

EXHIBIT C



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New York, New York 10012
212-614-6464
ccrjustice.org



Via E-Mail

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

May 8, 2019

Re: Freedom of Information Act Request- Request for Expedited Response

Dear Public Records Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), on behalf of Make the Road New York ("MRNY") and the Center for Constitutional Rights ("CCR") (collectively "the Requesters") for information relating to (a) the Department of Homeland Security's ("DHS" or "the agency") Notice of Proposed Rulemaking (NPRM) titled "Inadmissibility on Public Charge Grounds" published to the Federal Register on October 10, 2018, *available at* <https://www.federalregister.gov/documents/2018/10/10/2018-21106/inadmissibility-on-public-charge-grounds>; and (b) data relating to "public charge" determinations and charges from 1999- present.

We ask that you please direct this request to all appropriate offices and departments.

A. Purpose of Request

The purpose of this request is to obtain information for the public about the NPRM and the proposed regulation's impact on non-citizen and immigrant communities. As organizations that engage in legal advocacy and public education on behalf of such communities, MRNY and CCR have an interest in understanding the potential implementation and impact of any proposed rules so as to better inform our work. Because the Requesters disseminate policy and educational materials to the public, information obtained from this FOIA request will better enable the public to understand the analyses supporting the NPRM and the proposed regulation's effect on low-income and immigrant communities.

B. Request for Information Relating to the NPRM, the Proposed Regulation, and the Comment Review Process

MRNY and CCR request:

- (1) all emails, communications and analyses related to the NPRM, the proposed regulation,

and the comment review process, sent by the Executive Office for Immigration Review (EOIR) to the Office of Information and Regulatory Affairs ("OIRA") and/or OMB; and

- (2) any other emails, communications and analyses related to the NPRM, the proposed regulation, and the comment review process, between or among EOIR and/or (a) any part of the Executive Branch; (b) Congressional member or staff, and/or (c) any other person or entity outside the Executive Branch.

C. Request for Information Relating to "Public Charge" Data

MRNY and CCR request data, including statistics, charts, and numbers, on:

- (1) The number of individuals referred for removal based upon a public charge or likely to become a public charge finding from 1999- Present, broken down by year, by country of origin, and by gender;
- (2) The number of individuals placed in removal proceedings based upon a public charge or likely to become a finding from 1999- Present, broken down by year, by country of origin, and by gender; and
- (3) The number of individuals deported from the United States based upon a public charge or likely to become a public charge finding from 1999- Present, broken down by year, by country of origin, and by gender.

D. Format of Production

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records. Please provide the requested documents in the following format:

- Saved on a CD, CD-ROM, DVD, hard drive or other hardcopy media;
- In PDF or TIF format wherever possible;
- Electronically searchable wherever possible;
- Each paper record in a separately saved file;
- "Parent-child" relationships maintained, meaning that the Requester must be able to identify the attachments with emails;
- Any data records in native format (i.e. Excel spreadsheets in Excel);
- Emails should include BCC and any other hidden fields;
- With any other metadata preserved.

E. The Requesters

Make the Road New York is a non-profit, membership-based 501(c)(3) organization dedicated to informing, engaging, and empowering immigrant, Latino, and working-class communities in New York City. MRNY has more than 22,000 dues-paying members residing in New York City and Long Island. Its mission includes educating the public about civil rights issues affecting working-class and immigrant communities through electronic newsletters, reports, fact sheets, trainings, curricula, classes, and other educational and informational

material. MRNY regularly conducts research and analysis and publishes reports, fact sheets, and other informational material on issues important to the immigrant, Latino, and working class communities it serves. MRNY also disseminates information and analyses on pending and proposed legislation and mobilizes community members to advocate to their legislators, and engages in organizing and public-policy advocacy efforts; these efforts include substantial outreach to policymakers and communication with the media. MRNY frequently releases media statements, and disseminates information about local, state, and national issues to its thousands of members and to the public at large.

The Center for Constitutional Rights ("CCR") is a non-profit, public interest, legal, and public education organization that engages in litigation, public advocacy, and the production of publications in the fields of civil and international human rights. CCR's diverse dockets include litigation and advocacy around immigration, and racial and ethnic profiling. CCR is a member of several networks nationally and provides legal support to civil rights movements. One of CCR's primary activities is the publication of newsletters, know-you-rights handbooks, legal analysis of current immigration law issues, and other similar materials for public dissemination. These and other materials are available through CCR's Development, Communications, and Education & Outreach Departments. CCR operates a website, www.ccrjustice.org, which addresses the issues on which the Center works. The website includes material on topical civil and racial justice rights issues and material concerning CCR's work. All of this material is freely available to the public. In addition, CCR regularly issues press releases and a regularly updated blog, as well as "action alerts" sent to over 50,000 members that notify supporters and the general public about developments and operations pertaining to CCR's work. CCR staff members often serve as sources for journalist and media outlets, including on issues related to racial justice, police brutality, racial discrimination, and the right to dissent.

F. Expedited Processing

Expedited processing of this request is required because there is a "compelling need" for the information. *See* 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" may be established where "a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." *Id.* § 552(a)(6)(E)(v)(I). There is a void of information surrounding the scope and intention of the NPRM. This void poses a real and imminent threat to the lives of immigrants and to their U.S. citizen children --including numerous MRNY members -- who are forgoing the use of crucial healthcare and nutritional assistance benefits for fear of repercussions to their immigration statuses. If this informational void has not already caused the death or serious injury of a person who did not seek healthcare, it certainly will. Indeed, recent publicly disseminated information indicates that the NPRM could seriously derail U.S. efforts to combat the HIV epidemic. AIDS United, *Trump Administration's Public Charge Rule Would Derail Efforts to End the U.S. HIV Epidemic*, *The Body* (December 7, 2018)¹

A "compelling need" may also exist where there is an "urgency to inform the public concerning actual or alleged Federal Government activity," and the requesting party is "primarily engaged in disseminating information." 28 C.F.R. § 16.5(e)(ii). There is an urgent need to inform

¹ Available at <http://www.thebody.com/content/81521/trump-administrations-public-charge-rule-would-der.html>.

the public of the policies, analyses, and decision-making undergirding the NPRM: non-citizens and their U.S. citizen children must be free to utilize the crucial benefits for which they are eligible, and the public must be able to meaningfully engage with the political and legal issues surrounding these policies, to be equipped to engage in the notice and comment process and otherwise advise clients on the final rules. It is clear that public interest in this information is extremely high, as it is a subject of widely-disseminated press reports and hotly debated reporting and opinion writing in leading news outlets throughout the country. *See, e.g.,* Sung Yeon, *The Public Charge Rule Is Another Tactic to Strike Fear Among Immigrant Families*, The Hill (December 7, 2018);² Alicia Wilson and Catalina Sol, *A Proposed New 'Public Charge' Rule puts Children's Health Insurance at Risk*, The Washington Post (December 18, 2018);³ Uncovered California, *Will Undocumented Immigrants Avoid New State Health Benefits*, Los Angeles Daily News (April 17, 2019).⁴ As discussed in Part E of this request, MRNY and CCR are organizations primarily engaged in the dissemination of information.

In addition, the DOJ grants expedited processing where the subject of the request is a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence." 28 C.F.R. § 16.5(e) (iv). In recent weeks, the need for this information has grown, as news reports have documented impatience on the part of the Administration for quick action on the proposed regulation, which had appeared, until now, to be going through the appropriate legal processes. *See e.g.* Dara Lind, *Homeland Security Secretary Kirstjen Nielsen's Resignation, Explained*, Vox (April 7, 2019)⁵. Nick Moroff, Josh Dawsey, Seung Ming, Kim, and Maria Sacchetti, *Homeland Security Secretary Kirstjen Nielsen Leaving Trump Administration Amid Surge of Migrants*, The Washington Post (April 7, 2019)⁶. Indeed, in just the last week, news reports document that DOJ is planning its own rule to increase deportations based on receipt of public benefits. *See, e.g.,* "Exclusive: Trump Administratino Proposal Would Make it Easier to Deport Immigrants Who Use Public Benefits," Reuters (May 3, 2019).⁷

G. Fee Waiver

The Requesters are entitled to a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k) on the grounds that "disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations 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 26 C.F.R. § 16.10(k) (records furnished by DOJ without charge if the information is in the public interest, and disclosure is not in the commercial interest

² Available at <https://thehill.com/opinion/immigration/419951-the-public-charge-rule-is-another-tactic-to-strike-fear-among-immigrant-families>.

³ Available at https://www.washingtonpost.com/outlook/2018/12/18/proposed-new-public-charge-rule-puts-childrens-health-insurance-risk/?noredirect=on&utm_term=.0d510df835ec.

⁴ Available at https://drive.google.com/drive/folders/0B_DDCAFmaSfDSVhGbFFoUkQwUnc.

⁵ Available at <https://www.vox.com/2019/4/7/18299585/kirstjen-nielsen-trump-dhs-homeland-security-resign-secretary-new>

⁶ Available at https://www.washingtonpost.com/politics/homeland-security-secretary-kirstjen-nielsen-leaving-trump-administration-amid-surge-of-migrants/2019/04/07/97d20358-597d-11e9-b8e3-b03311fbbbf_story.html?noredirect=on&utm_term=.e4c011ecbc18

⁷ Available at <https://www.nytimes.com/reuters/2019/05/03/us/politics/03reuters-usa-immigration-benefits-exclusive.html?searchResultPosition=1>.

of institution). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. I 987). Requesters meet the requirements of 28 C.F.R. § 16.10(k) because the subject of the request concerns the operations or activities of the government, the disclosure of the information is likely to contribute to a significant public understanding of government operations or activities, the Requesters' primary interest is in disclosure; and they have no commercial interest in the information.

As described in above, the Requesters are non-profit organizations dedicated to civil rights, human rights, and immigrant rights, and have a proven track-record of compiling and disseminating information and reports to the public about government functions and activities, including the government's record and position on noncitizens' rights and policy matters. The Requesters have undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public's understanding of federal immigration actions and policies, and their effects on alien and immigrant communities.

Access to this information is crucial for Requesters and the communities they serve to evaluate such actions and their potential detrimental effects. As stated above, Requesters have no commercial interest in this matter. Requesters will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'").

In the alternative, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("[F]ees 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."); *see* 28 C.F.R. § 16.10(d)(1). If no fee waiver is granted and the fees exceed \$250.00, please contact the Requester's undersigned counsel to obtain consent to incur additional fees.

H. FOIA improvement Act of 2016

We call your attention to the bipartisan FOIA Improvement Act of 2016, which codifies a FOIA "presumption of openness, making it a permanent requirement for agencies."⁸ Following these amendments, an agency's determination that a record satisfies a FOIA exemption, such as the exemption for inter-agency deliberations, is not sufficient to justify withholding the record. Instead, an agency may withhold a record "only if - (I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or (II) the disclosure is prohibited by law." *See* 5 U.S.C. § 552(a)(8)(A). In addition, the amendments require that agencies " (I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and (II) take reasonable steps necessary to segregate and release nonexempt information." *Id.*

⁸ *See* H. CMTE. ON OVERSIGHT & GOV'T REFORM, FOIA OVERSIGHT AND IMPLEMENTATION ACT OF 2016, H.R. Doc. No. 114-391 (Jan. 6, 2016).

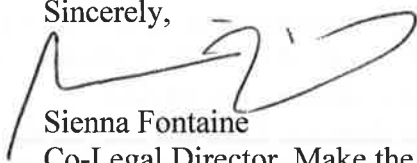
I. Certification & Conclusion

The Requesters certify that the above information is true and correct to the best of the Requesters' knowledge. See 28 C.F.R. § 16.5(e)(3). If this Request is denied in whole or in part, Requesters' asks that you justify all deletions by reference to specific exemptions of FOIA. The Requesters expect you to release all segregable portions of otherwise exempt material, and reserves the right to appeal a decision to withhold any records or to deny the within application for waiver of fees.

If you have any questions regarding the processing of this request, please do not hesitate to contact Sienna Fontaine, Esq., at (718) 565-8500 ext. 4612. Please direct all applicable Records to: Sienna Fontaine, MRNY, 301 Grove Street, Brooklyn, NY 11237 and to sienna.fontaine@maketheroadny.org.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sienna Fontaine', written over a horizontal line.

Sienna Fontaine
Co-Legal Director, Make the Road New York