

EXHIBIT B



August 12, 2015

Office of the General Counsel
ATTN: FOIA Service Center
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1903
Falls Church, VA 22041
EOIR.FOIARequests@usdoj.gov



Re: Request under the Freedom of Information Act (FOIA) for records regarding expedited “surge” dockets for unaccompanied children and adults with children



Dear FOIA Officers:



The American Immigration Lawyers Association (AILA), Catholic Legal Immigration Network, Inc. (CLINIC), Center for Gender & Refugee Studies (CGRS), Community Legal Services in East Palo Alto (CLSEPA), and Lawyers’ Committee for Civil Rights of the San Francisco Bay Area (LCCR) (Requestors) submit this letter as a request for information under the Freedom or Information Act (FOIA), 5 U.S.C. § 552, *et seq.* We ask that we be granted a fee waiver.



We ask for records pertaining to expedited immigration court dockets for certain unaccompanied alien children (UC) and adults with children (AWC). The Executive Office for Immigration Review (EOIR) has conducted such dockets since approximately July 2014, following the announcement of their institution on or about July 9, 2014.



Immigrants’ Rights Clinic

These expedited dockets (also known as “surge” and “priority” dockets) have been a matter of significant public concern since their institution. From their start, they have raised very serious due process concerns, which persist to this day, and a risk of irreparable harm to the vulnerable families and unaccompanied children assigned to the dockets. Concerns about the operation of these dockets and their impact have been exacerbated by the dearth of reliable information made available to those with cases on the expedited dockets and to legal representatives and the larger public. The need for such information remains extremely high for

these individuals and the attorneys and other legal representatives who seek to assist them. Indeed, thousands on these dockets have been ordered removed while policies and procedures have been left unclear and basic procedural safeguards have not been in place.¹ The larger public also continues to have a substantial interest in these dockets and in transparency and accountability for their manner of operation and their impact.²

I. EOIR Has Failed to Respond to Requestor's Previous FOIA Request for Substantially the Same Information.

The instant request includes records sought by Requestors' August 4, 2014 request under the Freedom of Information Act, a copy of which is enclosed. The Requestors have had to request these records a second time—through the instant request—because a year has passed without EOIR having complied with its FOIA obligations. Despite the passage of more than a year since the submission of the August 4, 2014 request, and repeated inquiries about that request, the agency has not produced a single record to the Requestors, nor has it claimed that any exemption applies that would warrant the withholding of any requested records. Moreover, we cannot be certain if the agency has registered our request internally, as we have only recently become aware that EOIR sent a letter of acknowledgment, assigning control number 2014-22620, to an undersigned Requestor that was not the primary contact for our August 4, 2014 request, and that acknowledgment appears to relate to a separate FOIA request under discussion with the agency at the time.³

¹ See, e.g., TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE (TRAC), "Priority Immigration Court Cases: Women with Children (Court Data through June 2015), available at <http://trac.syr.edu/phptools/immigration/mwc/>; see also TRAC, "Representation Makes Fourteen-Fold Difference in Outcome: Immigration Court 'Women with Children' Cases" (July 15, 2015), available at <http://trac.syr.edu/immigration/reports/396/>; Thomas Barrabi, INT'L BUS. TIMES, "Immigration Reform 2015: Undocumented Children Allowed To Sue For Legal Representation, Judge Rules" (Apr 14, 2015), available at <http://www.ibtimes.com/immigration-reform-2015-undocumented-children-allowed-sue-legal-representation-judge-1881105>.

² See, e.g., VOA NEWS, "Unaccompanied Children Migrants Continue to Spark Immigration Law Debate" (Aug. 6, 2015), available at <http://www.voanews.com/media/video/unaccompanied-children-migrants-continue-to-spark-immigration-law-debate/2904393.html>; LEXISNEXIS NEWSROOM, "TRAC: Legal Representation Makes 14X Difference in 'Women with Children' Immigration Court Cases" (July 15, 2015), available at <http://www.lexisnexis.com/legalnewsroom/immigration/b/newsheadlines/archive/2015/07/17/trac-legal-representation-makes-14x-difference-in-39-women-with-children-39-immigration-court-cases.aspx>; AP, N.Y. TIMES, "A Year on, Children Caught on Border Struggle To Stay, Adapt" (July 4, 2015), available at http://www.nytimes.com/aponline/2015/07/04/us/ap-us-immigration-overload-children.html?_r=0; P. J. Tobia, PBS NEWSHOUR, "Last year's child migrant crisis is this year's immigration court backlog" (June 18, 2015), available at <http://www.pbs.org/newshour/updates/todays-high-school-graduates-will-college-kid-gets-immigration-hearing/>; Molly Hennessy-Fiske, L.A. TIMES, "Immigration: 445,000 awaiting a court date, which might not come for 4 years" (May 16, 2015), available at <http://www.latimes.com/nation/la-na-immigration-court-delay-20150515-story.html>; Richard Gonzales, NPR, "Immigration Courts 'Operating In Crisis Mode,' Judges Say" (Feb. 23, 2015), available at <http://www.npr.org/2015/02/23/387825094/immigration-courts-operating-in-crisis-mode-judges-say>.

³ Our August 4, 2014 request was on the letterhead of Catholic Legal Immigration Network, Inc. (CLINIC) and was submitted by CLINIC for the Requestors. EOIR then sent a letter, dated August 14, 2014, to Center for Gender & Refugee Studies (CGRS), acknowledging receipt of a FOIA request from CGRS. While EOIR appears now to maintain that this acknowledgment corresponds to the Requestors' August 4, 2014 request regarding the expedited dockets for UC and AWC, the August 14, 2014 letter gave only "juveniles" as the subject of the FOIA request it was acknowledging and did not indicate the date of the request. CGRS, as a sole requester, had previously submitted a

Given these circumstances, we expect a timely, legally compliant response to the instant request. We further ask that, in the event the agency claims it is unable to produce all responsive records within 20 days, production should begin for those records that are reasonably available and proceed on a rolling basis. Unless otherwise specified below, this request seeks and expects records from January 1, 2012, through the date of this letter or 20 days prior to the date of production, whichever is later.

II. Request for Information

The Requestors request disclosure of the following records⁴ that were prepared, received, transmitted, collected and or/maintained by EOIR⁵ that contain, discuss, refer, or relate to statutes, regulations, policies, practices, procedures, memoranda, communications, recommendations, instructions or guidelines with respect to: the processing, scheduling, operation, and adjudication of removal proceedings of unaccompanied alien children (“UC” or “unaccompanied children”) and of adults entering the United States with one or more children (“families” or “adults with children” (AWC)). We understand that these individuals are placed on expedited (also referred to as “surge” or “priority”) master calendar dockets following release from facilities operated or overseen by the Office of Refugee Resettlement (ORR), Immigration & Customs Enforcement (ICE), Customs & Border Protection (CBP), or a party contracting with one of these agencies.

The requested records include but are not limited to those reflecting, describing, discussing, or otherwise pertaining to any and all policies, regulations, standards, criteria, practices, procedures, protocols, recommendations, communications, and/or guidelines, including those that address, describe, reflect, discuss, or otherwise pertain to:

- Any criteria or standards for the placement of particular respondents on an expedited juvenile/UC or family/AWC docket, including criteria or standards pertaining to the

FOIA request for records related to juvenile immigration court cases in April 2014. CGRS understood the acknowledgment (and subsequent denial of expedited processing and grant of a fee waiver) to correspond to its April 2014 request, which it was in the midst of discussing with EOIR in August 2014. A CLINIC attorney subsequently received a telephonic inquiry from EOIR FOIA Officer Cecilia Espenosa on or about August 25, 2014, regarding the Requestors’ August 4, 2014 request, so as of August 2014, EOIR appears to have understood that CLINIC was the first point of contact for Requestors’ August 2014 request. Thereafter, however, voicemail messages left for Ms. Espenosa by CLINIC and AILA attorneys did not yield a returned telephone call.

⁴ The term “records” as used herein includes all records or communications preserved in electronic or written form, including but not limited to 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, 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 any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

⁵ “EOIR” as used herein means EOIR offices and components (including Office of the Director, Office of the General Counsel, Office of the Chief Immigration Judge, the Board of Immigration Appeals, Office or Management Programs, and Office of Planning, Analysis and Technology), and any divisions, subdivisions, or sections therein.

filing of Notices to Appear for persons placed on an expedited juvenile/UC or family/AWC docket, and any criteria, standards or procedures for the transfer or removal of UC/AWC cases from an expedited docket.

- The locations of the immigration courts nationwide participating in the expedited juvenile/UC and family/AWC dockets.
- Standards and criteria used to assign Immigration Judges to expedited juvenile/UC or family/AWC dockets, any instructions or training pertaining to the expedited dockets provided to judges and other immigration court personnel involved in the operation of such dockets, and any oversight or other efforts to ensure equitable treatment of expedited juvenile/UC and family/AWC cases across different immigration courts and judges.
- Standards, criteria, policies, procedures and protocols for the scheduling and operation of expedited juvenile/UC and family/AWC dockets and the adjudication of cases on such dockets.⁶
- Standards, criteria, policies, procedures, and protocols related to the filing of Notices to Appear and timing and manner of service of Notices of Hearing for UC and AWC, including the period of time between the mailing of any such Notices and the hearing being noticed, and any measures employed to determine whether notice is received by a minor and whether such minor has the ability to comply with such notice.
- Any studies, findings, or analysis pertaining to the decision to institute expedited dockets for UC and AWC or to any decision to continue or end such dockets.

⁶ This would include any records pertaining to (a) the scheduling of cases on such dockets, (b) the number, bases, or length of continuances, and any limitations thereon, for respondents on such dockets, (c) when a respondent must plead to a Notice to Appear, any circumstances under which such pleadings can be excused or postponed, and any criteria, standards, or policies related to the capacity of a child or mentally incompetent respondent to make such pleadings, (d) timing of individual hearings in relation to the filing of the Notice to Appear, first master calendar hearing, or any subsequent master calendar hearings, (e) continuances, administrative closure or termination of proceedings, including for cases in which a UC seeks asylum at the Asylum Office and for cases in which the immigration court is notified of a respondent's potential eligibility or application for Special Immigrant Juvenile Status, a U or T nonimmigrant visa, or other relief involving a petition to U.S. Citizenship & Immigration Services or a state court, (f) issuance of *in absentia* removal orders to respondents on such dockets and any reopening of juvenile/UC or family/AWC cases following entry of an *in absentia* removal order, (g) any policies, practices, standards or criteria pertaining to the availability of counsel (including pro bono and low fee legal representation), (h) any explanations regarding the removal process and expedited dockets given to respondents, (i) screening for potential eligibility for relief, (j) determinations regarding detention, release on bond or respondents' own recognizance, or participation in an "alternatives to detention program, (k) standards, criteria, and procedures for the scheduling, separation or consolidation, and adjudication of UC or AWC cases in which a respondent's family includes a member with a prior order of removal or a member in previously initiated removal proceedings or a member who has been or is detained, (l) any case completion goals for cases assigned to an expedited juvenile/UC or family/AWC docket, and (m) any special practices, procedures, or protocols adopted to address the needs and challenges of children assigned to the expedited dockets.

- Any audits, evaluations, or reports pertaining to the impact of expediting UC and AWC cases, including but not limited to the rate of representation, the number and timing of removal orders, motions to re-open by UC and AWC, and including delays or other hardship resulting for cases continued to make priority for expedited UC and AWC cases.
- Any complaints regarding the expedited treatment of UC or AWC cases.

III. Request for Waiver of Fees

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 institution). In addition, as described below, the Requestors have the ability to widely disseminate the requested information. *See, e.g., Judicial Watch v. Rossotti*, 326 F.3d 1309 (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. Disclosure of the Information is in the Public Interest

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities related to removal processing of unaccompanied minor and families in removal proceedings. Requestors have the capacity and intent to disseminate widely the requested information to the public.

American Immigration Lawyers Association (AILA), founded in 1946, is a nonpartisan not-for-profit national association of more than 14,000 attorneys and law professors who practice and teach immigration law. In furtherance of its mission to promote justice and advocate for fair and reasonable immigration law and policy, AILA seeks to provide members and the general public with up-to-date information, news and commentary on all aspects of immigration law and policy. AILA maintains a public website with immigration-related information and news; publishes newsletters, e-magazines, and other print and electronic publications; and is in regular contact with national print and news media. AILA will disseminate widely the requested information to the public through its website and/or by other means discussed herein.

Catholic Legal Immigration Network, Inc. (CLINIC) provides technical support to the members of its network on broad range of immigration law topics. The network employs approximately 1,200 attorneys and accredited paralegals and assists some 600,000 clients, parishioners, and community members with immigration matters annually. CLINIC is particularly concerned and involved with the protection of unaccompanied children in removal proceedings, and publishes books, produces a monthly newsletter, and provides in-person training, online courses and

webinars on this issue to attorneys and paralegals throughout the United States. In addition, CLINIC's materials are disseminated to a large audience through its website, www.cliniclegal.org. Information obtained through this FOIA will contribute to CLINIC's public education materials on the immigration system, assist in working with pro bono attorneys working with unaccompanied children, and will be available, at no public cost, through its websites and/or related written materials.

The Center for Gender & Refugee Studies (CGRS), based at the University of California Hastings College of the Law, works to protect the fundamental human rights of refugees, with a focus on women and children, through litigation, scholarship, expert consultations, and the development of policy recommendations. Attorneys at the Center include authors of scholarly works regarding asylum, experts who advise other attorneys representing asylum seekers, and practicing attorneys who represent asylum seekers throughout the United States. CGRS conducts national trainings and advises attorneys representing asylum seekers, many of whom are children, and has published comprehensive studies documenting the procedures and treatment of women and child asylum seekers in the United States. Each year, CGRS provides technical assistance in hundreds of cases of asylum seekers, more than 1,500 in the last year, including cases of women and children from Mexico and Central America. CGRS will make widely available to the public the information requested through this FOIA through its website and/or by other means discussed herein.

Community Legal Services in East Palo Alto (CLSEPA) is a non-profit organization that provides legal assistance to low-income immigrants in and around East Palo Alto, where two-thirds of the population is Latino or Pacific Islander. The immigration team provides consultations to and represents local residents in many aspects of immigration law, including in immigration court. In an effort to teach local immigrants their rights and responsibilities, CLSEPA gives presentations at a number of venues in the area, including community health and social service agencies, immigrants' rights groups, churches, schools, women's shelters, and community events. For individual clients, CLSEPA provides pro bono and low cost legal assistance to immigrants applying for affirmative immigration benefits and to those in removal proceedings in immigration court.

The Lawyers' Committee for Civil Rights of the San Francisco Bay Area (LCCR) is a non-profit legal organization that works to protect and advance the rights and status of people of color, low-income communities, and immigrants and refugees through direct legal services, impact litigation, and policy advocacy. LCCR's longest-running pro bono program is its Asylum Program, established in 1983. A substantial number of LCCR's Asylum Program clients are unaccompanied children and adults with children. To support the representation of these vulnerable individuals and other asylum seekers served by the Asylum Program, LCCR provides in-person and webinar trainings for hundreds of participants each year as well as a regularly updated asylum law and procedure training and resource manual and close mentorship and technical assistance for pro bono attorneys. LCCR also makes information about asylum and other immigration matters available to the public through its website and written community

education materials. Information obtained through this FOIA will contribute to LCCR's public education materials on asylum and related aspects of the immigration system, will assist pro bono attorneys working with unaccompanied children and families who may be eligible for asylum, and will be available, at no public cost, through LCCR's website and/or related written materials and training presentations.

One or more of the Requestors will post the information obtained through this FOIA on its publicly accessible website. The Requestors' websites collectively receive millions of page views per year. One or more of the Requestors also will publish a summary of the information received and will disseminate that summary. Finally, the Requestors have regular contact with national print and news media and plan to share information gleaned from FOIA disclosures with interested media.

B. Disclosure of the Information is not Primarily in the Commercial Interest of the Requesters

AILA, CLINIC, CGRS, CLSEPA, and LCCR are not-for-profit organizations. The Requestors seek the requested information for the purpose of disseminating it to members of the public who have access to our public websites and other free publications, and not for the purpose of commercial gain.⁷

Thank you for your prompt attention to this request. Please reply to this request within twenty working days, or as required by statute. 5 U.S.C. § 552(a)(6)(A)(i). If portions of the requested materials are claimed to be exempt, please indicate the specific bases for the alleged exemptions, the number of pages of withheld records, and the dates of the records withheld, and provide the remaining non-exempt portions. 5 U.S.C. § 552(b). We reserve the right to appeal any decision(s) to withhold information and expect that you will list the address and office to which such an appeal may be directed. 5 U.S.C. § 552(a)(6)(A)(i).

If you have any questions, please do not hesitate to contact Betsy Lawrence or Kate Voigt at AILA or Christine Lin at CGRS/CGRS-CA by telephone or email.

⁷ If you decline to grant the requested waiver of fees, and if fees will exceed \$100.00, without waiving any right of appeal, the Requestors agree to pay all photocopying costs up to \$250.00. If the agency estimates that the fees will exceed this limit, please notify us of the amount of these fees before fulfilling this request.

Sincerely,

Betsy Lawrence
Director of Liaison
Kate Voigt
Associate Director of Liaison
American Immigration Lawyers Association
1331 G Street NW, Suite 300
Washington, DC 20005
(202) 507-7621
BLawrence@aila.org
KVoigt@aila.org

Christine L. Lin
Managing Attorney, Center for Gender & Refugee Studies – California (CGRS-CA)
Senior Staff Attorney, Center for Gender & Refugee Studies
Hastings College of the Law
200 McAllister Street
San Francisco, CA 94102
(415) 581-8821
linc@uchastings.edu

Michelle N. Mendez
Training and Legal Support Staff Attorney
Catholic Legal Immigration Network, Inc. (CLINIC)
8757 Georgia Avenue, Suite 850
Silver Spring, MD 20910
(301) 565-4809
mmendez@cliniclegal.org

Ilyce Shugall
Directing Attorney, Immigration Program
Community Legal Services in East Palo Alto
2117-B University Avenue
East Palo Alto, CA 94303
(650) 391-0342
ilyce@clsepa.org

Travis Silva
Equal Justice Works Fellow
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
131 Steuart Street, Suite 400
San Francisco, CA 94105
(415) 543.9444 ext. 207
tsilva@lccr.com

Jayashri Srikantiah
Director, Immigrants' Rights Clinic
Stanford Law School 559 Nathan Abbott Way
Stanford, CA 94305
(650) 724-2442
jsrikantiah@law.stanford.edu