

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SAFE HORIZON, INC. and ASISTA
IMMIGRATION ASSISTANCE,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES and UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY,

Defendants.
-----X

No. 21-cv-2328

COMPLAINT

Plaintiffs Safe Horizon, Inc. (“Safe Horizon”) and ASISTA Immigration Assistance (“ASISTA”), by and through their undersigned attorneys, in support of their complaint against Defendants United States Citizenship and Immigration Services (“USCIS”) and United States Department of Homeland Security (“DHS”), hereby allege as follows:

SUMMARY AND NATURE OF THE CASE

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to enforce the public’s right to information about the adjudication of U nonimmigrant status (“U-visa”) petitions and applications to become a lawful permanent resident based on an underlying U-visa (“adjustment of status applications”).

2. U-visas are a form of humanitarian immigration relief reserved for victims of serious crimes who assist U.S. law enforcement in detecting, investigating, and prosecuting crime. U-visas were created by a bipartisan Congress in 2000, as a way to both protect immigrant victims of crime and better empower law enforcement. Immigrants without legal status can be vulnerable

to exploitation by criminals and to misinformation about the law, and they are often reluctant to approach law enforcement for help. U-visas provide a critical tool both for victims of crime to feel comfortable seeking protection from law enforcement, and for law enforcement officers to discover and prosecute crime, deepen community trust, and improve public safety.

3. Beginning in 2018, Plaintiffs Safe Horizon and ASISTA observed a shift in USCIS's adjudication of U-visa petitions and U-visa-based permanent residence applications. Specifically, Plaintiffs observed that USCIS began requesting evidence of applicants' prior contact with law enforcement with greater frequency, even in cases where the contact was insignificant—for example, where charges were never filed, where charges were dismissed, and/or where the records were sealed. Prior to this time, such *de minimis* criminal history was effectively ignored: USCIS often accepted certificates of disposition and did not demand additional detail.

4. USCIS, however, never issued any information regarding this shift in the adjudication of U-visa related petitions and applications. There has been no published policy, no practice guidance, and no advisory of any sort. This paucity of public information has upset the work of many interested parties, including Plaintiffs. Immigration lawyers, advocates for noncitizens, social workers, and law enforcement personnel, for example, now lack an understanding of USCIS's current practice and policy governing U-visa adjudications, and the rationales that underlie it, and are thus at a loss for how to maintain best practices in their work.

5. Pursuant to FOIA, on February 19, 2020, Plaintiffs submitted a request for records (the "FOIA Request" or "Request") to USCIS via the Freedom of Information Act (FOIA) Immigration Records System (FIRST). Plaintiffs' Request seeks records relating to USCIS's policy on the adjudication of U-visa petitions and adjustment of status applications, including the

relevance of an applicant's prior contact with law enforcement in the adjudication of U-visa-related petitions and applications.

6. Timely disclosure of these records is critically important to the thousands of U-visa recipients, petitioners, and potential petitioners each year—hundreds of which are clients of Safe Horizon—and the organizations, including ASISTA and Safe Horizon, that serve the interests of U-visa seekers and adjustment of status applicants.

7. More than a year has elapsed since Plaintiffs submitted their FOIA Request, and Plaintiffs have not received any records from Defendants. Nor have Plaintiffs received any information from Defendants regarding the scope of the documents to be produced in response to their Request, or any communication from Defendants claiming that any requested information is subject to any FOIA exceptions or privileges. On the contrary, USCIS has represented that it would respond to the vast majority of Request items—referring the remaining Request items to DHS—and has failed to take action. DHS has failed to provide any response whatsoever to Plaintiffs' Request.

8. Plaintiffs are legally entitled to responses to their FOIA Request that satisfy the statute's requirements. Such a response must at least inform Plaintiffs of the scope of documents the agency will produce and the scope of documents it will withhold, and it must be followed by a prompt production of the responsive documents. In this case, the documents were requested on February 19, 2020. Defendants have far exceeded the statutory and regulatory time limitations to respond to the Request and produce the requested documents.

9. Plaintiffs accordingly seek an order directing Defendants to respond to Plaintiffs' FOIA Request and provide the requested documents in a timely manner. Plaintiffs also seek attorney's fees and other equitable relief as deemed appropriate by this Court.

JURISDICTION AND VENUE

10. The Court has jurisdiction over this matter pursuant to 5 U.S.C. § 522(a)(4)(B) and 28 U.S.C. § 1331.

11. Venue lies in the United States District Court for the Southern District of New York pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) because Safe Horizon has its principal place of business in the Southern District of New York.

PARTIES

12. Plaintiff Safe Horizon is a nonprofit organization under section 501(c)(3) of the Internal Revenue Code, headquartered at 2 Lafayette Street, New York, NY 10007. Established in 1978, Safe Horizon is the largest nonprofit victim services agency in the United States. Safe Horizon provides support for people who have experienced domestic and intimate partner violence, child physical and sexual abuse, rape and sexual assault, human trafficking, stalking, youth homelessness, and violent crimes committed against a family member and within communities. Safe Horizon's work affects the lives of more than 250,000 children, adults, and families affected by crime and abuse throughout New York City each year. Safe Horizon's Immigration Law Project offers legal representation to survivors of violence seeking immigration relief. It serves over 1,000 clients seeking immigration relief each year, a majority of whom are eligible for U-visas, having experienced substantial mental or physical abuse as a result of a crime and having assisted law enforcement agencies with the investigation or prosecution of criminal activity. The availability of U-visas, and Safe Horizon's ability to provide well-informed, reliable legal representation of U-visa-eligible clients, plays a central role in the organization's ability to pursue its mission of helping clients heal from violence and cooperate with law enforcement to prevent and prosecute crime. As described *infra* at ¶¶ 16–21, U-visas are a crucial tool for

preventing violence against immigrant populations, especially women and children, whose lack of legal status can make them vulnerable to crime and reluctant to cooperate with law enforcement. Safe Horizon also partners with governmental and other community agencies to widen its reach in vulnerable communities and advocate for policies on a local, state, and national level on behalf of those affected by violence and abuse.

13. Plaintiff ASISTA is a nonprofit legal, educational, and charitable organization under section 501(c)(3) of the Internal Revenue Code, headquartered in Suffield, Connecticut. ASISTA's mission is to increase public understanding of immigration law and policy and to advocate for the fair and just administration of federal immigration laws. ASISTA consults with those assisting noncitizen survivors of violence, including immigration lawyers, law students, and domestic violence and sexual assault advocates, to help directly protect the legal rights of noncitizens. ASISTA advocates for policy on behalf of immigrant survivors of violence, and publishes training materials and runs training programs that educate the public, legal practitioners, civil and criminal court judges, government officials, and law enforcement officers about immigration law and practice. It aims to ensure that laws protecting immigrant survivors of violence are implemented as Congress intended. ASISTA partners with numerous immigration organizations and legal practitioners nationwide, who collectively serve thousands of U-visa-eligible victims of qualifying crimes. Like Safe Horizon, ASISTA's ability to fulfill its organizational mission depends on being well informed and up to date about the legal requirements for obtaining a U-visa and USCIS's policies for adjudicating U-visa related applications.

14. Defendant USCIS is an agency within the meaning of 5 U.S.C. § 552(f). USCIS is headquartered at 20 Massachusetts Avenue N.W., Washington, D.C. 20529. USCIS is the federal agency responsible for administering the U.S. government's lawful immigration system. Among

its responsibilities is providing U-visas to victims of qualifying crimes and adjudicating adjustment of status applications based on an approved U-visa. Defendant USCIS has possession of and control over records sought by Plaintiffs.

15. Defendant DHS is a department of the executive branch of the U.S. government and is an agency within the meaning of 5 U.S.C. § 552(f). DHS is headquartered at 2707 Martin Luther King Jr. Avenue S.E., Washington, D.C. 20593. DHS is responsible for enforcing federal immigration laws, and is the parent agency to USCIS. Defendant DHS has possession of and control over records sought by Plaintiffs.

STATEMENT OF FACTS

Background of U-Visas

16. The U-visa is a humanitarian remedy “for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity.”¹ A noncitizen becomes eligible to apply for a U-visa if he or she is a victim of a qualifying crime, suffers substantial physical or mental abuse, and aids law enforcement in investigating or prosecuting that crime. The U-visa grants legal status for a period of four years, and the opportunity to apply for permanent resident status in the fourth year.

17. The U-visa was created by the Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000, which was “enacted to strengthen the ability of law enforcement agencies to

¹ USCIS, *Victims of Criminal Activity: U Nonimmigrant Status*, <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-criminal-activity-u-nonimmigrant-status>.

investigate and prosecute serious crimes . . . while offering protections to victims of such crimes without the immediate risk of being removed from the country[.]”²

18. Congress created the U-visa program “out of recognition that victims without legal status may otherwise be reluctant to help in the investigation or prosecution of criminal activity[.]” for fear that cooperation with law enforcement could lead to deportation.³ Congress specifically recognized that “[i]mmigrants, especially women and children, can be particularly vulnerable to criminal activity”—including domestic violence, sexual assault, or stalking—due to, among other factors, “language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences.”⁴ Accordingly, by creating the U-visa, “Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but to also strengthen relations between law enforcement and immigrant communities.”⁵

19. U-visas not only help protect victims of crime, but are also “key tools” for law enforcement officers in their work.⁶ Victims’ lack of legal status is a common reason they choose not to come forward to work with law enforcement, and a common factor that perpetrators use as leverage to exploit and control them. By granting victims legal status in the United States, “immigration relief can be critical to providing victims of crime a greater sense of security that

² Department of Homeland Security, “U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies,” Jan. 4, 2016, at 4, available at https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 3.

also makes it easier for them to assist [law enforcement officers] with [their] law enforcement and prosecutorial efforts.”⁷

20. In a recent report,⁸ the Human Rights Watch cited “more than a dozen law enforcement officials” from multiple states as unanimously stating that “the U visa has been an essential tool in strengthening relationships with immigrant communities and ensuring public safety.” These law enforcement officials emphasized that information provided by undocumented victims or witnesses on dangerous criminal activities “has a ripple effect that makes the whole community safer,” while other prosecutors and police officers “described the visas as ‘crucial’ and ‘essential’ to their work[,] . . . lamented the fact that they are not more widely available[,] . . . [or] emphasized that the program strengthens communities by embracing those who are willing to make sacrifices to benefit others.”

21. The New York City Department of Investigation has likewise stated that “[s]trengthening NYPD’s U visa program helps New York City” to “ensure that immigrants – documented or undocumented – are protected and feel safe stepping forward to report crimes[,]” and that making administration of the U-visa program “more consistent and transparent . . . can help protect immigrant communities and make the City safer.”⁹

⁷ *Id.*

⁸ Human Rights Watch, “Immigrant Crime Fighters,” July 3, 2018, available at <https://www.hrw.org/report/2018/07/03/immigrant-crime-fighters/how-u-visa-program-makes-us-communities-safer#>.

⁹ Press Release, Mark G. Peters, Commissioner of the Department of Investigation, The City of New York, “DOI Releases Report on NYPD’s Handling of U Visa Certification Program for Undocumented Crime Victims,” July 28, 2017, at 1, available at <https://www1.nyc.gov/assets/doi/reports/pdf/2017/07-28-2017-U-Visa-Rpt-Release.pdf>.

USCIS's Shift in Adjudication of U-Visas

22. The policies governing USCIS's adjudication of U-visas are of particular and urgent interest to Plaintiffs and the communities and clients they represent. Because Safe Horizon's clients have been victims of violence, many of their immigration clients are eligible for and apply for U-visas and adjustment of status based on underlying U-visas. Likewise, ASISTA offers advice and training on the representation of U-visa applicants.

23. Beginning in or around Spring 2018, Plaintiffs observed a shift in USCIS's adjudication of U-visas and adjustment of status applications. There were several changes, each regarding applicants' prior history of criminal contact. First, Plaintiffs observed an increase in Requests for Evidence from USCIS regarding applicants' prior criminal contact, such as requests for applicants' arrest reports, police reports, sworn statements regarding circumstances of an arrest, and/or charging documents. These requests were often made in situations where charges were never filed, charges were dismissed, and/or where the relevant records had been sealed. Second, Plaintiffs observed that, if applicants did not provide the requested evidence, USCIS increasingly began denying their applications. And third, if such evidence was provided, Plaintiffs observed that USCIS increasingly began issuing denials based on the substance of the evidence. Prior to this time, USCIS's practice was generally not to request this kind of evidence or, if it did, to be satisfied with the submission of the relevant certificate of disposition.

24. While it was clear that USCIS's practice had shifted, the extent and parameters of the change were completely obscure. No revised or new policy was publicly issued, and no change was described in any USCIS publication, announcement, advisory, or guidance of any kind. Due to the paucity of public information, many interested parties, such as immigration lawyers, advocates for noncitizens, social workers, and law enforcement personnel, now lack an

understanding of USCIS's practice and policy governing U-visa adjudications and the rationales that underlie it, and are thus at a loss for how to maintain best practices in their work.

25. The transparency sought by Plaintiffs through the FOIA Request is urgently needed. Current and potential U-visa petitioners, adjustment of status applicants, and their legal counsel, must make strategic decisions in preparing their applications in order to best represent their case to USCIS. These decisions rely on understanding USCIS's adjudication policies, and those policies are currently opaque and appear to be applied inconsistently. Moreover, because permanent resident applications based on approved U-visa applications and appeals to denials of U-visa petitions are subject to government-imposed deadlines, forcing applicants and attorneys to proceed with incomplete information may result in petitioners permanently losing opportunities to obtain a U-visa or permanent resident status. Failure to obtain a U-visa can cause significant harm to an applicant's life: the applicant could fall victim to further crime and/or be deported, uprooting their life entirely.

Plaintiffs' FOIA Request and Defendants' Failure to Respond

26. FOIA mandates disclosure of records held by a federal agency, in response to a request for such records by a member of the public, unless records fall within certain narrow statutory exemptions. *See* 5 U.S.C. § 552(a)(3)(A).

27. As the Supreme Court has recognized, "the basic purpose of [FOIA is] 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S. 352, 372 (1976). Such scrutiny improves the public's understanding of governmental operations and, thus, enables a vibrant and functioning democracy.

28. Accordingly, on February 19, 2020, Plaintiffs filed a FOIA Request with USCIS, seeking information regarding USCIS's policies and practices for adjudicating U-visa petitions

and adjustment of status applications based on an underlying U-visa. A true and correct copy of the FOIA Request is attached hereto as Exhibit 1.

29. In brief, the Request seeks records relating to any USCIS policy on the adjudication of U-visa petitions and adjustment of status applications based on an underlying U-visa (Item 1), and records relating to any USCIS policy on the relevance of an applicant's prior contact with law enforcement in the adjudication of such petitions and applications (Item 2). Records were sought for policies "issued or in effect at any time from 2015 to present" in order to put any recent changes in context with prior practice. These two principal requests were accompanied by subordinate requests seeking related information, namely: changes or modifications to relevant policies (Items 3–6), explanations or evaluations of relevant policies (Items 7–9), implementation plans for relevant policies (Item 10), and communications related to the above items (Item 11). Every component of Plaintiffs' Request fits squarely with the purpose of and rights granted by FOIA.

30. By letter dated March 24, 2020, USCIS acknowledged that it received Plaintiffs' FOIA Request on February 19, 2020, and informed Plaintiffs that it had "determined that the coordination of the response to" the Request would be "handled by" DHS. The letter also stated that USCIS had forwarded the Request to DHS. A true and correct copy of the March 24, 2020 letter is attached hereto as Exhibit 2.

31. On March 26, 2020, Plaintiffs, through counsel, sent a letter to DHS, copying USCIS, requesting that DHS acknowledge receipt of the Request, assign it a tracking number if it would take longer than 10 working days to process, and, pursuant to 6 C.F.R. § 5.4(g), process the Request according to the date it was submitted—February 19, 2020. A true and correct copy of this letter is attached hereto as Exhibit 3. Neither DHS nor USCIS responded to Plaintiffs' March 26 letter.

32. On June 8, 2020, Plaintiffs received, through counsel, two letters from USCIS. The first letter was dated May 7, 2020, and the second was dated May 11, 2020. Both letters were postmarked June 1, 2020. True and correct copies of these letters are attached hereto as Exhibits 4 and 5.

33. In both letters, USCIS stated that it had “reconsidered” Plaintiffs’ Request and that USCIS would now respond to the majority of the requested items (the “USCIS Request Items”), and refer only a handful of the items to DHS (the “DHS Request Items”). USCIS assigned new control numbers to Plaintiffs’ Request—one control number for the USCIS Request Items, and a separate control number for the DHS Request Items.

34. USCIS’s May 11 letter addressed the DHS Request Items. USCIS stated that it had “forwarded [Plaintiffs’] request to [DHS] for consideration and direct reply to [Plaintiffs].”

35. USCIS’s May 7 letter addressed the USCIS Request Items. USCIS granted Plaintiffs’ request for a fee waiver and stated that it had placed the USCIS Request Items in “Track 2,” the “complex track.” USCIS also purported to invoke a 10-day extension to respond to Plaintiffs’ FOIA Request pursuant to 5 U.S.C. § 552(a)(6)(B). In addition, USCIS stated that it would “need to reach out” to Plaintiffs at an indeterminate “later date” regarding the scope of the FOIA Request. USCIS has never in fact reached out.

36. The May 7 letter also included a “[n]otification” that the COVID-19 emergency had reduced USCIS’s “capacity to process paper FOIA requests and deliver records by mail.” However, neither this notification nor anything else in this letter (or the May 11 letter) suggested any impaired capacity to conduct searches, review documents, release records electronically, or otherwise process FOIA requests. In particular, the letter made no suggestion that the COVID-19 emergency had reduced its capacity to process FOIA requests submitted online, through its digital

FIRST portal, which “allows users to submit and track FOIA requests and receive documents digitally.”¹⁰

37. Neither letter provided any information regarding the scope of documents USCIS (or DHS) would search for, review, or produce, or any suggestion that USCIS (or DHS) had already conducted any search or review. Likewise, neither letter objected to any aspect of the Request or claimed that the requested items were or could be subject to any FOIA exemptions.

38. Since June 8, 2020, Plaintiffs have not received any communication from USCIS. USCIS has failed to communicate the scope of documents it intends to produce or claim that any of the requested information is exempt from production.

39. To date, Plaintiffs have not received any communication whatsoever from DHS.

40. Defendants USCIS and DHS are in violation of their duties under FOIA. Although statutorily obligated to determine their responses to a request within twenty (20) days, 5 U.S.C. § 522(a)(6)(A)(i), USCIS and DHS both failed to make a determination regarding Plaintiffs’ Request within 20 business days; even if a 10-day extension was warranted, which Plaintiffs dispute, Defendants also failed to make a determination within 30 business days. Defendants have also failed to make relevant records “promptly available.” 5 U.S.C. § 552(a)(3)(A), (a)(6)(C)(i).

41. Because Defendants have failed to make determinations as to Plaintiffs’ FOIA Request as required by law, Plaintiffs are deemed to have exhausted their administrative remedies. 5 U.S.C. § 522(a)(6)(C).

¹⁰ Press Release, USCIS, “USCIS Expands FIRST: A Fully Digital FOIA System,” June 25, 2019, available at <https://www.uscis.gov/news/news-releases/uscis-expands-first-a-fully-digital-foia-system>; USCIS, “Request Records through the Freedom of Information Act or Privacy Act,” available at <https://www.uscis.gov/records/request-records-through-the-freedom-of-information-act-or-privacy-act> (“Avoid Delays! Make Your FOIA Request Online: During the national COVID-19 response, our capacity to process paper FOIA requests and deliver records by mail will be greatly reduced.”).

42. Due to the gravity of interests at stake, it is imperative that Defendants comply with the Request as soon as possible.

CAUSE OF ACTION

Failure to Comply with FOIA

43. Plaintiffs repeat and incorporate the foregoing paragraphs as though fully set forth herein.

44. Pursuant to FOIA, 5 U.S.C. § 552(a), Plaintiffs have a statutory right to access requested government records.

45. Defendants were required to make a determination of which records would be produced within 20 business days after receipt of the request. 5 U.S.C. § 552(a)(6)(A)(i). A “determination” in this context “must at least inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions.” *Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm’n*, 711 F.3d 180, 186 (D.C. Cir. 2013). This requires the agency to “at least: (i) gather and review the documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the ‘determination’ is adverse.” *Id.* at 188.

46. Because Plaintiffs’ Request was filed February 19, 2020, Defendants’ deadline to make a “determination” of the request was March 18, 2020. At the absolute latest, Defendants’ deadline was July 21, 2020, thirty business days after plaintiffs received their latest communication on June 8, 2020.

47. Defendants have failed to respond to Plaintiffs’ FOIA Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

48. Defendants were also required under FOIA to make the requested records promptly available to Plaintiffs, 5 U.S.C. § 552(a)(3)(A). This requirement means making the records available “within days or a few weeks of a ‘determination,’ not months or years.” *Citizens for Responsibility & Ethics in Washington*, 711 F.3d at 188. “[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and the courts have a duty to prevent these abuses.” *Payne Enterprises, Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988) (quoting *Long v. I.R.S.*, 693 F.2d 907, 910 (9th Cir. 1982)).

49. Defendants have also failed to timely produce any requested records.

50. Defendants have not identified any legal basis for their failure to timely produce responsive records.

51. Because Defendants have failed to comply with the requirement to respond set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiffs have exhausted their administrative remedies and are entitled to proceed with this judicial action pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

52. Under FOIA, when an agency “improperly withh[o]ld[s]” records, this Court may “enjoin the agency from withholding agency records” and “order the[ir] production.” 5 U.S.C. § 552(a)(4)(B). This authority includes the power to enforce an agency’s obligation to make documents available to the general public. *NY Legal Assistance Grp. v. Board of Immigration Appeals*, No. 19-3248, 2021 WL 401269 at *5–6, *7–13 (2d Cir. Feb. 5, 2021).

53. Further, this Court may provide declaratory relief because this is a case of “actual controversy” within the jurisdiction of this Court. 28 U.S.C. § 2201(a). An actual controversy exists because Plaintiffs contend that Defendants’ continuing failure to act with respect to their FOIA Request is in violation of the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Safe Horizon and ASISTA respectfully request that the Court award them the following relief:

- A. Declare that the Defendants' failure to timely respond and failure to timely disclose records was and is unlawful;
- B. Order Defendants and any of their departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of them to promptly conduct reasonable searches for all records responsive to Plaintiffs' FOIA Request if they have not already done so;
- C. Order Defendant to produce, within twenty (20) days of the Court's order, all records responsive to Plaintiffs' FOIA Request and sworn declarations with facts sufficient to justify any responsive records withheld or redacted under claim of exemption;
- D. Enjoin Defendants and any of their departments, components, other organizational structures, agents, or other persons acting by, through, for, or on behalf of them from improperly withholding records or portions of records responsive to Plaintiffs' FOIA Request;
- E. Award Plaintiffs their reasonable attorney's fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412; and
- F. Grant all other such relief to Safe Horizon and ASISTA as the Court deems just and proper.

Dated: March 17, 2021
New York, New York

GIBSON, DUNN & CRUTCHER LLP

/s/ Akiva Shapiro

Akiva Shapiro

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EXHIBIT 1

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February 19, 2020

SUBMITTED VIA FREEDOM OF INFORMATION ACT RECORDS SYSTEM

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010
Fax (802) 860-6908
uscis.foia@uscis.dhs.gov

Re: Freedom of Information Act Request for Records Regarding Adjudication
of Form I-485 and Form I-918

Dear U.S.:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, Safe Horizon, Inc. ("Safe Horizon") and ASISTA Immigration Assistance ("ASISTA") (collectively, "Requestors") respectfully request copies of public records maintained by United States Citizenship and Immigration Services ("USCIS").

This request seeks information relating to the relevance of an applicant's prior criminal contact in the adjudication of petitions for U nonimmigrant status ("U-visa") and applications for adjustment of status for U nonimmigrants based on an underlying U-visa under the Immigration and Nationality Act ("INA") § 245(m).

I. REQUESTORS

Safe Horizon is a nonprofit organization established to provide assistance, advocacy, and support to victims of violence, including domestic violence, child abuse, sexual assault, stalking, human trafficking, and other crimes. Safe Horizon's Immigration Law Project ("ILP") provides legal consultation and representation to low-income survivors of violence seeking immigration relief. ILP regularly coordinates with local police departments and prosecutors in seeking immigration relief for victims and witnesses of crimes.

ASISTA is a nonprofit organization established to increase public understanding of immigration law and policy and 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

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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.

II. REQUEST FOR INFORMATION

Beginning in or around Spring 2018, Requestors observed a shift in USCIS's adjudication of Form I-918, Petition for U Nonimmigrant Status, and Form I-485, Application to Register Permanent Residence or Adjust Status based on an underlying U-visa. First, Requestors observed an increase in Requests for Evidence from USCIS regarding applicants' prior criminal contact. For example, USCIS began issuing requests for applicants' arrest reports, police reports, sworn statements regarding circumstances of an arrest, and/or charging documents, particularly in situations where charges were never filed, charges were dismissed, and/or where the relevant records have been sealed. Second, Requestors observed that, if applicants did not provide the requested evidence, USCIS increasingly began denying their applications. And third, if such evidence was provided, Requestors observed that USCIS increasingly began issuing denials based on the substance of the evidence. Prior to this time, USCIS's practice—reflecting, as we understand it, USCIS's policy—generally was not to request this kind of evidence; if it did, providing the relevant certificate of disposition was sufficient to satisfy USCIS's request.

While it is clear that the prior USCIS practice is no longer in force, the extent and parameters of the change in practice and policy are not clear. No revised or new practice or policy has, at present, been publicly issued or described in any USCIS publication, announcement, advisory, or guidance document of any kind. As a result of the paucity of public information, many members of the public, including immigration lawyers, advocates for noncitizens, social workers, and law enforcement personnel, lack an understanding of the current practice and policy governing U-visa adjudications, what rationales underlie it, and how to develop best practices for their work that properly account for it.

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Accordingly, we request that you please produce any and all records¹ constituting, referring, or relating to:

1. Any USCIS policy² or policies issued or in effect at any time from 2015 to present referring or relating to the adjudication of U-visa petitions (Form I-918) or applications for adjustment of status (Form I-485) based on an underlying U-visa.
2. Any USCIS policy or policies issued or in effect at any time from 2015 to present referring or relating to the relevance of an applicant's prior criminal contact in the adjudication of U-visa petitions or applications for adjustment of status based on an underlying U-visa. Such criminal contact may include, for example, situations where charges were never filed against the applicant, situations where charges were filed and dismissed, situations where the applicant was acquitted at trial of some or all charges, situations where the applicant entered a plea, and/or situations where records have been sealed. This request encompasses policies with any reference to evidence of such contact including, without limitation, policies regarding: the weight to be granted such evidence; the absence of such evidence; the weight to be granted such absence; the withholding of such evidence by an applicant; the weight to be granted such withholding; any presumptions related to any of the above considerations; any effect of any of the above considerations on the exercise of discretion; and the procedures, protocols, or methods for review of such cases.
3. Any change or modification to any policy that falls under items 1 or 2, whether or not such change or modification is currently in force.
4. Any creation of any new policy that falls under items 1 or 2, whether or not such new policy is currently in force.

¹ The term "records" as used herein includes, but is not limited to: memoranda, advisories, agreements, directives, guidance documents, guidelines, templates, standards, instructions, notes, orders, policies, procedures, protocols, reports, rules, manuals, training materials, analyses, evaluations, studies, files, data, documents, communications, correspondence, letters, faxes, emails, email attachments, informal notes or memoranda, meeting minutes, meeting notes, meeting summaries, meeting agendas, phone transcripts, phone recordings, audiotapes, and videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing annotations or marginal notations.

² The term "policy" as used herein includes, but is not limited to, any statement, instruction, directive, advisory, agreement, or discussion of any policy, practice, procedure, method, standard, or rule, whether or not it is formal, final, official, authoritative, binding, mandatory, discretionary, or universal (across USCIS, or across applicant cases).

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5. Any abrogation of a previous policy that falls under items 1 or 2, whether or not such abrogation is currently in force.
6. Any proposed change, modification, creation, or abrogation of a policy that falls under items 1 or 2, whether or not such proposal was ever endorsed or adopted.
7. Any statement of any rationale underlying any of items 1–6, including but not limited to: any aim or goal of any policy or proposed policy, or any reason or purpose for proposing or adopting any policy or proposed policy.
8. Any quantitative or qualitative evaluation of any of items 1–7, either prospective or retrospective, including but not limited to:
 - a. any basis for the adoption or non-adoption of any policy;
 - b. any factors considered in the adoption or non-adoption of any policy;
 - c. any procedure or method for the adoption or non-adoption of any policy;
 - d. any cost-benefit analysis;
 - e. any identification, estimation, or accounting of affected parties;
 - f. any consequences of adoption or non-adoption of any policy;
 - g. any consequences on the number of visa applications submitted, granted, or denied, or the number of removals of noncitizens;
 - h. any evaluation of any effect on any other federal agency, or on the subject matter domain of any other federal agency;
 - i. any evaluation of any effect on any non-federal governmental body, including state governments, state government agencies, state Attorneys General, state prosecutors, local government, local district attorneys, or local law enforcement;
 - j. any evaluation of any effect on any non-governmental organization; or
 - k. any process, protocol, strategy, procedure, schematic, or standard for evaluation, or any investigations or evaluations begun or proposed but not completed.

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9. Any data, information, or measurements created for or used in connection with any of items 1–8, including but not limited to: census data, USCIS operating statistics (such as numbers of applications of any type received, processed, approved, or denied), or operating statistics of any other government agency.
10. Any method, strategy, or plan for implementing any of items 1–6.
11. Any communications referring or relating to any of items 1–10 including, but not limited to, communications involving:
 - a. Any USCIS personnel;
 - b. Kenneth T. (Ken) Cuccinelli, Acting Director, USCIS;
 - c. Mark Koumans, Deputy Director, USCIS;
 - d. Kathy Nuebel Kovarik, Chief of Staff and Acting Deputy Director, USCIS;
 - e. Joseph Edlow, Chief Counsel, Office of the Chief Counsel, USCIS;
 - f. Stephen Dove, Chief, Office of the Executive Secretariat, USCIS;
 - g. Robert Law, Chief, Office of Policy and Strategy, USCIS;
 - h. The U.S. Department of Homeland Security (“DHS”), including DHS field offices, and any DHS leadership or personnel;
 - i. U.S. Immigration & Customs Enforcement (“ICE”), including any ICE leadership or personnel;
 - j. U.S. Customs and Border Protection (“CBP”), including any CBP leadership or personnel;
 - k. The U.S. Department of Justice (DOJ), including the DOJ’s Executive Office for Immigration Review (EOIR), any immigration judge, or any other DOJ or EOIR leadership or personnel.
 - l. Any White House personnel, including any member of the President’s Administration or Cabinet, any Senior Advisor to the President, and any other White House advisor, acting official, or staff.

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- m. Any members of Congress or Congressional staff;
 - n. Any legal professionals, including immigration judges, immigration lawyers, other judges, or other lawyers;
 - o. Any journalists or members of the news media; and
 - p. Any policy institutions, think tanks, research organizations, and/or other non-governmental organizations.
12. Standard operating procedures for waivers of inadmissibility for U-visa applicants under INA § 212(d)(3) & § 212(d)(14) from years 2015 to present.
13. Standard operating procedures for adjustment of status applications under INA § 245(m) from years 2015 to present.

Please search for responsive records regardless of format, medium, or physical characteristics. Where possible, please produce records electronically, in a text-searchable format (*e.g.*, pdf). This request seeks records of any kind, including hard copies, electronic records, audiotapes, videotapes, photographs, scanned images, e-mails, or facsimiles. This request also seeks any attachments to such responsive records.

III. REQUEST FOR WAIVER OF FEES

We also request a fee waiver. A fee waiver is appropriate here because disclosure of the requested records “is likely to contribute significantly to the public understanding of the activities or operations of the government” and the requestors have no commercial interest in the records sought. 5 U.S.C. § 552(a)(4)(A)(iii); *see also Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (recognizing Congress’s intent that FOIA’s fee waiver provision “is to be liberally construed in favor of waivers for noncommercial requesters”). Likewise, disclosure of the requested records meets the two requirements for a waiver of fees set out in the USCIS FOIA Request Guide: it is (1) “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) “not primarily in the commercial interest of the requester.” USCIS, *Freedom of Information Act Request Guide*, July 10, 2019, at 23, https://www.uscis.gov/sites/default/files/files/natedocuments/USCIS_FOIA_Request_Guide.pdf.

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A. Disclosure of the Records Is in the Public Interest

Disclosure of the requested information is in the public interest because it will contribute significantly to public understanding of how USCIS adjudicates U-visa petitions and adjustment of status applications for U nonimmigrants and the weight it places on prior criminal contact. This request furthers Requestors' 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 before USCIS. In addition, disclosure of the requested information is of great public interest given the high volume of U-visa petitions filed, the great importance of these visas to law enforcement and social work across the country, and the recent change in the adjudication of such petitions. *See* 6 C.F.R. § 5.11(k)(2)(iii) (stating that disclosure will contribute to public understanding when it affects a "reasonably broad audience of persons interested in the subject"). To take one example, the requested information is critically important to assist immigration attorneys and the affected non-citizen population in understanding how the current practice differs from past practice, what the rationale for this change was, and how to adjust best practices to comply with and account for the current state of federal immigration law.

Requestors have the intent and demonstrated ability to use this information for the direct benefit of members of the public, for the education of the public, and additionally to directly disseminate the requested information to a broad cross-section of the public.

- Safe Horizon, as discussed above, is the nation's leading nonprofit organization providing assistance, advocacy, and support to victims of violence, helping over 250,000 people annually. Safe Horizon frequently coordinates with police departments and prosecutors, such as the New York City Police Department and the Office of the District Attorney in all five counties of New York City, to facilitate the investigation and prosecution of crimes by providing its services, including immigration assistance, to victims and witnesses of crimes. Its Immigration Law Project provides direct legal services for immigrant survivors of violence; U-visas and U-visa-based adjustments of status are together the most common forms of relief sought by ILP on behalf of its clients. ILP provides services to its clients on either a pro bono or low-cost basis, and assists over 1,000 clients annually. In addition, ILP regularly conducts outreach, trainings, and presentations to community partners, members of law enforcement, elected officials, and other stakeholders on immigration law and policy-related issues. It actively engages in policy advocacy at the local, state, and national levels on immigration issues affecting its clients and is

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often sought out by, and quoted in, the press as an expert in the field of humanitarian-based immigration relief.

- ASISTA, as discussed above, is a nonprofit organization whose purpose is to increase public understanding of immigration law and policy, including by educating the public, the legal community, government officials, and law enforcement about changes in federal immigration law. Many of ASISTA's member organizations are nonprofits themselves, and ASISTA offers its services at a lower cost to nonprofit members. These services include assisting members of the public in complying with immigration law; training lawyers, domestic violence and sexual assault advocates, law enforcement personnel, and civil and criminal court judges in immigration law; directly assisting lawyers in individual immigration cases; and working closely with DHS to ensure the law is implemented as Congress intended. In addition, ASISTA undertakes significant educational and journalistic activities. It publishes and maintains a blog for updates on practice and advocacy in immigration law, publishes practice advisories for attorneys and others who work with immigrant crime survivors, develops and shares template comments for the field on emerging policy issues, and regularly solicits case examples from the field to inform the content of policy advocacy with DHS and other decision-makers. Through these activities, ASISTA regularly provides information to the general public, immigration law professionals, the media, DHS, and members of Congress contemplating legislative changes or hearings on emerging issues. In addition, ASISTA maintains an established network of over 500 organizations and individuals practicing immigration law. It regularly disseminates information about immigration law to these partner organizations, who use it to the benefit of their various activities, including public education, professional legal training, and direct client representation. ASISTA's website regularly publishes immigration-related information and news, and these online publications are widely available and circulated. From February 1, 2019 to October 21, 2019, it had over 122,583 pageviews from 33,542 unique visitors. ASISTA has previously disseminated information from prior FOIA requests to facilitate the sharing of this information with a broad public audience. *See, e.g.,* <https://asistahelp.org/impact-litigation-2/> (publication of records obtained through FOIA-related to petitions for U-visas where the underlying crime was California robbery).

Requestors will review and analyze the information obtained to provide better services to their immigrant clients; to provide better education and training to lawyers, accredited representatives, law enforcement personnel, and partner organizations working in immigration law; and to provide the information to the public on at least one publicly

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accessible website. For example, ASISTA will publish a practice advisory of such information and will disseminate that advisory through its website or its established networks. Additionally, Requestors have regular contact with national print and news media and plan to share with those outlets information they obtain from this FOIA request that is relevant to Requestors' public interest work.

B. Disclosure of the Records Is Not Primarily in the Commercial Interest of the Requestors

As discussed above, Requestors are both not-for-profit organizations. Neither organization will benefit commercially in any way from the information requested. Both organizations seek the requested information for the purposes of (1) improving the quality of the services they are able to provide to their clients and/or members, and (2) disseminating the information to the general public and to additional interested individuals and organizations. All use or dissemination of the information received in response to this FOIA request will be free of charge. To the extent the requested information is used or disseminated to any paying client or member of either organization, the amount of payment will not increase in any way as a consequence of the requested information being used or shared.

* * *

Requestors appreciate your timely attention to this request, and look forward to your reply within 20 business days, as required under 5 U.S.C. § 552(a)(6)(A)(i). If you expect a significant delay in responding to and fulfilling this request in full, please provide us with information regarding when we should expect the records to arrive, and please send responsive records seriatim as they become available.

Consistent with FOIA's objective of increasing the transparency of agency action, FOIA exemptions are construed narrowly and the agency bears the burden of justifying its decision to withhold documents. *See, e.g., AquAlliance v. U.S. Bureau of Reclamation*, 856 F.3d 101, 102–04 (D.C. Cir. 2017). For example, the deliberative process privilege of FOIA Exemption 5 applies only if the information at issue is both predecisional and deliberative. *See, e.g., Nat'l Ass'n Home Builders v. Norton*, 309 F.3d 26, 39 (D.C. Cir. 2002). If you deny any part or all of this request, please cite each specific exemption you believe justifies the refusal to release the specific information and notify us of the appeal procedures available to us under applicable law.

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Should you conclude that a complete waiver of fees is not warranted, we will pay up to \$25 for the processing of this request. If the estimated fees exceed this amount, please contact us to receive our permission prior to incurring any additional fees.

We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

If we may be of any assistance in facilitating this request, please contact us at:

Akiva Shapiro
(212) 351-3830
AShapiro@gibsondunn.com

Alyssa Kuhn
(212) 351-2653
AKuhn@gibsondunn.com

Cassarah M. Chu
(212) 351-6381
CMChu@gibsondunn.com

Emil N. Nachman
(212) 351-6367
ENachman@gibsondunn.com

Sincerely,

/s/ Akiva Shapiro
Akiva Shapiro

EXHIBIT 2

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010



**U.S. Citizenship
and Immigration
Services**

COW2020000224

March 24, 2020

Cassarrah Chu
Gibson, Dunn & Crutcher
200 Park Avenue
Floor 48
New York, NY 10166

Dear Cassarah Chu:

Your request was received in this office on February 19, 2020 regarding U Visa and Criminal History Records. After assessing your request, we determined that the coordination of the response to your request will be handled by the following government agency:

Department of Homeland Security
Director, Departmental Disclosure & FOIA
Privacy Office, FOIA Stop 0665
245 Murray Lane SW
WashingtonDC 20528

For your convenience, we have forwarded your request to that agency for consideration and direct reply to you. For additional information relating to the Department of Homeland Security (DHS) and its components, we encourage you to visit the DHS website at the following address: www.dhs.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jill A. Eggleston".

Jill A. Eggleston
Director, FOIA Operations

EXHIBIT 3

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

200 Park Avenue
New York, NY 10166-0193
Tel 212.351.4000
www.gibsondunn.com

Akiva Shapiro
Direct: +1 212.351.3830
Fax: +1 212.351.6340
AShapiro@gibsondunn.com

March 26, 2020

VIA E-MAIL (FOIA@HQ.DHS.GOV)

Department of Homeland Security
Director, Departmental Disclosure & FOIA
Privacy Office, Mail Stop 0655
2707 Martin Luther King Jr. Avenue SE
Washington, DC 20528

Re: Freedom of Information Act Request for Records Regarding Adjudication of Form I-485 and Form I-918

To Whom It May Concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, Safe Horizon, Inc. (“Safe Horizon”) and ASISTA Immigration Assistance (“ASISTA”) (collectively, “Requestors”) respectfully request copies of public records maintained by the Department of Homeland Security (“DHS”) and the United States Citizenship and Immigration Services (“USCIS”).

On February 19, 2020, Requestors submitted a request for records to USCIS, via USCIS’s digital Freedom of Information Act Immigration Records System (“FIRST”), seeking information relating to the relevance of an applicant’s prior criminal contact in the adjudication of petitions for U nonimmigrant status (“U-visa”) and applications for adjustment of status for U nonimmigrants based on an underlying U-visa under the Immigration and Nationality Act (“INA”) § 245(m). A copy of the original request is attached hereto as **Appendix A**. The request is reproduced below in full.

On March 24, 2020, USCIS’s FOIA Public Liaison, Jill A. Eggleston, notified Requestors via FIRST that USCIS had determined the coordination of the response to Requestors’ February 19, 2020 request will be handled by DHS. In addition, USCIS notified Requestors that USCIS had forwarded the February 19, 2020 request to DHS for consideration. A copy of USCIS’s March 24, 2020 letter to Requestors is attached hereto as **Appendix B**.

Requestors kindly request that DHS acknowledge receipt of this request and assign it an individualized tracking number if the request will take longer than 10 working days to process. *See* 6 C.F.R. § 5.6(b). In addition, Requestors contend that DHS should handle this request according to the date that USCIS received this request, February 19, 2020. *See* 6 C.F.R. § 5.4(g).

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I. REQUESTORS

Safe Horizon is a nonprofit organization established to provide assistance, advocacy, and support to victims of violence, including domestic violence, child abuse, sexual assault, stalking, human trafficking, and other crimes. Safe Horizon's Immigration Law Project ("ILP") provides legal consultation and representation to low-income survivors of violence seeking immigration relief. ILP regularly coordinates with local police departments and prosecutors in seeking immigration relief for victims and witnesses of crimes.

ASISTA is a nonprofit organization established to increase public understanding of immigration law and policy and 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.

II. REQUEST FOR INFORMATION

Beginning in or around Spring 2018, Requestors observed a shift in USCIS's adjudication of Form I-918, Petition for U Nonimmigrant Status, and Form I-485, Application to Register Permanent Residence or Adjust Status based on an underlying U-visa. First, Requestors observed an increase in Requests for Evidence from USCIS regarding applicants' prior criminal contact. For example, USCIS began issuing requests for applicants' arrest reports, police reports, sworn statements regarding circumstances of an arrest, and/or charging documents, particularly in situations where charges were never filed, charges were dismissed, and/or where the relevant records have been sealed. Second, Requestors observed that, if applicants did not provide the requested evidence, USCIS increasingly began denying their applications. And third, if such evidence was provided, Requestors observed that USCIS increasingly began issuing denials based on the substance of the evidence. Prior to this time, USCIS's practice—reflecting, as we understand it, USCIS's policy—generally was not to request this kind of evidence; if it did, providing the relevant certificate of disposition was sufficient to satisfy USCIS's request.

While it is clear that the prior USCIS practice is no longer in force, the extent and parameters of the change in practice and policy are not clear. No revised or new practice or policy has, at present, been publicly issued or described in any USCIS publication, announcement, advisory, or guidance document of any kind. As a result of the paucity of public information, many members of the public, including immigration lawyers, advocates for noncitizens, social workers, and law enforcement personnel, lack an understanding of the

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current practice and policy governing U-visa adjudications, what rationales underlie it, and how to develop best practices for their work that properly account for it.

Accordingly, we request that you please produce any and all records¹ constituting, referring, or relating to:

1. Any USCIS policy² or policies issued or in effect at any time from 2015 to present referring or relating to the adjudication of U-visa petitions (Form I-918) or applications for adjustment of status (Form I-485) based on an underlying U-visa.
2. Any USCIS policy or policies issued or in effect at any time from 2015 to present referring or relating to the relevance of an applicant's prior criminal contact in the adjudication of U-visa petitions or applications for adjustment of status based on an underlying U-visa. Such criminal contact may include, for example, situations where charges were never filed against the applicant, situations where charges were filed and dismissed, situations where the applicant was acquitted at trial of some or all charges, situations where the applicant entered a plea, and/or situations where records have been sealed. This request encompasses policies with any reference to evidence of such contact including, without limitation, policies regarding: the weight to be granted such evidence; the absence of such evidence; the weight to be granted such absence; the withholding of such evidence by an applicant; the weight to be granted such withholding; any presumptions related to any of the above considerations; any effect of any of the above considerations on the exercise of discretion; and the procedures, protocols, or methods for review of such cases.
3. Any change or modification to any policy that falls under items 1 or 2, whether or not such change or modification is currently in force.

¹ The term "records" as used herein includes, but is not limited to: memoranda, advisories, agreements, directives, guidance documents, guidelines, templates, standards, instructions, notes, orders, policies, procedures, protocols, reports, rules, manuals, training materials, analyses, evaluations, studies, files, data, documents, communications, correspondence, letters, faxes, emails, email attachments, informal notes or memoranda, meeting minutes, meeting notes, meeting summaries, meeting agendas, phone transcripts, phone recordings, audiotapes, and videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing annotations or marginal notations.

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4. Any creation of any new policy that falls under items 1 or 2, whether or not such new policy is currently in force.
5. Any abrogation of a previous policy that falls under items 1 or 2, whether or not such abrogation is currently in force.
6. Any proposed change, modification, creation, or abrogation of a policy that falls under items 1 or 2, whether or not such proposal was ever endorsed or adopted.
7. Any statement of any rationale underlying any of items 1–6, including but not limited to: any aim or goal of any policy or proposed policy, or any reason or purpose for proposing or adopting any policy or proposed policy.
8. Any quantitative or qualitative evaluation of any of items 1–7, either prospective or retrospective, including but not limited to:
 - a. any basis for the adoption or non-adoption of any policy;
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 - h. any evaluation of any effect on any other federal agency, or on the subject matter domain of any other federal agency;
 - i. any evaluation of any effect on any non-federal governmental body, including state governments, state government agencies, state Attorneys General, state prosecutors, local government, local district attorneys, or local law enforcement;
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9. Any data, information, or measurements created for or used in connection with any of items 1–8, including but not limited to: census data, USCIS operating statistics (such as numbers of applications of any type received, processed, approved, or denied), or operating statistics of any other government agency.
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 - d. Kathy Nuebel Kovarik, Chief of Staff and Acting Deputy Director, USCIS;
 - e. Joseph Edlow, Chief Counsel, Office of the Chief Counsel, USCIS;
 - f. Stephen Dove, Chief, Office of the Executive Secretariat, USCIS;
 - g. Robert Law, Chief, Office of Policy and Strategy, USCIS;
 - h. The U.S. Department of Homeland Security (“DHS”), including DHS field offices, and any DHS leadership or personnel;
 - i. U.S. Immigration & Customs Enforcement (“ICE”), including any ICE leadership or personnel;
 - j. U.S. Customs and Border Protection (“CBP”), including any CBP leadership or personnel;
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- n. Any legal professionals, including immigration judges, immigration lawyers, other judges, or other lawyers;
 - o. Any journalists or members of the news media; and
 - p. Any policy institutions, think tanks, research organizations, and/or other non-governmental organizations.
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A. *Disclosure of the Records Is in the Public Interest*

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criminal contact. This request furthers Requestors' 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 before USCIS. In addition, disclosure of the requested information is of great public interest given the high volume of U-visa petitions filed, the great importance of these visas to law enforcement and social work across the country, and the recent change in the adjudication of such petitions. *See* 6 C.F.R. § 5.11(k)(2)(iii) (stating that disclosure will contribute to public understanding when it affects a "reasonably broad audience of persons interested in the subject"). To take one example, the requested information is critically important to assist immigration attorneys and the affected non-citizen population in understanding how the current practice differs from past practice, what the rationale for this change was, and how to adjust best practices to comply with and account for the current state of federal immigration law.

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changes in federal immigration law. Many of ASISTA's member organizations are nonprofits themselves, and ASISTA offers its services at a lower cost to nonprofit members. These services include assisting members of the public in complying with immigration law; training lawyers, domestic violence and sexual assault advocates, law enforcement personnel, and civil and criminal court judges in immigration law; directly assisting lawyers in individual immigration cases; and working closely with DHS to ensure the law is implemented as Congress intended. In addition, ASISTA undertakes significant educational and journalistic activities. It publishes and maintains a blog for updates on practice and advocacy in immigration law, publishes practice advisories for attorneys and others who work with immigrant crime survivors, develops and shares template comments for the field on emerging policy issues, and regularly solicits case examples from the field to inform the content of policy advocacy with DHS and other decision-makers. Through these activities, ASISTA regularly provides information to the general public, immigration law professionals, the media, DHS, and members of Congress contemplating legislative changes or hearings on emerging issues. In addition, ASISTA maintains an established network of over 500 organizations and individuals practicing immigration law. It regularly disseminates information about immigration law to these partner organizations, who use it to the benefit of their various activities, including public education, professional legal training, and direct client representation. ASISTA's website regularly publishes immigration-related information and news, and these online publications are widely available and circulated. From February 1, 2019 to October 21, 2019, it had over 122,583 pageviews from 33,542 unique visitors. ASISTA has previously disseminated information from prior FOIA requests to facilitate the sharing of this information with a broad public audience. *See, e.g.*, <https://asistahelp.org/impact-litigation-2/> (publication of records obtained through FOIA-related to petitions for U-visas where the underlying crime was California robbery).

Requestors will review and analyze the information obtained to provide better services to their immigrant clients; to provide better education and training to lawyers, accredited representatives, law enforcement personnel, and partner organizations working in immigration law; and to provide the information to the public on at least one publicly accessible website. For example, ASISTA will publish a practice advisory of such information and will disseminate that advisory through its website or its established networks. Additionally, Requestors have regular contact with national print and news media and plan to share with those outlets information they obtain from this FOIA request that is relevant to Requestors' public interest work.

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Department of Homeland Security
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B. Disclosure of the Records Is Not Primarily in the Commercial Interest of the Requestors

As discussed above, Requestors are both not-for-profit organizations. Neither organization will benefit commercially in any way from the information requested. Both organizations seek the requested information for the purposes of (1) improving the quality of the services they are able to provide to their clients and/or members, and (2) disseminating the information to the general public and to additional interested individuals and organizations. All use or dissemination of the information received in response to this FOIA request will be free of charge. To the extent the requested information is used or disseminated to any paying client or member of either organization, the amount of payment will not increase in any way as a consequence of the requested information being used or shared.

* * *

Requestors appreciate your timely attention to this request, and look forward to your reply within 20 business days, as required under 5 U.S.C. § 552(a)(6)(A)(i). If you expect a significant delay in responding to and fulfilling this request in full, please provide us with information regarding when we should expect the records to arrive, and please send responsive records seriatim as they become available.

Consistent with FOIA's objective of increasing the transparency of agency action, FOIA exemptions are construed narrowly and the agency bears the burden of justifying its decision to withhold documents. *See, e.g., AquAlliance v. U.S. Bureau of Reclamation*, 856 F.3d 101, 102–04 (D.C. Cir. 2017). For example, the deliberative process privilege of FOIA Exemption 5 applies only if the information at issue is both predecisional and deliberative. *See, e.g., Nat'l Ass'n Home Builders v. Norton*, 309 F.3d 26, 39 (D.C. Cir. 2002). If you deny any part or all of this request, please cite each specific exemption you believe justifies the refusal to release the specific information and notify us of the appeal procedures available to us under applicable law.

Should you conclude that a complete waiver of fees is not warranted, we will pay up to \$25 for the processing of this request. If the estimated fees exceed this amount, please contact us to receive our permission prior to incurring any additional fees.

We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

GIBSON DUNN

Department of Homeland Security
March 26, 2020
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If we may be of any assistance in facilitating this request, please contact us at:

Akiva Shapiro
(212) 351-3830
AShapiro@gibsondunn.com

Alyssa Kuhn
(212) 351-2653
AKuhn@gibsondunn.com

Cassarah M. Chu
(212) 351-6381
CMChu@gibsondunn.com

Emil N. Nachman
(212) 351-6367
ENachman@gibsondunn.com

Sincerely,

/s/ Akiva Shapiro
Akiva Shapiro

CC: uscis.foia@uscis.dhs.gov

Appendix A

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

200 Park Avenue
New York, NY 10166-0193
Tel 212.351.4000
www.gibsondunn.com

Akiva Shapiro
Direct: +1 212.351.3830
Fax: +1 212.351.6340
AShapiro@gibsondunn.com

February 19, 2020

SUBMITTED VIA FREEDOM OF INFORMATION ACT RECORDS SYSTEM

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010
Fax (802) 860-6908
uscis.foia@uscis.dhs.gov

Re: Freedom of Information Act Request for Records Regarding Adjudication
of Form I-485 and Form I-918

Dear U.S.:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, Safe Horizon, Inc. ("Safe Horizon") and ASISTA Immigration Assistance ("ASISTA") (collectively, "Requestors") respectfully request copies of public records maintained by United States Citizenship and Immigration Services ("USCIS").

This request seeks information relating to the relevance of an applicant's prior criminal contact in the adjudication of petitions for U nonimmigrant status ("U-visa") and applications for adjustment of status for U nonimmigrants based on an underlying U-visa under the Immigration and Nationality Act ("INA") § 245(m).

I. REQUESTORS

Safe Horizon is a nonprofit organization established to provide assistance, advocacy, and support to victims of violence, including domestic violence, child abuse, sexual assault, stalking, human trafficking, and other crimes. Safe Horizon's Immigration Law Project ("ILP") provides legal consultation and representation to low-income survivors of violence seeking immigration relief. ILP regularly coordinates with local police departments and prosecutors in seeking immigration relief for victims and witnesses of crimes.

ASISTA is a nonprofit organization established to increase public understanding of immigration law and policy and 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

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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.

II. REQUEST FOR INFORMATION

Beginning in or around Spring 2018, Requestors observed a shift in USCIS's adjudication of Form I-918, Petition for U Nonimmigrant Status, and Form I-485, Application to Register Permanent Residence or Adjust Status based on an underlying U-visa. First, Requestors observed an increase in Requests for Evidence from USCIS regarding applicants' prior criminal contact. For example, USCIS began issuing requests for applicants' arrest reports, police reports, sworn statements regarding circumstances of an arrest, and/or charging documents, particularly in situations where charges were never filed, charges were dismissed, and/or where the relevant records have been sealed. Second, Requestors observed that, if applicants did not provide the requested evidence, USCIS increasingly began denying their applications. And third, if such evidence was provided, Requestors observed that USCIS increasingly began issuing denials based on the substance of the evidence. Prior to this time, USCIS's practice—reflecting, as we understand it, USCIS's policy—generally was not to request this kind of evidence; if it did, providing the relevant certificate of disposition was sufficient to satisfy USCIS's request.

While it is clear that the prior USCIS practice is no longer in force, the extent and parameters of the change in practice and policy are not clear. No revised or new practice or policy has, at present, been publicly issued or described in any USCIS publication, announcement, advisory, or guidance document of any kind. As a result of the paucity of public information, many members of the public, including immigration lawyers, advocates for noncitizens, social workers, and law enforcement personnel, lack an understanding of the current practice and policy governing U-visa adjudications, what rationales underlie it, and how to develop best practices for their work that properly account for it.

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Accordingly, we request that you please produce any and all records¹ constituting, referring, or relating to:

1. Any USCIS policy² or policies issued or in effect at any time from 2015 to present referring or relating to the adjudication of U-visa petitions (Form I-918) or applications for adjustment of status (Form I-485) based on an underlying U-visa.
2. Any USCIS policy or policies issued or in effect at any time from 2015 to present referring or relating to the relevance of an applicant's prior criminal contact in the adjudication of U-visa petitions or applications for adjustment of status based on an underlying U-visa. Such criminal contact may include, for example, situations where charges were never filed against the applicant, situations where charges were filed and dismissed, situations where the applicant was acquitted at trial of some or all charges, situations where the applicant entered a plea, and/or situations where records have been sealed. This request encompasses policies with any reference to evidence of such contact including, without limitation, policies regarding: the weight to be granted such evidence; the absence of such evidence; the weight to be granted such absence; the withholding of such evidence by an applicant; the weight to be granted such withholding; any presumptions related to any of the above considerations; any effect of any of the above considerations on the exercise of discretion; and the procedures, protocols, or methods for review of such cases.
3. Any change or modification to any policy that falls under items 1 or 2, whether or not such change or modification is currently in force.
4. Any creation of any new policy that falls under items 1 or 2, whether or not such new policy is currently in force.

¹ The term "records" as used herein includes, but is not limited to: memoranda, advisories, agreements, directives, guidance documents, guidelines, templates, standards, instructions, notes, orders, policies, procedures, protocols, reports, rules, manuals, training materials, analyses, evaluations, studies, files, data, documents, communications, correspondence, letters, faxes, emails, email attachments, informal notes or memoranda, meeting minutes, meeting notes, meeting summaries, meeting agendas, phone transcripts, phone recordings, audiotapes, and videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing annotations or marginal notations.

² The term "policy" as used herein includes, but is not limited to, any statement, instruction, directive, advisory, agreement, or discussion of any policy, practice, procedure, method, standard, or rule, whether or not it is formal, final, official, authoritative, binding, mandatory, discretionary, or universal (across USCIS, or across applicant cases).

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5. Any abrogation of a previous policy that falls under items 1 or 2, whether or not such abrogation is currently in force.
6. Any proposed change, modification, creation, or abrogation of a policy that falls under items 1 or 2, whether or not such proposal was ever endorsed or adopted.
7. Any statement of any rationale underlying any of items 1–6, including but not limited to: any aim or goal of any policy or proposed policy, or any reason or purpose for proposing or adopting any policy or proposed policy.
8. Any quantitative or qualitative evaluation of any of items 1–7, either prospective or retrospective, including but not limited to:
 - a. any basis for the adoption or non-adoption of any policy;
 - b. any factors considered in the adoption or non-adoption of any policy;
 - c. any procedure or method for the adoption or non-adoption of any policy;
 - d. any cost-benefit analysis;
 - e. any identification, estimation, or accounting of affected parties;
 - f. any consequences of adoption or non-adoption of any policy;
 - g. any consequences on the number of visa applications submitted, granted, or denied, or the number of removals of noncitizens;
 - h. any evaluation of any effect on any other federal agency, or on the subject matter domain of any other federal agency;
 - i. any evaluation of any effect on any non-federal governmental body, including state governments, state government agencies, state Attorneys General, state prosecutors, local government, local district attorneys, or local law enforcement;
 - j. any evaluation of any effect on any non-governmental organization; or
 - k. any process, protocol, strategy, procedure, schematic, or standard for evaluation, or any investigations or evaluations begun or proposed but not completed.

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9. Any data, information, or measurements created for or used in connection with any of items 1–8, including but not limited to: census data, USCIS operating statistics (such as numbers of applications of any type received, processed, approved, or denied), or operating statistics of any other government agency.
10. Any method, strategy, or plan for implementing any of items 1–6.
11. Any communications referring or relating to any of items 1–10 including, but not limited to, communications involving:
 - a. Any USCIS personnel;
 - b. Kenneth T. (Ken) Cuccinelli, Acting Director, USCIS;
 - c. Mark Koumans, Deputy Director, USCIS;
 - d. Kathy Nuebel Kovarik, Chief of Staff and Acting Deputy Director, USCIS;
 - e. Joseph Edlow, Chief Counsel, Office of the Chief Counsel, USCIS;
 - f. Stephen Dove, Chief, Office of the Executive Secretariat, USCIS;
 - g. Robert Law, Chief, Office of Policy and Strategy, USCIS;
 - h. The U.S. Department of Homeland Security (“DHS”), including DHS field offices, and any DHS leadership or personnel;
 - i. U.S. Immigration & Customs Enforcement (“ICE”), including any ICE leadership or personnel;
 - j. U.S. Customs and Border Protection (“CBP”), including any CBP leadership or personnel;
 - k. The U.S. Department of Justice (DOJ), including the DOJ’s Executive Office for Immigration Review (EOIR), any immigration judge, or any other DOJ or EOIR leadership or personnel.
 - l. Any White House personnel, including any member of the President’s Administration or Cabinet, any Senior Advisor to the President, and any other White House advisor, acting official, or staff.

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- m. Any members of Congress or Congressional staff;
 - n. Any legal professionals, including immigration judges, immigration lawyers, other judges, or other lawyers;
 - o. Any journalists or members of the news media; and
 - p. Any policy institutions, think tanks, research organizations, and/or other non-governmental organizations.
12. Standard operating procedures for waivers of inadmissibility for U-visa applicants under INA § 212(d)(3) & § 212(d)(14) from years 2015 to present.
13. Standard operating procedures for adjustment of status applications under INA § 245(m) from years 2015 to present.

Please search for responsive records regardless of format, medium, or physical characteristics. Where possible, please produce records electronically, in a text-searchable format (e.g., pdf). This request seeks records of any kind, including hard copies, electronic records, audiotapes, videotapes, photographs, scanned images, e-mails, or facsimiles. This request also seeks any attachments to such responsive records.

III. REQUEST FOR WAIVER OF FEES

We also request a fee waiver. A fee waiver is appropriate here because disclosure of the requested records “is likely to contribute significantly to the public understanding of the activities or operations of the government” and the requestors have no commercial interest in the records sought. 5 U.S.C. § 552(a)(4)(A)(iii); *see also Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (recognizing Congress’s intent that FOIA’s fee waiver provision “is to be liberally construed in favor of waivers for noncommercial requesters”). Likewise, disclosure of the requested records meets the two requirements for a waiver of fees set out in the USCIS FOIA Request Guide: it is (1) “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) “not primarily in the commercial interest of the requester.” USCIS, *Freedom of Information Act Request Guide*, July 10, 2019, at 23, https://www.uscis.gov/sites/default/files/files/natedocuments/USCIS_FOIA_Request_Guide.pdf.

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A. Disclosure of the Records Is in the Public Interest

Disclosure of the requested information is in the public interest because it will contribute significantly to public understanding of how USCIS adjudicates U-visa petitions and adjustment of status applications for U nonimmigrants and the weight it places on prior criminal contact. This request furthers Requestors' 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 before USCIS. In addition, disclosure of the requested information is of great public interest given the high volume of U-visa petitions filed, the great importance of these visas to law enforcement and social work across the country, and the recent change in the adjudication of such petitions. *See* 6 C.F.R. § 5.11(k)(2)(iii) (stating that disclosure will contribute to public understanding when it affects a "reasonably broad audience of persons interested in the subject"). To take one example, the requested information is critically important to assist immigration attorneys and the affected non-citizen population in understanding how the current practice differs from past practice, what the rationale for this change was, and how to adjust best practices to comply with and account for the current state of federal immigration law.

Requestors have the intent and demonstrated ability to use this information for the direct benefit of members of the public, for the education of the public, and additionally to directly disseminate the requested information to a broad cross-section of the public.

- Safe Horizon, as discussed above, is the nation's leading nonprofit organization providing assistance, advocacy, and support to victims of violence, helping over 250,000 people annually. Safe Horizon frequently coordinates with police departments and prosecutors, such as the New York City Police Department and the Office of the District Attorney in all five counties of New York City, to facilitate the investigation and prosecution of crimes by providing its services, including immigration assistance, to victims and witnesses of crimes. Its Immigration Law Project provides direct legal services for immigrant survivors of violence; U-visas and U-visa-based adjustments of status are together the most common forms of relief sought by ILP on behalf of its clients. ILP provides services to its clients on either a pro bono or low-cost basis, and assists over 1,000 clients annually. In addition, ILP regularly conducts outreach, trainings, and presentations to community partners, members of law enforcement, elected officials, and other stakeholders on immigration law and policy-related issues. It actively engages in policy advocacy at the local, state, and national levels on immigration issues affecting its clients and is

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often sought out by, and quoted in, the press as an expert in the field of humanitarian-based immigration relief.

- ASISTA, as discussed above, is a nonprofit organization whose purpose is to increase public understanding of immigration law and policy, including by educating the public, the legal community, government officials, and law enforcement about changes in federal immigration law. Many of ASISTA's member organizations are nonprofits themselves, and ASISTA offers its services at a lower cost to nonprofit members. These services include assisting members of the public in complying with immigration law; training lawyers, domestic violence and sexual assault advocates, law enforcement personnel, and civil and criminal court judges in immigration law; directly assisting lawyers in individual immigration cases; and working closely with DHS to ensure the law is implemented as Congress intended. In addition, ASISTA undertakes significant educational and journalistic activities. It publishes and maintains a blog for updates on practice and advocacy in immigration law, publishes practice advisories for attorneys and others who work with immigrant crime survivors, develops and shares template comments for the field on emerging policy issues, and regularly solicits case examples from the field to inform the content of policy advocacy with DHS and other decision-makers. Through these activities, ASISTA regularly provides information to the general public, immigration law professionals, the media, DHS, and members of Congress contemplating legislative changes or hearings on emerging issues. In addition, ASISTA maintains an established network of over 500 organizations and individuals practicing immigration law. It regularly disseminates information about immigration law to these partner organizations, who use it to the benefit of their various activities, including public education, professional legal training, and direct client representation. ASISTA's website regularly publishes immigration-related information and news, and these online publications are widely available and circulated. From February 1, 2019 to October 21, 2019, it had over 122,583 pageviews from 33,542 unique visitors. ASISTA has previously disseminated information from prior FOIA requests to facilitate the sharing of this information with a broad public audience. *See, e.g.*, <https://asistahelp.org/impact-litigation-2/> (publication of records obtained through FOIA-related to petitions for U-visas where the underlying crime was California robbery).

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accessible website. For example, ASISTA will publish a practice advisory of such information and will disseminate that advisory through its website or its established networks. Additionally, Requestors have regular contact with national print and news media and plan to share with those outlets information they obtain from this FOIA request that is relevant to Requestors' public interest work.

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* * *

Requestors appreciate your timely attention to this request, and look forward to your reply within 20 business days, as required under 5 U.S.C. § 552(a)(6)(A)(i). If you expect a significant delay in responding to and fulfilling this request in full, please provide us with information regarding when we should expect the records to arrive, and please send responsive records seriatim as they become available.

Consistent with FOIA's objective of increasing the transparency of agency action, FOIA exemptions are construed narrowly and the agency bears the burden of justifying its decision to withhold documents. *See, e.g., AquAlliance v. U.S. Bureau of Reclamation*, 856 F.3d 101, 102–04 (D.C. Cir. 2017). For example, the deliberative process privilege of FOIA Exemption 5 applies only if the information at issue is both predecisional and deliberative. *See, e.g., Nat'l Ass'n Home Builders v. Norton*, 309 F.3d 26, 39 (D.C. Cir. 2002). If you deny any part or all of this request, please cite each specific exemption you believe justifies the refusal to release the specific information and notify us of the appeal procedures available to us under applicable law.

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Should you conclude that a complete waiver of fees is not warranted, we will pay up to \$25 for the processing of this request. If the estimated fees exceed this amount, please contact us to receive our permission prior to incurring any additional fees.

We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

If we may be of any assistance in facilitating this request, please contact us at:

Akiva Shapiro
(212) 351-3830
AShapiro@gibsondunn.com

Alyssa Kuhn
(212) 351-2653
AKuhn@gibsondunn.com

Cassarah M. Chu
(212) 351-6381
CMChu@gibsondunn.com

Emil N. Nachman
(212) 351-6367
ENachman@gibsondunn.com

Sincerely,

/s/ Akiva Shapiro
Akiva Shapiro

Appendix B

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010



**U.S. Citizenship
and Immigration
Services**

COW2020000224

March 24, 2020

Cassarrah Chu
Gibson, Dunn & Crutcher
200 Park Avenue
Floor 48
New York, NY 10166

Dear Cassarah Chu:

Your request was received in this office on February 19, 2020 regarding U Visa and Criminal History Records. After assessing your request, we determined that the coordination of the response to your request will be handled by the following government agency:

Department of Homeland Security
Director, Departmental Disclosure & FOIA
Privacy Office, FOIA Stop 0665
245 Murray Lane SW
WashingtonDC 20528

For your convenience, we have forwarded your request to that agency for consideration and direct reply to you. For additional information relating to the Department of Homeland Security (DHS) and its components, we encourage you to visit the DHS website at the following address: www.dhs.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jill A. Eggleston".

Jill A. Eggleston
Director, FOIA Operations

EXHIBIT 4

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010



**U.S. Citizenship
and Immigration
Services**

**COW2020000551
PIN: 306259**

May 7, 2020

Cassarrah Chu
Gibson, Dunn, & Crutcher LLP
200 Park Avenue
Floor 48
New York, NY 10166

Dear Cassarah Chu:

Important Notification: During the national COVID-19 response, our capacity to process paper FOIA requests and deliver records by mail will be greatly reduced.

To sign up for digital release, go to first.uscis.gov, create an account, and register your case using the **Control Number: COW2020000551** and **PIN: 306259**. Read the enclosed yellow flyer for more details.

We received your request for information relating to U Visa and Criminal History Records on February 19, 2020. USCIS initially referred your entire request to the DHS Privacy Office under Control Number COW2020000224. Upon reconsideration, USCIS will respond to your requested Items 1-10, 11(a)-(g), and Items 12-13 under this new Control Number COW2020000551. Item 11 (h)-(p) will be referred to the DHS Privacy Office under another control number. You will receive a second letter regarding this referral.

You specifically requested,

"Item 1. Any USCIS policy or policies issued or in effect at any time from 2015 to present referring or relating to the adjudication of U-visa petitions (Form 1-918) or applications for adjustment of status (Form 1-485) based on an underlying U-visa.

2. Any USCIS policy or policies issued or in effect at any time from 2015 to present referring or relating to the relevance of an applicant's prior criminal contact in the adjudication of U-visa petitions or applications for adjustment of status based on an underlying U-visa. Such criminal contact may include, for example, situations where charges were never filed against the applicant, situations where charges were filed and dismissed, situations where the applicant was acquitted at trial of some or all charges, situations where the applicant entered a plea, and/or situations where records have been sealed. This request encompasses policies with any reference to evidence of such contact including, without limitation, policies regarding: the weight to be granted such evidence; the absence of such evidence; the weight to be granted such absence; the withholding of such evidence by an applicant; the weight to be granted such withholding; any presumptions related to any of the above considerations; any effect of any of the above considerations on the exercise of discretion; and the procedures, protocols, or methods for review of such cases.

3. Any change or modification to any policy that falls under items 1 or 2, whether or not such change or modification is currently in force.

4. Any creation of any new policy that falls under items 1 or 2, whether or not such new policy is currently in force.

5. Any abrogation of a previous policy that falls under items 1 or 2, whether or not such abrogation is currently in force.

COW2020000551

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6. Any proposed change, modification, creation, or abrogation of a policy that falls under items 1 or 2, whether or not such proposal was ever endorsed or adopted.
7. Any statement of any rationale underlying any of items 1-6, including but not limited to: any aim or goal of any policy or proposed policy, or any reason or purpose for proposing or adopting any policy or proposed policy.
8. Any quantitative or qualitative evaluation of any of items 1-7, either prospective or retrospective, including but not limited to:
 - a. any basis for the adoption or non-adoption of any policy;
 - b. any factors considered in the adoption or non-adoption of any policy;
 - c. any procedure or method for the adoption or non-adoption of any policy;
 - d. any cost-benefit analysis;
 - e. any identification, estimation, or accounting of affected parties;
 - f. any consequences of adoption or non-adoption of any policy;
 - g. any consequences on the number of visa applications submitted, granted, or denied, or the number of removals of noncitizens;
 - h. any evaluation of any effect on any other federal agency, or on the subject matter domain of any other federal agency;
 - i. any evaluation of any effect on any non-federal governmental body, including state governments, state government agencies, state Attorneys General, state prosecutors, local government, local district attorneys, or local law enforcement;
 - j. any evaluation of any effect on any non-governmental organization; or
 - k. any process, protocol, strategy, procedure, schematic, or standard for evaluation, or any investigations or evaluations begun or proposed but not completed.
9. Any data, information, or measurements created for or used in connection with any of items 1-8, including but not limited to: census data, USCIS operating statistics (such as numbers of applications of any type received, processed, approved, or denied), or operating statistics of any other government agency.
10. Any method, strategy, or plan for implementing any of items 1-6.
11. Any communications referring or relating to any of items 1-10 including, but not limited to, communications involving:
 - a. Any USCIS personnel;
 - b. Kenneth T. (Ken) Cuccinelli, Acting Director, USCIS;
 - c. Mark Kaumans, Deputy Director, USCIS;
 - d. Kathy Nuebel Kovarik, Chief of Staff and Acting Deputy Director, USCIS;
 - e. Joseph Edlow, Chief Counsel, Office of the Chief Counsel, USCIS;
 - f. Stephen Dove, Chief, Office of the Executive Secretariat, USCIS;

COW2020000551

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- g. Robert Law, Chief, Office of Policy and Strategy, USCIS;
 - h. The U.S. Department of Homeland Security ("OHS"), including OHS field offices, and any OHS leadership or personnel;
 - i. U.S. Immigration & Customs Enforcement ("ICE"), including any ICE leadership or personnel;
 - j. U.S. Customs and Border Protection ("CBP"), including any CBP leadership or personnel;
 - k. The U.S. Department of Justice (DOJ), including the DOJ's Executive Office for Immigration Review (EOIR), any immigration judge, or any other DOJ or EOIR leadership or personnel.
 - l. Any White House personnel, including any member of the President's Administration or Cabinet, any Senior Advisor to the President, and any other White House advisor, acting official, or staff.
 - m. Any members of Congress or Congressional staff;
 - n. Any legal professionals, including immigration judges, immigration lawyers, other judges, or other lawyers;
 - o. Any journalists or members of the news media; and
 - p. Any policy institutions, think tanks, research organizations, and/or other nongovernmental organizations.
12. Standard operating procedures for waivers of inadmissibility for U-visa applicants under INA § 212(d)(3) & § 212(d)(14) from years 2015 to present.
13. Standard operating procedures for adjustment of status applications under INA § 245(m) from years 2015 to present."

We will need to reach out to you at a later date to discuss the scope of your request.

Your request is being handled under the provisions of the Freedom of Information Act (5 U.S.C. § 552). It has been assigned the following control number: COW2020000551. Please cite this number in all future correspondence about your request.

We respond to requests on a first-in, first-out basis and on a multi-track system. Your request has been placed in the complex track (Track 2).

Your request for a fee waiver has been granted.

Consistent with 6 C.F.R. § 5.5(a) of the Department of Homeland Security (DHS) FOIA regulations, USCIS processes FOIA requests according to their order of receipt. Although USCIS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances. Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Additionally, due to the scope and nature of your request, USCIS will need to locate, compile, and review responsive records from multiple offices, both at headquarters and in the field. USCIS may also need to consult with another agency or other component of the Department of Homeland Security that have a substantial interest in the responsive information. Due to these unusual circumstances, USCIS will invoke a 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B). Please contact our office if you would like to limit the scope of your request or to agree on a different timetable for the processing of your request. We will make every effort to comply with your request in a timely manner.

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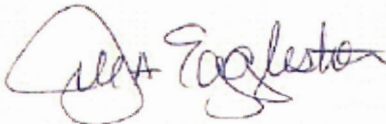
This office now offers an online delivery option. Visit first.uscis.gov to register this request. You will need to create a MyUSCIS account if you do not already have one. Once logged on, click the "Register Request" link where you will be prompted to enter your control number, COW2020000551, and PIN, 306259. A Compact Disc (CD) for use on your personal computer will be mailed if you do not wish to take advantage of digital delivery. To request your responsive records on paper, please include your control number and write to the above address, Attention: FOIA/PA Officer, or fax them to (802) 860-6908.

The National Records Center (NRC) has the responsibility to ensure that personally identifiable information (PII) pertaining to U.S. Citizenship and Immigration Services (USCIS) clients is protected. In our efforts to safeguard this information, we may request that additional information be provided to facilitate and correctly identify records responsive to your request. Though submission of this information is voluntary, without this information, your request may be delayed while additional steps are taken to ensure the correct responsive records are located and processed. Further, if we are unable to positively identify the subject of the record we may be unable to provide records responsive to your FOIA request.

You may check the status of your FOIA request online at first.uscis.gov/#/check-status. If you have any questions concerning your pending FOIA/PA request, or to check the status of a pending application or petition, please call The National Customer Service Center at (800) 375-5283. Please be aware that the National Records Center no longer accepts FOIA/PA related questions directly by phone.

All FOIA/PA related requests, including address changes, must be submitted in writing and be signed by the requester. Questions concerning this FOIA/PA request may be mailed to the FOIA/PA Officer at the PO Box listed at the top of the letterhead or emailed to USCIS.FOIA@uscis.dhs.gov. Please include the control number listed above on all correspondence with this office. You can now submit a new FOIA request online using our new Freedom of Information Act Records SysTem (FIRST). If you wish to submit a new FOIA/PA request, please visit www.uscis.gov/FOIA for instructions and requirements.

Sincerely,



Jill A. Eggleston
Director, FOIA Operations



U.S. Citizenship
and Immigration
Services

— NEW —

USCIS FOIA HAS GONE DIGITAL!

USCIS has moved to an end-to-end digital FOIA process! The FOIA Office is excited to introduce the new **paperless delivery of your response**. You can now digitally access your responsive records as soon as they are processed, eliminating mail time and remove the risk of receiving a CD that may potentially be damaged in the mail. This delivery option is just one of several enhancements that we have made to make it easier for you to submit a request to our office and help reduce the time it takes to receive a response.

Signing up for Digital Delivery is Quick and Easy:

In the attached acknowledgement letter, follow the instructions on how to set up an account through myUSCIS and link that account to your case. Once complete, you will be able to log into the digital delivery center to view and / or download your responsive records once available. *If you already have a myUSCIS account, simply login and link the case to your existing account.* Once you have linked your case to your account, we will notify you through email once your case has been processed and your records are ready to be picked up.

More Digital Options Now Available:

We are excited to introduce our new paperless FOIA processing options, as well as all of the additional enhancements that will make it easier to make, manage, and receive your requests more quickly, to include:

- Submitting a FOIA Request online
- Faster case processing
- Online personal case management

Go to <https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia> to find out more information about our online FOIA services today.

If you do not wish to take advantage of this option, we will be providing your records through the mail on a Compact Disc (CD) for use on your personal computer. You may also request your responsive records on paper.

EXHIBIT 5

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010



U.S. Citizenship
and Immigration
Services

COW2020000570

May 11, 2020

Cassarah Chu
Gibson, Dunn, & Crutcher LLP
200 Park Avenue
Floor 48
New York, NY 10166

Dear Cassarah Chu:

We received your request for information relating to U Visa and Criminal History Records on February 19, 2020. USCIS initially referred your entire request to the DHS Privacy Office under Control Number COW2020000224. Upon reconsideration, USCIS will respond to your requested Items 1-10, 11(a)-(g), and Items 12-13 under the new Control Number COW2020000551. You will receive another letter addressing the requested Items 1-10, 11(a)-(g), and Items 12-13. This Control Number COW2020000570 will address Items 11 (h)-(p).

You specifically requested,

"Item 1. Any USCIS policy or policies issued or in effect at any time from 2015 to present referring or relating to the adjudication of U-visa petitions (Form I-918) or applications for adjustment of status (Form I-485) based on an underlying U-visa.

2. Any USCIS policy or policies issued or in effect at any time from 2015 to present referring or relating to the relevance of an applicant's prior criminal contact in the adjudication of U-visa petitions or applications for adjustment of status based on an underlying U-visa. Such criminal contact may include, for example, situations where charges were never filed against the applicant, situations where charges were filed and dismissed, situations where the applicant was acquitted at trial of some or all charges, situations where the applicant entered a plea, and/or situations where records have been sealed. This request encompasses policies with any reference to evidence of such contact including, without limitation, policies regarding: the weight to be granted such evidence; the absence of such evidence; the weight to be granted such absence; the withholding of such evidence by an applicant; the weight to be granted such withholding; any presumptions related to any of the above considerations; any effect of any of the above considerations on the exercise of discretion; and the procedures, protocols, or methods for review of such cases.

3. Any change or modification to any policy that falls under items 1 or 2, whether or not such change or modification is currently in force.

4. Any creation of any new policy that falls under items 1 or 2, whether or not such new policy is currently in force.

5. Any abrogation of a previous policy that falls under items 1 or 2, whether or not such abrogation is currently in force.

6. Any proposed change, modification, creation, or abrogation of a policy that falls under items 1 or 2, whether or not such proposal was ever endorsed or adopted.

7. Any statement of any rationale underlying any of items 1-6, including but not limited to: any aim or goal of any policy or proposed policy, or any reason or purpose for proposing or adopting any policy or

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proposed policy.

8. Any quantitative or qualitative evaluation of any of items 1-7, either prospective or retrospective, including but not limited to:

- a. any basis for the adoption or non-adoption of any policy;
- b. any factors considered in the adoption or non-adoption of any policy;
- c. any procedure or method for the adoption or non-adoption of any policy;
- d. any cost-benefit analysis;
- e. any identification, estimation, or accounting of affected parties;
- f. any consequences of adoption or non-adoption of any policy;
- g. any consequences on the number of visa applications submitted, granted, or denied, or the number of removals of noncitizens;
- h. any evaluation of any effect on any other federal agency, or on the subject matter domain of any other federal agency;
- i. any evaluation of any effect on any non-federal governmental body, including state governments, state government agencies, state Attorneys General, state prosecutors, local government, local district attorneys, or local law enforcement;
- j. any evaluation of any effect on any non-governmental organization; or
- k. any process, protocol, strategy, procedure, schematic, or standard for evaluation, or any investigations or evaluations begun or proposed but not completed.

9. Any data, information, or measurements created for or used in connection with any of items 1-8, including but not limited to: census data, USCIS operating statistics (such as numbers of applications of any type received, processed, approved, or denied), or operating statistics of any other government agency.

10. Any method, strategy, or plan for implementing any of items 1-6.

11. Any communications referring or relating to any of items 1-10 including, but not limited to, communications involving:

- a. Any USCIS personnel;
- b. Kenneth T. (Ken) Cuccinelli, Acting Director, USCIS;
- c. Mark Kaumans, Deputy Director, USCIS;
- d. Kathy Nuebel Kovarik, Chief of Staff and Acting Deputy Director, USCIS;
- e. Joseph Edlow, Chief Counsel, Office of the Chief Counsel, USCIS;
- f. Stephen Dove, Chief, Office of the Executive Secretariat, USCIS;
- g. Robert Law, Chief, Office of Policy and Strategy, USCIS;
- h. The U.S. Department of Homeland Security ("OHS"), including OHS field offices, and any OHS leadership or personnel;
- i. U.S. Immigration & Customs Enforcement ("ICE"), including any ICE leadership or personnel;

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- j. U.S. Customs and Border Protection ("CBP"), including any CBP leadership or personnel;
 - k. The U.S. Department of Justice (DOJ), including the DOJ's Executive Office for Immigration Review (EOIR), any immigration judge, or any other DOJ or EOIR leadership or personnel.
 - l. Any White House personnel, including any member of the President's Administration or Cabinet, any Senior Advisor to the President, and any other White House advisor, acting official, or staff.
 - m. Any members of Congress or Congressional staff;
 - n. Any legal professionals, including immigration judges, immigration lawyers, other judges, or other lawyers;
 - o. Any journalists or members of the news media; and
 - p. Any policy institutions, think tanks, research organizations, and/or other nongovernmental organizations.
12. Standard operating procedures for waivers of inadmissibility for U-visa applicants under INA § 212(d)(3) & § 212(d)(14) from years 2015 to present.
13. Standard operating procedures for adjustment of status applications under INA § 245(m) from years 2015 to present."

After assessing Item 11 (h) – (p), we determined that the coordination of the response to these items of your request will be handled by the following government agency:

Department of Homeland Security
Director, Departmental Disclosure & FOIA
Privacy Office, FOIA Stop 0665
245 Murray Lane SW
WashingtonDC 20528

For your convenience, we have forwarded your request to that agency for consideration and direct reply to you. For additional information relating to the Department of Homeland Security (DHS) and its components, we encourage you to visit the DHS website at the following address: www.dhs.gov.

Sincerely,



Jill A. Eggleston
Director, FOIA Operations