

December 23, 2019

*Via Email*

U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5009  
Washington, D.C. 20536-5009  
[ICE-FOIA@dhs.gov](mailto:ICE-FOIA@dhs.gov)

Re: FOIA Request for U Visa Records

Dear FOIA Officer,

This letter constitutes a request by ASISTA Immigration Assistance (“Requestor” or “ASISTA”) under the Freedom of Information Act, 5 U.S.C. § 552 *et. seq.* for copies of records pertaining to the removal of petitioners for U nonimmigrant status.

#### **I. REQUEST FOR INFORMATION**

ASISTA requests any and all records<sup>1</sup> which were prepared, received, transmitted, collected, and/or maintained by the U.S. Immigration and Customs Enforcement (“ICE”) and which relate to the discretionary adjudication of Form I-246, *Application for a Stay of Deportation or Removal* (“Form I-246”) where the applicant has a pending petition for U nonimmigrant status, and to the removal of petitioners for U nonimmigrant status.

Such records include, but are not limited to:

1. Inter-agency policy, directions or guidance concerning circumstances under which to permit the removal of petitioners for U nonimmigrant status before USCIS has decided the merits of their cases;

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<sup>1</sup> 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.

2. Inter- and intra-agency communications, guidelines, or statements of policies regarding prima facie determinations or expedited review of U petitions, as well as ICE Directive 11005.2;
3. All drafts and final versions of ICE Directive 11005.2; and
4. Monthly, quarterly, and annual quantitative summaries of removals of individuals whose U nonimmigrant status petition was pending at the time of removal from FY2015 to present.

## **II. THE REQUESTOR**

ASISTA is a nonprofit organization established to increase public understanding of immigration law and policy, and to advocate for the fair and just administration of federal immigration laws, particularly as they relate to immigrant survivors of violence. ASISTA consults with immigration lawyers, law students, accredited representatives and other advocates to help directly protect the legal rights of noncitizens; advocates for policy on behalf of immigrant survivors of violence; publishes educational materials; and runs training programs that educate the public, legal practitioners, government officials, and law enforcement officers about immigration law and practice.

## **III. FEE WAIVER REQUEST**

ASISTA requests a fee waiver because the information they seek 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 [Requestor]...” 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 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 is in the public interest because it will contribute significantly to the public understanding of how ICE reviews, processes, and makes determinations regarding stays of removal or terminating proceedings as a discretionary matter for U nonimmigrant status petitioners. This request furthers Requestor’s work to increase the public understanding of immigration law and policy, specifically as relevant to noncitizen victims of crimes, such as domestic and intimate partner violence. Access to this information ensures fairness and transparency in the adjudication of humanitarian applications such as the impact of ICE Directive 11005.2 on U visa applicants. Moreover, such information is in the public interest as it affects a large population of individuals: tens

of thousands of noncitizens with pending, approved, denied, or to be filed humanitarian applications, noncitizen and citizen victims of crime, immigration attorneys, and immigration advocates. *See* 6 C.F.R. § 5.11(k)(ii)(2)(iii) (stating that disclosure will contribute to public understanding when it affects a “reasonably broad audience of persons interested in the subject”).

Lastly, as detailed in the subsection above, Requestor has the capacity to disseminate widely the requested information to the public. Requestor will review and analyze the information obtained through this Request, and publish practice advisories or related written materials to be shared with the public and organizational members. In addition, Requestor regularly conducts national trainings and disseminates information to the public on the legal rights and remedies available to immigrant survivors of violence, especially those who have suffered domestic and intimate partner violence. ASISTA intends to post records received in response to this FOIA request on its publicly accessible website. Also, Requestor 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 the Requestor**

Requestor is a non-profit organization. Attorneys, noncitizens, and other interested members of the public may obtain information about immigration-related issues through their distribution of records, including their individual website, and through public and educational appearances. Requestor seeks the requested information for the purpose of disseminating it to members of the public who have access to their public website and other free publications, and not for the purposes of commercial gain. Requestor ASISTA has demonstrated the capacity to disseminate information to the public in the past, including information obtained through FOIA requests. *See* <https://asistahelp.org/impact-litigation-2/> (publication of records obtained through FOIA related to petitions for U visas where the underlying crime was statutory robbery in California). 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 requestor explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

The FOIA provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed. Please send all non-exempt portions of the requested records and 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. As some of the documents listed above may be more readily available than others, please provide the documents on a rolling basis as they become available. ASISTA reserves the right to appeal your decision to withhold any materials or to deny a waiver of fees.

#### **IV. EXPEDITED PROCESSING REQUEST**

ASISTA further requests expedited processing of this request for records. The records sought are urgently needed in order to inform immigrant victims of crime and their advocates regarding ICE's policies and practices regarding the stays of removal of individuals with pending U nonimmigrant status petitions.

Requestor certifies that the information contained in this request is true and correct to the best of my knowledge. *See* 6 C.F.R. § 5.5(e)(iv)(3).

#### **V. FORMAT OF PRODUCTION**

ASISTA 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.

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.

Thank you for your prompt attention to this matter. Please furnish the applicable records to ASISTA's counsel:

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Sincerely,

/s/ Amy Cheung

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*On behalf of ASISTA*

/s/ Vincent Cox

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*On behalf of ASISTA*