



NATIONAL OFFICE

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September 25, 2018

U.S. Department of Justice
Executive Office for Immigration Review
Office of General Counsel – FOIA Service Center
5107 Leesburg Pike, Suite 1903
Falls Church, VA 22041
E-mail address: EOIR.FOIARequests@usdoj.gov

Re: Request under the Freedom of Information Act for records related to Memphis Immigration Court practice or policy of prohibiting telephonic and or video appearances in the absence of “extraordinary circumstances”

Dear FOIA Officer:

The Catholic Legal Immigration Network, Inc. (“CLINIC”) submits this Freedom of Information Act (“FOIA”) request (the “Request”) for specific records related to what appears to be a new policy or practice in place at the Memphis Immigration Court (the “Court”) whereby Immigration Judges (“IJ”) deny requests to appear telephonically in the absence of “extraordinary circumstances,” even for Master Calendar hearings at which a respondent might reasonably expect to spend less than ten minutes in front of the Court.

I. Background

Previously and until recently, it was the practice and or policy of the Court to grant motions to appear telephonically solely on grounds that a respondent and or counsel’s lack of geographic proximity to the Court presented good cause to do so. This practice, entirely consistent with the Immigration Court Practice Manual, see §§ 4.6, Form of the Proceedings, and 4.7, Hearings by Video or Telephone Conference, made sense from both a practical and constitutional perspective.

As you know, expecting an immigrant in proceedings “to understand the complex and intricate immigration system without the assistance of counsel is fundamentally unfair.” See, e.g., United States Commission on Civil Rights, *With Liberty and Justice for All*, 121 (September 2015), available at <http://bit.ly/2NDf2xw> (last accessed September 25, 2018). Thus, the efforts that the Court had undertaken to facilitate access to counsel by providing flexible access to the Court were laudable.

Unfortunately, it would appear that the Court has abruptly shifted course. Now, the Court appears to have adopted a new policy or practice whereby the same or similarly-grounded motions as those referenced above are being denied on heretofore unheard of grounds that “extraordinary circumstances” are not present such that relief would be warranted. Such a change would constitute a significant departure from the Court’s past practice—upon which many respondents and counsel have and will continue to rely in structuring their attorney-client relationships unless adequately informed otherwise.

Perhaps more so now than ever, a fair and full understanding of the policies and practices of the Court is especially important given that the Department has increased its enforcement activities, and, thereby, exposes more and more individuals to proceedings at the Court. Further, release of the requested records is critical to ensure meaningful public access to and debate about how the Government works as a general matter. These records will contribute to the American public’s understanding of governmental policy and inform current and future public discussion about the legality and wisdom of the current administration’s ‘approach’ to immigration, as well as any resulting harm to individuals’ human rights, our nation’s values, and our national security.

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II. Requested Records

CLINIC seeks the release of the records outlined below.¹ To the extent that treating the request below as divisible (*i.e.*, as if it were made in multiple requests) would allow you to more expeditiously respond to any or all constituent parts, please do so. With respect to the form of production,² CLINIC request that responsive electronic records be provided in their native file format. Alternatively, CLINIC requests that records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

CLINIC hereby requests the following records:

- For the past one hundred and eighty (180) days, records sent to and or from IJ Richard J. Averwater that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ Rebecca L. Holt that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from IJ Vernon Benet Miles that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";
- For the past one hundred and eighty (180) days, records sent to and or from J. Thomas Davis that include any or all of the following terms: "telephone"; "telephonic"; "video"; and or "extraordinary";

Each of the above requests should be read to include any correspondence in which any of the named individuals or their addresses (electronic or physical) appear in the "From", "To", "CC", or "BCC" address lines.

Note that CLINIC does not seek any personally identifiable information about any third party including any petitioner, applicant, and or detainee. If responsive records and or information contain personally identifiable information, please redact such information and produce such redacted records in response to this Request.

III. Application for Expedited Processing

CLINIC requests expedited processing of the above Request pursuant to applicable law and regulations.³ There is a "compelling need" for these records, as defined in the statute and regulations, because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged

¹ The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials, and studies.

² See 5 U.S.C. § 552(a)(3)(B)

³ See 5 U.S.C. § 552(a)(6)(E) and 32 C.F.R. § 1900.34(c); 28 C.F.R. § 16.5(e); 32 C.F.R. § 286.4(d)(3); 22 C.F.R. § 171.12(b).

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government activity.⁴ In addition, the records and information sought relate to a “breaking news story of general public interest.”⁵

A. CLINIC is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

CLINIC is “primarily engaged in disseminating information” within the meaning of the statute and regulations. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of CLINIC’s work and are among its primary activities.⁶ For example:

- Since 1997, CLINIC’s programs have helped more than 100,000 people apply for citizenship; helped approximately 12,000 refugees and asylees apply for green cards; and have provided immigrants with over 15,000 hours of English language instruction.
- CLINIC represents more than 170 dioceses and religious communities that bring foreign-born priests, sisters, seminarians and religious laypersons to the United States each year.
- CLINIC trained more than 7,000 immigration practitioners in 2012.
- CLINIC’s Attorney-of-the-Day Help Line fields at least 20 calls per day from member agencies on the most effective strategy for representing clients. CLINIC’s attorneys staff the hotline which covers topics such as family-based immigration, naturalization, temporary employment authorization, and relief from removal.
- CLINIC’s pro bono attorneys have filed briefs and represented more than 500 immigrants before the Board of Immigration Appeals (BIA).

CLINIC plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records and information requested are not sought for commercial use and the requestors plan to disseminate the information disclosed as a result of this Request to the public at no cost.

B. The records sought are urgently needed to inform the public about actual or alleged government activity.

The records and information sought by this Request are urgently needed to inform the public about actual or alleged government activity; moreover, the records sought relate to a breaking news story of general public interest.⁷ Release of the records sought by the Request will aid the American public in drawing its own conclusions about the legitimacy and legality of our immigration system.

⁴ 5 U.S.C. § 552(a)(6)(E)(v); *see also* 32 C.P.R. § 1900.34(c)(2); 28 C.P.R. § 16.5(e)(I)(ii); 32 C.P.R. § 286.4(d)(3)(ii); 22 C.P.R. § 171.12(b)(2).

⁵ 22 C.F.R. § 171.12(b)(2)(i); *see also* 32 C.F.R. § 1900.34(c)(2) (providing for expedited processing when “the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity”); 32 C.P.R. § 286.4(d)(3)(ii)(A).

⁶ *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential public interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information” (cleaned up)).

⁷ *See* 5 U.S.C. § 552(a)(6)(E)(v); *see also* 32 C.P.R. § 1900.34(c)(2); 28 C.P.R. § 16.5(e)(I)(ii); 32 C.P.R. § 286.4(d)(3)(ii); 22 C.P.R. § 171.12(b)(2).

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Moreover, the records sought relate to a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.”⁸ Given the foregoing, expedited processing should be granted for this Request.

IV. Application for Waiver or Limitation of Fees

CLINIC asks that all fees associated with this Request be waived because disclosure of the requested records and information will contribute significantly to public understanding of the governmental activities identified above and because the disclosure is not in CLINIC’s commercial interest.⁹

A. Disclosure of the records and information is in the public interest.

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities related to the means by which the government detains certain immigrants. CLINIC has the capacity and intent to disseminate widely the requested information to the public. CLINIC provides technical support to the members of its network on a broad range of immigration law topics. The network includes approximately 1,200 attorneys and accredited representatives and assists some 600,000 clients, parishioners, and community members with immigration matters annually. CLINIC publishes books, produces a monthly newsletter, and provides in-person training, online courses, and webinars on a variety of immigration law issues including those affecting detained individuals. In addition, CLINIC’s materials are disseminated to the public through its website, www.cliniclegal.org, which for the past couple of months has received approximately 100,000 unique views per month.

Information obtained through this FOIA request will contribute to CLINIC’s public education materials on the immigration system and will assist CLINIC in providing technical assistance to nonprofit legal services providers and pro bono attorneys who represent individuals in immigration detention. Finally, CLINIC has regular contact with national print and news media and may share information gleaned from this Request with interested parties.

B. Disclosure of the information is not in CLINIC’s commercial interest.

CLINIC is a not-for-profit organization. CLINIC seeks the requested information and records for the purpose of educating the public and not for the purpose of commercial gain. CLINIC will also use the information obtained to inform our organization’s technical assistance and training programs, which provide free consultation and resources to immigrants and their attorneys across the United States.

Thank you for your prompt attention to this request. Please reply to this request within the timeframe provided by law. If portions of the requested records and or information are claimed to be exempt

⁸ See 28 C.F.R. § 16.5(e)(1)(iv)

⁹ 5 U.S.C. § 552(a)(4)(A)(iii); see also 6 C.F.R. § 5.11(k) (records may be furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of the requester). CLINIC is a 501(c)(3) organization that promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of Catholic and community legal immigration programs. CLINIC’s network originally was comprised of 17 programs. It has since increased to 300 diocesan and other affiliated immigration programs with 400 offices in 47 states, Puerto Rico, and the District of Columbia. The network employs roughly 1,200 BIA accredited representatives and attorneys who, in turn, serve hundreds of thousands of low-income immigrants each year. For additional information, see <https://cliniclegal.org>.



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from disclosure under FOIA, please indicate the specific reasons for the alleged exemptions, the number of pages withheld, and the dates of the records withheld, producing the remaining non-exempt portions.

Please do not hesitate to contact us should you have any questions or concerns.

Sincerely,

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