

EXHIBIT B



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Via Certified Mail

U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, D. C. 20522-0208
Facsimile: (202) 485-1669

Re: Freedom of Information Request: Iraqi and Afghan Special Immigrant Visas
Expedited Processing and Fee Waiver/Limitation Requested

To Whom It May Concern:

The International Refugee Assistance Project (“IRAP”) and the Refugee and Immigrant Center for Education and Legal Services (“RAICES”) (collectively the “Requesters”) submit this Freedom of Information Act (“FOIA”) request (“Request”) to the U.S. Department of State (“Department of State” or the “Agency”). IRAP and RAICES seek records relating to the Afghan and Iraqi Special Immigrant Visa (“SIV”) programs as well as the inspection, admission, detention, and deportation of SIV holders at United States airports as described more fully below. This Request is made pursuant to 5 U.S.C. § 552 *et seq.*, and its implementing regulations, 22 C.F.R. Part 171.

I. BACKGROUND

Congress has created three special programs since 2006 to enable the resettlement of Iraqi and Afghan nationals who face serious threats in their country of origin due to their employment with the U.S. government and its allies, including (1) the SIV program for Iraqis and Afghans who worked directly with the U.S. Armed Forces or under Chief of Mission authority as a translator or interpreter in Iraq or Afghanistan authorized in Section 1059 of the National Defense Authorization Act for Fiscal Year 2006;¹ (2) the SIV program for Iraqis who were employed by or on behalf of the U.S. government authorized in the National Defense Authorization Act of 2008; and (3) the SIV program for Afghans who were employed by or on behalf of the U.S. government authorized in the Afghan Allies Protection Act of 2009.²

¹ U.S. Department of State—Bureau of Consular Affairs, “Special Immigrant Visas (SIVs) for Iraqi and Afghan Translators/Interpreters”, <https://travel.state.gov/content/travel/en/us-visas/immigrate/siv-iraqi-afghan-translators-interpreters.html> (last accessed Oct. 7, 2019).

² U.S. Department of State—Bureau of Consular Affairs, “Special Immigrant Visas for Iraqis—Who Were Employed by/on Behalf of the U.S. Government,” <https://travel.state.gov/content/travel/en/us->

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All three programs require a minimum period of employment, faithful and valuable service, the recommendation of a qualifying employer, and a sworn statement attesting to the threats the applicant faces in the country of origin due to their U.S. affiliation. To receive an SIV, an applicant must be otherwise eligible for an immigrant visa and admissible to the United States, have an in-person interview at a U.S. embassy or consulate abroad, and undergo significant security screening by U.S. security and law enforcement agencies.³ These individuals go through years of processing and security screening, including an average time of 708 days of government processing time prior to receiving approval for visas.⁴ If successful, an SIV recipient becomes a legal permanent resident upon his or her arrival to the United States, where he or she can resettle in safety with a spouse and unmarried children under the age of 21.

The SIV programs collectively are designed to address the danger and persecution faced by the many thousands of Afghans and Iraqis who put their own lives at risk to assist the U.S. Government and its Armed Forces in their missions in Afghanistan and Iraq. The reputation of the United States as a loyal wartime partner and the willingness of local allies critical to ongoing and future U.S. operations abroad depend upon the successful functioning of the SIV programs as a safe and legal pathway.⁵

The Department of State is the federal agency authorized to issue Special Immigrant Visas and administers much of the application and screening processes, including “Chief of Mission” approval—the first stage of the SIV process, in which the principal officer in charge of the U.S. diplomatic mission to Iraq or Afghanistan collects and reviews an applicant’s documents to confirm that he or she provided faithful and valuable service while employed by or on behalf of the U.S. government and has experienced threats as a consequence of that employment—as well as conducts in-person visa interviews with SIV applicants.⁶ If successful, the applicant receives

[visas/immigrate/special-immig-visas-iraqis-employed-us-gov.html](https://travel.state.gov/content/travel/en/us-visas/immigrate/special-immig-visa-iraqis-employed-us-gov.html) (last accessed Feb. 13, 2019); U.S. Department of State—Bureau of Consular Affairs, “Special Immigrant Visas for Afghans—Who Were Employed by/on Behalf of the U.S. Government,” <https://travel.state.gov/content/travel/en/us-visas/immigrate/special-immig-visa-afghans-employed-us-gov.html#overview> (last accessed Feb. 13, 2019).

³ Andorra Bruno, “Iraqi and Afghan Special Immigrant Visa Programs,” Congressional Research Service (Feb. 26, 2016), <https://fas.org/sgp/crs/homesec/R43725.pdf>.

⁴ Department of State, January 2019 Quarterly Report, Afghan SIV Report, available at <https://travel.state.gov/content/dam/visas/SIVs/Afghan-SIV-Report-January-2019.pdf> (last accessed Oct. 7, 2019).

⁵ *See, e.g.*, IRAP, “Fifteen Years On: Protecting Iraqi Wartime Partners” (Mar. 20, 2018), available at <https://refugeerights.org/wp-content/uploads/2018/03/Fifteen-Years-On-Protecting-Iraqi-Wartime-Partners.pdf>.

⁶ *See supra* footnote 2.

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an SIV, and presents this visa upon arrival at the port of entry into the United States, where a Customs and Border Protection officer reviews and must endorse the visa in order for the SIV recipient to formally enter the country and become a legal permanent resident of the United States.⁷

Over the past two years, IRAP and RAICES have become aware of an increasing pattern of SIV holders facing obstacles at U.S. airports upon their arrival.⁸ Despite having undergone extensive vetting and demonstrated the existence of serious threats to their safety prior to having their applications approved for travel, many SIV holders have faced lengthy secondary inspection, days-long detention, family separation, and even deportation back to danger in their countries of origin. IRAP and RAICES have also become aware of an increasing pattern of SIV holders being prevented from boarding, or deplaned from, flights to the United States when they attempt to travel to the United States after receiving their visa.

Although these incidents have happened at airports around the United States and internationally, a heavily-publicized case occurred recently at the Houston George Bush Intercontinental Airport in Houston, Texas.

II. REQUESTERS

IRAP is a 501(c)(3) organization that organizes law students and lawyers to develop and enforce a set of legal and human rights for refugees and displaced persons. IRAP utilizes media and systemic policy advocacy, direct legal aid, and impact litigation to serve the world's most persecuted individuals and empower the next generation of human rights leaders.

RAICES is a 501(c)(3) legal services and advocacy organization that provides immigration legal services to indigent communities throughout Texas. RAICES is also a refugee resettlement agency that has resettled numerous SIV recipients in the past year. RAICES uses a combination of legal and social services, litigation, and advocacy to pursue systemic change and to protect and defend the communities we serve.

⁷ U.S. Customs and Border Protection, "Requirements for Immigrant and Nonimmigrant Visas," <https://www.cbp.gov/travel/international-visitors/visa-waiver-program/requirements-immigrant-and-nonimmigrant-visas> (last accessed Oct. 21, 2019).

⁸ Lachlan Murray, "'Enhanced Vetting' Leaves Our Afghan Allies Behind," Daily Beast, Dec. 2, 2017, <https://www.thedailybeast.com/they-helped-our-troops-soId-their-homes-uprooted-their-families-enhanced-vetting-has-left-them-in-limbo>.

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III. RECORDS REQUESTED

IRAP and RAICES request all records in the custody or control of the Department of State as follows:

1. Records describing written procedures, guidelines, statement of general policy or effect of the Agency's participation in the Afghan and Iraqi SIV vetting process prior to issuance of SIVs;
2. Records that constitute, contain, describe or refer to policies, procedures, guidance, or instructions describing the inspection, admission, detention, and deportation of arriving Afghan or Iraqi SIV holders;
3. Records describing written procedures, guidelines, statement of general policy or effect used by the Agency to determine whether to deny or prevent Afghan or Iraqi SIV holders from boarding, and/or deplaning Afghan or Iraqi SIV holders from, a flight to the United States;
4. Records that contain, estimate, describe or refer to the number of Afghan SIV holders prevented from boarding and/or deplaned from flights to the United States, for each month since October 1, 2016;
5. Records that contain, estimate, describe or refer to the total number of SIV holders (not limited to Afghan SIV holders) prevented from boarding and/or deplaned from flights to the United States, for each month since October 1, 2016;
6. Records describing the basis or reason for the decision or determination to prevent from boarding and/or deplane any Afghan or Iraqi SIV holder from a flight;
7. Records describing the total number of Afghan or Iraqi SIV holders prevented from boarding and/or deplaned from their flights who were later cleared for travel;
8. Records for each Afghan or Iraqi SIV holder that contain descriptions of, or that estimate or refer to, the time between being approved for travel and being admitted into the United States.
9. Records describing international agreements, such as treaties or executive agreements, that govern the Agency's processing of SIV holders for admission into the United States;
10. Records that contain communications or reports between the Agency and its resettlement contractors or subcontractors regarding resettlement benefits for Afghan or Iraqi SIV holders who were prevented from boarding or deplaned from a flight or sent for further inspection upon their arrival at a United States airport;

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11. Records that contain communications to or from Afghan or Iraqi SIV holders that occurred after the SIV holder was issued a visa until the time the SIV holder was granted admission into the United States.

Time period: This Request covers all records created on or after January 1, 2016 through the date the Agency initiates its search for responsive records.

Definition: The term “records” as used in the Request includes all records preserved in electronic or written form, including but not limited to: e-mails; text communications between phones or other electronic devices (including but not limited to, communications sent via SMS or other text, Blackberry Messenger, iMessage, WhatsApp, Signal, G-chat, or Twitter direct message); images, video, and audio recorded on cell phones; voicemail messages; social-media posts; formal and informal presentations; alerts; bulletins; advisories; and minutes or notes of meetings and phone calls.

Exemptions: The Requesters are not seeking records, or portions of records, that address the issuance or rejection of a visa or that implicate national security or Privacy Act issues. If any of the information sought in this Request is deemed by the Agency to be properly withheld under a FOIA exemption, 5 U.S.C. § 552(b), please provide redacted records where possible. Further, Requesters ask that the Agency provide for each record or portion of a record that is withheld, an explanation sufficient to identify the record and the particular exemption(s) claimed.

Agency’s search obligation: The Agency must search all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of their Request. This includes any email accounts and cell phones used by employees and former employees for agency business, whether they are personal or Agency systems. For each relevant email account identified, all storage areas are included in this Request, including, but not limited to, the inbox “folder” (and all subfolders therein), sent folder, deleted folder, outbox folder, and all relevant archive files.

If any records responsive or potentially responsive to the Request have been destroyed, the Request includes, but is not limited to, any and all records relating or referring to the destruction, or the events leading to the destruction, of those records.

Format of production: The Requesters ask that responsive electronic records be provided in their native file format if possible, but for the ease of administration and to conserve resources, the Requesters will accept documents produced in any readily accessible electronic format.

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History of FOIA request: Certain records sought in the above Request were first requested by IRAP on December 19, 2017. *See* Case Control Number F-2017-18006. On January 29, 2018, the Department of State denied IRAP’s request and IRAP timely filed its appeal on March 20, 2018. The Department of State did not timely resolve IRAP’s appeal, but instead on June 5, 2018 responded to IRAP that it would begin processing the request. *See* Case Control Number F-2018-02193. As of the date of this letter and more than a year later, IRAP has received no responsive documents.

IV. REQUEST FOR EXPEDITED PROCESSING

The Requesters seek expedited processing based on two independent grounds described below, and they certify that the statements made in support of those grounds to be true and correct under 5 U.S.C. § 552(a)(6)(E)(vi) and 6 C.F.R. § 5.5(e)(3). Please provide a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(e)(4).

A. The Request Should Be Expedited Because of Compelling Need.

The Requesters seek expedited processing under 5 U.S.C. § 552(a)(6)(E)(i)(I) because of a “compelling need” for the requested records. There is “compelling need,” as defined by the statute, because IRAP and RAICES are organizations “primarily engaged in disseminating information” and has an “urgency to inform the public about an actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii).

First, dissemination of information is an integral component of IRAP’s mission to educate and cultivate the next generation of human rights leaders. *See Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding that an organization whose mission is to serve as the site of record for relevant and up-to-the-minute civil rights news and information is primarily engaged in disseminating information). The Requesters routinely engage in gathering information for their legal and policy work through FOIA, analyzing the information, and distributing it. IRAP has published a number of policy reports to the public on refugee resettlement issues,⁹ and maintains “Know Your Rights” and other educational materials on its website.¹⁰ IRAP routinely issues press releases and publishes a blog on its work and on issues relating to refugee

⁹ *See, e.g.*, IRAP, A Question of Honor—The Ongoing Importance of the Afghan SIV Program (Mar. 22, 2017), available at <https://refugeerights.org/irap-releases-policy-report-on-afghan-special-immigrant-visa-program/>; IRAP and Human Rights First, Private Sponsorship of Refugee Resettlement in the United States: Guiding Principles and Recommendations (Oct. 17, 2016) (white paper on private refugee sponsorship program), available at <https://refugeerights.org/press-release-irap-and-human-rights-first-release-white-paper-on-private-refugee-sponsorship-program/>.

¹⁰ *See* Know Your Rights, <https://refugeerights.org/know-your-rights/> (last visited Sep. 8, 2017).

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policy.¹¹ It has a monthly newsletter that reaches over 25,000 individuals, maintains a Facebook account with over 40,000 followers,¹² and a Twitter account with over 15,000 followers.¹³ IRAP also routinely collects and distributes resources and up-to-date information to its network of 29 law school chapters and 75 firms working with it.

Similarly, RAICES intends to review, analyze, and disseminate the records by hosting them on its web presence, thereby making the information available to the public at large and members of the media who can then further disseminate the information through additional reports or articles that will likely be published nationwide and internationally. RAICES's web presence (including its website, Facebook, and Twitter pages) are frequented by the public at large, including attorneys, members of the media, members of major universities and institutes of learning, impacted communities, and government officials and employees. RAICES is active on Twitter and currently has nearly 87,000 followers.¹⁴ RAICES will also issue press releases and post documents on its web presence, and ask employees to appear on radio and television to discuss these matters.

Second, there is an urgency to inform the public about the records subject to this Request. The lengthy secondary inspection, detention, and attempted or actual deportation of SIV holders has been the subject of extensive media coverage, reflecting public interest in the issue. 6 C.F.R. § 5.5(e)(3) (explaining that “[t]he existence of numerous articles published on a given subject can be helpful to establishing the requirement that there be an ‘urgency to inform’ the public on the topic”). In March 2017, the multi-day detention of an Afghan family of five that arrived at LAX airport on an SIV was covered in the New York Times; U.S. Senator Patty Murray of Washington State, the family’s ultimate resettlement destination, commented via a spokesperson that they were frustrated by the lack of communication and information from the Department of Homeland Security.¹⁵ The Washington Post and Wall Street Journal reported on the visa revocation, attempted deportation, and detention of an Afghan SIV holder upon arrival at EWR airport in Newark, NJ upon his arrival.¹⁶ More recently, an Afghan SIV recipient was detained with and

¹¹ See Press Room, <https://refugeerights.org/press-room/> (last visited Sep. 8, 2017); Blog, <https://refugeerights.org/blog1/> (last visited Sep. 8, 2017).

¹² See IRAP, Facebook, <https://www.facebook.com/RefugeeAssist/>.

¹³ See IRAP (@RefugeeAssist), Twitter, <https://twitter.com/RefugeeAssist>.

¹⁴ See RAICES (@RAICESTexas), Twitter, <https://twitter.com/RAICESTexas>

¹⁵ Nicholas Kulish, “An Afghan Family, With Visas in Hand, Is Detained in Los Angeles,” New York Times (Mar. 4, 2017), available at <https://www.nytimes.com/2017/03/04/us/afghan-family-detained-los-angeles-visas.html> (last visited Feb. 13, 2019).

¹⁶ See, e.g., Abigail Hauslohner, “Federal court blocks deportation of Afghan special visa recipient,” Washington Post (Mar. 15, 2017), available at <https://www.washingtonpost.com/national/immigration-authorities-to-deport->

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then separated from his family upon arrival in January 2019, drawing national news coverage and the attention of U.S. Representatives Sheila Jackson Lee and Al Green, both of whom went to the airport in support of the SIV recipient.¹⁷ RAICES represented this family and assisted the SIV recipient in obtaining release from detention, reunification with his family in San Antonio, resolution of his and his family's SIV processing, and currently provides them with refugee benefits through our resettlement services.

Third, this Request again asks for records sought by IRAP nearly two years ago in its December 19, 2017 FOIA request (as discussed above), for which the Agency has not produced any responsive documents. This significant delay in processing IRAP's request should compel the agency to timely produce the records sought here.

B. There Is Widespread and Exceptional Media Interest.

Additionally, the records sought should be processed on an expedited basis because the Request involves “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 6 C.F.R. § 5.5(e)(1)(iv).

As described above, the subject matter of the Request has been subject of extensive media coverage. *See supra* Section I. The subject has also raised questions about the integrity of the government’s airport security processing of SIV holders arriving in the United States, with lawmakers and advocates confused by the government’s pattern of detaining and deporting SIV recipients and by the government’s failure to provide information to the public or to lawmakers’ offices regarding its actions with regards to affected SIV holders. *See Am. Civil Liberties Union v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 32 (D.D.C. 2004) (holding, under an identical

[afghan-man-who-helped-us-government/2017/03/15/a7eecb9a-098e-11e7-a15f-a58d4a988474_story.html?utm_term=.cedc8549b69f](https://www.washingtonpost.com/national/afghan-man-who-helped-us-government/2017/03/15/a7eecb9a-098e-11e7-a15f-a58d4a988474_story.html?utm_term=.cedc8549b69f) (last visited Feb. 13, 2019); Abigail Hauslohner, “He was promised he could live in the U.S. after serving in Afghanistan. But they never let him in,” *Washington Post* (May 15, 2017), available at https://www.washingtonpost.com/national/he-was-told-he-could-live-in-the-us-after-serving-in-afghanistan-but-they-never-let-him-in/2017/05/15/32e985a4-30f0-11e7-9dec-764dc781686f_story.html?utm_term=.8b3aea555b68 (last visited Feb. 13, 2019); Kate King, “Afghan National with Special Visa Detained in New Jersey,” *Wall Street Journal* (Mar. 16, 2017), available at <https://www.wsj.com/articles/afghan-national-with-special-visa-detained-in-new-jersey-1489700863> (last visited Feb. 13, 2019).

¹⁷ *See, e.g.*, Alex Horton, “He Helped U.S. troops and fled Afghanistan. CBP detained him in Houston, an advocacy group said,” *Washington Post* (Jan. 12, 2019), available at https://www.washingtonpost.com/nation/2019/01/12/he-helped-us-troops-fled-afghanistan-cbp-detained-him-houston-an-advocacy-group-said/?utm_term=.44caefaaf35 (last visited Feb. 13, 2019).

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expedited processing regulation, that “suggestions of possible violations of privacy rights” presented by news articles raised questions about government integrity).

V. REQUEST OF WAIVER OF OR LIMITATION ON FEES

IRAP and RAICES seek fee waivers on the grounds described below. Fee waivers should be granted here, given that Congress intended FOIA to be construed liberally in favor of granting waivers for noncommercial requesters like IRAP and RAICES. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (internal quotation marks and citations omitted)).

A. All Fees Should Be Waived Because Disclosure is In the Public Interest.

The Requesters ask that all fees associated with this FOIA request be waived because the disclosure of the requested records is “in the public interest.” 5 U.S.C. § 552(a)(4)(A)(iii). This is so because disclosure 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.” *Id.*; 6 C.F.R. § 5.11 (k)(1).

The Request meets each of the factors that the agency should consider under 6 C.F.R. § 5.11(k)(2) in determining whether the disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government.” First, the Request pertains directly to “operations or activities of the federal government.” *Id.* § 5.11(k)(2)(i).

Second, the Request is “likely to contribute” to “an increased public understanding of” the government’s operations or activities, *id.* § 5.11(k)(2)(ii), specifically by helping the public determine why SIV holders, despite extensive vetting prior to receiving approval for their visa, are frequently subject to lengthy inspection, detention, and even attempts at revocation of their visas upon arrival.

Third, the disclosure of the requested records will contribute to “the understanding of a reasonably broad audience of persons interested in the subject,” *id.* § 5.11(k)(2)(iii), because IRAP and RAICES intend to analyze the responsive records and publish its findings in support of its policy and advocacy work to maintain fair and robust Special Immigrant Visa programs and to ensure that SIV recipients who face danger in their countries of nationality due to their work with the United States are not deported back to that dangerous environment.

Finally, disclosure will enhance the public’s understanding of the subject of the Request “to a significant extent.” *Id.* § 5.11(k)(2)(iv). Although there has been significant media and public

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interest in these issues, as described above, much remains unknown and the requested records will shed light on exactly how often SIV recipients are facing such issues upon arrival and why.

The Request is also not in the commercial interest of IRAP or RAICES. Any records obtained as a result of this FOIA request will be made available to the public at no cost.

B. Search and Review Fees Should Be Waived Because IRAP and RAICES are Representatives of the News Media.

Further, the Agency should waive search and review fees because IRAP and RAICES meet the statutory and regulatory definitions of “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(b)(6). This term refers to any “entity that gathers 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.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also* 6 C.F.R. § 5.11(b)(6).

As described above, IRAP and RAICES routinely gather information through its legal and policy work, including through FOIA requests, processes the information, and distributes that work to a broad audience. *See supra* Section II. Other non-profits who similarly engage in media advocacy, in addition to other policy advocacy and legal work, have been found to be a “representative of a news media” for purposes of a fee waiver. *See, e.g., Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (concluding that the ACLU is a news representative); *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (same for the EPIC); *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (same).

VI. CONCLUSION

The Requesters ask for a response from the Agency within the statutorily prescribed twenty (20) business days. 5 U.S.C. § 552(a)(6)(A)(i). Please notify me in advance if the costs relating to the Request exceed \$100.00. If you have any questions regarding this request, please contact Elizabeth Foydel at (516) 838-1875 or efoydel@refugeerights.org or Manoj Govindaiah at (210) 787-3745 or manoj.govindaiah@raicestexas.org. Thank you in advance for your timely cooperation.

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Sincerely,



Elizabeth Foydel
International Refugee Assistance
Project



Manoj Govindaiah
Refugee and Immigrant Center for
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