Via Electronic and Certified Mail
FOIA Officer
U.S. Customs and Border Protection
90 K Street, NW
9th Floor, Mail Stop 1181
Washington, DC 20229

Re: Freedom of Information Request Regarding Arriving SIV Holders
Expedited Processing & 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”) submit this Freedom of Information Act request (“Request”) seeking records relating to the inspection, admission, detention, and deportation of arriving Special Immigrant Visa (SIV) holders. The Request is made pursuant to 5 U.S.C. § 552 et seq., and its relevant implementing regulations, 6 C.F.R. § 5 et seq.

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. The Special Immigrant Visa (SIV) program for Iraqi and Afghan translators/interpreters authorizes issuance of up to 50 SIVs per year to 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. The Special Immigrant Visa program for Iraqis who were employed by or on behalf of the U.S. government, created through the National Defense Authorization Act of 2008, and the Special Immigrant Visa program for Afghans who were employed by or on behalf of the U.S. government, created through the Afghan Allies Protection Act of 2009, authorize issuance of

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thousands of visas per year to Iraqis and Afghans who were employed as translators/interpreters or in other capacities in their countries of origin.²

All three of these 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 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.⁴

Over the past two years, IRAP has become aware of an increasing pattern of Special Immigrant Visa holders facing obstacles at U.S. airports upon their arrival. 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. Although these incidents have happened at airports around the United States, a heavily-publicized case occurred recently at the Houston George Bush Intercontinental Airport in Houston, Texas.

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.

RECORDS REQUESTED

The Requesters request disclosure of any and all records prepared, received, transmitted, collected, and/or maintained by the Department of Homeland Security, or sub-offices thereof, that reflect the following:

• Policies, procedures, guidance, instructions, and other similar records applicable to the inspection, admission, detention, and deportation of arriving Special Immigrant Visa (SIV) holders.
• Records sufficient to show, for each Special Immigrant Visa holder arriving in the United States at Houston George Bush Intercontinental Airport (IAH) in Houston, Texas:
  o The number of individuals on the SIV holder’s case;
  o Whether the case is from Afghanistan or Iraq;
  o Whether the principal SIV holder and/or his or her family members were admitted after primary inspection;
  o If the principal SIV holder and/or his or her family members were admitted after primary inspection on a basis other than the Special Immigrant Visa, what was that basis for admission;
  o If the principal SIV holder and/or his or her family members were not admitted, either after primary inspection or secondary inspection, were the principal SIV holder and/or his or her family members paroled into the United States;
  o Whether the principal SIV holder and/or his or her family members were referred to secondary inspection, and if so the reason and the name of the government employee making that decision;
How long the principal SIV holder and/or his or her family members were in secondary inspection;

Whether the principal SIV holder and/or his or her family members were admitted after secondary inspection;

Whether the principal SIV holder and/or his or her family members withdrew their application during inspection;

Whether the principal SIV holder and/or his or her family members were denied entry, and if so the reason and the name of the government employee making that decision;

Whether the principal SIV holder and/or his or her family members were placed in expedited removal proceedings, and if so the reason and the name of the government employee making that decision;

Whether the principal SIV holder and/or his or her family members were transferred to the custody of a government agency other than Customs and Border Protection, and if so, which agency; and

Whether the principal SIV holder and/or his or her family members were asked whether they fear returning to their country of nationality.

**Time frame:** This Request covers records created on or after January 1, 2016.

**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, Gchat, 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. **Please note:** Should any responsive record contain personally identifying information of any third party, the Requesters ask that the information be redacted.

**Agency’s search obligation:** We request searches of all electronic and paper/manual indices, filing systems, and locations for any and all records relating or referring to the subject of our 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, our Request includes, but is not limited to, any and all records relating or referring to the destruction of
those records. This includes, but is not limited to, any and all records relating or referring to the events leading to the destruction of those records.

*Format of production:* The Requesters request that responsive electronic records be provided electronically in their native file format if possible, except that data should be provided in searchable Excel spreadsheets. See 5 U.S.C. § 552(a)(3)(B). Please produce emails in native format as well as in searchable PDF format, with parent-child relationships (the association between an attachment to an email or other record and its parent record) preserved. If production in the format requested is not possible, please provide the records electronically in a text-searchable PDF format, in the best image quality in the agency’s possession, in separate, Bates-stamped files.

**REQUEST FOR EXPEDITED PROCESSING**

The Requesters seek expedited processing based on two independent grounds described below, and we 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.**

IRAP and RAICES seeks expedited processing under 5 U.S.C. § 552(a)(6)(E)(i)(I) because of “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). IRAP and RAICES routinely engage in gathering information from its legal and policy work including through FOIA, analyzing the information, and distributing it. IRAP has published a number of policy reports to the public on refugee resettlement
issues, and maintains “Know Your Rights” and other educational materials on its website. It routinely releases press releases and publishes a blog on its work and on issues relating to refugee policy. It has a monthly newsletter that reaches over 25,000 individuals. It maintains a Facebook account with over 40,000 followers, and a Twitter account with over 15,000 followers. 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. 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. DHS should consider RAICES’s track record and reputation for disseminating information to the public.

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 Special Immigrant Visa 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 a Special Immigrant Visa 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

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10 See RAICES (@RAICESTexas), Twitter, https://twitter.com/RAICESTexas
Security. The Washington Post and Wall Street Journal reported on the visa revocation, attempted deportation, and detention of an Afghan Special Immigrant Visa holder upon arrival at EWR airport in Newark, NJ upon his arrival. More recently, an Afghan SIV recipient was detained with and 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. 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.

B. There Is Widespread and Exceptional Media Interest.

Alternatively, 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. 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 expedited processing regulation, that


“suggestions of possible violations of privacy rights” presented by news articles raised questions about government integrity).

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 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. In the Alternative, Search and Review Fees Should Be Waived Because IRAP and RAICES Are Representatives of the News Media.

If the agency does not waive all fees as requested above, it should at minimum 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. 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 for Judicial Watch, a public interest law firm with a website and a radio show).

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We expect your response within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(i). In your response, please specify the search that was undertaken to locate records responsive to this Request. If the Request is denied in part or in whole, please justify all redactions by reference to specific FOIA exemptions and release all segregable portions of otherwise exempt material.

Please furnish copies of all applicable information to:

Elizabeth Foydel
International Refugee Assistance Project
One Battery Park Plaza, 4th Floor
New York, New York 10004
efoydel@refugeerights.org

Please notify us in advance if any costs relating to the Request exceeds $100.00.

If you have any questions regarding this request, please contact Elizabeth Foydel at (516) 838-1875 or efoydel@refugeerights.org. Thank you in advance for your timely cooperation.

Sincerely,

Elizabeth Foydel
Deputy Policy Director
IRAP

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Manoj Govindaiah
Director of Litigation
RAICES