Mail Stop 0655
2707 Martin Luther King Jr. AVE SE
Washington, DC 20528-065
foia@hq.dhs.gov

RE: Freedom of Information Act Request

Dear FOIA Officer,

Van Der Hout LLP submits the following request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et. seq.* In accordance with 5 U.S.C. § 552(a)(6)(A)(i), we expect that you will respond to this request within twenty working days, unless otherwise permitted by statute.

This request seeks information relating to all the Memoranda of Understanding (MOU) signed by the U.S. Department of Homeland Security (DHS) and/or the U.S. Department of State (DOS), and the government of Israel forming the basis for Israel’s designation into the Visa Waiver Program (VWP) under Immigration and Nationality Act (INA) § 217 and 8 C.F.R. § 217. On July 19, 2023, DHS, DOS, and the government of Israel signed an MOU—entitled “Memorandum of Understanding between The Government of the State of Israel And The Government of the United States of America On Extension of Reciprocal Privileges and the Visa Waiver Program.” *See* Letter from Chris Van Hollen to Secretary Antony Blinken (Sept. 8, 2023).¹ Thereafter, on September 26, 2023, DHS and DOS released statements designating Israel into the VWP, which referenced “updates” made by Israel “to its entry policies to meet the VWP requirement to extend reciprocal privileges to all U.S. citizens without regard to national origin, religion, or ethnicity.”

¹ Available at https://www.vanhollen.senate.gov/imo/media/doc/van_hollen_vwp_letter_to_blinken_090823.pdf (accessed Oct. 21, 2023).

See DHS, Secretary Mayorkas and Secretary Blinken Announce Designation of Israel into the Visa Waiver Program.² Most recently, on October 19, 2023, DHS announced “the start of visa-free travel for short term visits to the United States for eligible Israeli citizens and nationals following Israel’s admission into the [VWP].” See DHS, DHS Announces Start of Applications for Visa-Free Travel to U.S. for Eligible Israeli Travel to U.S. For Eligible Israeli Citizens and Nationals.³ In light of these public releases and Israel’s designation into the VWP, we believe that there exist *at least two* MOUs or *at least two versions* of one MOU regarding Israel’s designation into the VWP.

Given the public’s interest in understanding the terms of the MOU(s) signed DHS, DOS, and the government of Israel, as well as Israel’s designation into the VWP, the requested information must be promptly disclosed and produced.

1. REQUEST FOR INFORMATION

Van Der Hout LLP requests the following records, documents, and/or information which were prepared, received, transmitted, collected, and/or maintained by DHS and/or DOS⁴:

- a) The MOU signed by DHS, DOS, and the government of Israel on July 19, 2023, entitled “Memorandum of Understanding between The Government of the State of Israel And The Government of the United States of America On Extension of Reciprocal Privileges and the Visa Waiver Program”;
- b) The MOU signed by DHS, DOS, and the government of Israel which was in existence on September 26, 2023—the date Israel was formally designated into the VWP; and
- c) Any records⁵, documents, or information reflecting changes to the MOU between September 26, 2023, through the date of fulfillment of this FOIA request. 22 C.F.R. § 171.11(j); 6 C.F.R. § 5.4(a).

2. THE REQUESTORS

Van Der Hout LLP is a nationally recognized, full-service immigration law firm representing individuals, families, and business employers in the Bay Area, throughout California, and across

² Available at <https://www.dhs.gov/news/2023/09/27/secretary-mayorkas-and-secretary-blinken-announce-designation-israel-visa-waiver> (accessed Oct. 21, 2023).

³ Available at <https://www.dhs.gov/news/2023/10/19/dhs-announces-start-applications-visa-free-travel-us-eligible-israeli-citizens-and#:~:text=On%20September%2026%2C%202023%2C%20DHS,the%20United%20States%20through%20ESTA> (accessed Oct. 21, 2023).

⁴ Including components, divisions, subdivisions, or sections of the DHS and the DOS.

⁵ The term “records” as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, directives, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, training 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 reproductions, such as copies containing marginal notations.

the country and globe in a broad range of immigration and visa concerns. Since its foundation in 1980, the firm has represented thousands of individuals, litigated cases of national significance, including many pro-bono cases, and helped clients and entities to understand U.S. Immigration law provisions and policies.

3. FEE WAIVER REQUEST

Van Der Hout LLP requests a fee waiver because the information it seeks 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 [requestors]...” 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).

a. Disclosure of the Information is in the Public Interest

Disclosure of the information sought herein is in the public interest because it will contribute significantly to the public understanding of how, and on what mutually agreed upon terms, Israel was designated into the VWP by DHS and DOS. This request furthers Van Der Hout LLP’s work to increase the public understanding of immigration law and policy. Access to this information ensures fairness and transparency regarding Israel’s participation in the VWP. Moreover, such information is in the public interest as it affects a large population of individuals: thousands of U.S. citizens who are seeking or will seek to enter Israel in the future. *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”).

Furthermore, as detailed in the subsection above, Van Der Hout LLP has the capacity to disseminate widely the requested information to the public. Van Der Hout LLP will review and analyze the information obtained through this Request and may release written materials to be shared with the public and further intends to disseminate such records to organizational members. Also, Van Der Hout LLP has frequent contact with national print and news media and plans to share information gleaned from FOIA disclosures with interested media.

b. Disclosure of the Information is Not in the Commercial Interest of Van Der Hout LLP

Van Der Hout LLP is a for-profit law firm that handles a significant amount of work on a pro bono basis. Additionally, attorneys, noncitizens, and other interested members of the public may obtain information about immigration-related issues through its distribution of records, including its website, and through public and educational appearances. Van Der Hout LLP seeks the requested information for the purpose of disseminating it to organizational members, and not for the purposes of commercial gain. 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 case. *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).

4. EXEMPTIONS

If DHS and DOS conclude 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.

5. FORMAT OF PRODUCTION

Van Der Hout LLP seeks the documents in a workable format, such as searchable portable document format (PDF) and Microsoft Excel. Please also provide a glossary or other descriptive factors containing definitions of acronyms, numerical codes or terms contained documents responsive to this request, if those terms are not publicly defined.

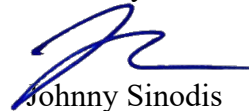
Please email responsive documents to Johnny Sinodis at jsin@vblaw.com or send them via U.S. mail to the following address:

Johnny Sinodis
Van Der Hout LLP
360 Post Street, Suite 800
San Francisco, CA 94108

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).

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.

Sincerely,



Johnny Sinodis

Exhibit B



Homeland
Security

November 17, 2023

SENT VIA E-MAIL TO: jsin@vblaw.com

Johnny Sinodis
Van Der Hout LLP
180 Sutter Street
San Francisco, California 94104

Re: 2024-HQFO-00200

Dear Requester:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated 10/27/2023, and to your request for [expedited handling and] a waiver of all assessable FOIA fees. Our office received your request on 10/27/2023. Specifically, you requested the following records, documents, and/or information which were prepared, received, transmitted, collected, and/or maintained by DHS and/or DOS:

- 1). The MOU signed by DHS, DOS, and the government of Israel on July 19, 2023, entitled “Memorandum of Understanding between The Government of the State of Israel and the Government of the United States of America on Extension of Reciprocal Privileges and the Visa Waiver Program”.
- 2). The MOU signed by DHS, DOS, and the government of Israel which was in existence on September 26, 2023—the date Israel was formally designated into the VWP; and
- 3). Any records, documents, or information reflecting changes to the MOU between September 26, 2023, through the date of fulfillment of this FOIA request. 22 C.F.R. § 171.11(j); 6 C.F.R. § 5.4(a).

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. Part 5 § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS’ goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances under 6 C.F.R. Part 5 § 5.5(c). As your request seeks a voluminous amount of separate and distinct records, DHS will invoke a 10-day extension for your request pursuant 6 C.F.R. Part 5 § 5.5(c). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

You have requested a fee waiver. The DHS FOIA regulations at 6 C.F.R. Part 5 § 5.11(k) set forth six factors DHS must evaluate to determine whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns “the operations

or activities of the government,” (2) Whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons, (4) Whether the contribution to public understanding of government operations or activities will be “significant,” (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure, and (6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

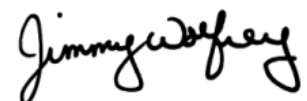
Upon review of the subject matter of your request, and an evaluation of the six factors identified above, DHS has determined that it will conditionally grant your request for a fee waiver. The fee waiver determination will be based upon a sampling of the responsive documents received from the various DHS program offices as a result of the searches conducted in response to your FOIA request. DHS will, pursuant to DHS FOIA regulations applicable to non-commercial requesters, provide two hours of search time and process the first 100 pages at no charge to you. If upon review of these documents, DHS determines that the disclosure of the information contained in those documents does not meet the factors permitting DHS to waive the fees, then DHS will at that time either deny your request for a fee waiver entirely, or will allow for a percentage reduction in the amount of the fees corresponding to the amount of relevant material found that meets the factors allowing for a fee waiver. In either case, DHS will promptly notify you of its final decision regarding your request for a fee waiver and provide you with the responsive records as required by applicable law.

In the event that your fee waiver is denied, and you determine that you still want the records, provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester you will be charged for any search time and duplication beyond the free two hours and 100 pages mentioned in the previous paragraph. You will be charged 10 cents per page for duplication and search time at the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. In the event that your fee waiver is denied, we will construe the submission of your request as an agreement to pay up to \$25.00. This office will contact you before accruing any additional fees.

We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the analysts in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number 2024-HQFO-00200. Please refer to this identifier in any future correspondence. If you have any questions, or would like to discuss this matter, please feel free to contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

A handwritten signature in black ink, appearing to read "Jimmy Wolfrey". The signature is written in a cursive, flowing style.

Jimmy Wolfrey
Senior Director, FOIA Operations and Management