

PL.'S NOT. OF MOT. AND MOT. FOR PRELIM. INJ.; MEM. IN SUPP. OF  
PL.'S MOT. FOR PRELIM. INJ.  
Case No. 3:17-cv-01799-JSC

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**TO DEFENDANTS AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that on August 24, 2017 or as soon thereafter as the matter may be heard, at the United States District Court for the Northern District of California, Courtroom F, 15th Floor, 450 Golden Gate Avenue, San Francisco, California, Plaintiff Cora Currier will, and hereby does, move for an order granting preliminary injunctive relief.

Pursuant to Federal Rule of Civil Procedure 65, Ms. Currier seeks to enjoin the defendant federal agencies from impeding her efforts to expeditiously obtain government records concerning the development and implementation of two executive orders restricting entry of nationals from several Muslim-majority countries. Ms. Currier respectfully asks this Court to order the Defendants to complete the expedited processing of her Freedom of Information Act requests no later than September 5, 2017. This motion is based on this notice of motion, the memorandum of points and authorities in support of this motion, the declaration of Marcia Hofmann and attached exhibits in support of this motion, the proposed order, all papers and records on file with the Clerk or which may be submitted prior to or at the time of the hearing, and any further evidence which may be offered.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, seeking the expedited processing and release of records held by four federal agencies: the Department of Homeland Security, Department of Justice, Department of State, and Department of Defense. Plaintiff Cora Currier is a journalist who has submitted a series of FOIA requests to these agencies seeking information related to the development and implementation of President Trump's controversial effort to prevent nationals from several Muslim-majority countries from entering the United States. Defendants acknowledge that the requested information qualifies for expedited processing, and each agency and component has granted Ms. Currier's requests for such treatment. Nonetheless, in violation of the FOIA and Defendants' own regulations, the agencies have failed to process Ms. Currier's requests even within the statutory time frame (20 business days) for a

1 standard request that is *not* entitled to expedited treatment. Defendants’ failure to process the  
 2 requests violates the law.

3 As Defendants forestall compliance with Ms. Currier’s FOIA requests, courts around the  
 4 country—including the Supreme Court—are weighing the legality of the executive orders,  
 5 including whether unconstitutional animus motivated the Executive Branch to impose the travel  
 6 restrictions. Because Ms. Currier’s rights and Defendants’ obligations are highly time-sensitive,  
 7 Ms. Currier respectfully requests the entry of an order compelling the agencies to process and  
 8 disclose the requested records no later than September 5, 2017, so that she can report on the  
 9 documents while they are still newsworthy and can inform the public debate surrounding the travel  
 10 ban.

## 11 **II. STATEMENT OF ISSUES TO BE DECIDED**

12 Whether Ms. Currier is entitled to injunctive relief to ensure timely processing of her FOIA  
 13 requests.

## 14 **III. STATEMENT OF FACTS**

### 15 **A. The “Travel Ban” Executive Orders and Subsequent Judicial Proceedings**

16 On January 27, 2017, President Donald Trump signed an executive order entitled  
 17 “Protecting the Nation From Foreign Terrorist Entry Into the United States,” which was intended to  
 18 take immediate effect. Exec. Order No. 13,769, 82 Fed. Reg. 8977 (“EO-1”). The order banned  
 19 nationals of Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen from entering the United States  
 20 for 90 days, suspended entry of all refugees for 120 days, and indefinitely banned Syrian refugees  
 21 from entering the country. Rudy Giuliani, a top advisor to President Trump, publicly stated that  
 22 EO-1 had been developed to implement a “Muslim ban” promised by President Trump during his  
 23 campaign.<sup>1</sup>  
 24  
 25  
 26

27 <sup>1</sup> Rebecca Savransky, *Giuliani: Trump Asked Me How to do a Muslim Ban ‘Legally,’* THE HILL  
 28 (Jan. 29, 2017), <http://thehill.com/homenews/administration/316726-giuliani-trump-asked-me-how-to-do-a-muslim-ban-legally>.

EO-1 attracted immense international media attention and sparked public protests around the world.<sup>2</sup> It was also met with resistance within the United States government. For example, then-acting Attorney General Sally Yates declined to enforce the travel ban and was dismissed from her position.<sup>3</sup> Approximately a thousand State Department employees joined an internal dissent memo denouncing the executive order.<sup>4</sup> Military officials reportedly expressed concern about the effect of the travel ban on the fight against the Islamic State in Syria and Iraq and worried that it would hamper cooperation with Iraq and other coalition partners.<sup>5</sup>

EO-1 prompted a wave of legal challenges throughout the country. Some courts granted temporary injunctive relief barring enforcement of certain provisions of the travel ban. *See, e.g., Aziz v. Trump*, No. 1:17-cv-116, 2017 WL 580855 at \*11 (E.D. Va. Feb. 13, 2017); *Washington v. Trump*, No. C17-0141-JLR, 2017 WL 462040 at \*2 (W.D. Wash. Feb. 3, 2017), *aff'd Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017), *en banc rehearing denied*, 858 F. 3d 1168 (9th Cir. 2017).

In midst of these judicial proceedings, President Trump signed a second executive order, which revoked EO-1. Executive Order No. 13,780, 82 Fed. Reg. 13209 (Mar. 6, 2017) ("EO-2").

<sup>2</sup> *See, e.g.,* Michael D. Shear, Nicholas Kulish & Alan Feuer, *Judge Blocks Trump Order on Refugees Amid Chaos and Outcry Worldwide*, N.Y. TIMES (Jan. 28, 2017), <https://www.nytimes.com/2017/01/28/us/refugees-detained-at-us-airports-prompting-legal-challenges-to-trumps-immigration-order.html>; *Protests Erupt at Airports Following Trump Travel Ban*, ASSOCIATED PRESS (Jan. 29, 2017), <https://apnews.com/98d4bed7e9414a86bfefc28c5f7595b>; *Trump's Travel Ban Sparks Mass Confusion as Conflicting Details Emerge*, CBC NEWS (Jan. 29, 2017), <http://www.cbc.ca/news/world/trump-immigration-refugee-travel-executive-order-1.3957205>; Emanuella Grinberg and Elliott C. McLaughlin, *Travel Ban Protests Stretch Into Third Day From US to UK*, CNN (Jan. 31, 2017), <http://www.cnn.com/2017/01/30/politics/travel-ban-protests-immigration/index.html>.

<sup>3</sup> *Statement on the Appointment of Dana Boente as Acting Attorney General*, THE WHITE HOUSE (Jan. 30, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/30/statement-appointment-dana-boente-acting-attorney-general>.

<sup>4</sup> Jeffrey Gettleman, *State Dept. Dissent Cable on Trump's Ban Draws 1,000 Signatures*, N.Y. TIMES (Jan. 31, 2017), <https://www.nytimes.com/2017/01/31/world/americas/state-dept-dissent-cable-trump-immigration-order.html?mcubz=1>.

<sup>5</sup> Glenn Thrush, *Trump's New Travel Ban Blocks Migrants From Six Nations, Sparing Iraq*, N.Y. TIMES (March 6, 2017), <https://www.nytimes.com/2017/03/06/us/politics/travel-ban-muslim-trump.html>.

EO-2 also restricted nationals of several predominantly Muslim countries from entering the United States, but was narrower in scope than EO-1. President Trump characterized the new order as “the watered down, politically correct” version of its predecessor.<sup>6</sup>

A wave of legal challenges were brought around the country before EO-2 could take effect. Federal district courts in Maryland and Hawaii found a substantial likelihood that the travel restrictions violated the Establishment Clause and issued nationwide injunctions blocking portions of it. *Hawaii v. Trump*, No. 17-00050 DKW-KS, 2017 WL 1167383 (D. Haw. Mar. 29, 2017) (entering preliminary injunction); *Hawaii v. Trump*, No. 17-00050 DKW-KS, 2017 WL 1011673 (D. Haw. Mar. 15, 2017) (entering temporary restraining order); *Int’l Refugee Assistance Project v. Trump*, No. TDC-17-036, 2017 WL 1018235 (D. Md. Mar. 16, 2017). The Fourth and Ninth Circuits largely upheld the injunctions. *Int’l Refugee Assistance Project v. Trump*, 857 F.3d 554, 606 (4th Cir. 2017); *Hawaii v. Trump*, 859 F.3d 741, 789 (9th Cir. 2017) (per curiam).

On June 26, 2017, the Supreme Court granted certiorari to review the circuit court decisions in *International Refugee Assistance Project* and *Hawaii. Trump v. Int’l Refugee Assistance Project*, \_\_\_ U.S. \_\_\_, 137 S. Ct. 2080, 2089 (2017) (per curiam). The Court will hear consolidated argument during the first session of October Term 2017. *Id.* at 2086. Pursuant to Supreme Court Rule 25, the government’s merits briefing is to be filed no later than August 10, 2017, and the respondents’ merits briefing is due on September 11, 2017. Other ongoing challenges to the travel ban include *Al-Mowafak v. Trump*, No. 3:17-cv-00557-WHO (N.D. Cal. filed Feb. 2, 2017); *Mohammed v. United States*, 2:17-cv-00786-SJO-GJS (C.D. Cal. filed Jan. 30, 2017); *Ali v. Trump*, 2:17-cv-00135 (W.D. Wa. filed Jan. 30, 2017); *Doe v. Trump*, 2:17-cv-00178-JLR (W.D. Wa. filed Feb. 7, 2017); *Washington v. Trump*, No. 2:17-cv-00141-JLR (W.D. Wa. filed Jan. 30, 2017); *Tawfeeq v. Dep’t of Homeland Security*, 1:17-cv-00353 (N.D. Ga. filed Jan. 30, 2017); *Pars Equality Ctr. v. Trump*, No. 1:17-cv-00255-TSC (D.D.C. filed Feb. 2, 2017); *Hagig v. Trump*, No. 1:17-cv-00289-RBJ (D. Colo. filed Jan. 30, 2017); *Arab American Civil Rights League v. Trump*, No. 2:17-cv-

<sup>6</sup> @realDonaldTrump, TWITTER (June 5, 2017, 3:29 AM), <https://twitter.com/realdonaldtrump/status/871675245043888128>.

1 10310-VAR-SDD (filed E.D. Mich. Jan. 31, 2017); and *Sarsour v. Trump*, No. 1:17-cv-00120-  
 2 AJT-IDD (E.D. Va. filed Jan. 30, 2017).

3  
 4 **B. Ms. Currier’s Freedom of Information Act Requests for Records About the  
 Executive Orders**

5 Plaintiff Cora Currier is a staff reporter for the Intercept, where she writes about national  
 6 security, counterterrorism, and immigration. Hofmann Decl. ¶ 2. On February 1, 2017, Ms. Currier  
 7 submitted FOIA requests to the Department of Homeland Security (DHS), Department of Justice  
 8 (DOJ), and Department of State seeking records about the agencies’ analysis and implementation  
 9 of EO-1, which had been signed just five days earlier. Hofmann Decl. ¶¶ 3-6, Exs. 1-2, 4.<sup>7</sup>

10 In her request to DHS, Ms. Currier specifically identified Customs and Border Protection as  
 11 an agency component whose records should be searched. Hofmann Decl. ¶ 3, Ex.1. In her request  
 12 to the DOJ and subsequent correspondence with the agency, Ms. Currier identified the Office of  
 13 the Attorney General, Office of the Deputy Attorney General, Office of Legal Counsel, Office of  
 14 Legislative Affairs, and Office of Public Affairs as agency components whose records should be  
 15 searched. Hofmann Decl. ¶¶ 4-5, Exs. 2-3.

16 Ms. Currier formally asked that each request be processed in an expedited manner as  
 17 provided in 5 U.S.C. § 552(a)(6)(E)(v)(II) because it sought the disclosure of information about  
 18 which there is “[a]n urgency to inform the public concerning actual or alleged Federal Government  
 19 activity,” and the requests were made by “a person primarily engaged in disseminating  
 20 information.” Hofmann Decl. Exs. 1-2, 4. Ms. Currier also asked that the requests to DHS and DOJ  
 21 be expedited pursuant to agency regulations because they involve “[a] matter of widespread and  
 22 exceptional media interest in which there exist possible questions about the government’s integrity  
 23 which affect public confidence.” 6 C.F.R. § 5.5(e)(1)(iv) and 28 C.F.R. § 16.5(e)(1)(iv). Hofmann  
 24 Decl. Exs. 1-2. All of Ms. Currier’s February 1 requests were granted expedited processing.  
 25 Hofmann Decl. ¶¶ 7-10, Exs. 5-8.

26  
 27 <sup>7</sup> Ms. Currier submitted the February 1 requests with her colleague Jenna McLaughlin, who was at  
 28 the time a fellow staff reporter at the Intercept, but has since left the media organization. Ms.  
 McLaughlin is not a party to this case.



On April 3, 2017, Ms. Currier submitted a second set of FOIA requests to the same agencies and components seeking records concerning the analysis and implementation of EO-2. Hofmann Decl. ¶¶ 11-14, Exs. 9-12. Ms. Currier also sent FOIA requests to the Department of Defense, the DOJ Executive Office of United States Attorneys, and the Federal Bureau of Investigation seeking records about both EO-1 and EO-2. Hofmann Decl. ¶¶ 15-17, Exs. 13-15. Ms. Currier formally asked that all of the April 3 requests be processed in an expedited manner, and the agencies all granted expedited processing. Hofmann Decl. ¶¶ 18-24, Exs. 16-22.

On July 17, 2017, Customs and Border Protection issued an interim partial response to Ms. Currier's February 1 FOIA request to DHS. The agency processed 56 pages of records, releasing 53 partially redacted pages. Hofmann Decl. ¶ 25, Ex. 23.

Counsel for the parties have had ongoing discussions about the agencies' progress, and Ms. Currier has agreed to narrow the scope of some requests in an effort to shorten the time needed by Defendants to process the documents. Hofmann Decl. ¶ 30. Nonetheless, to date, no defendant has completed processing Ms. Currier's requests to its components, nor informed Ms. Currier of an anticipated date for the completion of processing. Hofmann Decl. ¶ 26.<sup>8</sup>

#### IV. ARGUMENT

This motion raises a straightforward issue. Although Defendants have acknowledged that Ms. Currier is legally entitled to expedited processing of her FOIA requests, they have failed to comply with the FOIA's provisions for expedited processing. 5 U.S.C. § 552(a)(6)(E)(iii). They have also failed to comply with the statute's generally applicable 20-day statutory deadline for processing standard, non-expedited FOIA requests. *Id.* § 552(a)(6)(A). The agencies' actions are unlawful and must be enjoined in light of the ongoing public interest and active litigation over the legality of the travel ban.

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<sup>8</sup> Ms. Currier also submitted FOIA requests to the DOJ U.S. Marshals Service on February 1 and April 3. That component has processed Ms. Currier's requests, and they are not at issue in this motion.

**A. The Court has Jurisdiction to Grant the Requested Relief**

This Court has jurisdiction to consider this matter and grant appropriate relief. The FOIA provides:

Agency action to deny or affirm denial of a request for expedited processing . . . shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

5 U.S.C. § 552(a)(6)(E)(iii). The referenced judicial review provision states:

On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business . . . has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo[.]

*Id.* § 552(a)(4)(B). *See Al-Fayed v. CIA*, 254 F.3d 300, 304 (D.C. Cir. 2001).

Notwithstanding Defendants' decisions to "expedite" Ms. Currier's requests, the agencies have failed to respond within the standard 20-working-day time limit established by 5 U.S.C. § 552(a)(6)(A). Ms. Currier's claim is ripe for adjudication because she has exhausted all applicable administrative remedies. The FOIA provides:

[a]ny person making a request to any agency for records . . . shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph.

5 U.S.C. § 552(a)(6)(C).

**B. Ms. Currier is Entitled to Entry of an Order for Preliminary Injunction**

A preliminary injunction is a device for "preventing the irreparable loss of rights before judgment." *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984) (citation omitted). To establish the need for a preliminary injunction, a plaintiff must show "(1) a likelihood of success on the merits, (2) a likelihood of irreparable harm that would result if an injunction were not issued, (3) the balance of equities tips in favor of the plaintiff, and (4) an injunction is in the public interest." *Martins v. United States Citizenship & Immigration Servs.*, 962 F. Supp. 2d 1106, 1119 (N.D. Cal. 2013), *quoting Winter v. Natural. Res. Def. Council*, 555 U.S. 7, 20 (2008). The Court may also issue a preliminary injunction when the plaintiff raises "serious questions going to the merits" and the "balance of hardships tips sharply in [the] plaintiff's favor,"

provided that the other elements of the test are satisfied. *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–32 (9th Cir. 2011).

This Court has found that injunctive relief is appropriate in a FOIA case when a plaintiff establishes that her requests are entitled to expedited processing under the statute and the government fails to process them in a timely manner. *Elec. Frontier Found. v. Office of the Dir. of Nat. Intelligence*, 542 F. Supp. 2d 1181, 1187 (N.D. Cal. 2008) (“*EFF v. ODNI I*”); *see also Elec. Frontier Found. v. Office of Dir. of Nat. Intelligence*, No. C 07-5278 SI, 2007 WL 4208311 at \*4 (N.D. Cal. Nov. 27, 2007) (“*EFF v. ODNI II*”) (collecting cases). The preliminary injunction factors in this case firmly establish Ms. Currier’s entitlement to the relief she seeks.

### 1. Ms. Currier is Likely to Prevail Upon the Merits of Her Claim

Given Ms. Currier’s uncontested entitlement to the expedited processing of her requests under the explicit terms of the FOIA, her likelihood of prevailing on the merits could not be stronger. All of the Defendants have already determined that Ms. Currier’s requests are entitled to expediting processing. Hofmann Decl. ¶¶ 7-10 & 18-24, Exs. 5-8 & 16-22. Yet the agencies have violated the terms of the FOIA and their own regulations by failing to satisfy the processing deadline for even standard, non-expedited requests. As this Court has found, “an agency’s failure to comply with the FOIA’s time limits is, by itself, a violation of the FOIA, and is an improper withholding of the requested documents.” *Gilmore v. Dep’t of Energy*, 33 F. Supp. 2d 1184, 1187 (N.D. Cal. 1998).

The FOIA clearly establishes the circumstances in which an agency must process a request in an expedited manner. According to the statute, “[e]ach agency shall promulgate regulations . . . providing for expedited processing of requests for records . . . in cases in which the person requesting the records demonstrates a compelling need and . . . in other cases determined by the agency.” 5 U.S.C. § 552(a)(6)(E)(i). “Compelling need” includes, “with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v). Put another way, a compelling need exists when the “subject matter of the request [is] central to a pressing

1 issue of the day.” *Wadelton v. Dep’t of State*, 941 F. Supp. 2d 120, 123 (D.D.C. 2013), citing *Al-*  
 2 *Fayed*, 254 F.3d 300.

3 Pursuant to this statutory directive, the Defendants have all issued regulations establishing  
 4 grounds for expedited processing. Pursuant to those regulations, requests should be expedited when  
 5 there is “an urgency to inform the public” about an “actual or alleged federal government activity,”  
 6 if made by a person who is “primarily engaged in disseminating information.” 6 C.F.R. §  
 7 5.5(e)(1)(ii) (DHS); 28 C.F.R. § 16.5(e)(1)(ii) (DOJ); 22 C.F.R. § 171.11(f)(2) (State); 32 C.F.R. §  
 8 286.8(e)(1)(i)(B) (DOD). DHS and DOJ have an additional agency-specific ground for expedited  
 9 processing where the request involves “a matter of widespread and exceptional media interest in  
 10 which there exist possible questions about the government’s integrity which affect public  
 11 confidence.” 6 C.F.R. § 5.5(e)(1)(iv); 28 C.F.R. § 16.5(e)(1)(iv).

12 When an agency grants expedited treatment, it is obligated to process the request “as soon  
 13 as practicable.” 5 U.S.C. § 552(a)(6)(E)(iii). This phrase, “in the context of a provision of FOIA  
 14 allowing for *expedited* processing, cannot be interpreted to impose a lower burden on the agency  
 15 than would otherwise exist.” *Elec. Privacy Info. Ctr. v. Dep’t of Justice*, 416 F. Supp. 2d 30, 39  
 16 (D.D.C. 2006) (emphasis in original).

17 As such, an agency presumptively violates the “expedited processing” provisions of the  
 18 FOIA when it fails to meet the generally applicable 20-working-day deadline imposed by the FOIA  
 19 for processing a non-expedited request. *Id.*; *EFF v. ODNI I*, 542 F. Supp. 2d at 1186; *EFF v. ODNI*  
 20 *II*, 2007 WL 4208311 at \*\*4-5. Once the 20-working-day deadline has passed, the agency bears the  
 21 burden of proving that it is in fact processing the expedited request “as soon as practicable.” *EFF v.*  
 22 *ODNI I*, 542 F. Supp. 2d at 1186; *EFF v. ODNI II*, 2007 WL 4208311 at \*5; *Elec. Privacy Info.*  
 23 *Ctr.*, 416 F. Supp. 2d 24, 39 at n.8. While the agency may rebut the presumption that it failed to  
 24 process a request “as soon as practicable,” it bears the burden of presenting “credible evidence” to  
 25 show that further delay is necessary due to “exceptional circumstances.” *EFF v. ODNI II*, 2007 WL  
 26 4208311 at \*5; *Elec. Privacy Info. Ctr.*, 416 F. Supp. 2d at 39-40.

Ms. Currier requested expedited processing of her FOIA requests concerning President Trump's executive orders on immigration, a matter about which there is "an urgency to inform the public about actual or alleged federal government activity." Hofmann Decl. Exs. 1-2, 4 & 9-15. Furthermore, as a journalist, Ms. Currier is "primarily engaged in disseminating information." *Id.* Defendants determined that Ms. Currier's requests are entitled to expedited processing under this standard. Hofmann Decl. Exs. 5-8, 16-22. Yet Ms. Currier's requests have been pending for several months, and there is no indication that the agencies have done anything other than "drag [their] feet and pay lip service" to Ms. Currier's entitlement to expedition. *EFF v. ODNI II*, 2007 WL 4208311 at \*5; *Elec. Privacy Info. Ctr.*, 416 F. Supp. 2d at 37.

As this Court has noted, "in the absence of relevant evidence as to the reasons for their delay in processing [a plaintiff's FOIA] requests, [government agencies] have *no* likelihood of success on the merits." *Gerstein v. CIA*, No. C-06-4643 MMC, 2006 WL 3462659 at \*4 (N.D. Cal. Nov. 29, 2006) (emphasis added). The agencies have not (and cannot) offer adequate justification for the delay. Ms. Currier is entitled to the immediate processing and release of the requested records, and asks that the Court issue an order to secure this right.

## 2. Ms. Currier Will Suffer Irreparable Injury in the Absence of the Requested Injunctive Relief

Ms. Currier will suffer irreparable harm if the Defendants' unlawful failure to comply with their legal obligations is not immediately enjoined. The very nature of the right that Ms. Currier seeks to vindicate—expedited processing—depends upon timeliness, because "stale information is of little value." *Payne Enterprises, Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988); *EFF v. ODNI II*, 2007 WL 4208311 at \*6; *Elec. Privacy Info. Ctr.*, 416 F. Supp. 2d at 40-41.

Courts have recognized that the requisite injury is present, and preliminary injunctive relief is appropriate, in expedited processing cases where time is of the essence, because delay constitutes a cognizable harm. *EFF v. ODNI I*, 542 F. Supp. 2d at 1186-87; *EFF v. ODNI II*, 2007 WL 4208311 at \*\*6-7; *Gerstein*, 2006 WL 3462659 at \*4; *Elec. Privacy Info. Ctr.*, 416 F. Supp. 2d at 40; *see also, e.g., United States v. BNS, Inc.*, 858 F.2d 456, 465 (9th Cir. 1988); *Martin-Marietta*

1 *Corp. v. Bendix Corp.*, 690 F.2d 558, 568 (6th Cir. 1982). In the FOIA, Congress created a  
 2 statutory right to prompt processing of requests made on matters where there is an urgency to  
 3 inform the public. But unless Defendants are ordered to process the requests immediately, Ms.  
 4 Currier's right to expedition under the FOIA will be irretrievably lost.

5 Any further delay in the processing of Ms. Currier's requests will irreparably harm her  
 6 ability to obtain in a timely fashion information vital to the ongoing public discussion over the  
 7 travel ban. Hofmann Decl. ¶¶ 27-29. Ms. Currier hopes to write articles based on these records  
 8 while they are still newsworthy, and the public will benefit from that reporting and access to the  
 9 records on which it is based. Because time is of the essence in this matter, Ms. Currier will be  
 10 irreparably harmed unless the Court acts now, "when it [is] still possible to grant effective relief,"  
 11 and before "all opportunity to grant the requested relief [is] foreclosed." *Local Lodge No. 1266,*  
 12 *Int'l Ass'n of Machinists and Aerospace Workers v. Panoramic Corp.*, 668 F.2d 276, 290 (7th Cir.  
 13 1981).

### 14 **3. The Balance of Equities Favors Ms. Currier**

15 The balance of equities weighs in favor of the relief Ms. Currier seeks. She has a significant  
 16 interest in the timely processing of the documents to which she has a statutory right. She is a  
 17 professional journalist seeking to report on a matter of great interest to the general public. The  
 18 information she seeks may not only form the basis of Ms. Currier's own news reporting, but could  
 19 also play an important role in the judiciary's ongoing consideration of the legality of the travel ban.

20 On the other side of the scale, the defendant agencies cannot be "burdened" by having to  
 21 comply with federal law and their own regulations. The relief Ms. Currier seeks will require  
 22 nothing more of the government than what the law already mandates: the expedited processing of  
 23 her FOIA requests, which the agencies concede qualify for such treatment. Ms. Currier merely  
 24 seeks the expedition to which the agencies agree she is entitled. *See EFF v. ODNI II*, 2007 WL  
 25 4208311 at \*7.  
 26  
 27  
 28

#### 4. The Public Interest Favors the Requested Relief

The final factor in the preliminary injunction analysis tips sharply in Ms. Currier's favor. The expedited release of the records will serve the public interest in three ways. First, the timely release of the information may help inform judicial review by courts throughout the country that are actively considering whether the travel ban violates the law and runs afoul of the Establishment Clause. One circuit court has already cited agency dissent about the national security value of the travel ban as evidence that the orders were motivated by religious animus rather than national security concerns. *Int'l Refugee Assistance Project*, 857 F.3d 554, 596 (4th Cir. 2017). The documents requested by Ms. Currier could shed further light on this matter for the courts considering the travel ban. Once decisions are made in those matters, however, the litigation cannot be "restarted or wound back." *EFF v. ODNI I*, 542 F. Supp. 2d at 1186 (quoting *Gerstein v. CIA*, 2006 WL 3462659 at \*4); *EFF v. ODNI II*, 2007 WL 4208311 at \*7.

Given the briefing schedule in the Supreme Court litigation, Ms. Currier asks this Court to order the agencies to complete processing her FOIA requests no later than September 5. That deadline would not only allow Ms. Currier to report on the disclosed records while they are still newsworthy, but would also give the respondents and *amici* in that matter an opportunity to review the documents and incorporate any relevant information into their Supreme Court briefings.

Second, the expedited release of the records will further the FOIA's core purpose of ensuring "the uninhibited, robust, and wide-open debate about matters of public importance that secures an informed citizenry." *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 815 (1985), quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (internal quotation marks omitted). The public oversight mechanism provided by the FOIA is central to open and democratic debate on the travel ban. As the Supreme Court has observed, the Act is "a means for citizens to know what their Government is up to. This phrase should not be dismissed as a convenient formalism. *It defines a structural necessity in a real democracy.*" *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171-172 (2004) (emphasis added; citation and internal quotation marks omitted). And timely access to information is just as important as access itself.



1 Delay in the processing of FOIA requests “may well result in disclosing the relevant documents  
 2 after the need for them in the formulation of national . . . policy has been overtaken by events.”  
 3 *Natural Resources Defense Council v. Dep’t of Energy*, 191 F. Supp. 2d 41, 43 (D.D.C. 2002)  
 4 (“NRDC”) (granting motion for release of documents).

5 Finally, the public interest is served when federal agencies follow the law and their own  
 6 regulations. The courts have long recognized an “overriding public interest” in “an agency’s  
 7 faithful adherence to its statutory mandate.” *Jacksonville Port Authr. v. Adams*, 556 F.2d 52, 59  
 8 (D.C. Cir. 1977). And it is “axiomatic that an agency is required to follow its own regulations.”  
 9 *Edmonds v. FBI*, No. 02-1294, 2002 WL 32539613, at \*9 n.3 (D.D.C. Dec. 3, 2002) (quoting  
 10 *Cherokee National of Okla. v. Babbitt*, 117 F.3d 1489, 1499 (D.C. Cir. 1997)) (internal quotation  
 11 marks omitted). Such adherence is what Ms. Currier seeks here. For these reasons, the public  
 12 interest favors the issuance of an order directing defendants to immediately process and release the  
 13 requested information.

#### 14 **C. The Court Should Order Defendants to Process Ms. Currier’s FOIA Requests** 15 **Immediately**

16 It is well established that preliminary injunctive relief is appropriate when, as in this case,  
 17 an agency has failed to act upon a well-founded request for expedited processing. *EFF v. ODNI I*,  
 18 542 F. Supp. 2d at 1187 (granting preliminary injunction in FOIA lawsuit for expedited  
 19 processing); *EFF v. ODNI II*, 2007 WL 4208311 at \*8 (same); *Elec. Privacy Info. Ctr. I*, 416 F.  
 20 Supp. 2d at 35 (same); *Aguilera v. FBI*, 941 F. Supp. 144, 152-153 (D.D.C. 1996) (same); *Cleaver*  
 21 *v. Kelley*, 427 F. Supp. 80, 81-82 (D.D.C. 1976) (same); *ACLU v. Dep’t of Defense*, 339 F. Supp.  
 22 2d 501, 503 (S.D.N.Y. 2004) (same). Congress expressly required agencies to make determinations  
 23 on requests for expedited processing within 10 calendar days, 5 U.S.C. § 552(a)(6)(E)(ii)(I), and  
 24 provided for immediate judicial review of adverse determinations, 5 U.S.C. § 552(a)(6)(E)(iii),  
 25 demonstrating an intent that the courts should act quickly to vindicate the right to expedition. *See*,  
 26 *e.g.*, *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 28-29 (D.D.C. 2004) (complete exhaustion of  
 27 administrative remedies not a prerequisite to judicial review of agency expedition decisions).  
 28



Courts regularly impose processing deadlines on agencies requiring the prompt delivery of non-exempt records to FOIA requesters. This Court has in the past ordered agencies to process and produce all non-exempt records responsive to FOIA requests within 17 days and 13 days of the Court's orders, respectively. *EFF v. ODNI I*, 542 F. Supp. 2d at 1187; *EFF v. ODNI II*, 2007 WL 4208311 at \*8; *see also Gerstein v. CIA*, 2006 WL 3462659 at \*5 (ordering agencies to process and produce all non-exempt records responsive to FOIA requests within 30 days of the Court's order); *Gerstein v. CIA*, No. C-06-4643 MMC, 2006 WL 3462658 at \*9 (N.D. Cal. Nov. 29, 2006) (same).

Even in cases involving large numbers of documents, courts have recognized the interests of the requester in prompt release pursuant to a finding of expedited processing. In *ACLU v. Dep't of Defense*, for example, the court ordered a variety of agencies to "produce or identify" all documents responsive to an expedited FOIA request, estimated to be between 17,000 and 20,000 pages, and to provide the requesters with a *Vaughn* index detailing withholdings, within 30 days. 339 F. Supp. 2d at 503-505.<sup>9</sup>

Other courts have imposed concrete FOIA processing schedules upon federal agencies even in cases involving *non-expedited* requests. For example, in *Judicial Watch, Inc. v. Dep't of Energy*, the court ordered the Department of Commerce and Department of Transportation to process, respectively, 9000 and 6000 pages of material within 60 days in response to non-expedited requests. 191 F. Supp. 2d 138, 141 (D.D.C. 2002). The court also ordered the agencies to provide the requester with an index detailing their withholdings pursuant to *Vaughn v. Rosen*, 484 F.2d 820, 826-8 (D.C. Cir. 1973) within 72 days. *Id.*, 191 F. Supp. 2d 138 at 141.

Similarly, in *NRDC*, the court ordered the Department of Energy to process 7500 pages of non-expedited material; to process the "vast majority" of it within 32 days, and to provide the requester with a *Vaughn* index within 63 days. 191 F. Supp. 2d at 43-44 (noting that the schedule

---

<sup>9</sup> Judicial resolution of the expedited processing issue would not resolve all issues raised in the first amended complaint. Once the question of processing time is resolved, the Court would retain jurisdiction to review the completeness and propriety of the Defendants substantive determination of Ms. Currier's FOIA requests. *See Open America v. Watergate Special Prosecution Force*, 547 F. 2d 605 (D.C. Cir. 1976).

1 was necessary partially because the time table the defendant proposed would result in the  
2 production of documents after the need for them as part of a public debate would have passed).

3 Given the extraordinary public interest in the records at issue, and to facilitate Ms. Currier's  
4 work to inform the public and courts about the development and implementation of the travel ban,  
5 Ms. Currier respectfully asks this Court to direct Defendants to complete the processing of her  
6 requests and produce or identify all responsive records no later than September 5, and to provide  
7 Ms. Currier with an a document index and declaration, as specified in *Vaughn v. Rosen*, stating the  
8 justification for the withholding of any documents responsive to Ms. Currier's requests within 30  
9 days of the date of the Court's order.

10 **V. CONCLUSION**

11  
12 For the foregoing reasons, Ms. Currier's motion for a preliminary injunction should be  
13 granted.

14 DATED: July 20, 2017

Respectfully submitted,

16 /s/ Marcia Hofmann

Marcia Hofmann

17 Kendra K. Albert

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Attorneys for Plaintiff CORA CURRIER

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

CORA CURRIER,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,  
et al.,

Defendants.

Case No. 3:17-cv-01799-JSC

**DECLARATION OF MARCIA  
HOFMANN IN SUPPORT OF  
PLAINTIFF CORA CURRIER'S  
MOTION FOR PRELIMINARY  
INJUNCTION**

Date: August 24, 2017

Time: 9:00 a.m.

Place: Courtroom F, 15th Floor

Magistrate Judge Jacqueline Scott Corley

1. I am an attorney of record for the plaintiff Cora Currier in this matter and a member in good standing of the California State Bar, and am admitted to practice before this Court. I have personal knowledge of the matters stated in this declaration. If called upon to do so, I am competent to testify to all matters set forth here.

2. Ms. Currier is a staff reporter for the Intercept, where she writes about national security, counterterrorism and immigration.

-1-

1           3.       On February 1, 2017, Ms. Carrier submitted a Freedom of Information Act (FOIA)  
2 request to the Department of Homeland Security seeking records about the agency's analysis and  
3 implementation of Executive Order No. 13,769 ("EO-1"), specifically identifying Customs and  
4 Border Protection as an agency component whose records should be searched. A true and correct  
5 copy of this letter is attached as Exhibit 1.  
6

7           4.       On February 1, 2017, Ms. Carrier submitted FOIA requests to the Department of  
8 Justice seeking records about the agency's analysis and implementation of EO-1, specifically  
9 identifying the Office of the Attorney General, the Office of the Deputy Attorney General, the  
10 Office of Legal Counsel, and the Office of Legislative Affairs as agency components whose  
11 records should be searched. A true and correct copy of this letter is attached as Exhibit 2.  
12

13           5.       On February 13, 2017, the Department of Justice Office of Information Policy sent  
14 me an email asking if Ms. Carrier would like a search of the Office of Public Affairs conducted as  
15 part of her February 1, 2017 request to the Department of Justice. I informed the Office of  
16 Information Policy that Ms. Carrier would like such a search conducted. A true and correct copy of  
17 this email exchange is attached as Exhibit 3.  
18

19           6.       On February 1, 2017, Ms. Carrier submitted a FOIA request to the Department of  
20 State seeking records about the agency's analysis and implementation of EO-1. A true and correct  
21 copy of this letter is attached as Exhibit 4.  
22

23           7.       In a letter dated February 13, 2017, the Department of Homeland Security  
24 acknowledged receipt of Ms. Carrier's February 1 FOIA request and granted expedited processing.  
25 A true and correct copy of this letter is attached as Exhibit 5.  
26

27           8.       In a letter dated February 17, 2017, the Department of Justice Office of Information  
28 Policy acknowledged receipt of Ms. Carrier's FOIA request on behalf of the Office of the Attorney

1 General, Office of the Deputy Attorney General, Office of Public Affairs, and Office of Legislative  
2 Affairs, and granted expedited processing. A true and correct copy of this letter is attached as  
3 Exhibit 6.

4  
5 9. In a letter dated February 14, 2017, the Department of Justice Office of Legal  
6 Counsel acknowledged that it had received Ms. Currier's February 1 FOIA request and granted  
7 expedited processing. A true and correct copy of this letter is attached as Exhibit 7.

8 10. In a letter dated February 9, 2017, the Department of State acknowledged receipt of  
9 Ms. Currier's February 1 FOIA request and granted expedited processing. A true and correct copy  
10 of this letter is attached as Exhibit 8.

11 11. On April 3, 2017, Ms. Currier submitted a FOIA request to the Department of  
12 Homeland Security seeking records about the agency's analysis and implementation of Executive  
13 Order No. 13,780 ("EO-2"), specifically identifying Customs and Border Protection as an agency  
14 component whose records should be searched. A true and correct copy of this letter is attached as  
15 Exhibit 9.

16  
17 12. On April 3, 2017, Ms. Currier submitted a FOIA request to the Department of  
18 Justice seeking records about the agency's analysis and implementation of EO-2, specifically  
19 identifying the Office of the Attorney General, Office of the Deputy Attorney General, Office of  
20 Public Affairs, and Office of Legislative Affairs as an agency components whose records should be  
21 searched. A true and correct copy of this letter is attached as Exhibit 10.

22  
23 13. On April 3, 2017, Ms. Currier submitted a FOIA request to the Department of  
24 Justice Office of Legal Counsel seeking records about the agency's analysis and implementation of  
25 EO-2. A true and correct copy of that letter is attached as Exhibit 11.

26 ///

20. In a letter dated April 13, 2017, the Department of Justice Office of Information Policy acknowledged that it had received Ms. Currier's FOIA request to the Office of the Attorney General, Office of the Deputy Attorney General, Office of Public Affairs, and Office of Legislative Affairs, and granted expedited processing. A true and correct copy of this letter is attached as Exhibit 18.

1           21. In a letter dated April 5, 2017, the Department of Justice Office of Legal Counsel  
2 acknowledged that it had received Ms. Currier's April 3 FOIA request and granted expedited  
3 processing. A true and correct copy of this letter is attached as Exhibit 19.

4           22. In an undated letter, the Department of Justice Office of Information Policy granted  
5 expedited processing on behalf of the Executive Office for United States Attorneys. A true and  
6 correct copy of this letter is attached as Exhibit 20.

7           23. In a letter dated April 27, 2017, the Federal Bureau of Investigation acknowledged  
8 that it had received Ms. Currier's April 3 FOIA request and granted expedited processing. A true  
9 and correct copy of this letter is attached as Exhibit 21.

10           24. In an email dated May 5, 2017, the Department of Defense granted expedited  
11 processing of Ms. Currier's April 3 FOIA request. A true and correct copy of this email granting  
12 expedited processing is attached as Exhibit 22.

13           25. On July 17, 2017, Customs and Border Protection issued an interim partial response  
14 to Ms. Currier's February 1 FOIA request to the Department of Homeland Security. The agency  
15 processed 56 pages of records, releasing 53 partially redacted pages. A true and correct copy of the  
16 interim partial response cover letter is attached as Exhibit 23.

17           26. Notwithstanding the agencies' purported decisions to grant expedited processing for  
18 Ms. Currier's FOIA requests, the agencies have neither completed the processing of the requests  
19 nor informed Ms. Currier of an anticipated date for the completion of such processing.

20           27. Unless the agencies are ordered to process Ms. Currier's FOIA requests  
21 immediately, Ms. Currier's right to expedition under the FOIA will be irretrievably lost, resulting  
22 in irreparable injury to Ms. Currier.

23  
24  
25  
26 ///

29. Without expedited access to the information to which it is legally entitled, Ms. Currier's ability to engage in an urgent and current public debate will be irretrievably lost.

30. I met and conferred with opposing counsel on July 7, and July 18, 2017. Ms. Currier has agreed to narrow the scope of some requests in an effort to shorten the time needed by Defendants to process the documents. We have also discussed the agencies' progress in processing the requests and the possibility of agreeing upon a processing schedule to eliminate the need for motion practice to secure Ms. Currier's right to expedition. I informed opposing counsel that Ms. Currier intended to seek preliminary injunctive relief if the parties could not agree upon a mutually acceptable date by which to complete the processing of Ms. Currier's requests. To date, Defendants have been unwilling to commit to process the requests in their entirety by a specific date.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief. Executed July 20, 2017.

Marcia Hofmann



# Exhibit 1

# Exhibit 1

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



# ZEITGEIST

LAW PC

25 Taylor Street, San Francisco, CA 94102  
+1 415.830.6664

February 1, 2017

Jonathan Cantor  
Acting Chief Privacy Officer/Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW  
STOP-0655  
Washington, DC 20528-0655

Nicole Barksdale-Perry  
Senior Director of FOIA Operations (Acting)  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW  
STOP-0655  
Washington, DC 20528-0655

## **Re: Freedom of Information Act Request**

Dear Mr. Cantor and Ms. Barksdale-Perry:

This is an expedited request under the Freedom of Information Act, 5 U.S.C. § 552. I am submitting it to the Department of Homeland Security (DHS) on behalf of Cora Currier and Jenna McLaughlin, two staff journalists at The Intercept.

## **Requested Records**

On January 27, 2017, President Trump signed an executive order entitled "Protecting the Nation From Foreign Terrorist Entry Into the United States." The order banned nationals of Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen from entering the United States for 90 days.

Department of Homeland Security FOIA Request

February 1, 2017

Page 2

Ms. Currier and Ms. McLaughlin request all agency records from January 20, 2017 to the present concerning the agency's analysis and implementation of that executive order. They believe the records they seek are located within DHS Headquarters and U.S. Customs and Border Protection (CBP), and urge the agencies to process this request consistent with Justice Department policy directing a presumption of disclosure.<sup>1</sup>

This request includes, but is not limited to:

- A. Records related to briefings, discussions, talking points, emails (whether through .gov email addresses or private third-party services such as Gmail) or other communications:
  - 1. Among DHS and CBP personnel, including supervisors, officers, managers, and union representatives;
  - 2. From or about travelers asking for clarification or about the ban's effect;
  - 3. Between DHS or CBP officials and the Executive Office of the President or other White House offices;
  - 4. Between DHS or CBP officials and members of Congress or congressional staffers, including aides to the House Judiciary Committee;
  - 5. Between DHS or CBP officials and the staff or management of commercial airlines;
  - 6. Between DHS or CBP officials and local and state agencies, including local law enforcement and agents at airports of entry such as General Edward Lawrence Logan International Airport (BOS), Los Angeles International Airport (LAX), Washington Dulles International Airport (IAD), Seattle-Tacoma International Airport (SEA), San Francisco International Airport (SFO), Dallas/Fort Worth International Airport (DFW), and John F. Kennedy International Airport (JFK); and
  - 7. Between DHS or CBP officials and non-government representatives and outside consultants, including nonprofits, policy think tanks such as the Center for Immigration Studies and Federation for American Immigration Reform, and private firms such as Giuliani Partners.

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<sup>1</sup> See Dep't of Justice Office of Information Policy, *President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines: Creating a "New Era of Open Government"* (2009), <https://www.justice.gov/oip/blog/foia-post-2009-creating-new-era-open-government>.

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- B. Records reflecting analysis and response of DHS or CBP officials to judicial orders staying the enforcement of the executive order, including discussions of legal liability for failing to follow those orders.

Please produce any responsive records you identify in electronic format.

### **Request for Expedited Processing**

This requests warrants expedited processing under two standards: 6 C.F.R. §§ 5.5(e)(1)(ii) and (iv).

#### A. Urgency to Inform the Public Standard

This request pertains to information about which there is “[a]n urgency to inform the public about an actual or alleged Federal Government activity,” and it is made by requesters “primarily engaged in disseminating information.” *Id.* § 5.5(e)(1)(ii).

There is an urgency to inform the public about the federal government’s implementation of a highly controversial executive order banning nationals of seven Muslim-majority countries from entering the United States. Thousands of people across the country have protested this action. To date, five different district courts have issued temporary relief against the executive order.<sup>2</sup> Acting Attorney General Sally Yates stated this week that the Justice Department would not defend the executive order in court because she was “not convinced” that it “is consistent with this institution’s solemn obligation to always seek justice and stand for what is right”—and she was promptly fired and replaced by the President.<sup>3</sup>

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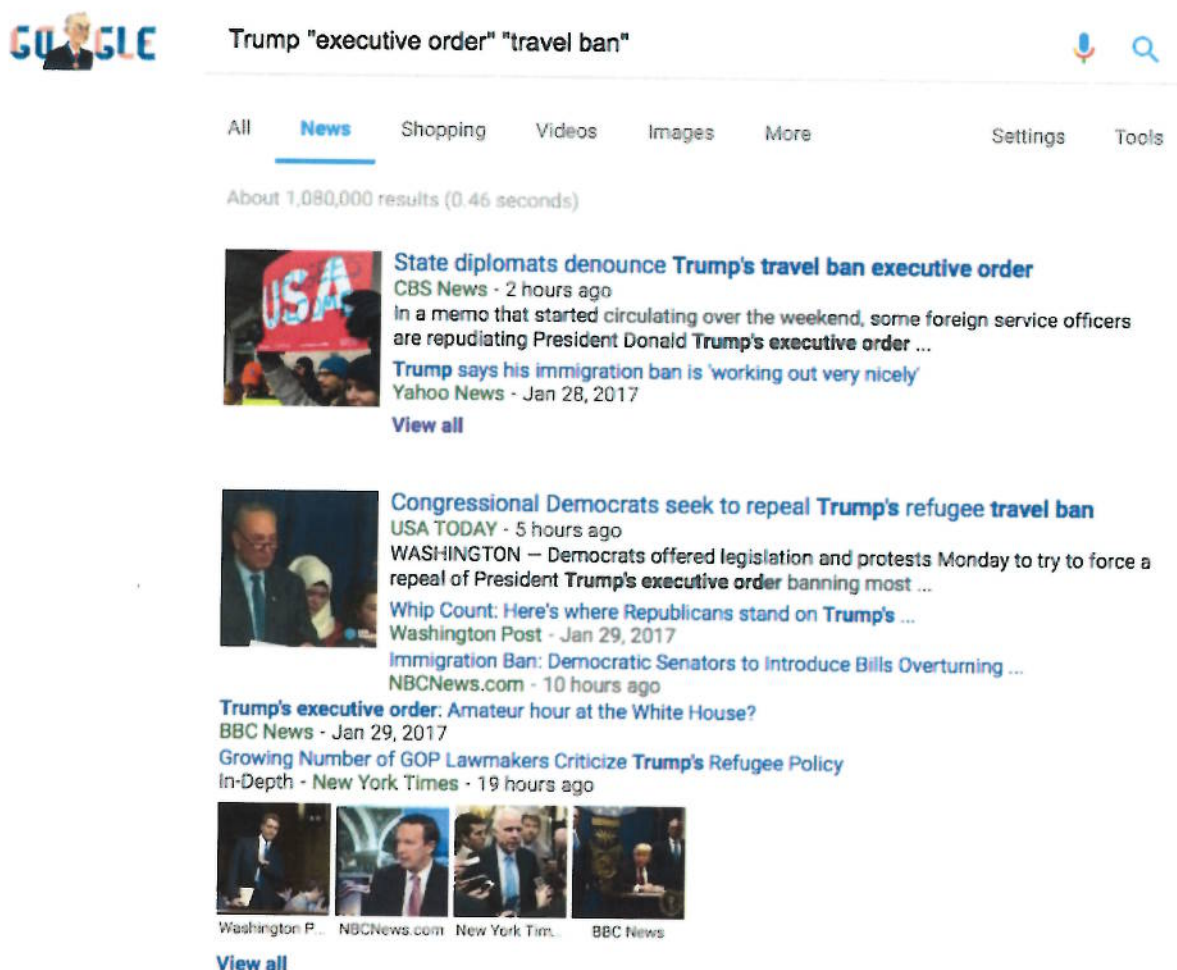
<sup>2</sup> Steve Vladeck, *The Airport Cases: What Happened, and What’s Next?*, JUST SECURITY (Jan. 30, 2017), <https://www.justsecurity.org/36960/stock-weekends-district-court-orders-immigration-eo/>.

<sup>3</sup> Mark Landler, Matt Apuzzo & Eric Lichtblau, *Trump Fires Acting Attorney General*, THE NEW YORK TIMES (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/politics/trump-immigration-ban-memo.html>.



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These events have been the subject of articles from news outlets throughout the world. In fact, a Google News search for the string "Trump 'executive order' 'travel ban'" returns more than a million results.<sup>4</sup>



Here is a sample of news articles published by major press organizations within the United States and around the globe discussing the executive order and subsequent events:

Halimah Abdullah & Phil Mccausland, *Trump Signs Order Suspending Admission of Syrian Refugees*, NBC NEWS (Jan. 28, 2017), <http://www.nbcnews.com/news/us-news/trump-signs-two-executive-orders-expands-power-military-extreme-vetting-n713336>.

<sup>4</sup> <https://goo.gl/iYqQ4T>.

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FINANCIAL TIMES, *Trump bans refugees and migrants from Muslim countries* (Jan. 28, 2017), <https://www.ft.com/content/379ef670-e545-11e6-893c-082c54a7f539>.

BBC NEWS, *Trump executive order banning refugees: World Reacts* (Jan. 29, 2017), <http://www.bbc.com/news/world-us-canada-38781973>.

CBC NEWS, *Trump's travel ban sparks mass confusion as conflicting details emerge* (Jan. 29, 2017), <http://www.cbc.ca/news/world/trump-immigration-refugee-travel-executive-order-1.3957205>.

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RT.COM, *More US judges rule to restrict Trump 'Muslim ban' travel order* (Jan. 29, 2017), <https://www.rt.com/usa/375540-judges-trump-muslim-ban/>.

Michael D. Shear & Ron Nixon, *How Trump's Rush to Enact an Immigration Ban Unleashed Global Chaos*, THE NEW YORK TIMES (Jan. 29, 2017), <https://www.nytimes.com/2017/01/29/us/politics/donald-trump-rush-immigration-order-chaos.html>.

PEOPLE'S DAILY: ENGLISH EDITION, *Trump's refugee ban sparks protests before White House, at over 30 U.S. airports* (Jan. 30, 2017), <http://en.people.cn/n3/2017/0130/c90000-9172519.html>.

Stephen Collinson, *Donald Trump's travel ban fundamentally changes American history*, CNN POLITICS (Jan. 30, 2017), <http://www.cnn.com/2017/01/30/politics/donald-trump-immigration-ban/index.html>.

Murtaza Hussain, *Iranians in U.S. "Can Never Feel Safe Anymore" After Muslim Ban*, THE INTERCEPT (Jan. 30, 2017), <https://theintercept.com/2017/01/30/iranians-in-u-s-can-never-feel-safe-anymore-after-muslim-ban/>.

The requested information will help the public better understand the circumstances surrounding the creation and execution of the order, as well as how DHS and CBP have responded to the public outcry and judicial decisions prompted by it. Further, as explained below in support of the request for "news media" treatment, Ms. Currier and Ms. McLaughlin are "primarily engaged in disseminating information."



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B. Widespread and Exceptional Media Interest Standard

The requested records relate to “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 6 C.F.R. § 5.5(e)(1)(iv).

As noted above, the subject of this request has been extensively covered by press around the world over the past few days, and is a matter of widespread and exceptional media interest.

Further, the requested records relate directly to questions about the government’s integrity that affect public confidence. Many members of the news media have questioned whether the executive order went through appropriate internal vetting processes, and whether White House staff overruled DHS legal interpretations regarding the order’s application to lawful permanent residents.<sup>5</sup> Concerns have also been raised about whether CBP is responding appropriately to inquiries by members of Congress.<sup>6</sup> The requested information will help shed light on how the executive order was written, interpreted and implemented, and how DHS and CBP interacted with the White House, Congress, and others as the events of the past few days unfolded.

Furthermore, Rudy Giuliani has publicly stated that he participated in the development of the executive order, and that President Trump asked him about how to legally implement a “Muslim ban.”<sup>7</sup> The requested records may show the role that Mr. Giuliani and his private consulting group played in drafting the travel restrictions, and the extent to which those limits were intended to be based on religion.

Pursuant to 6 C.F.R. § 5.5(e)(3), I certify this statement to be true and correct.

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<sup>5</sup> Evan Perez, Pamela Brown & Kevin Liptak, *Inside the confusion of the Trump executive order and travel ban*, CNN (Jan. 30, 2017), <http://www.cnn.com/2017/01/28/politics/donald-trump-travel-ban/index.html>.

<sup>6</sup> David Siegel, *Congressmen at Dulles airport protest say they were denied access to detainee facilities*, CNN (Jan. 30, 2017), <http://www.cnn.com/2017/01/30/politics/congressmen-customs-border-dulles/index.html>.

<sup>7</sup> Rebecca Savransky, *Giuliani: Trump asked me how to do a Muslim ban ‘legally’*, THE HILL (Jan. 29, 2017), <http://thehill.com/homenews/administration/316726-giuliani-trump-asked-me-how-to-do-a-muslim-ban-legally>.

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### **Request for “News Media” Fee Status**

Ms. Currier and Ms. McLaughlin are representatives of the news media and do not seek the requested records for commercial use. Accordingly, fees associated with the processing of this request should be limited to reasonable duplication costs. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

The requesters are representatives of the news media because they “gather[] information of potential interest to a segment of the public, uses [their] editorial skills to turn the raw materials into a distinct work, and distribute[] that work to an audience.” *Id.*; 6 C.F.R. § 5.11(b)(6).

The Intercept is a digital news publication that was founded in 2014 with a mission to report on national security and foreign policy issues. The Intercept has since expanded to a staff of more than twenty reporters producing investigative reporting, analysis, commentary, and multimedia content focused on national security, politics, civil liberties, technology, criminal justice, the media, and more. The Intercept’s coverage has been recognized with awards from the Online News Association, the American Society of Magazine Editors, the New York Press Club, and others.

Cora Currier is a staff reporter for The Intercept, where she has covered national security, counterterrorism, and immigration since joining the newsroom in July 2014. Prior to that, she covered similar topics for the investigative news site ProPublica. She has reported on issues pertinent to the recent travel ban, including CBP’s policy on collecting social media information from foreign travelers,<sup>8</sup> government efforts to counter violent extremism, the No Fly list and other watchlisting procedures,<sup>9</sup> and in the past, has covered the cases of individuals blocked from

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<sup>8</sup> Cora Currier, *The US Government Wants to Read Travelers’ Tweets Before Letting Them In*, THE INTERCEPT (Oct. 21, 2016), <https://theintercept.com/2016/10/21/the-u-s-government-wants-to-read-travelers-tweets-before-letting-them-in/>.

<sup>9</sup> Cora Currier, *Government May Now Tell You Why You’re on a “No Fly” List, But Not Always*, THE INTERCEPT (April 15, 2015), <https://theintercept.com/2015/04/15/government-will-now-tell-youre-fly-list-except-wont/>.



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entering the United States on terrorism grounds.<sup>10</sup> She has previously requested, obtained, and reported on documents obtained via the FOIA on a range of national security-related issues.<sup>11</sup>

Jenna McLaughlin is also a staff reporter for The Intercept, where she has covered national security, technology, and human rights since joining the newsroom in 2015. Prior to that, she covered national security and foreign policy for investigative news website and magazine Mother Jones. She has reported on documents obtained through FOIA including on the use of cell-site simulators, or Stingrays, in Chicago with the partnership of transparency organization Lucy Parson Labs.<sup>12</sup> She has regularly written about issues pertinent to the travel ban including the privacy rights of foreigners and Americans,<sup>13</sup> government efforts to counter violent extremism,<sup>14</sup> and social media surveillance.<sup>15</sup>

Finally, we note that per DHS regulations, a request for records that supports the news-dissemination function of the requester is not considered to be for a commercial use. *Id.* 5.11(b)(6).

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<sup>10</sup> Cora Currier, *Why the U.S. Won't Allow a Dying Iranian Sociologist to Join His Family*, PROPUBLICA (Nov. 20, 2012), <https://www.propublica.org/article/why-the-us-wont-allow-a-dying-iranian-sociologist-to-join-his-family>.

<sup>11</sup> Cora Currier, *Newly Released Records Show the US Paid \$6 Million for Civilian Harm in Afghanistan*, THE INTERCEPT (Mar. 3, 2015), <https://theintercept.com/2015/03/04/newly-released-records-show-us-paid-6-million-afghan-civilian-harm/>.

<sup>12</sup> Jenna McLaughlin, *How Chicago Police Convinced Courts to Let Them Track Cellphones Without a Warrant*, THE INTERCEPT (Oct. 18, 2016), <https://theintercept.com/2016/10/18/how-chicago-police-convinced-courts-to-let-them-track-cellphones-without-a-warrant/>.

<sup>13</sup> Jenna McLaughlin, *Top European Court Rules That NSA Spying Make U.S. Unsafe for Data*, THE INTERCEPT (Oct. 6, 2015), <https://theintercept.com/2015/10/06/top-european-court-rules-that-nsa-spying-makes-u-s-unsafe-for-data/>.

<sup>14</sup> Jenna McLaughlin, *FBI Left Out Top Muslim-American Groups When Vetting Anti-Extremist Game*, THE INTERCEPT (Nov. 11, 2015), <https://theintercept.com/2015/11/11/fbi-left-out-top-muslim-american-groups-when-vetting-anti-extremist-game/>.

<sup>15</sup> Jenna McLaughlin, *The White House Asked Social Media Companies to Look for Terrorists. Here's Why They'd #Fail*, THE INTERCEPT (JAN. 20, 2016), <https://theintercept.com/2016/01/20/the-white-house-asked-social-media-companies-to-look-for-terrorists-heres-why-theyd-fail/>.

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Thus, Ms. Currier and Ms. McLaughlin should be classified as “news media” requesters for purposes of fee assessments.

### **Request for Public Interest Fee Waiver**

Ms. Currier and Ms. McLaughlin request a waiver of fees because disclosure of the requested records “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k)(1)(i)-(ii). As DHS regulations note, news media requesters are entitled to a presumption that their requests meet this standard. 6 C.F.R. § 5.11(k)(3)(ii).

First, the request concerns “identifiable operations or activities of the federal government[.]” *Id.* § 5.11(k)(2)(i). Specifically, the records will shed light on how DHS officials were involved in the creation and execution of a restriction on the ability of travelers from certain countries to enter the United States.

Second, disclosure of the requested records will be “meaningfully informative about government operations or activities” and is “likely to contribute to an increased public understanding of those operations or activities.” *Id.* § 5.11(k)(2)(ii) (internal quotation marks omitted). The records sought will educate the public about DHS’s implementation of the executive order, which has caused considerable confusion and public speculation to date.<sup>16</sup>

Third, the requested records will “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.” *Id.* § 5.11(k)(2)(iii). The requesters do not seek this information for themselves, but to incorporate into news reporting that will educate the public.

Fourth, the requested records will significantly enhance the public’s understanding of DHS’s involvement in the executive order *Id.* § 5.11(k)(2)(iv). The records will reveal substantial new information about the travel restrictions, how they were developed, and DHS’s role in executing them even after multiple courts ordered that certain government actions be stayed.

Finally, the records are not primarily in the requesters’ commercial interest. Ms. Currier and Ms. McLaughlin seek the requested information for newsgathering purposes and expect to incorporate it into journalistic work product.

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<sup>16</sup> See, e.g., Edward Helmore & Alan Yuhus, *Border agents defy courts on Trump travel ban, congressmen and lawyers say*, THE GUARDIAN (Jan. 30, 2017), <https://www.theguardian.com/us-news/2017/jan/29/customs-border-protection-agents-trump-muslim-country-travel-ban>.



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Thus, DHS should grant a public interest fee waiver for this request. Should DHS decline a fee waiver, Ms. Currier and Ms. McLaughlin agree to pay up to \$100 for the processing of this request. If the estimated fees will exceed this limit, please inform me before you begin processing.

Thank you for your consideration of this request. As DHS regulations provide, we will anticipate your determination on expedited processing within ten (10) calendar days. *Id.* § 5.5(e)(4). If you have any questions or concerns, please do not hesitate to contact me at (415) 830-6664 or [marcia@zeitgeist.law](mailto:marcia@zeitgeist.law).

Regards,

A handwritten signature in blue ink that reads "Marcia Hofmann". The signature is written in a cursive, flowing style.

Marcia Hofmann

# Exhibit 2

# Exhibit 2

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



# ZEITGEIST

LAW PC

25 Taylor Street, San Francisco, CA 94102  
+1 415.830.6664

February 1, 2017

Office of the Attorney General  
Office of the Deputy Attorney General  
Office of Public Affairs  
Office of Legislative Affairs  
Laurie Day  
Chief, Initial Request Staff  
Office of Information Policy  
U.S. Department of Justice  
Suite 11050  
1425 New York Ave. NW  
Washington, DC 20530

Peter Carr  
Acting Director of Public Affairs  
Office of Public Affairs  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
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Melissa Golden  
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U.S. Department of Justice  
Room 5511, 950 Pennsylvania Ave. NW  
Washington, DC 20530

William R. Bordley  
Associate General Counsel  
U.S. Marshals Service  
Office of General Counsel  
CG-3 R1594  
Washington, DC 20530

## **Re: Freedom of Information Act Request**

Dear FOIA Officers:

This is an expedited request under the Freedom of Information Act, 5 U.S.C. § 552. I am submitting it to the Department of Justice (DOJ) on behalf of Cora Currier and Jenna McLaughlin, two staff journalists at The Intercept.

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### **Requested Records**

On January 27, 2017, President Trump signed an executive order entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States.” The order banned nationals of Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen from entering the United States for 90 days.

Ms. Currier and Ms. McLaughlin request all agency records from January 20, 2017 to the present concerning the agency’s analysis and implementation of that executive order. They believe the records we seek are located within the Office of the Attorney General, Office of the Deputy Attorney General, Office of Legal Counsel, Office of Legislative Affairs, and U.S. Marshals Service. We urge all components to process this request consistent with DOJ policy directing a presumption of disclosure.<sup>1</sup>

This request includes, but is not limited to:

- A. Records related to briefings, discussions, talking points, emails (whether through .gov email addresses or private third-party services such as Gmail) or other communications:
  - 1. Among DOJ personnel, including supervisors, officers, managers, and union representatives;
  - 2. Between DOJ officials and the Executive Office of the President (EOP) or other White House offices, including any consultations by the OLC and communications between the Acting Attorney General and EOP;
  - 3. Between DOJ officials and other federal agencies, including the Department of Homeland Security and Department of State;
  - 4. Between DOJ officials and members of Congress or congressional staffers, including aides to the House Judiciary Committee;

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<sup>1</sup> See Dep’t of Justice Office of Information Policy, *President Obama’s FOIA Memorandum and Attorney General Holder’s FOIA Guidelines: Creating a “New Era of Open Government”* (2009), <https://www.justice.gov/oip/blog/foia-post-2009-creating-new-era-open-government>.

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5. Between DOJ officials and local and state agencies, including local law enforcement and agents at airports of entry such as General Edward Lawrence Logan International Airport (BOS), Los Angeles International Airport (LAX), Washington Dulles International Airport (IAD), Seattle-Tacoma International Airport (SEA), San Francisco International Airport (SFO), Dallas/Fort Worth International Airport (DFW), and John F. Kennedy International Airport (JFK); and
  6. Between DOJ officials and non-government representatives and outside consultants, including nonprofits, policy think tanks such as the Center for Immigration Studies and Federation for American Immigration Reform, and private firms such as Giuliani Partners.
- B. Records reflecting analysis and response of DOJ officials to judicial orders staying the enforcement of the executive order, including discussions of legal liability for failing to follow those orders.

Please produce any responsive records you identify in electronic format.

### **Request for Expedited Processing**

This requests warrants expedited processing under two standards: 28 C.F.R. §§ 16.5(e)(1)(ii) and (iv).

A. Urgency to Inform the Public Standard

This request pertains to information about which there is “[a]n urgency to inform the public about an actual or alleged Federal Government activity,” and it is made by requesters “primarily engaged in disseminating information.” *Id.* § 16.5(e)(1)(ii).

There is an urgency to inform the public about the federal government’s implementation of a highly controversial executive order banning nationals of seven Muslim-majority countries from entering the United States. Thousands of people across the country have protested this action. To date, five different district courts have issued temporary relief against the executive order.<sup>2</sup> Acting Attorney General Sally Yates stated earlier this week that the Justice Department would

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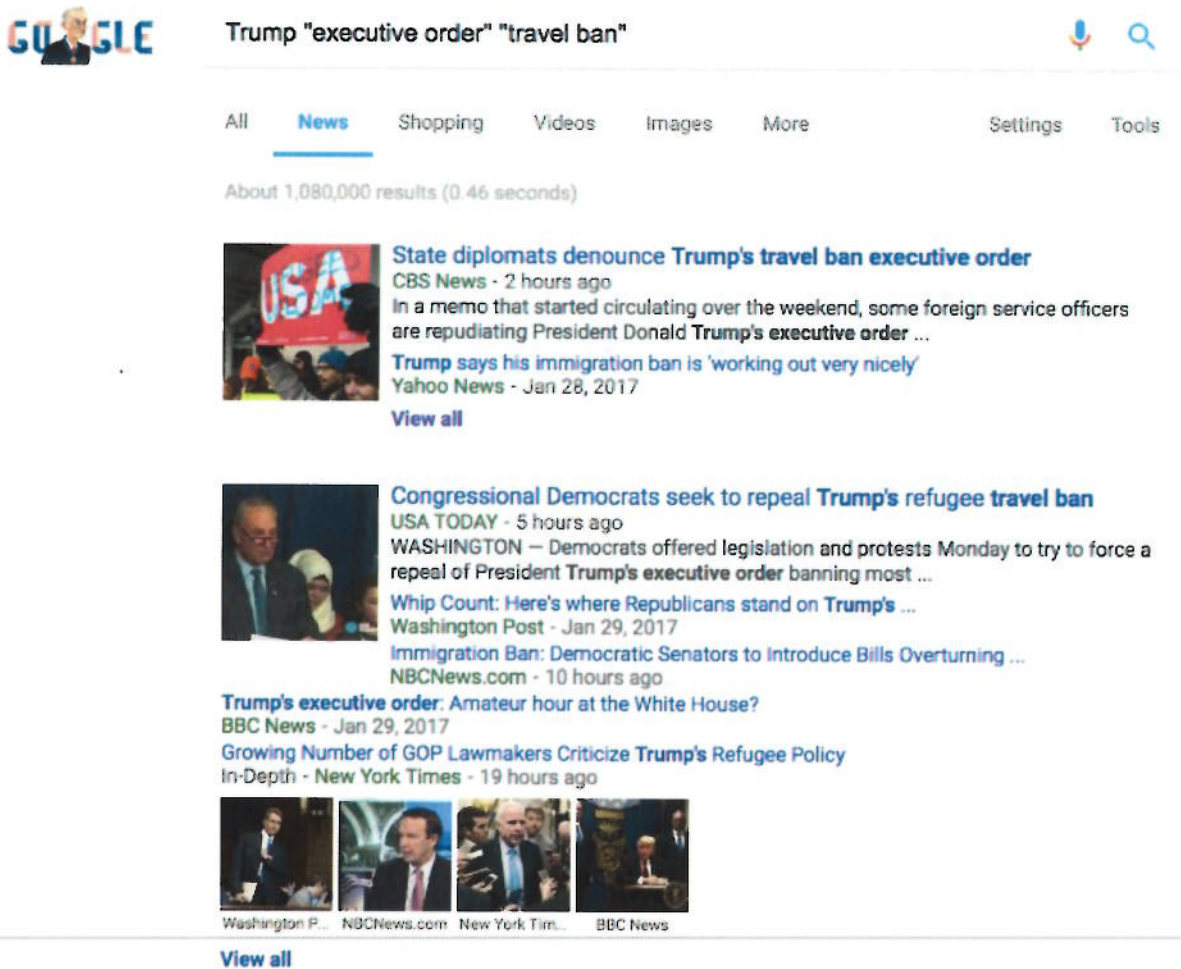
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not defend the executive order in court because she was “not convinced” that it “is consistent with this institution’s solemn obligation to always seek justice and stand for what is right”—and she was promptly fired and replaced by the President.<sup>3</sup>

These events have been the subject of articles from news outlets throughout the world. In fact, a Google News search for the string “Trump ‘executive order’ ‘travel ban’” returns more than a million results.<sup>4</sup>



<sup>3</sup> Mark Landler, Matt Apuzzo & Eric Lichtblau, *Trump Fires Acting Attorney General*, THE NEW YORK TIMES (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/politics/trump-immigration-ban-memo.html>.

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The requested information will help the public better understand the circumstances surrounding the creation and execution of the order, as well as how DOJ has responded to the public outcry and judicial decisions prompted by it. Further, as explained below in support of the request for "news media" treatment, Ms. Currier and Ms. McLaughlin are "primarily engaged in disseminating information."

#### B. Widespread and Exceptional Media Interest Standard

The requested records relate to "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(e)(1)(iv).

As noted above, the subject of this request has been extensively covered by press around the world over the past few days, and is a matter of widespread and exceptional media interest.

Further, the requested records relate directly to questions about the government's integrity that affect public confidence. Five federal courts have found the travel restrictions are likely unconstitutional, and yet concerns have been raised about whether the U.S. Marshals Service is enforcing those orders against Customs and Border Control.<sup>5</sup> Acting Attorney General Yates determined that the travel ban was not legally defensible, and was subsequently replaced with a new acting attorney general who ordered the DOJ to enforce it regardless.<sup>6</sup> The requested information will help shed light on how DOJ has interacted with the White House, Congress, and others as the events of the past few days unfolded.

Furthermore, Rudy Giuliani has publicly stated that he participated in the development of the executive order, and that President Trump asked him about how to legally implement a "Muslim

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<sup>5</sup> Patrick Michaels & Andrew Becker, *Detainees at Airports Can't Talk to Lawyers, Despite Court Order*, REVEAL (Jan. 29, 2017), <https://www.revealnews.org/blog/detainees-at-airports-cant-talk-to-lawyers-despite-court-order/>.

<sup>6</sup> Curt Mills, *New Acting AG Dana Boente Vows to Enforce Trump Order*, U.S. NEWS & WORLD REPORT (Jan. 31, 2017), <http://www.usnews.com/news/national-news/articles/2017-01-31/after-firing-new-acting-attorney-general-dana-boente-vows-to-enforce-trump-refugee-order>.



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ban.”<sup>7</sup> The requested records may show the role that Mr. Giuliani and his private consulting group played in drafting the travel restrictions, and the extent to which those limits were intended to be based on religion.

Pursuant to 28 C.F.R. § 16.5(e)(3), I certify this statement to be true and correct.

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Cora Currier is a staff reporter for The Intercept, where she has covered national security, counterterrorism, and immigration since joining the newsroom in July 2014. Prior to that, she covered similar topics for the investigative news site ProPublica. She has reported on issues pertinent to the recent travel ban, including CBP’s policy on collecting social media information from foreign travelers,<sup>8</sup> government efforts to counter violent extremism, the No Fly list and

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<sup>7</sup> Rebecca Savransky, *Giuliani: Trump asked me how to do a Muslim ban ‘legally’*, THE HILL (Jan. 29, 2017), <http://thehill.com/homenews/administration/316726-giuliani-trump-asked-me-how-to-do-a-muslim-ban-legally>.

<sup>8</sup> Cora Currier, *The US Government Wants to Read Travelers’ Tweets Before Letting Them In*, THE INTERCEPT (Oct. 21, 2016), <https://theintercept.com/2016/10/21/the-u-s-government-wants-to-read-travelers-tweets-before-letting-them-in/>.

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other watchlisting procedures,<sup>9</sup> and in the past, has covered the cases of individuals blocked from entering the United States on terrorism grounds.<sup>10</sup> She has previously requested, obtained, and reported on documents obtained via the FOIA on a range of national security-related issues.<sup>11</sup>

Jenna McLaughlin is also a staff reporter for The Intercept, where she has covered national security, technology, and human rights since joining the newsroom in 2015. Prior to that, she covered national security and foreign policy for investigative news website and magazine Mother Jones. She has reported on documents obtained through FOIA including on the use of cell-site simulators, or Stingrays, in Chicago with the partnership of transparency organization Lucy Parson Labs.<sup>12</sup> She has regularly written about issues pertinent to the travel ban including the privacy rights of foreigners and Americans,<sup>13</sup> government efforts to counter violent extremism,<sup>14</sup> and social media surveillance.<sup>15</sup>

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<sup>9</sup> Cora Currier, *Government May Now Tell You Why You're on a "No Fly" List, But Not Always*, THE INTERCEPT (April 15, 2015), <https://theintercept.com/2015/04/15/government-will-now-tell-youre-fly-list-except-wont/>.

<sup>10</sup> Cora Currier, *Why the U.S. Won't Allow a Dying Iranian Sociologist to Join His Family*, PROPUBLICA (Nov. 20, 2012), <https://www.propublica.org/article/why-the-us-wont-allow-a-dying-iranian-sociologist-to-join-his-family>.

<sup>11</sup> Cora Currier, *Newly Released Records Show the US Paid \$6 Million for Civilian Harm in Afghanistan*, THE INTERCEPT (Mar. 3, 2015), <https://theintercept.com/2015/03/04/newly-released-records-show-us-paid-6-million-afghan-civilian-harm/>.

<sup>12</sup> Jenna McLaughlin, *How Chicago Police Convinced Courts to Let Them Track Cellphones Without a Warrant*, THE INTERCEPT (Oct. 18, 2016), <https://theintercept.com/2016/10/18/how-chicago-police-convinced-courts-to-let-them-track-cellphones-without-a-warrant/>.

<sup>13</sup> Jenna McLaughlin, *Top European Court Rules That NSA Spying Make U.S. Unsafe for Data*, THE INTERCEPT (Oct. 6, 2015), <https://theintercept.com/2015/10/06/top-european-court-rules-that-nsa-spying-makes-u-s-unsafe-for-data/>.

<sup>14</sup> Jenna McLaughlin, *FBI Left Out Top Muslim-American Groups When Vetting Anti-Extremist Game*, THE INTERCEPT (Nov. 11, 2015), <https://theintercept.com/2015/11/11/fbi-left-out-top-muslim-american-groups-when-vetting-anti-extremist-game/>.

<sup>15</sup> Jenna McLaughlin, *The White House Asked Social Media Companies to Look for Terrorists. Here's Why They'd #Fail*, THE INTERCEPT (JAN. 20, 2016), <https://theintercept.com/2016/01/20/the-white-house-asked-social-media-companies-to-look-for-terrorists-heres-why-theyd-fail/>.



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Finally, we note that per DOJ regulations, a request for records that supports the news-dissemination function of the requester is not considered to be for a commercial use. *Id.* 16.10(b)(6).

Thus, Ms. Currier and Ms. McLaughlin should be classified as “news media” requesters for purposes of fee assessments.

### **Request for Public Interest Fee Waiver**

Ms. Currier and Ms. McLaughlin request a waiver of fees because disclosure of the requested records “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(1)(i)-(ii). As DOJ regulations note, news media requesters are entitled to a presumption that their requests meet this standard. 28 C.F.R. § 16.10(k)(3)(ii).

First, the request concerns “identifiable operations or activities of the Federal Government[.]” *Id.* § 16.10(k)(2)(i). Specifically, the records will shed light on how DOJ officials were involved in the creation and execution of a restriction on the ability of travelers from certain countries to enter the United States.

Second, disclosure of the requested records will be “meaningfully informative about government operations or activities” and is “likely to contribute to an increased public understanding of those operations or activities.” *Id.* § 16.10(k)(2)(ii) (internal quotation marks omitted). The records sought will educate the public about DOJ’s implementation and defense of the executive order, which has caused considerable confusion and public speculation to date.<sup>16</sup>

Third, the requested records will “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.” *Id.* § 16.10(k)(2)(iii). The requesters do not seek this information for themselves, but to incorporate into news reporting that will educate the public. It is presumed that representatives of the news media such as Ms. Currier and Ms. McLaughlin satisfy this factor. *Id.*

Fourth, the requested records will significantly enhance the public’s understanding of DOJ’s involvement in the executive order *Id.* § 16.10(k)(2)(iv). The records will reveal substantial new

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<sup>16</sup> See, e.g., Edward Helmore & Alan Yuhus, *Border agents defy courts on Trump travel ban, congressmen and lawyers say*, THE GUARDIAN (Jan. 30, 2017), <https://www.theguardian.com/us-news/2017/jan/29/customs-border-protection-agents-trump-muslim-country-travel-ban>.

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information about the travel restrictions, how they were developed, and DOJ's role in executing and defending them even after multiple courts ordered that certain government actions be stayed.

Finally, the records are not primarily in the requesters' commercial interest. Ms. Currier and Ms. McLaughlin seek the requested information for newsgathering purposes and expect to incorporate it into journalistic work product.

Thus, DOJ should grant a public interest fee waiver for this request. Should DOJ decline a fee waiver, Ms. Currier and Ms. McLaughlin agree to pay up to \$100 for the processing of this request. If the estimated fees will exceed this limit, please inform me before you begin processing.

Thank you for your consideration of this request. As DOJ regulations provide, we will anticipate your determination on expedited processing within ten (10) calendar days. *Id.* § 16.5(e)(4). If you have any questions or concerns, please do not hesitate to contact me at (415) 830-6664 or [marcia@zeitgeist.law](mailto:marcia@zeitgeist.law).

Regards,

A handwritten signature in blue ink that reads "Marcia Hofmann". The signature is fluid and cursive, with the first name "Marcia" and last name "Hofmann" clearly distinguishable.

Marcia Hofmann

# Exhibit 3

# Exhibit 3

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION

**Subject:** Re: Your Request DOJ-2017-002176 (AG) et. al.  
**From:** Marcia Hofmann <marcia@zeitgeist.law>  
**Date:** 2/14/17, 11:08 AM  
**To:** "Smith, James M. (OIP)" <James.M.Smith@usdoj.gov>

Thank you, Mr. Smith. We would like a search of the Office of Public Affairs conducted as part of the request. Don't hesitate to let me know if you have other questions or concerns.

--

Marcia Hofmann  
Founder and Principal  
Zeitgeist Law PC  
25 Taylor Street  
San Francisco, CA 94102  
(415) 830-6664

On 2/13/17 12:08 PM, Smith, James M. (OIP) wrote:

Dear Ms. Hofmann,

I am writing in regards to the Freedom of Information Act request made on behalf of Cora Currier and Jenna McLaughlin, dated February 1, 2017, and received in the Office of Information Policy on February 7, 2017, for records pertaining to Executive Order 13769. The letter was addressed in part to the Office of Public Affairs, however, in the section of the letter describing the requested records, the Office of Public Affairs was not among the offices listed as a location of potential records. As such, could you clarify if you would like a search of the Office of Public Affairs conducted as part of the request?

Thank you for your time.

Best,

James Matthew Smith

Attorney-Advisor

Office of Information Policy

U.S. Department of Justice



# Exhibit 4

# Exhibit 4

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



# ZEITGEIST

LAW PC

25 Taylor Street, San Francisco, CA 94102  
+1 415.830.6664

February 1, 2017

Office of Information Programs and Services  
A/GIS/IPS  
U.S. Department of State, SA-2  
Washington, DC 20522-8100

## **Re: Freedom of Information Act Request**

Dear Freedom of Information Officer:

This is an expedited request under the Freedom of Information Act, 5 U.S.C. § 552. I am submitting it to the Department of State (DOS) on behalf of Cora Currier and Jenna McLaughlin, two staff journalists at the Intercept.

## **Requested Records**

On January 27, 2017, President Trump signed an executive order entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States.” The order banned nationals of Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen from entering the United States for 90 days, and indefinitely banned Syrian refugees from entering the country.

Ms. Currier and Ms. McLaughlin request all agency records from January 20, 2017 to the present concerning the agency’s analysis and implementation of that executive order. We urge the agency to process this request consistent with Justice Department policy directing a presumption of disclosure.<sup>1</sup>

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<sup>1</sup> See Dep’t of Justice Office of Information Policy, *President Obama’s FOIA Memorandum and Attorney General Holder’s FOIA Guidelines: Creating a “New Era of Open Government”* (2009), <https://www.justice.gov/oip/blog/foia-post-2009-creating-new-era-open-government>.

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February 1, 2017

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This request includes, but is not limited to:

- A. Records related to briefings, discussions, talking points, emails (whether through .gov email addresses or private third-party services such as Gmail) or other communications:
  - 1. Among DOS personnel, including consular officials, supervisors, officers, managers, and union representatives;
  - 2. From or about visa applicants or dual citizens asking for clarification or about the ban's effect;
  - 3. Between DOS officials and the Executive Office of the President or other White House offices;
  - 4. Between DOS and members of Congress or congressional staffers, including aides to the House Judiciary Committee; and
  - 5. Between DOS officials and non-government representatives and outside consultants, including nonprofits, policy think tanks such as the Center for Immigration Studies and Federation for American Immigration Reform, and private firms such as Giuliani Partners.
- B. Records reflecting analysis and response of DOS officials to judicial orders staying the enforcement of the executive order, including discussions of legal liability for failing to follow those orders.
- C. Records from the Dissent Channel related to the executive order.
- D. Records reflecting analysis and response of DOS officials to responses by other countries to the executive order, including but not limited to Iran and Iraq.

Please produce any responsive records you identify in electronic format: .....

### **Request for Expedited Processing**

This request warrants expedited processing because it seeks information that is "urgently needed" to "inform the public concerning an actual or alleged Federal Government activity," and it is made by requesters "primarily engaged in disseminating information." 22 C.F.R. § 171.11(f)(2).

Department of State FOIA Request

February 1, 2017

Page 3

There is an urgency to inform the public about the federal government's implementation of a highly controversial executive order banning nationals of seven Muslim-majority countries from entering the United States. Thousands of people across the country have protested this action. To date, five different district courts have issued temporary relief against the executive order.<sup>2</sup> Acting Attorney General Sally Yates stated this week that the Justice Department would not defend the executive order in court because she was "not convinced" that it "is consistent with this institution's solemn obligation to always seek justice and stand for what is right"—and she was promptly fired and replaced by the President.<sup>3</sup>

The State Department's role in the travel ban is of special interest to the public. Sources suggest that Rex Tillerson, President Trump's current nominee for Secretary of State, was not briefed on the executive order until after it was signed.<sup>4</sup> Roughly 900 State Department employees reportedly joined an internal dissent memo denouncing the ban.<sup>5</sup> And both Iran and Iraq have taken "reciprocal action" and implemented more stringent requirements for United States citizens to enter.<sup>6</sup>

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<sup>2</sup> Steve Vladeck, *The Airport Cases: What Happened, and What's Next?*, JUST SECURITY (Jan. 30, 2017), <https://www.justsecurity.org/36960/stock-weekends-district-court-orders-immigration-eo/>.

<sup>3</sup> Mark Landler, Matt Apuzzo & Eric Lichtblau, *Trump Fires Acting Attorney General*, THE NEW YORK TIMES (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/politics/trump-immigration-ban-memo.html>.

<sup>4</sup> Associated Press Wire, *Trump faces blowback from Cabinet, diplomats for refugee ban*, FOX NEWS (Jan. 30, 2017), <http://www.foxnews.com/us/2017/01/30/trump-faces-blowback-from-cabinet-diplomats-for-refugee-ban.html>.

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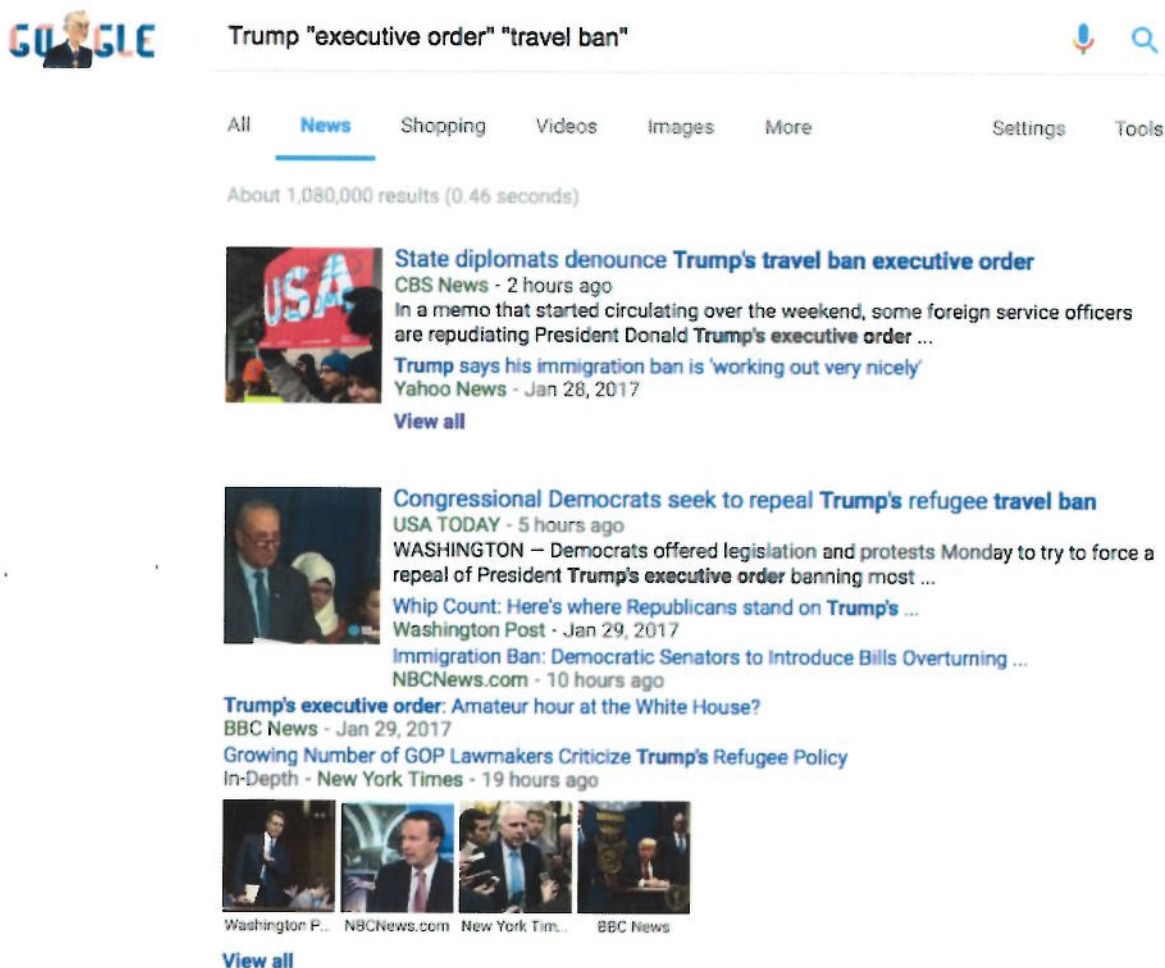
<sup>5</sup> Lesley Wroughton, *About 900 State Department officials sign dissent memo: source*, REUTERS (Jan. 31, 2017), <http://www.reuters.com/article/us-usa-trump-dissent-idUSKBN15F2KP>.

<sup>6</sup> See Javad Zarif, *Full Statement of the Ministry of Foreign Affairs of the Islamic Republic of Iran on the #MuslimBan*, 6/7, TWITTER (Jan. 28, 2017), [https://twitter.com/JZarif?ref\\_src=twsrc%5Etfw](https://twitter.com/JZarif?ref_src=twsrc%5Etfw); and *Iraqi lawmakers approve 'reciprocity measure' in response to U.S. travel ban*, CHICAGO TRIBUNE (Jan. 30, 2017), <http://www.chicagotribune.com/news/nationworld/ct-iraq-travel-ban-americans-donald-trump-20170130-story.html>.



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This is a breaking news story of general public interest. These events have been the subject of articles from news outlets throughout the world. In fact, a Google News search for the string “Trump ‘executive order’ ‘travel ban’” returns more than a million results.<sup>7</sup>



Here is a sample of news articles published by major press organizations within the United States and around the globe discussing the executive order and subsequent events:

Halimah Abdullah & Phil McCausland, *Trump Signs Order Suspending Admission of Syrian Refugees*, NBC NEWS (Jan. 28, 2017), <http://www.nbcnews.com/news/us-news/trump-signs-two-executive-orders-expands-power-military-extreme-vetting-n713336>.

<sup>7</sup> <https://goo.gl/iYqQ4T>.

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FINANCIAL TIMES, *Trump bans refugees and migrants from Muslim countries* (Jan. 28, 2017), <https://www.ft.com/content/379ef670-e545-11e6-893c-082c54a7f539>.

BBC NEWS, *Trump executive order banning refugees: World Reacts* (Jan. 29, 2017), <http://www.bbc.com/news/world-us-canada-38781973>.

CBC NEWS, *Trump's travel ban sparks mass confusion as conflicting details emerge* (Jan. 29, 2017), <http://www.cbc.ca/news/world/trump-immigration-refugee-travel-executive-order-1.3957205>.

THE TIMES OF INDIA, *World a horrible mess: Donald Trump defends ban on immigrants from 7 Muslim countries* (Jan. 29, 2017), <http://timesofindia.indiatimes.com/world/us/world-is-a-horrible-mess-donald-trump-defends-ban-on-immigrants-from-muslim-countries/articleshow/56855966.cms>.

RT.COM, *More US judges rule to restrict Trump 'Muslim ban' travel order* (Jan. 29, 2017), <https://www.rt.com/usa/375540-judges-trump-muslim-ban/>.

Michael D. Shear & Ron Nixon, *How Trump's Rush to Enact an Immigration Ban Unleashed Global Chaos*, THE NEW YORK TIMES (Jan. 29, 2017), <https://www.nytimes.com/2017/01/29/us/politics/donald-trump-rush-immigration-order-chaos.html>.

PEOPLE'S DAILY: ENGLISH EDITION, *Trump's refugee ban sparks protests before White House, at over 30 U.S. airports* (Jan. 30, 2017), <http://en.people.cn/n3/2017/0130/c90000-9172519.html>.

Stephen Collinson, *Donald Trump's travel ban fundamentally changes American history*, CNN POLITICS (Jan. 30, 2017), <http://www.cnn.com/2017/01/30/politics/donald-trump-immigration-ban/index.html>.

Murtaza Hussain, *Iranians in U.S. "Can Never Feel Safe Anymore" After Muslim Ban*, THE INTERCEPT (Jan. 30, 2017), <https://theintercept.com/2017/01/30/iranians-in-u-s-can-never-feel-safe-anymore-after-muslim-ban/>.

The requested information will help the public better understand the circumstances surrounding the creation and execution of the order, the internal dissent that resulted from it, and how DOS has responded to reciprocal actions by other states.



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Further, as explained below in support of the request for “news media” treatment, Ms. Currier and Ms. McLaughlin are “primarily engaged in disseminating information.”

### **Request for “News Media” Fee Status**

Ms. Currier and Ms. McLaughlin are representatives of the news media and do not seek the requested records for commercial use. Accordingly, fees associated with the processing of this request should be limited to reasonable duplication costs. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

The requesters are representatives of the news media because they “gather[] information of potential interest to a segment of the public, uses [their] editorial skills to turn the raw materials into a distinct work, and distribute[] that work to an audience.” *Id.* § 552(a)(4)(A)(ii)(II); 22 C.F.R. § 171.14(b)(5)(ii)(C).

The Intercept is a digital news publication that was founded in 2014 with a mission to report on national security and foreign policy issues. The Intercept has since expanded to a staff of more than twenty reporters producing investigative reporting, analysis, commentary, and multimedia content focused on national security, politics, civil liberties, technology, criminal justice, the media, and more. The Intercept’s coverage has been recognized with awards from the Online News Association, the American Society of Magazine Editors, the New York Press Club, and others.

Cora Currier is a staff reporter for the Intercept, where she has covered national security, counterterrorism, and immigration since joining the newsroom in July 2014. Prior to that, she covered similar topics for the investigative news site ProPublica. She has reported on issues pertinent to the recent travel ban, including CBP’s policy on collecting social media information from foreign travelers,<sup>8</sup> government efforts to counter violent extremism, the No Fly list and other watchlisting procedures,<sup>9</sup> and in the past, has covered the cases of individuals blocked from

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<sup>8</sup> Cora Currier, *The US Government Wants to Read Travelers’ Tweets Before Letting Them In*, THE INTERCEPT (Oct. 21, 2016), <https://theintercept.com/2016/10/21/the-u-s-government-wants-to-read-travelers-tweets-before-letting-them-in/>.

<sup>9</sup> Cora Currier, *Government May Now Tell You Why You’re on a “No Fly” List, But Not Always*, THE INTERCEPT (April 15, 2015), <https://theintercept.com/2015/04/15/government-will-now-tell-youre-fly-list-except-wont/>.

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entering the United States on terrorism grounds.<sup>10</sup> She has previously requested, obtained, and reported on documents obtained via the FOIA on a range of national security-related issues.<sup>11</sup>

Jenna McLaughlin is also a staff reporter for The Intercept, where she has covered national security, technology, and human rights since joining the newsroom in 2015. Prior to that, she covered national security and foreign policy for investigative news website and magazine Mother Jones. She has reported on documents obtained through FOIA including on the use of cell-site simulators, or Stingrays, in Chicago with the partnership of transparency organization Lucy Parson Labs.<sup>12</sup> She has regularly written about issues pertinent to the travel ban including the privacy rights of foreigners and Americans,<sup>13</sup> government efforts to counter violent extremism,<sup>14</sup> and social media surveillance.<sup>15</sup>

Thus, Ms. Currier and Ms. McLaughlin should be classified as “news media” requesters for purposes of fee assessments.

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<sup>10</sup> Cora Currier, *Why the U.S. Won't Allow a Dying Iranian Sociologist to Join His Family*, PROPUBLICA (Nov. 20, 2012), <https://www.propublica.org/article/why-the-us-wont-allow-a-dying-iranian-sociologist-to-join-his-family>.

<sup>11</sup> Cora Currier, *Newly Released Records Show the US Paid \$6 Million for Civilian Harm in Afghanistan*, THE INTERCEPT (Mar. 3, 2015), <https://theintercept.com/2015/03/04/newly-released-records-show-us-paid-6-million-afghan-civilian-harm/>.

<sup>12</sup> Jenna McLaughlin, *How Chicago Police Convinced Courts to Let Them Track Cellphones Without A Warrant*, THE INTERCEPT (Oct. 18, 2016), <https://theintercept.com/2016/10/18/how-chicago-police-convinced-courts-to-let-them-track-cellphones-without-a-warrant/>.

<sup>13</sup> Jenna McLaughlin, *Top European Court Rules that NSA Spying Makes U.S. Unsafe for Data*, THE INTERCEPT (Oct. 6, 2015), <https://theintercept.com/2015/10/06/top-european-court-rules-that-nsa-spying-makes-u-s-unsafe-for-data/>.

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<sup>14</sup> Jenna McLaughlin, *FBI Left Out Top Muslim-American Groups When Vetting Anti-Extremist Game*, THE INTERCEPT (Nov 11, 2015), <https://theintercept.com/2015/11/11/fbi-left-out-top-muslim-american-groups-when-vetting-anti-extremist-game/>.

<sup>15</sup> Jenna McLaughlin, *The White House Asked Social Media Companies to Look for Terrorists. Here's Why They'd #Fail*, THE INTERCEPT (Jan. 20, 2016), <https://theintercept.com/2016/01/20/the-white-house-asked-social-media-companies-to-look-for-terrorists-heres-why-theyd-fail/>.



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### **Request for Public Interest Fee Waiver**

Ms. Currier and Ms. McLaughlin request a waiver of fees because disclosure of the requested records “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 22 C.F.R. § 171.16(a).

Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government. First, the request concerns “identifiable operations or activities of the federal government[.]” 22 C.F.R. § 171.16(a)(1)(i). Specifically, the requested records will shed light on how (and whether) DOS officials were involved in the creation of a restriction on the ability of travelers from certain countries to enter the United States.

Second, disclosure of the requested records will be “meaningfully informative about government operations or activities” and is “likely to contribute to an increased public understanding of those operations or activities.” *Id.* § 171.16(a)(1)(ii). (internal quotation marks omitted). As discussed above, news outlets have already reported on significant internal dissent within the DOS about the executive order. The requested records will shed more light on how the executive order was developed and how DOS helped to implement it.

Third, the requested records will “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.” *Id.* § 171.16(a)(1)(iii). The requesters do not seek this information for themselves, but to incorporate into news reporting that will educate the public. Representatives of the news media, such as Ms. Currier and Ms. McLaughlin, presumptively satisfy this factor. *Id.*

Fourth, the requested records will significantly enhance the public’s understanding of DOS’s involvement in carrying out the executive order. *Id.* § 171.16(a)(1)(iv). The records will reveal substantial new information about how the travel restrictions were developed and dissent within the DOS about how to implement them.

Finally, the records are not primarily in the requesters’ commercial interest. Ms. Currier and Ms. McLaughlin seek the requested information for newsgathering purposes and expect to incorporate it into journalistic work product. Such requests are not considered for a commercial purpose. *Id.* § 171.16(a)(2)(iii).

Thus, DOS should grant a public interest fee waiver for this request. Should DOS decline a fee waiver, Ms. Currier and Ms. McLaughlin agree to pay up to \$100 for the processing of this

Department of State FOIA Request

February 1, 2017

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request. If the estimated fees will exceed this limit, please inform me before you begin processing.

Thank you for your consideration of this request. As DOS regulations provide, we will anticipate your determination on expedited processing within ten (10) calendar days. *Id.* § 171.11(f)(4). If you have any questions or concerns, please do not hesitate to contact me at (415) 830-6664 or [marcia@zeitgeist.law](mailto:marcia@zeitgeist.law).

Regards,

A handwritten signature in blue ink that reads "Marcia Hofmann". The signature is fluid and cursive, with the first name "Marcia" and last name "Hofmann" clearly distinguishable.

Marcia Hofmann

# Exhibit 5

# Exhibit 5

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



Homeland  
Security

February 13, 2017

**SENT VIA E-MAIL TO: marcia@zeitgeist.law**

Marcia Hofmann  
Zeitgeist Law PC  
25 Taylor St  
San Francisco, CA 94102

Re: **2017-HQFO-00362**

Dear Hofmann:

This letter acknowledges receipt of your February 07, 2017, Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), for records related to briefings, discussions, talking points, emails (whether through .gov email addresses or private third-party services such as Gmail) or other communications: among DHS and CBP personnel, including supervisors, officers, managers, and union representatives; from or about travelers asking for clarification or about the ban's effect; between DHS or CBP officials and the Executive Office of the President or other White House offices; between DHS or CBP officials and members of Congress or congressional staffers, including aides to the House Judiciary Committee; between DHS or CBP officials and the staff or management of commercial airlines; between DHS or CBP officials and local and state agencies, including local law enforcement and agents at airports of entry such as General Edward Lawrence Logan International Airport (BOS), Los Angeles International Airport (LAX), Washington Dulles International Airport (IAD), Seattle-Tacoma International Airport (SEA), San Francisco International Airport (SFO), Dallas/Fort Worth International Airport (DFW), and John F. Kennedy International Airport (JFK); and between DHS or CBP officials and non-government representatives and outside consultants, including nonprofits, policy think tanks such as the Center for Immigration Studies and Federation for American Immigration Reform, and private firms such as Giuliani Partners; records reflecting analysis and response of DHS or CBP officials to judicial orders staying the enforcement of the executive order, including discussions of legal liability for failing to follow those orders. This office received your request on February 07, 2017.

As it relates to your request for expedited processing and fee waiver, your request is granted. Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' 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. As your request seeks documents that will require a thorough and wide-ranging search, DHS will invoke a 10-day

extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2017-HQFO-00362**. Please refer to this identifier in any future correspondence. To check the status of your FOIA request, you may contact this office at 1-866-431-0486 or 202-343-1743, or you may check the status of your request online at <http://www.dhs.gov/foia-status>.

Sincerely,

A handwritten signature in black ink that reads "Catherine Pruitt". The signature is written in a cursive, flowing style.

Catherine Pruitt  
FOIA Program Specialist

# Exhibit 6

# Exhibit 6

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION





**U.S. Department of Justice**  
Office of Information Policy  
Suite 11050  
1425 New York Avenue, NW  
Washington, DC 20530-0001

Telephone: (202) 514-3642

February 17, 2017

Ms. Marcia Hofmann  
Zeitgeist Law, P.C.  
25 Taylor Street  
San Francisco, CA 94102  
[marcia@zeitgeist.law](mailto:marcia@zeitgeist.law)

Re: DOJ-2017-002176 (AG)  
DOJ-2017-002177 (DAG)  
DOJ-2017-002178 (PAO)  
DOJ-2017-002179 (OLA)  
VRB:VAV:JMS

Dear Ms. Hofmann:

This is to acknowledge receipt of your letter, on behalf of Cora Currier and Jenna McLaughlin journalists at the Intercept, dated February 1, 2017, and received in this Office on February 7, 2017, in which you requested records pertaining to the Executive Order 13769, "Protecting the Nation from Foreign Terrorist Entry Into the United States," dating from January 20, 2017. This response is made on behalf of the Offices of the Attorney General, Deputy Attorney General, Public Affairs, and Legislative Affairs.

You have requested expedited processing of the request pursuant to the Department's standard permitting expedition for requests involving "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." See 28 C.F.R. § 16.5(e)(1)(ii) (2016). Based on the information you have provided, I have determined that your request for expedited processing should be granted. Accordingly, your request has been assigned to an Attorney-Advisor in this Office and records searches have been initiated in the Offices of the Attorney General, Deputy Attorney General, Public Affairs, and Legislative Affairs.

Although your request has been granted expedited processing, we are required to advise you that the records you seek require searches in other offices, and so your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii). Accordingly, we have not yet completed a search to determine whether there are records within the scope of your request. The time needed to process your request will necessarily depend on the complexity of our records search and on the volume and complexity of any records located. Your request has been assigned to the expedited track, and will be processed as soon as practicable.

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request. In your letter, Ms. Currier and Ms. McLaughlin agreed to pay fees up to \$100 in the event that a fee waiver is not granted.

-2-

If you have any questions or wish to discuss the processing of your request, you may contact James Smith, the Attorney-Advisor processing your request, by telephone at the above number or you may write to him at Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001. Lastly, you may contact our FOIA Public Liaison at the above telephone number to have any concerns you may have addressed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Vanessa R. Brinkmann" with a small "for" written below the name.

Vanessa R. Brinkmann  
Senior Counsel

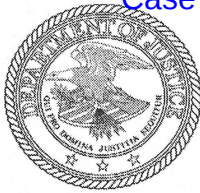
# Exhibit 7

# Exhibit 7

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

February 14, 2017

Marcia Hofmann  
Zeitgeist Law  
O.B.O. Cora Currier and Jenna McLaughlin  
The Intercept  
marcia@zeitgeist.law

**Re: FOIA Tracking No. FY17-104**

Dear Ms. Hofmann:

This letter acknowledges receipt of your February 1, 2017 Freedom of Information Act ("FOIA") request to the Office of Legal Counsel ("OLC"), seeking "all agency records from January 20, 2017 to the present concerning the agency's analysis and implementation of" "[the] executive order entitled 'Protecting the Nation From Foreign Terrorist Entry Into the United States.'" We received your request on February 8, 2017, and it has been assigned tracking number **FY17-104**.

Your request for expedited processing has been granted and your request has been assigned to the "expedited" processing track. Because of the considerable number of FOIA requests received by OLC before your request, including other previously expedited requests, our staff has not yet been able to complete a search to determine whether there are documents within the scope of your request. Please note that it also is likely that we will be unable to respond to your request within the twenty-day statutory deadline. I regret the necessity of this delay, but I assure you that your request will be given priority and processed as soon as practicable.

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request. We note that in the event your fee waiver is denied, you have agreed to pay fees up to \$100.

In the meantime, if you have any questions or wish to discuss your request, you may contact Melissa Golden, our Lead Paralegal and FOIA Specialist and FOIA Liaison, at (202) 514-2053, or at Office of Legal Counsel, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Room 5511, Washington, DC 20530.

Sincerely,

A handwritten signature in blue ink, reading "Paul P. Colborn", is located below the "Sincerely," text.

Paul P. Colborn  
Special Counsel

# Exhibit 8

# Exhibit 8

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION





United States Department of State

Washington, D.C. 20520

FEB 9, 2017

Dear Requester,

RE: Records from 1-20-2017 to the present concerning the Department of State's analysis and implementation of Donald Trump's Executive Order, "Protecting the Nation From Foreign Terrorist Entry Into the United States."

This is in response to your request dated 2-1-2017, which was received on 2-7-2017. We have assigned Case Control Number F-2017-02483 and will begin the processing of your request based upon the information provided in your communication.

The cut-off date is the date the search is initiated unless you have provided a specific timeframe.

After consideration of your request for expedited processing under the Department's rules governing Freedom of Information Act requests, we have determined that your request does warrant expedited processing.

We have considered your request for a fee waiver. Based upon the information provided in your letter, your request for a fee waiver has been granted; therefore, your request will be processed at no charge to you.

We will notify you as soon as responsive material has been retrieved and reviewed.

Should you want to contact us, you may call our FOIA Requester Service Center at (202) 261-8484 or send an email to [FOIAstatus@state.gov](mailto:FOIAstatus@state.gov). Please refer to the Case Control Number in any communication.

Sincerely,

Requester Communications Branch  
Office of Information Programs & Services

Office of Information Programs and Services  
U.S. Department of State, SA-2  
Washington, DC 20522-8100  
Website: [www.foia.state.gov](http://www.foia.state.gov)

Inquiries:  
Phone: 1-202-261-8484  
FAX: 1-202-261-8579  
E-mail: [FOIAstatus@state.gov](mailto:FOIAstatus@state.gov)

# Exhibit 9

# Exhibit 9

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



**ZEITGEIST**

LAW PC

25 Taylor Street, San Francisco, CA 94102  
+1 415.830.6664

April 3, 2017

Jonathan Cantor  
Acting Chief Privacy Officer/Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW  
STOP-0655  
Washington, DC 20528-0655

**Re: Freedom of Information Act Request and Request for Expedited Processing**

Dear Mr. Cantor:

This is an expedited request under the Freedom of Information Act, 5 U.S.C. § 552. I am submitting it to the Department of Homeland Security (DHS) on behalf of Cora Currier, a staff journalist at The Intercept.

This letter follows another FOIA request submitted on February 1, 2017, seeking records related to Executive Order No. 13,769, entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States,” which President Trump signed on January 27, 2017. DHS granted expedited processing for that request on February 13, 2017.

**Requested Records**

On January 27, 2017, President Trump signed Executive Order No. 13,769, entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States.” Among other things, the order banned nationals of Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen from entering the United States for 90 days. The order was enjoined in part or full by several federal courts, one of which was upheld by the Ninth Circuit Court of Appeals.

On March 6, 2017, President Trump signed Executive Order No. 13,780, which had the same title as its predecessor. This new order also restricted travel to the United States from several

April 3, 2017  
DHS FOIA Request  
Executive Orders 13,769 & 13,780  
Page 2

predominantly Muslim countries. To date, portions of this order have been blocked by two federal district courts. The government is appealing those decisions to the Fourth Circuit and Ninth Circuit.

Ms. Currier requests all agency records from February 1, 2017 to the present concerning the agency's analysis and implementation of Executive Order No. 13,769 and Executive Order No. 13,780. We believe the records they seek are located within DHS Headquarters, U.S. Customs and Border Protection (CBP), and the Office of the Inspector General.

We urge the all components to process this request consistent with Justice Department policy directing a presumption of disclosure.<sup>1</sup>

This request includes, but is not limited to:

- A. Records related to briefings, discussions, talking points, emails (whether through .gov email addresses or private third-party services such as Gmail) or other communications:
  - 1. Among DHS and CBP personnel, including supervisors, officers, managers, and union representatives;
  - 2. From or about travelers asking for clarification or about the ban's effect;
  - 3. Between DHS or CBP officials and the Executive Office of the President or other White House offices;
  - 4. Between DHS or CBP officials and members of Congress or congressional staffers, including aides to the House Judiciary Committee;
  - 5. Between DHS or CBP officials and the staff or management of commercial airlines;
  - 6. Between DHS or CBP officials and local and state agencies, including local law enforcement and agents at airports of entry such as General Edward Lawrence Logan International Airport (BOS), Los Angeles International Airport (LAX), Washington Dulles International Airport (IAD), Seattle-Tacoma International Airport (SEA), San Francisco International Airport (SFO), Dallas/Fort Worth International Airport (DFW), and John F. Kennedy International Airport (JFK);

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<sup>1</sup> See Dep't of Justice Office of Information Policy, *President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines: Creating a "New Era of Open Government"* (2009), <https://www.justice.gov/oip/blog/foia-post-2009-creating-new-era-open-government>.

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DHS FOIA Request  
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Page 3

7. Between DHS or CBP officials and nonprofits or policy think tanks such as the Center for Immigration Studies, Federation for American Immigration Reform, the Center for Security Policies, the Heritage Foundation, the Investigative Project on Terrorism;
  8. Between DHS or CBP officials and non-government representatives and outside consultants, including private firms such as Giuliani Partners; and
  9. Between DHS or CBP officials and reporters from Breitbart News, Fox News, The Daily Caller, The Daily Wire, the Washington Times, and the Free Beacon regarding the executive orders.
- B. Records reflecting analysis and response of DHS or CBP officials to judicial orders staying the enforcement of the executive order, including discussions of legal liability for failing to follow those orders.
  - C. Any analyses, reports, or assessments about the security risks posed by individuals from the nations covered by the executive orders.
  - D. Any analyses, reports, or other documents assessing the impact or effectiveness of the travel restrictions in preventing terrorist or national security threats or
  - E. Any analyses, reports, or other documents assessing the use of citizenship as an indicator of a terrorist threat to the United States, including the report entitled "Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States," which was prepared at the request of the DHS Acting Under Secretary for Intelligence and Analysis.
  - F. Any records related to the Inspector General's review of the implementation of Executive Order No. 13,769, including directives to DHS staff about the retention of records relevant to the investigation.

Please produce any responsive records you identify in electronic format.



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Page 4

### **Request for Expedited Processing**

This requests warrants expedited processing under two standards: 6 C.F.R. §§ 5.5(e)(1)(ii) and (iv).

#### **A. Urgency to Inform the Public Standard**

This request pertains to information about which there is “[a]n urgency to inform the public about an actual or alleged Federal Government activity,” and it is made by a requester “primarily engaged in disseminating information.” *Id.* § 5.5(e)(1)(ii).

There is an urgency to inform the public about the federal government’s implementation of highly controversial restrictions banning nationals of several Muslim-majority countries from entering the United States. Thousands of people across the country have protested these restrictions. Several different federal courts issued temporary relief against Order No. 13,769 citing constitutional concerns. Then-Acting Attorney General Sally Yates declined to instruct the DOJ to defend that executive order because she was “not convinced” that it was consistent with the DOJ’s “solemn obligation to always seek justice and stand for what is right”—and she was promptly fired and replaced by the President.<sup>2</sup> Executive Order No. 13,780 was intended to cure the legal deficiencies of the first travel ban, but to date, two federal courts have enjoined enforcement of that order, as well.<sup>3</sup>

These events have been the subject of articles from news outlets throughout the world. In fact, a Google News search for the string “Trump ‘executive order’ ‘travel ban’” returns close to two million results.<sup>4</sup>

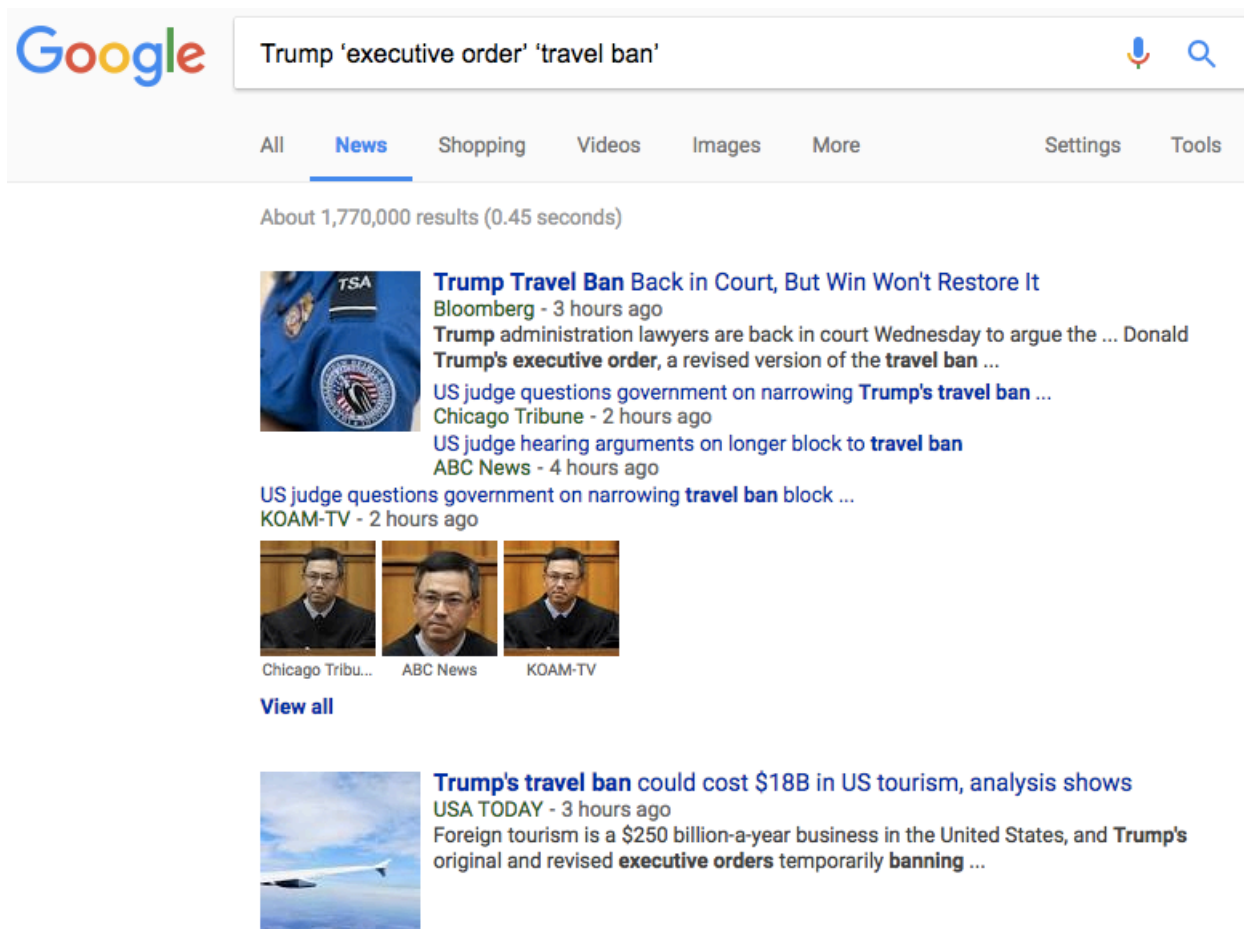
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<sup>2</sup> Mark Landler, Matt Apuzzo & Eric Lichtblau, *Trump Fires Acting Attorney General*, THE NEW YORK TIMES (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/politics/trump-immigration-ban-memo.html>.

<sup>3</sup> See Order Granting Motion to Convert Temporary Restraining Order to a Preliminary Injunction, *Hawai’i v. Trump*, No. 1:17-cv-00050-DKW-KSC, at 6, 16-17 (D. Haw. March 29, 2017) (notice of appeal filed March 30, 2017); Memorandum Opinion, *Int’l Refugee Assistance Project v. Trump*, No. 8:17-cv-00361-TDC, at 9, 28-33 (D. Md. March 16, 2017) (notice of appeal filed March 18, 2017).

<sup>4</sup> <https://goo.gl/b5OIn7>.

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Here is a sample of news articles published by major press organizations within the United States and internationally discussing recent developments related to this matter:

Laura Jarrett, *Federal Judge Extends Ruling Halting Travel Ban Indefinitely*, CNN (March 30, 2017), <http://www.cnn.com/2017/03/29/politics/hawaii-trump-travel-ban-extended>.

Kartikay Mehrotra and Erik Larson, *Trump Travel Ban Back in Court, But Win Won't Restore It*, BLOOMBERG (March 29, 2017), <https://www.bloomberg.com/politics/articles/2017-03-29/trump-travel-ban-back-in-court-but-even-a-win-won-t-restore-it>.

Bart Jansen, *Trump's Travel Ban Could Cost \$18B in U.S. Tourism, Analysis Shows*, USA TODAY (March 29, 2017), <http://www.usatoday.com/story/news/world/2017/03/29/trumps-travel-ban-could-cost-18b-us-tourism-travel-analysts-say/99708758>.

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Josh Gerstein, *Is Trump Stalling a Travel Ban Appeal at 9th Circuit?*, POLITICO (March 28, 2017), <http://www.politico.com/blogs/under-the-radar/2017/03/donald-trump-travel-ban-ninth-circuit-appeal-236575>.

Cogan Schneier, *Web of Litigation Grows Around Trump Travel Ban*, NATIONAL LAW JOURNAL (March 28, 2017), <http://www.nationallawjournal.com/id=1202782264436/Web-of-Litigation-Grows-Around-Trump-Travel-Ban?slreturn=20170229201754>.

Andrea Noble, *Full Fourth Circuit to Consider Hearing Case on Trump's Travel Limits*, WASHINGTON TIMES (March 27, 2017), <http://www.washingtontimes.com/news/2017/mar/27/trump-travel-ban-full-4th-circuit-court-appeals-co>.

Ryan Teague Beckwith, *President Trump's Own Words Keep Hurting His Travel Ban*, TIME (March 16, 2017), <http://time.com/4703614/travel-ban-judges-donald-trump-words>.

Alexander Burns, *2 Federal Judges Rule Against Trump's Latest Travel Ban*, NEW YORK TIMES (March 15, 2017), <https://www.nytimes.com/2017/03/15/us/politics/trump-travel-ban.html>.

Vivian Salama and Alicia Caldwell, *DHS Report Disputes Threat From Banned Nations*, AP (Feb. 24, 2017), <http://bigstory.ap.org/article/39f1f8e4ceed4a30a4570f693291c866/dhs-intel-report-disputes-threat-posed-travel-ban-nations>.

The requested information will help the public better understand the circumstances surrounding the creation and execution of the travel restrictions, as well as how DHS has responded to the public outcry and judicial decisions prompted by them. Further, as explained below in support of the request for “news media” treatment, Ms. Currier is “primarily engaged in disseminating information.”

#### B. Widespread and Exceptional Media Interest Standard

The requested records relate to “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 6 C.F.R. § 5.5(e)(1)(iv).

As noted above, the subject of this request has been extensively covered by press around the world over the past few weeks.

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Further, the requested records relate directly to questions about the government's integrity that affect public confidence. Many members of the news media have questioned whether the executive orders went through appropriate internal vetting processes, and whether White House staff overruled DHS legal interpretations regarding the first order's application to lawful permanent residents.<sup>5</sup> Concerns have also been raised about whether CBP had responded appropriately to inquiries by members of Congress.<sup>6</sup> And numerous federal courts have found the travel restrictions in both executive orders are likely unconstitutional. The requested information will help shed light on how the travel restrictions were written, interpreted and implemented, and how DHS and CBP interacted with the White House, Congress, and others as the events of the past few weeks unfolded. It will also help the public understand the motivations behind the travel restrictions and the steps that have been taken to remedy the constitutional deficiencies identified by the courts.

Pursuant to 6 C.F.R. § 5.5(e)(3), I certify this statement to be true and correct.

#### **Request for "News Media" Fee Status**

Ms. Currier is a representative of the news media and does not seek the requested records for commercial use. Accordingly, fees associated with the processing of this request should be limited to reasonable duplication costs. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Ms. Currier is a representative of the news media because she "gathers information of potential interest to a segment of the public, uses [her] editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Id.*; 6 C.F.R. § 5.11(b)(6).

Cora Currier is a staff reporter for The Intercept. The Intercept is a digital news publication that was founded in 2013 with a mission to report on national security and foreign policy issues. The Intercept has since expanded to a staff of more than twenty reporters producing investigative reporting, analysis, commentary, and multimedia content focused on national security, politics, civil liberties, technology, criminal justice, the media, and more. The Intercept's coverage has

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<sup>5</sup> Evan Perez, Pamela Brown & Kevin Liptak, *Inside the confusion of the Trump executive order and travel ban*, CNN (Jan. 30, 2017), <http://www.cnn.com/2017/01/28/politics/donald-trump-travel-ban/index.html>.

<sup>6</sup> David Siegel, *Congressmen at Dulles airport protest say they were denied access to detainee facilities*, CNN (Jan. 30, 2017), <http://www.cnn.com/2017/01/30/politics/congressmen-customs-border-dulles/index.html>.

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DHS FOIA Request  
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been recognized with awards from the Online News Association, the American Society of Magazine Editors, the New York Press Club, and others.

Ms. Currier has covered national security, counterterrorism, and immigration since joining the newsroom in 2014. Prior to that, she covered similar topics for the investigative news site ProPublica. She has reported on issues pertinent to the recent travel ban, including CBP's policy on collecting social media information from foreign travelers,<sup>7</sup> government efforts to counter violent extremism, the No Fly list and other watchlisting procedures,<sup>8</sup> and in the past, has covered the cases of individuals blocked from entering the United States on terrorism grounds.<sup>9</sup> She has previously requested, obtained, and reported on documents obtained via the FOIA on a range of national security-related issues.<sup>10</sup>

Finally, we note that per DHS regulations, a request for records that supports the news-dissemination function of the requester is not considered to be for a commercial use. *Id.* § 5.11(b)(6).

Thus, Ms. Currier should be classified as “news media” requesters for purposes of fee assessments.

### **Request for Public Interest Fee Waiver**

Ms. Currier requests a waiver of fees because disclosure of the requested records “is likely to contribute significantly to the public understanding of the activities or operations of the

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<sup>7</sup> Cora Currier, *The US Government Wants to Read Travelers' Tweets Before Letting Them In*, THE INTERCEPT (Oct. 21, 2016), <https://theintercept.com/2016/10/21/the-u-s-government-wants-to-read-travelers-tweets-before-letting-them-in/>.

<sup>8</sup> Cora Currier, *Government May Now Tell You Why You're on a "No Fly" List, But Not Always*, THE INTERCEPT (April 15, 2015), <https://theintercept.com/2015/04/15/government-will-now-tell-youre-fly-list-except-wont/>.

<sup>9</sup> Cora Currier, *Why the U.S. Won't Allow a Dying Iranian Sociologist to Join His Family*, PROPUBLICA (Nov. 20, 2012), <https://www.propublica.org/article/why-the-us-wont-allow-a-dying-iranian-sociologist-to-join-his-family>.

<sup>10</sup> Cora Currier, *Newly Released Records Show the US Paid \$6 Million for Civilian Harm in Afghanistan*, THE INTERCEPT (Mar. 3, 2015), <https://theintercept.com/2015/03/04/newly-released-records-show-us-paid-6-million-afghan-civilian-harm/>.



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Executive Orders 13,769 & 13,780  
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government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k)(1)(i)-(ii). As DHS regulations note, news media requesters are entitled to a presumption that their requests meet this standard. 6 C.F.R. § 5.11(k)(3)(ii).

First, the request concerns “identifiable operations or activities of the federal government[.]” *Id.* § 5.11(k)(2)(i). Specifically, the records will shed light on how DHS officials were involved in the creation and execution of restrictions on the ability of travelers from certain countries to enter the United States.

Second, disclosure of the requested records will be “meaningfully informative about government operations or activities” and is “likely to contribute to an increased public understanding of those operations or activities.” *Id.* § 5.11(k)(2)(ii) (internal quotation marks omitted). The records sought will educate the public about DHS’s implementation of the executive orders.

Third, the requested records will “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.” *Id.* § 5.11(k)(2)(iii). The requesters do not seek this information for themselves, but to incorporate into news reporting that will educate the public.

Fourth, the requested records will significantly enhance the public’s understanding of DHS’s involvement in the executive orders. *Id.* § 5.11(k)(2)(iv). The records will reveal substantial new information about the travel restrictions, how they were developed, and DHS’s role in executing them even after multiple courts ordered that certain government actions be stayed.

Finally, the records are not primarily in the requester’s commercial interest. Ms. Currier seeks the requested information for newsgathering purposes and expects to incorporate it into journalistic work product.

Thus, DHS should grant a public interest fee waiver for this request. Should DHS decline a fee waiver, Ms. Currier agrees to pay up to \$100 for the processing of this request. If the estimated fees will exceed this limit, please inform me before you begin processing.

April 3, 2017  
DHS FOIA Request  
Executive Orders 13,769 & 13,780  
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Thank you for your consideration of this request. As DHS regulations provide, we will anticipate your determination on expedited processing within ten (10) calendar days. *Id.* § 5.5(e)(4). If you have any questions or concerns, please do not hesitate to contact me at (415) 830-6664 or [marcia@zeitgeist.law](mailto:marcia@zeitgeist.law).

Regards,

A handwritten signature in blue ink, reading "Marcia Hofmann". The signature is fluid and cursive, with the first name "Marcia" and last name "Hofmann" clearly distinguishable.

Marcia Hofmann

# Exhibit 10

# Exhibit 10

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



**ZEITGEIST**

LAW PC

25 Taylor Street, San Francisco, CA 94102  
+1 415.830.6664

April 3, 2017

Office of the Attorney General  
Office of the Deputy Attorney General  
Office of Public Affairs  
Office of Legislative Affairs  
Laurie Day  
Chief, Initial Request Staff  
Office of Information Policy  
U.S. Department of Justice  
Suite 11050  
1425 New York Ave. NW  
Washington, DC 20530

Peter Carr  
Acting Director of Public Affairs  
Office of Public Affairs  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

**Re: Freedom of Information Act Request and Request for Expedited Processing**

Dear FOIA Officers:

This is an expedited request under the Freedom of Information Act, 5 U.S.C. § 552. I am submitting it to the Department of Justice (DOJ) on behalf of Cora Carrier, a staff journalist at The Intercept.

This letter follows another FOIA request submitted on February 1, 2017, seeking records related to Executive Order No. 13,769, entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States,” which President Trump signed on January 27, 2017. The DOJ Office of Information Policy granted expedited processing on behalf of the Offices of the Attorney General, Deputy Attorney General, Legislative Affairs, and Public Affairs for that request.

**Requested Records**

On January 27, 2017, President Trump signed Executive Order No. 13,769, entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States.” Among other things, the order banned nationals of Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen from entering the

April 3, 2017  
DOJ FOIA Request  
Executive Orders 13,769 & 13,780  
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United States for 90 days. The order was enjoined in part or full by several federal courts, one of which was upheld by the Ninth Circuit Court of Appeals.

On March 6, 2017, President Trump signed Executive Order No. 13,780, which had the same title as its predecessor. This new order also restricted travel to the United States from several predominantly Muslim countries. To date, portions of this order have been blocked by two federal district courts. The government is appealing those decisions to the Fourth Circuit and Ninth Circuit.

Ms. Currier requests all agency records from February 1, 2017 to the present concerning the agency's analysis and implementation of Executive Order No. 13,769 and Executive Order No. 13,780. We believe the records we seek are located within the Offices of the Attorney General, Deputy Attorney General, Legislative Affairs, and Public Affairs.

We urge all components to process this request consistent with DOJ policy directing a presumption of disclosure.<sup>1</sup>

This request includes, but is not limited to:

- A. Records related to briefings, discussions, talking points, emails (whether through .gov email addresses or private third-party services such as Gmail) or other communications:
  - 1. Among DOJ personnel, including supervisors, officers, managers, and union representatives;
  - 2. Between DOJ officials and the Executive Office of the President (EOP) or other White House offices, including any consultations by the OLC and communications between the Acting Attorney General and EOP;
  - 3. Between DOJ officials and other federal agencies, including the Department of Homeland Security and Department of State;
  - 4. Between DOJ officials and members of Congress or congressional staffers, including aides to the House Judiciary Committee;

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<sup>1</sup> See Dep't of Justice Office of Information Policy, *President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines: Creating a "New Era of Open Government"* (2009), <https://www.justice.gov/oip/blog/foia-post-2009-creating-new-era-open-government>.



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5. Between DOJ officials and local and state agencies, including local law enforcement and agents at airports of entry such as General Edward Lawrence Logan International Airport (BOS), Los Angeles International Airport (LAX), Washington Dulles International Airport (IAD), Seattle-Tacoma International Airport (SEA), San Francisco International Airport (SFO), Dallas/Fort Worth International Airport (DFW), and John F. Kennedy International Airport (JFK);
  6. Between DOJ officials and non-government representatives and outside consultants, including nonprofits, policy think tanks such as the Center for Immigration Studies and Federation for American Immigration Reform, the Center for Security Policies, the Heritage Foundation, the Investigative Project on Terrorism;
  7. Between DOJ officials and reporters from Breitbart News, Fox News, The Daily Caller, The Daily Wire, the Washington Times, or the Free Beacon; and
  8. Between DOJ officials and private firms such as Giuliani Partners and Renaissance Technologies.
- B. Legal assessments, analyses, or discussions about the decision to remove language between Executive Order No. 13,769 and Executive Order No. 13,780 about offering preferential status to minority religious groups and the legality of such measures.
- C. Records reflecting analysis and response of DOJ officials to judicial orders staying the enforcement of the executive order, including discussions of legal liability for failing to follow those orders.

Please produce any responsive records you identify in electronic format.

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### **Request for Expedited Processing**

This requests warrants expedited processing under two standards: 28 C.F.R. §§ 16.5(e)(1)(ii) and (iv).

#### **A. Urgency to Inform the Public Standard**

This request pertains to information about which there is “[a]n urgency to inform the public about an actual or alleged Federal Government activity,” and it is made by a requester “primarily engaged in disseminating information.” *Id.* § 16.5(e)(1)(ii).

There is an urgency to inform the public about the federal government’s implementation of highly controversial restrictions banning nationals of several Muslim-majority countries from entering the United States. Thousands of people across the country have protested these restrictions. Several different federal courts issued temporary relief against Order No. 13,769 citing constitutional concerns. Then-Acting Attorney General Sally Yates declined to instruct the DOJ to defend that executive order because she was “not convinced” that it was consistent with the DOJ’s “solemn obligation to always seek justice and stand for what is right”—and she was promptly fired and replaced by the President.<sup>2</sup> Executive Order No. 13,780 was intended to cure the legal deficiencies of the first travel ban, but to date, two federal courts have enjoined enforcement of that order, as well.<sup>3</sup>

These events have been the subject of articles from news outlets throughout the world. In fact, a Google News search for the string “Trump ‘executive order’ ‘travel ban’” returns close to two million results.<sup>4</sup>

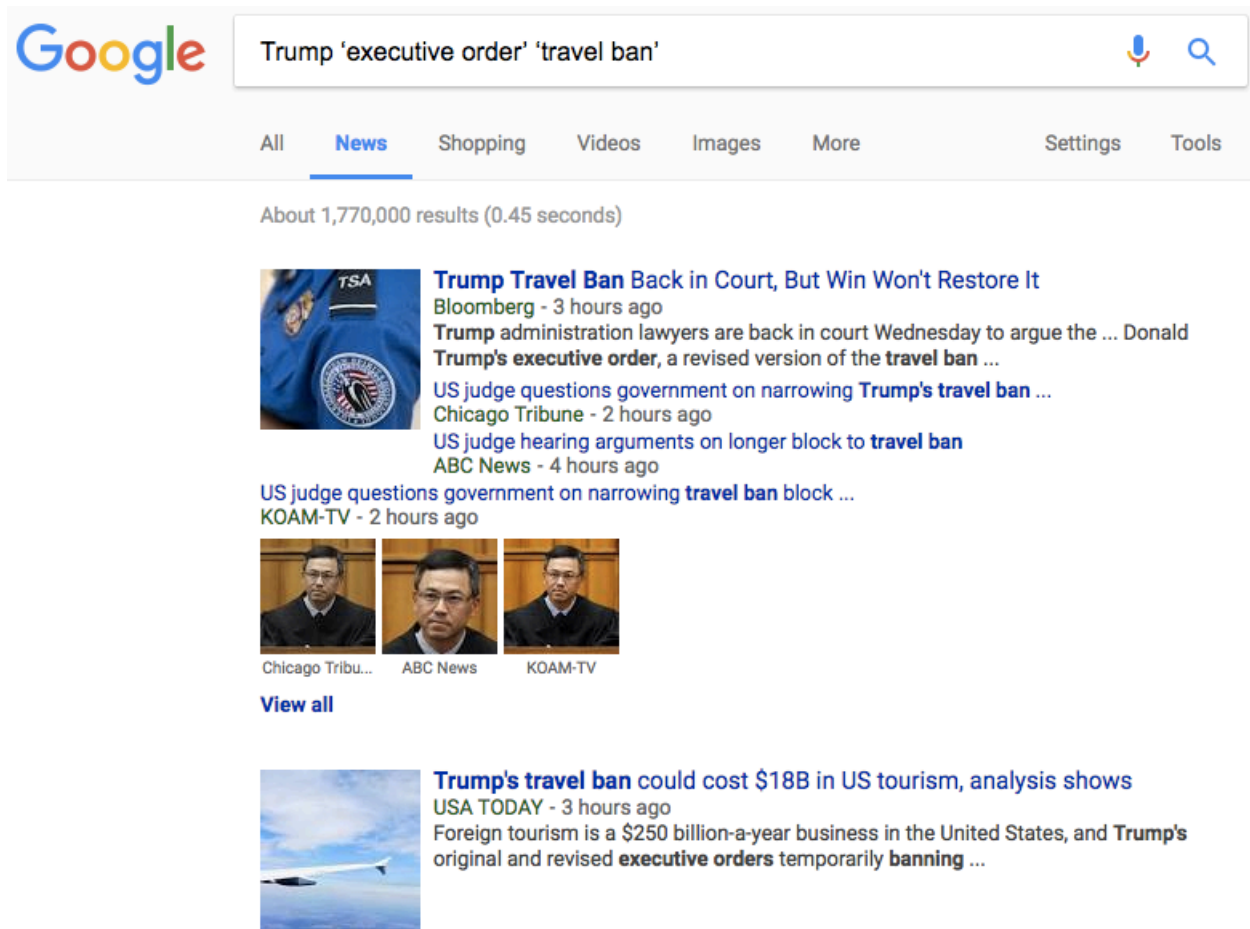
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<sup>2</sup> Mark Landler, Matt Apuzzo & Eric Lichtblau, *Trump Fires Acting Attorney General*, THE NEW YORK TIMES (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/politics/trump-immigration-ban-memo.html>.

<sup>3</sup> See Order Granting Motion to Convert Temporary Restraining Order to a Preliminary Injunction, *Hawai’i v. Trump*, No. 1:17-cv-00050-DKW-KSC, at 6, 16-17 (D. Haw. March 29, 2017) (notice of appeal filed March 30, 2017); Memorandum Opinion, *Int’l Refugee Assistance Project v. Trump*, No. 8:17-cv-00361-TDC, at 9, 28-33 (D. Md. March 16, 2017) (notice of appeal filed March 18, 2017).

<sup>4</sup> <https://goo.gl/b5OIn7>.

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The screenshot shows a Google search interface with the query "Trump 'executive order' 'travel ban'". The search results are filtered to "News". The first result is titled "Trump Travel Ban Back in Court, But Win Won't Restore It" from Bloomberg, dated 3 hours ago. It includes a thumbnail image of a TSA uniform. Below this are several other news snippets from the Chicago Tribune, ABC News, and KOAM-TV, all discussing the court challenges to the travel ban. A second result is titled "Trump's travel ban could cost \$18B in US tourism, analysis shows" from USA TODAY, dated 3 hours ago, with a thumbnail image of an airplane. The interface includes navigation tabs for All, News, Shopping, Videos, Images, and More, as well as Settings and Tools.

Google

Trump 'executive order' 'travel ban'

All News Shopping Videos Images More Settings Tools

About 1,770,000 results (0.45 seconds)

**Trump Travel Ban Back in Court, But Win Won't Restore It**  
Bloomberg - 3 hours ago  
Trump administration lawyers are back in court Wednesday to argue the ... Donald Trump's executive order, a revised version of the travel ban ...  
US judge questions government on narrowing Trump's travel ban ...  
Chicago Tribune - 2 hours ago  
US judge hearing arguments on longer block to travel ban  
ABC News - 4 hours ago  
US judge questions government on narrowing travel ban block ...  
KOAM-TV - 2 hours ago

Chicago Tribu... ABC News KOAM-TV

**View all**

**Trump's travel ban could cost \$18B in US tourism, analysis shows**  
USA TODAY - 3 hours ago  
Foreign tourism is a \$250 billion-a-year business in the United States, and Trump's original and revised executive orders temporarily banning ...

Here is a sample of news articles published by major press organizations within the United States and internationally discussing recent developments related to this matter:

Laura Jarrett, *Federal Judge Extends Ruling Halting Travel Ban Indefinitely*, CNN (March 30, 2017), <http://www.cnn.com/2017/03/29/politics/hawaii-trump-travel-ban-extended>.

Kartikay Mehrotra and Erik Larson, *Trump Travel Ban Back in Court, But Win Won't Restore It*, BLOOMBERG (March 29, 2017), <https://www.bloomberg.com/politics/articles/2017-03-29/trump-travel-ban-back-in-court-but-even-a-win-won-t-restore-it>.

Bart Jansen, *Trump's Travel Ban Could Cost \$18B in U.S. Tourism, Analysis Shows*, USA TODAY (March 29, 2017), <http://www.usatoday.com/story/news/world/2017/03/29/trumps-travel-ban-could-cost-18b-us-tourism-travel-analysts-say/99708758>.

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Josh Gerstein, *Is Trump Stalling a Travel Ban Appeal at 9th Circuit?*, POLITICO (March 28, 2017), <http://www.politico.com/blogs/under-the-radar/2017/03/donald-trump-travel-ban-ninth-circuit-appeal-236575>.

Cogan Schneier, *Web of Litigation Grows Around Trump Travel Ban*, NATIONAL LAW JOURNAL (March 28, 2017), <http://www.nationallawjournal.com/id=1202782264436/Web-of-Litigation-Grows-Around-Trump-Travel-Ban?slreturn=20170229201754>.

Andrea Noble, *Full Fourth Circuit to Consider Hearing Case on Trump's Travel Limits*, WASHINGTON TIMES (March 27, 2017), <http://www.washingtontimes.com/news/2017/mar/27/trump-travel-ban-full-4th-circuit-court-appeals-co>.

Ryan Teague Beckwith, *President Trump's Own Words Keep Hurting His Travel Ban*, TIME (March 16, 2017), <http://time.com/4703614/travel-ban-judges-donald-trump-words>.

Alexander Burns, *2 Federal Judges Rule Against Trump's Latest Travel Ban*, NEW YORK TIMES (March 15, 2017), <https://www.nytimes.com/2017/03/15/us/politics/trump-travel-ban.html>.

Vivian Salama and Alicia Caldwell, *DHS Report Disputes Threat From Banned Nations*, AP (Feb. 24, 2017), <http://bigstory.ap.org/article/39f1f8e4ceed4a30a4570f693291c866/dhs-intel-report-disputes-threat-posed-travel-ban-nations>.

The requested information will help the public better understand the circumstances surrounding the creation and execution of the travel restrictions, as well as how DOJ has responded to the public outcry and judicial decisions prompted by them. Further, as explained below in support of the request for “news media” treatment, Ms. Currier is “primarily engaged in disseminating information.”

#### B. Widespread and Exceptional Media Interest Standard

The requested records relate to “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 28 C.F.R. § 16.5(e)(1)(iv).

As noted above, the subject of this request has been extensively covered by press around the world over the past few weeks.

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Further, the requested records relate directly to questions about the government's integrity that affect public confidence. Numerous federal courts have found the travel restrictions in both executive orders are likely unconstitutional. The requested information will help shed light on how DOJ has interacted with the White House, Congress, and others as the events of the past few weeks unfolded. It will also help the public understand the motivations behind the travel restrictions, the steps that have been taken to remedy the constitutional deficiencies identified by the courts, and how the Executive branch has worked to enforce and craft its defense of the executive orders.

Pursuant to 28 C.F.R. § 16.5(e)(3), I certify this statement to be true and correct.

### **Request for "News Media" Fee Status**

Ms. Currier is a representative of the news media and does not seek the requested records for commercial use. Accordingly, fees associated with the processing of this request should be limited to reasonable duplication costs. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Ms. Currier is a representative of the news media because she "gathers information of potential interest to a segment of the public, uses [her] editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Id.*; 28 C.F.R. § 16.10(b)(6).

Cora Currier is a staff reporter for The Intercept. The Intercept is a digital news publication that was founded in 2013 with a mission to report on national security and foreign policy issues. The Intercept has since expanded to a staff of more than twenty reporters producing investigative reporting, analysis, commentary, and multimedia content focused on national security, politics, civil liberties, technology, criminal justice, the media, and more. The Intercept's coverage has been recognized with awards from the Online News Association, the American Society of Magazine Editors, the New York Press Club, and others.

Ms. Currier has covered national security, counterterrorism, and immigration since joining the newsroom in 2014. Prior to that, she covered similar topics for the investigative news site ProPublica. She has reported on issues pertinent to the recent travel ban, including CBP's policy on collecting social media information from foreign travelers,<sup>5</sup> government efforts to counter

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<sup>5</sup> Cora Currier, *The US Government Wants to Read Travelers' Tweets Before Letting Them In*, THE INTERCEPT (Oct. 21, 2016), <https://theintercept.com/2016/10/21/the-u-s-government-wants-to-read-travelers-tweets-before-letting-them-in/>.



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violent extremism, the No Fly list and other watchlisting procedures,<sup>6</sup> and in the past, has covered the cases of individuals blocked from entering the United States on terrorism grounds.<sup>7</sup> She has previously requested, obtained, and reported on documents obtained via the FOIA on a range of national security-related issues.<sup>8</sup>

Finally, we note that per DOJ regulations, a request for records that supports the news-dissemination function of the requester is not considered to be for a commercial use. *Id.* 16.10(b)(6).

Thus, Ms. Currier should be classified as “news media” requesters for purposes of fee assessments.

### **Request for Public Interest Fee Waiver**

Ms. Currier requests a waiver of fees because disclosure of the requested records “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(1)(i)-(ii).

First, the request will “shed light on the operations or activities of the federal government.” *Id.* § 16.10(k)(2)(i). Specifically, the records will shed light on how DOJ officials were involved in the creation and execution of restrictions on the ability of travelers from certain countries to enter the United States.

Second, disclosure of the requested records is likely to contribute significantly to public understanding” of this issue. *Id.* § 16.10(k)(2)(ii). Such disclosure will be “meaningfully

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<sup>6</sup> Cora Currier, *Government May Now Tell You Why You’re on a “No Fly” List, But Not Always*, THE INTERCEPT (April 15, 2015), <https://theintercept.com/2015/04/15/government-will-now-tell-youre-fly-list-except-wont/>.

<sup>7</sup> Cora Currier, *Why the U.S. Won’t Allow a Dying Iranian Sociologist to Join His Family*, PROPUBLICA (Nov. 20, 2012), <https://www.propublica.org/article/why-the-us-wont-allow-a-dying-iranian-sociologist-to-join-his-family>.

<sup>8</sup> Cora Currier, *Newly Released Records Show the US Paid \$6 Million for Civilian Harm in Afghanistan*, THE INTERCEPT (Mar. 3, 2015), <https://theintercept.com/2015/03/04/newly-released-records-show-us-paid-6-million-afghan-civilian-harm/>.

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informative” because it will give the public additional detail about DOJ’s role in developing and defense of the executive orders. *Id.* § 16.10(k)(2)(ii)(A). The requested records will also “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.” *Id.* § 16.10(k)(2)(ii)(B). Ms. Currier does not seek this information for herself, but to incorporate into news reporting that will educate the public. It is presumed that representatives of the news media such as Ms. Currier satisfy this factor. *Id.*

Finally, the records are not primarily in the requester’s commercial interest. *Id.* § 16.10(k)(2)(iii). Ms. Currier seeks the requested information for newsgathering purposes and expects to incorporate it into journalistic work product.

Thus, DOJ should grant a public interest fee waiver for this request. Should DOJ decline a fee waiver, Ms. Currier agrees to pay up to \$100 for the processing of this request. If the estimated fees will exceed this limit, please inform me before you begin processing.

Thank you for your consideration of this request. As DOJ regulations provide, we will anticipate your determination on expedited processing within ten (10) calendar days. *Id.* § 16.5(e)(4). If you have any questions or concerns, please do not hesitate to contact me at (415) 830-6664 or [marcia@zeitgeist.law](mailto:marcia@zeitgeist.law).

Regards,



Marcia Hofmann

# Exhibit 11

# Exhibit 11

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



**ZEITGEIST**

LAW PC

25 Taylor Street, San Francisco, CA 94102  
+1 415.830.6664

April 3, 2017

Office of Legal Counsel  
Melissa Golden  
Lead Paralegal and FOIA Specialist  
U.S. Department of Justice  
Room 5511, 950 Pennsylvania Ave. NW  
Washington, DC 20530

**Re: Freedom of Information Act Request and Request for Expedited Processing**

Dear Ms. Golden:

This is an expedited request under the Freedom of Information Act, 5 U.S.C. § 552. I am submitting it to the Department of Justice (DOJ) Office of Legal Counsel (OLC) on behalf of Cora Currier, a staff journalist at The Intercept.

This letter follows another FOIA request submitted on February 1, 2017, seeking records related to Executive Order No. 13,769, entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States,” which President Trump signed on January 27, 2017. The Office of Legal Counsel granted expedited processing for that request.

**Requested Records**

On January 27, 2017, President Trump signed Executive Order No. 13,769, entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States.” Among other things, the order banned nationals of Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen from entering the United States for 90 days. The order was eventually enjoined in part or full by several federal courts, including the Ninth Circuit Court of Appeals.

On March 6, 2017, President Trump signed Executive Order No. 13,780, which had the same title as its predecessor. This new order also restricted travel to the United States from several predominantly Muslim countries. To date, portions of this order have been blocked by two

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federal district courts. The government is appealing those decisions to the Fourth Circuit and Ninth Circuit.

Ms. Currier requests all agency records from February 1, 2017 to the present concerning the agency's analysis and implementation of Executive Order No. 13,769 and Executive Order No. 13,780.

We urge OLC to process this request consistent with DOJ policy directing a presumption of disclosure.<sup>1</sup>

This request includes, but is not limited to:

- A. Records related to briefings, discussions, talking points, emails (whether through .gov email addresses or private third-party services such as Gmail) or other communications:
  - 1. Among OLC personnel, including supervisors, officers, managers, and union representatives;
  - 2. Between OLC officials and the Executive Office of the President (EOP) or other White House offices, including any consultations;
  - 3. Between OLC officials and other federal agencies, including the Department of Homeland Security and Department of State;
  - 4. Between OLC officials and members of Congress or congressional staffers, including aides to the House Judiciary Committee;
  - 5. Between OLC officials and non-government representatives and outside consultants, including nonprofits, policy think tanks such as the Center for Immigration Studies and Federation for American Immigration Reform, the Center for Security Policies, the Heritage Foundation, the Investigative Project on Terrorism;

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<sup>1</sup> See Dep't of Justice Office of Information Policy, *President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines: Creating a "New Era of Open Government"* (2009), <https://www.justice.gov/oip/blog/foia-post-2009-creating-new-era-open-government>.



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6. Between OLC officials and private firms such as Giuliani Partners and Renaissance Technologies; and
  7. Between OLC officials and reporters from Breitbart News, Fox News, The Daily Caller, The Daily Wire, the Washington Times, or the Free Beacon; and
- B. Legal assessments, analyses, or discussions about the decision to remove language between Executive Order No. 13,769 and Executive Order No. 13,780 about offering preferential status to minority religious groups and the legality of such measures.
- C. Records reflecting analysis and response of DOJ officials to judicial orders staying the enforcement of the executive order, including discussions of legal liability for failing to follow those orders.

Please produce any responsive records you identify in electronic format.

### **Request for Expedited Processing**

This requests warrants expedited processing under two standards: 28 C.F.R. §§ 16.5(e)(1)(ii) and (iv).

A. Urgency to Inform the Public Standard

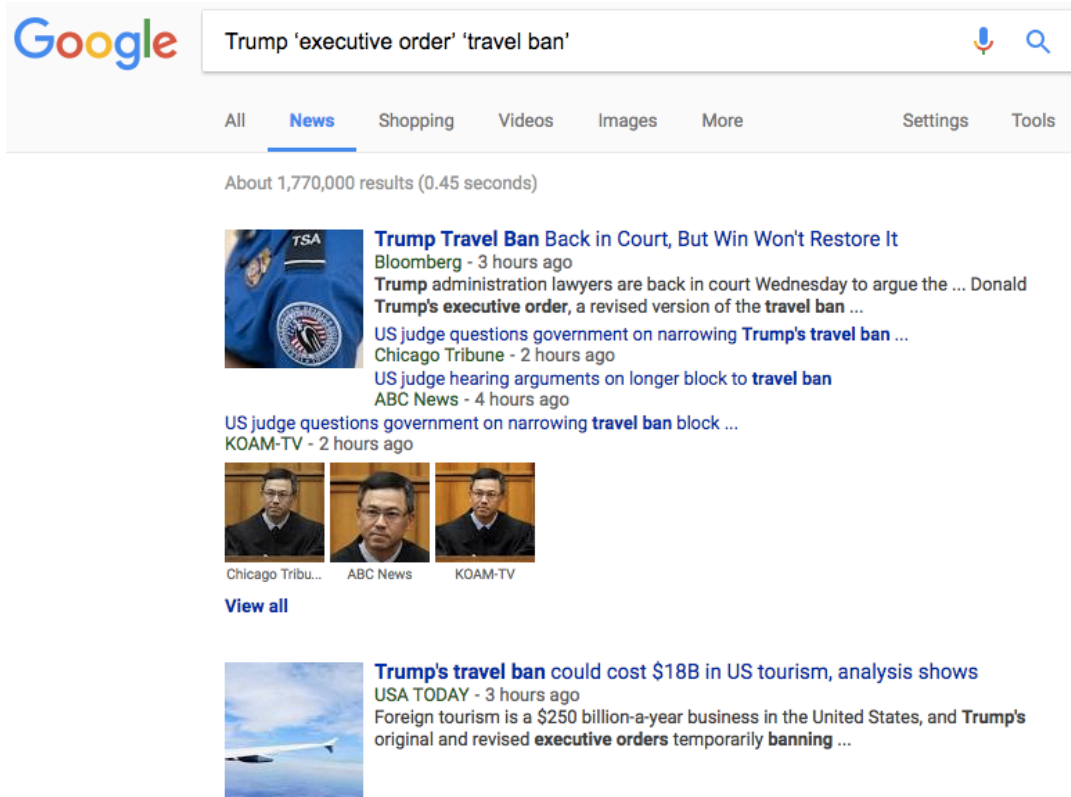
This request pertains to information about which there is “[a]n urgency to inform the public about an actual or alleged Federal Government activity,” and it is made by a requester “primarily engaged in disseminating information.” *Id.* § 16.5(e)(1)(ii).

There is an urgency to inform the public about the federal government’s implementation of highly controversial restrictions banning nationals of several Muslim-majority countries from entering the United States. Thousands of people across the country have protested these restrictions. Several different federal courts issued temporary relief against Order No. 13,769 citing constitutional concerns. Then-Acting Attorney General Sally Yates declined to instruct the DOJ to defend that executive order because she was “not convinced” that it was consistent with the DOJ’s “solemn obligation to always seek justice and stand for what is right”—and she was

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promptly fired and replaced by the President.<sup>2</sup> Executive Order No. 13,780 was intended to cure the legal deficiencies of the first travel ban, but to date, two federal courts have enjoined enforcement of that order, as well.<sup>3</sup>

These events have been the subject of articles from news outlets throughout the world. In fact, a Google News search for the string “Trump ‘executive order’ ‘travel ban’” returns close to two million results.<sup>4</sup>



<sup>2</sup> Mark Landler, Matt Apuzzo & Eric Lichtblau, *Trump Fires Acting Attorney General*, THE NEW YORK TIMES (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/politics/trump-immigration-ban-memo.html>.

<sup>3</sup> See Order Granting Motion to Convert Temporary Restraining Order to a Preliminary Injunction, *Hawai'i v. Trump*, No. 1:17-cv-00050-DKW-KSC, at 6, 16-17 (D. Haw. March 29, 2017) (notice of appeal filed March 30, 2017); Memorandum Opinion, *Int'l Refugee Assistance Project v. Trump*, No. 8:17-cv-00361-TDC, at 9, 28-33 (D. Md. March 16, 2017) (notice of appeal filed March 18, 2017).

<sup>4</sup> <https://goo.gl/b5OIIn7>.

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Here is a sample of news articles published by major press organizations within the United States and internationally discussing recent developments related to this matter:

Laura Jarrett, *Federal Judge Extends Ruling Halting Travel Ban Indefinitely*, CNN (March 30, 2017), <http://www.cnn.com/2017/03/29/politics/hawaii-trump-travel-ban-extended>.

Kartikay Mehrotra and Erik Larson, *Trump Travel Ban Back in Court, But Win Won't Restore It*, BLOOMBERG (March 29, 2017), <https://www.bloomberg.com/politics/articles/2017-03-29/trump-travel-ban-back-in-court-but-even-a-win-won-t-restore-it>.

Bart Jansen, *Trump's Travel Ban Could Cost \$18B in U.S. Tourism, Analysis Shows*, USA TODAY (March 29, 2017), <http://www.usatoday.com/story/news/world/2017/03/29/trumps-travel-ban-could-cost-18b-us-tourism-travel-analysts-say/99708758>.

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The requested information will help the public better understand the circumstances surrounding the creation and execution of the travel restrictions, as well as how DOJ has responded to the public outcry and judicial decisions prompted by them. Further, as explained below in support of the request for “news media” treatment, Ms. Currier is “primarily engaged in disseminating information.”

**B. Widespread and Exceptional Media Interest Standard**

The requested records relate to “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 28 C.F.R. § 16.5(e)(1)(iv).

As noted above, the subject of this request has been extensively covered by press around the world over the past few weeks.

Further, the requested records relate directly to questions about the government’s integrity that affect public confidence. Numerous federal courts have found the travel restrictions in both executive orders are likely unconstitutional. The requested information will help shed light on how DOJ has interacted with the White House, Congress, and others as the events of the past few weeks unfolded. It will also help the public understand the motivations behind the travel restrictions, the steps that have been taken to remedy the constitutional deficiencies identified by the courts, and how the Executive branch has worked to enforce and craft its defense of the executive orders.

Pursuant to 28 C.F.R. § 16.5(e)(3), I certify this statement to be true and correct.

**Request for “News Media” Fee Status**

Ms. Currier is a representative of the news media and does not seek the requested records for commercial use. Accordingly, fees associated with the processing of this request should be limited to reasonable duplication costs. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Ms. Currier is a representative of the news media because she “gathers information of potential interest to a segment of the public, uses [her] editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *Id.*; 28 C.F.R. § 16.10(b)(6).

Cora Currier is a staff reporter for The Intercept. The Intercept is a digital news publication that was founded in 2013 with a mission to report on national security and foreign policy issues. The

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Intercept has since expanded to a staff of more than twenty reporters producing investigative reporting, analysis, commentary, and multimedia content focused on national security, politics, civil liberties, technology, criminal justice, the media, and more. The Intercept's coverage has been recognized with awards from the Online News Association, the American Society of Magazine Editors, the New York Press Club, and others.

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Finally, we note that per DOJ regulations, a request for records that supports the news-dissemination function of the requester is not considered to be for a commercial use. *Id.* 16.10(b)(6).

Thus, Ms. Currier should be classified as "news media" requesters for purposes of fee assessments.

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<sup>6</sup> Cora Currier, *Government May Now Tell You Why You're on a "No Fly" List, But Not Always*, THE INTERCEPT (April 15, 2015), <https://theintercept.com/2015/04/15/government-will-now-tell-youre-fly-list-except-wont/>.

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<sup>8</sup> Cora Currier, *Newly Released Records Show the US Paid \$6 Million for Civilian Harm in Afghanistan*, THE INTERCEPT (Mar. 3, 2015), <https://theintercept.com/2015/03/04/newly-released-records-show-us-paid-6-million-afghan-civilian-harm/>.



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### **Request for Public Interest Fee Waiver**

Ms. Currier requests a waiver of fees because disclosure of the requested records “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(1)(i)-(ii).

First, the request will “shed light on the operations or activities of the federal government.” *Id.* § 16.10(k)(2)(i). Specifically, the records will shed light on how DOJ officials were involved in the creation, execution, and defense of restrictions on the ability of travelers from certain countries to enter the United States.

Second, disclosure of the requested records is likely to contribute significantly to public understanding” of this issue. *Id.* § 16.10(k)(2)(ii). Such disclosure will be “meaningfully informative” because it will give the public additional detail about DOJ’s development and defense of the executive orders. *Id.* § 16.10(k)(2)(ii)(A). The requested records will also “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.” *Id.* § 16.10(k)(2)(ii)(B). Ms. Currier does not seek this information for herself, but to incorporate into news reporting that will educate the public. It is presumed that representatives of the news media such as Ms. Currier satisfy this factor. *Id.*

Finally, the records are not primarily in the requester’s commercial interest. *Id.* § 16.10(k)(2)(iii). Ms. Currier seeks the requested information for newsgathering purposes and expects to incorporate it into journalistic work product.

Thus, OLC should grant a public interest fee waiver for this request. Should OLC decline a fee waiver, Ms. Currier agrees to pay up to \$100 for the processing of this request. If the estimated fees will exceed this limit, please inform me before you begin processing.

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Thank you for your consideration of this request. As DOJ regulations provide, we will anticipate your determination on expedited processing within ten (10) calendar days. *Id.* § 16.5(e)(4). If you have any questions or concerns, please do not hesitate to contact me at (415) 830-6664 or [marcia@zeitgeist.law](mailto:marcia@zeitgeist.law).

Regards,

A handwritten signature in blue ink that reads "Marcia Hofmann". The signature is fluid and cursive, with the first name "Marcia" and last name "Hofmann" clearly distinguishable.

Marcia Hofmann

# Exhibit 12

# Exhibit 12

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



**ZEITGEIST**

LAW PC

25 Taylor Street, San Francisco, CA 94102  
+1 415.830.6664

April 3, 2017

Office of Information Programs and Services  
A/GIS/IPS  
U.S. Department of State, SA-2  
Washington, DC 20522-8100

**Re: Freedom of Information Act Request and Request for Expedited Processing**

Dear Freedom of Information Officer:

This is an expedited request under the Freedom of Information Act, 5 U.S.C. § 552. I am submitting it to the Department of State (DOS) on behalf of Cora Currier, a staff journalist at the Intercept.

This letter follows another FOIA request submitted on February 1, 2017, seeking records related to Executive Order No. 13,769, entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States,” which President Trump signed on January 27, 2017. DOS granted expedited processing for that request on February 7, 2017.

**Requested Records**

On January 27, 2017, President Trump signed Executive Order No. 13,769, entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States.” Among other things, the order banned nationals of Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen from entering the United States for 90 days. The order was enjoined in part or full by several federal courts, one of which was upheld by the Ninth Circuit Court of Appeals.

On March 6, 2017, President Trump signed Executive Order No. 13,780, which had the same title as its predecessor. This new order also restricted travel to the United States from several predominantly Muslim countries. To date, portions of this order have been blocked by two federal district courts. The government is appealing those decisions to the Fourth Circuit and Ninth Circuit.

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Ms. Currier requests all agency records from February 1, 2017 to the present concerning the agency's analysis and implementation of Executive Order No. 13,769 and Executive Order No. 13,780.

We urge the agency to process this request consistent with Justice Department policy directing a presumption of disclosure.<sup>1</sup>

This request includes, but is not limited to:

- A. Records related to briefings, discussions, talking points, emails (whether through .gov email addresses or private third-party services such as Gmail) or other communications:
  - 1. Among DOS personnel, including consular officials, supervisors, officers, managers, and union representatives;
  - 2. From or about visa applicants or dual citizens asking for clarification or about the ban's effect;
  - 3. Between DOS officials and the Executive Office of the President or other White House offices;
  - 4. Between DOS and members of Congress or congressional staffers, including aides to the House Judiciary Committee; and
  - 5. Between DOS officials and non-government representatives and outside consultants, including nonprofits, policy think tanks such as the Center for Immigration Studies and Federation for American Immigration Reform, the Center for Security Policies, the Heritage Foundation, the Investigative Project on Terrorism; and State Department officials and private firms such as Giuliani Partners and Renaissance Technologies.
- B. Records reflecting analysis and response of DOS officials to judicial orders staying the enforcement of the executive orders, including discussions of legal liability for failing to follow those orders.

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<sup>1</sup> See Dep't of Justice Office of Information Policy, *President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines: Creating a "New Era of Open Government"* (2009), <https://www.justice.gov/oip/blog/foia-post-2009-creating-new-era-open-government>.



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- C. Records from the Dissent Channel related to the executive orders.
- D. Records reflecting analysis and response of DOS officials to responses by other countries to the executive orders, including but not limited to Iran and Iraq.
- E. Directives, memos, or cables advising consular officials how to handle queries from travelers about their legal status or travel plans in light of the executive orders.
- F. Memos, analyses, or communications (including correspondence with Iraqi officials) about the decision to remove Iraq from the list of countries covered by the travel restrictions in Executive Order No. 13,780.
- G. Analyses, reports, or assessments of the security risks posed by individuals from the nations whose citizens were covered by the executive orders.
- H. Analyses, reports, or assessments of the impact of the travel restrictions on national security or diplomatic relationships.

Please produce any responsive records you identify in electronic format.

### **Request for Expedited Processing**

This request warrants expedited processing because it seeks information that is “urgently needed” to “inform the public concerning an actual or alleged Federal Government activity,” and it is made by requesters “primarily engaged in disseminating information.” 22 C.F.R. § 171.11(f)(2).

There is an urgency to inform the public about the federal government’s implementation of highly controversial restrictions banning nationals of several Muslim-majority countries from entering the United States. Thousands of people across the country have protested these restrictions. Several different federal courts issued temporary relief against Order No. 13,769 citing constitutional concerns. Then-Acting Attorney General Sally Yates declined to instruct the DOJ to defend that executive order because she was “not convinced” that it was consistent with the DOJ’s “solemn obligation to always seek justice and stand for what is right”—and she was promptly fired and replaced by the President.<sup>2</sup> Executive Order No. 13,780 was intended to cure

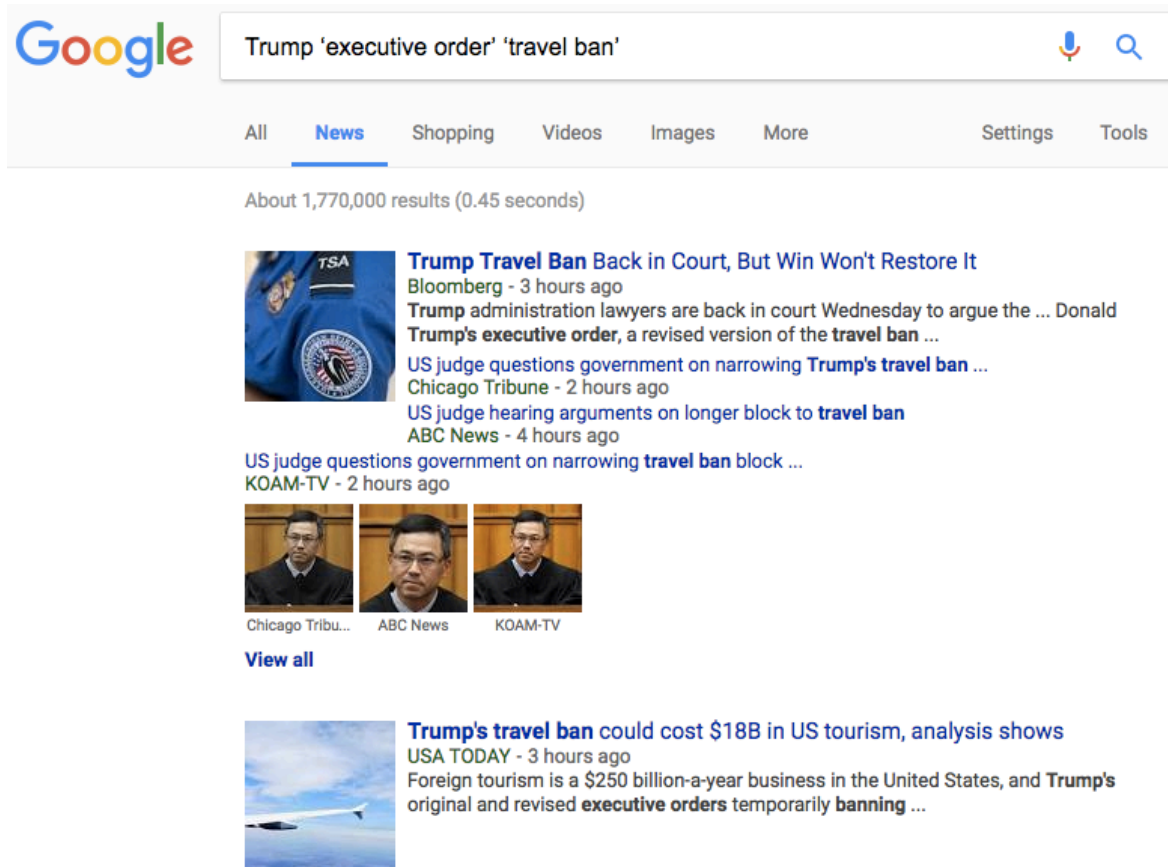
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<sup>2</sup> Mark Landler, Matt Apuzzo & Eric Lichtblau, *Trump Fires Acting Attorney General*, THE NEW YORK TIMES (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/politics/trump-immigration-ban-memo.html>.

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the legal deficiencies of the first travel ban, but to date, two federal courts have enjoined enforcement of that order, as well.<sup>3</sup>

These events have been the subject of articles from news outlets throughout the world. In fact, a Google News search for the string “Trump ‘executive order’ ‘travel ban’” returns close to two million results.<sup>4</sup>



<sup>3</sup> See Order Granting Motion to Convert Temporary Restraining Order to a Preliminary Injunction, *Hawai'i v. Trump*, No. 1:17-cv-00050-DKW-KSC, at 6, 16-17 (D. Haw. March 29, 2017) (notice of appeal filed March 30, 2017); Memorandum Opinion, *Int'l Refugee Assistance Project v. Trump*, No. 8:17-cv-00361-TDC, at 9, 28-33 (D. Md. March 16, 2017) (notice of appeal filed March 18, 2017).

<sup>4</sup> <https://goo.gl/b5OIn7>.

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Page 5

Here is a sample of news articles published by major press organizations within the United States and internationally discussing recent developments related to this matter:

Laura Jarrett, *Federal Judge Extends Ruling Halting Travel Ban Indefinitely*, CNN (March 30, 2017), <http://www.cnn.com/2017/03/29/politics/hawaii-trump-travel-ban-extended>.

Kartikay Mehrotra and Erik Larson, *Trump Travel Ban Back in Court, But Win Won't Restore It*, BLOOMBERG (March 29, 2017), <https://www.bloomberg.com/politics/articles/2017-03-29/trump-travel-ban-back-in-court-but-even-a-win-won-t-restore-it>.

Bart Jansen, *Trump's Travel Ban Could Cost \$18B in U.S. Tourism, Analysis Shows*, USA TODAY (March 29, 2017), <http://www.usatoday.com/story/news/world/2017/03/29/trumps-travel-ban-could-cost-18b-us-tourism-travel-analysts-say/99708758>.

Josh Gerstein, *Is Trump Stalling a Travel Ban Appeal at 9th Circuit?*, POLITICO (March 28, 2017), <http://www.politico.com/blogs/under-the-radar/2017/03/donald-trump-travel-ban-ninth-circuit-appeal-236575>.

Cogan Schneier, *Web of Litigation Grows Around Trump Travel Ban*, NATIONAL LAW JOURNAL (March 28, 2017), <http://www.nationallawjournal.com/id=1202782264436/Web-of-Litigation-Grows-Around-Trump-Travel-Ban?slreturn=20170229201754>.

Andrea Noble, *Full Fourth Circuit to Consider Hearing Case on Trump's Travel Limits*, WASHINGTON TIMES (March 27, 2017), <http://www.washingtontimes.com/news/2017/mar/27/trump-travel-ban-full-4th-circuit-court-appeals-co>.

Ryan Teague Beckwith, *President Trump's Own Words Keep Hurting His Travel Ban*, TIME (March 16, 2017), <http://time.com/4703614/travel-ban-judges-donald-trump-words>.

Alexander Burns, *2 Federal Judges Rule Against Trump's Latest Travel Ban*, NEW YORK TIMES (March 15, 2017), <https://www.nytimes.com/2017/03/15/us/politics/trump-travel-ban.html>.

Vivian Salama and Alicia Caldwell, *DHS Report Disputes Threat From Banned Nations*, ASSOCIATED PRESS (Feb. 24, 2017), <http://bigstory.ap.org/article/39f1f8e4ceed4a30a4570f693291c866/dhs-intel-report-disputes-threat-posed-travel-ban-nations>.

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The requested information will help the public better understand the circumstances surrounding the creation and execution of the travel restrictions, the internal dissent that resulted from it, and how DOS has responded to reciprocal actions by other states.

Further, as explained below in support of the request for “news media” treatment, Ms. Currier is “primarily engaged in disseminating information.”

### **Request for “News Media” Fee Status**

Ms. Currier is a representative of the news media and does not seek the requested records for commercial use. Accordingly, fees associated with the processing of this request should be limited to reasonable duplication costs. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Ms. Currier is a representative of the news media because she “gathers information of potential interest to a segment of the public, uses [her] editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *Id.* § 552(a)(4)(A)(ii)(II); 22 C.F.R. § 171.14(b)(5)(ii)(C).

Cora Currier is a staff reporter for The Intercept. The Intercept is a digital news publication that was founded in 2013 with a mission to report on national security and foreign policy issues. The Intercept has since expanded to a staff of more than twenty reporters producing investigative reporting, analysis, commentary, and multimedia content focused on national security, politics, civil liberties, technology, criminal justice, the media, and more. The Intercept’s coverage has been recognized with awards from the Online News Association, the American Society of Magazine Editors, the New York Press Club, and others.

Ms. Currier has covered national security, counterterrorism, and immigration since joining the newsroom in 2014. Prior to that, she covered similar topics for the investigative news site ProPublica. She has reported on issues pertinent to the recent travel ban, including CBP’s policy on collecting social media information from foreign travelers,<sup>5</sup> government efforts to counter violent extremism, the No Fly list and other watchlisting procedures,<sup>6</sup> and in the past, has

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<sup>5</sup> Cora Currier, *The US Government Wants to Read Travelers’ Tweets Before Letting Them In*, THE INTERCEPT (Oct. 21, 2016), <https://theintercept.com/2016/10/21/the-u-s-government-wants-to-read-travelers-tweets-before-letting-them-in/>.

<sup>6</sup> Cora Currier, *Government May Now Tell You Why You’re on a “No Fly” List, But Not Always*, THE INTERCEPT (April 15, 2015), <https://theintercept.com/2015/04/15/government-will-now-tell-youre-fly-list-except-wont/>.

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covered the cases of individuals blocked from entering the United States on terrorism grounds.<sup>7</sup> She has previously requested, obtained, and reported on documents obtained via the FOIA on a range of national security-related issues.<sup>8</sup>

Thus, Ms. Currier should be classified as a “news media” requester for purposes of fee assessments.

### **Request for Public Interest Fee Waiver**

Ms. Currier requests a waiver of fees because disclosure of the requested records “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 22 C.F.R. § 171.16(a).

Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government. First, the request concerns “identifiable operations or activities of the federal government[.]” 22 C.F.R. § 171.16(a)(1)(i). Specifically, the requested records will shed light on how (and whether) DOS officials were involved in the creation of restrictions limiting the ability of travelers from certain countries to enter the United States.

Second, disclosure of the requested records will be “meaningfully informative about government operations or activities” and is “likely to contribute to an increased public understanding of those operations or activities.” *Id.* § 171.16(a)(1)(ii). (internal quotation marks omitted). News outlets have already reported on significant internal dissent within the DOS about the travel restrictions. The requested records will shed more light on how the executive orders were developed and how DOS helped to implement them.

Third, the requested records will “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.”

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<sup>7</sup> Cora Currier, *Why the U.S. Won't Allow a Dying Iranian Sociologist to Join His Family*, PROPUBLICA (Nov. 20, 2012), <https://www.propublica.org/article/why-the-us-wont-allow-a-dying-iranian-sociologist-to-join-his-family>.

<sup>8</sup> Cora Currier, *Newly Released Records Show the US Paid \$6 Million for Civilian Harm in Afghanistan*, THE INTERCEPT (Mar. 3, 2015), <https://theintercept.com/2015/03/04/newly-released-records-show-us-paid-6-million-afghan-civilian-harm/>.



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*Id.* § 171.16(a)(1)(iii). Ms. Currier does not seek this information for herself, but to incorporate into news reporting that will educate the public. Representatives of the news media such as Ms. Currier presumptively satisfy this factor. *Id.*

Fourth, the requested records will significantly enhance the public's understanding of DOS's involvement in carrying out the executive order. *Id.* § 171.16(a)(1)(iv). The records will reveal substantial new information about how the travel restrictions were developed and dissent within the DOS about how to implement them.

Finally, the records are not primarily in the requester's commercial interest. Ms. Currier seeks the requested information for newsgathering purposes and expects to incorporate it into journalistic work product. Such requests are not considered for a commercial purpose. *Id.* § 171.16(a)(2)(iii).

Thus, DOS should grant a public interest fee waiver for this request. Should DOS decline a fee waiver, Ms. Currier agrees to pay up to \$100 for the processing of this request. If the estimated fees will exceed this limit, please inform me before you begin processing.

Thank you for your consideration of this request. As DOS regulations provide, we will anticipate your determination on expedited processing within ten (10) calendar days. *Id.* § 171.11(f)(4). If you have any questions or concerns, please do not hesitate to contact me at (415) 830-6664 or [marcia@zeitgeist.law](mailto:marcia@zeitgeist.law).

Regards,

A handwritten signature in blue ink that reads "Marcia Hofmann". The signature is fluid and cursive, with the first name "Marcia" and last name "Hofmann" clearly distinguishable.

Marcia Hofmann

# Exhibit 13

# Exhibit 13

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



**ZEITGEIST**

LAW PC

25 Taylor Street, San Francisco, CA 94102  
+1 415.830.6664

April 3, 2017

Office of Freedom of Information  
1155 Defense Pentagon  
Washington, DC 20301-1155

**Re: Freedom of Information Act Request and Request for Expedited Processing**

Dear Freedom of Information Officer:

This is an expedited request under the Freedom of Information Act, 5 U.S.C. § 552. I am submitting it to the Department of Defense (DOD) on behalf of Cora Carrier, a staff journalist at the Intercept.

**Requested Records**

On January 27, 2017, President Trump signed Executive Order No. 13,769, entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States.” Among other things, the order banned nationals of Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen from entering the United States for 90 days. The order was enjoined in part or full by several federal courts, one of which was upheld by the Ninth Circuit Court of Appeals.

On March 6, 2017, President Trump signed Executive Order No. 13,780, which had the same title as its predecessor. This new order also restricted travel to the United States from several predominantly Muslim countries. To date, portions of this order have been blocked by two federal district courts. The government is appealing those decisions to the Fourth Circuit and Ninth Circuit.

Ms. Carrier requests all agency records from January 20, 2017 to the present concerning the agency’s analysis of the impact of Executive Order No. 13,769 and Executive Order No. 13,780.

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We urge the agency to process this request consistent with Justice Department policy directing a presumption of disclosure.<sup>1</sup>

This request includes, but is not limited to:

- A. Records reflecting analysis and response of DOD officials to responses by officials of other countries to the executive orders, including but not limited to Iran and Iraq.
- B. Memos, analyses, or communications (including correspondence with Iraqi officials) about the decision to remove Iraq from the list of countries covered by the travel restrictions in Executive Order No. 13,780.
- C. Analyses, reports or assessments produced by DOD components about the security risks posed by individuals from the nations covered by the executive orders, about the use of citizenship as an indicator of a terrorist threat to the United States, or otherwise evaluating the effectiveness of the travel ban in preventing national security threats.
- D. Any analyses, reports, or assessments about the executive orders' impact on national security or on military operations abroad.

Please produce any responsive records you identify in electronic format.

### **Request for Expedited Processing**

This request warrants expedited processing because it seeks information that is “urgently needed” to “inform the public concerning an actual or alleged Federal Government activity,” and it is made by requesters “primarily engaged in disseminating information.” 32 C.F.R. § 286.8(e)(1)(i)(B).

There is an urgency to inform the public about the federal government’s implementation of highly controversial restrictions banning nationals of several Muslim-majority countries from entering the United States. Thousands of people across the country have protested these restrictions. Several different federal courts issued temporary relief against Order No. 13,769 citing constitutional concerns. Then-Acting Attorney General Sally Yates declined to instruct the

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<sup>1</sup> See Dep’t of Justice Office of Information Policy, *President Obama’s FOIA Memorandum and Attorney General Holder’s FOIA Guidelines: Creating a “New Era of Open Government”* (2009), <https://www.justice.gov/oip/blog/foia-post-2009-creating-new-era-open-government>.

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DOJ to defend that executive order because she was “not convinced” that it was consistent with the DOJ’s “solemn obligation to always seek justice and stand for what is right”—and she was promptly fired and replaced by the President.<sup>2</sup> Executive Order No. 13,780 was intended to cure the legal deficiencies of the first travel ban, but to date, two federal courts have enjoined enforcement of that order, as well.<sup>3</sup>

Additionally, news reports have indicated that the Secretary of Defense and other military officials expressed concerns about the effects of the travel ban on the fight against the Islamic State in Syria and Iraq. According to reports, defense officials were concerned that including Iraq in the ban would hamper cooperation with Iraqi and other coalition partners.<sup>4</sup> An Iraqi general who frequently travels from Iraq to meet with U.S. commanders was reportedly denied entry to the United States after the initial executive order went into effect.<sup>5</sup>

These events have been the subject of articles from news outlets throughout the world. In fact, a Google News search for the string “Trump ‘executive order’ ‘travel ban’” returns close to two million results.<sup>6</sup>

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<sup>2</sup> Mark Landler, Matt Apuzzo & Eric Lichtblau, *Trump Fires Acting Attorney General*, THE NEW YORK TIMES (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/politics/trump-immigration-ban-memo.html>.

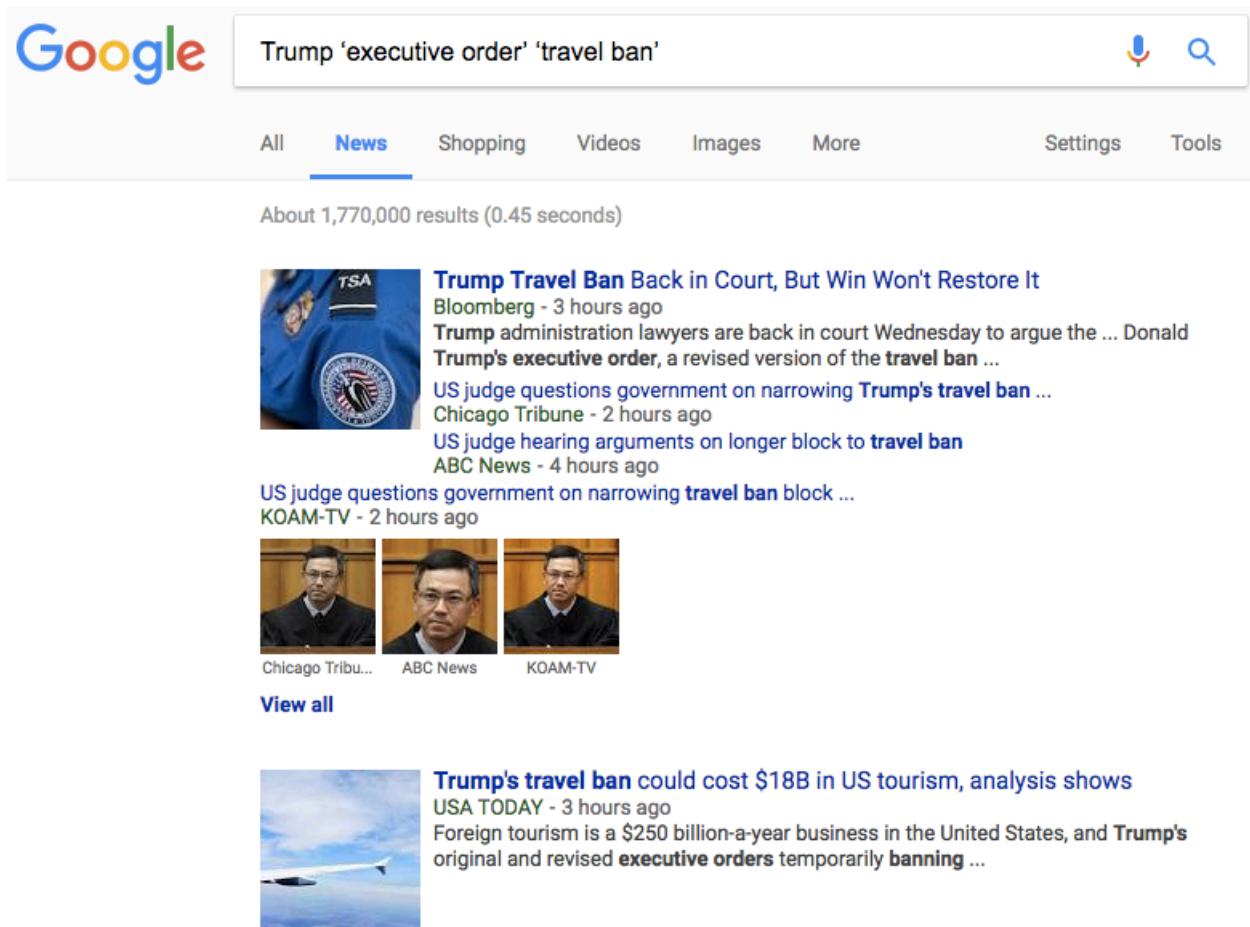
<sup>3</sup> See Order Granting Motion to Convert Temporary Restraining Order to a Preliminary Injunction, *Hawai’i v. Trump*, No. 1:17-cv-00050-DKW-KSC, at 6, 16-17 (D. Haw. March 29, 2017) (notice of appeal filed March 30, 2017); Memorandum Opinion, *Int’l Refugee Assistance Project v. Trump*, No. 8:17-cv-00361-TDC, at 9, 28-33 (D. Md. March 16, 2017) (notice of appeal filed March 18, 2017).

<sup>4</sup> Glenn Thrush, *Trump’s New Travel Ban Blocks Migrants From Six Nations, Sparing Iraq*, THE NEW YORK TIMES (March 6, 2017), <https://www.nytimes.com/2017/03/06/us/politics/travel-ban-muslim-trump.html>.

<sup>5</sup> Charlie D’Agata, *Iraqi general who works with American military kept from visiting U.S.*, CBS NEWS (Jan. 30, 2017), <http://www.cbsnews.com/news/iraqi-general-who-works-with-american-military-kept-from-visiting-u-s/>.

<sup>6</sup> <https://goo.gl/b5OIn7>.

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The screenshot shows a Google search interface with the query "Trump 'executive order' 'travel ban'". The search results are filtered to "News". The first result is titled "Trump Travel Ban Back in Court, But Win Won't Restore It" from Bloomberg, dated 3 hours ago. It includes a thumbnail image of a TSA uniform. Below this, there are three smaller thumbnails of a man in a suit, with captions "Chicago Tribu...", "ABC News", and "KOAM-TV". A "View all" link is present. The second result is titled "Trump's travel ban could cost \$18B in US tourism, analysis shows" from USA TODAY, dated 3 hours ago. It includes a thumbnail image of an airplane flying over a body of water.

Google

Trump 'executive order' 'travel ban'

All News Shopping Videos Images More Settings Tools

About 1,770,000 results (0.45 seconds)

**Trump Travel Ban Back in Court, But Win Won't Restore It**  
Bloomberg - 3 hours ago  
Trump administration lawyers are back in court Wednesday to argue the ... Donald Trump's executive order, a revised version of the travel ban ...  
US judge questions government on narrowing Trump's travel ban ...  
Chicago Tribune - 2 hours ago  
US judge hearing arguments on longer block to travel ban  
ABC News - 4 hours ago  
US judge questions government on narrowing travel ban block ...  
KOAM-TV - 2 hours ago

Chicago Tribu... ABC News KOAM-TV

[View all](#)

**Trump's travel ban could cost \$18B in US tourism, analysis shows**  
USA TODAY - 3 hours ago  
Foreign tourism is a \$250 billion-a-year business in the United States, and Trump's original and revised executive orders temporarily banning ...

Here is a sample of news articles published by major press organizations within the United States and internationally discussing recent developments related to this matter:

Laura Jarrett, *Federal Judge Extends Ruling Halting Travel Ban Indefinitely*, CNN (March 30, 2017), <http://www.cnn.com/2017/03/29/politics/hawaii-trump-travel-ban-extended>.

Vivian Salama and Alicia Caldwell, *DHS Report Disputes Threat From Banned Nations*, AP (February 24, 2017), <http://bigstory.ap.org/article/39f1f8e4ceed4a30a4570f693291c866/dhs-intel-report-disputes-threat-posed-travel-ban-nations>.

Kartikay Mehrotra and Erik Larson, *Trump Travel Ban Back in Court, But Win Won't Restore It*, BLOOMBERG (March 29, 2017), <https://www.bloomberg.com/politics/articles/2017-03-29/trump-travel-ban-back-in-court-but-even-a-win-won-t-restore-it>.



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Bart Jansen, *Trump's Travel Ban Could Cost \$18B in U.S. Tourism, Analysis Shows*, USA TODAY (March 29, 2017), <http://www.usatoday.com/story/news/world/2017/03/29/trumps-travel-ban-could-cost-18b-us-tourism-travel-analysts-say/99708758>.

Josh Gerstein, *Is Trump Stalling a Travel Ban Appeal at 9th Circuit?*, POLITICO (March 28, 2017), <http://www.politico.com/blogs/under-the-radar/2017/03/donald-trump-travel-ban-ninth-circuit-appeal-236575>.

Cogan Schneier, *Web of Litigation Grows Around Trump Travel Ban*, NATIONAL LAW JOURNAL (March 28, 2017), <http://www.nationallawjournal.com/id=1202782264436/Web-of-Litigation-Grows-Around-Trump-Travel-Ban?slreturn=20170229201754>.

Andrea Noble, *Full Fourth Circuit to Consider Hearing Case on Trump's Travel Limits*, WASHINGTON TIMES (March 27, 2017), <http://www.washingtontimes.com/news/2017/mar/27/trump-travel-ban-full-4th-circuit-court-appeals-co>.

Ryan Teague Beckwith, *President Trump's Own Words Keep Hurting His Travel Ban*, TIME (March 16, 2017), <http://time.com/4703614/travel-ban-judges-donald-trump-words>.

Alexander Burns, *2 Federal Judges Rule Against Trump's Latest Travel Ban*, NEW YORK TIMES (March 15, 2017), <https://www.nytimes.com/2017/03/15/us/politics/trump-travel-ban.html>.

Vivian Salama and Alicia Caldwell, *DHS Report Disputes Threat From Banned Nations*, AP (Feb. 24, 2017), <http://bigstory.ap.org/article/39f1f8e4ceed4a30a4570f693291c866/dhs-intel-report-disputes-threat-posed-travel-ban-nations>.

The requested information will help the public better understand the circumstances surrounding the creation and execution of the travel restrictions, the internal dissent that resulted from it, and how DOD has responded to reciprocal actions by other states.

Further, as explained below in support of the request for “news media” treatment, Ms. Currier is “primarily engaged in disseminating information.”

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### **Request for “News Media” Fee Status**

Ms. Currier is a representative of the news media and does not seek the requested records for commercial use. Accordingly, fees associated with the processing of this request should be limited to reasonable duplication costs. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Ms. Currier is a representative of the news media because she “gathers information of potential interest to a segment of the public, uses [her] editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *Id.* § 552(a)(4)(A)(ii)(II).

The Intercept is a digital news publication that was founded in 2013 with a mission to report on national security and foreign policy issues. The Intercept has since expanded to a staff of more than twenty reporters producing investigative reporting, analysis, commentary, and multimedia content focused on national security, politics, civil liberties, technology, criminal justice, the media, and more. The Intercept’s coverage has been recognized with awards from the Online News Association, the American Society of Magazine Editors, the New York Press Club, and others.

Cora Currier is a staff reporter for The Intercept. Ms. Currier has covered national security, counterterrorism, and immigration since joining the newsroom in 2013. Prior to that, she covered similar topics for the investigative news site ProPublica. She has reported on issues pertinent to the recent travel ban, including CBP’s policy on collecting social media information from foreign travelers,<sup>7</sup> government efforts to counter violent extremism, the No Fly list and other watchlisting procedures,<sup>8</sup> and in the past, has covered the cases of individuals blocked from

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<sup>7</sup> Cora Currier, *The US Government Wants to Read Travelers’ Tweets Before Letting Them In*, THE INTERCEPT (Oct. 21, 2016), <https://theintercept.com/2016/10/21/the-u-s-government-wants-to-read-travelers-tweets-before-letting-them-in/>.

<sup>8</sup> Cora Currier, *Government May Now Tell You Why You’re on a “No Fly” List, But Not Always*, THE INTERCEPT (April 15, 2015), <https://theintercept.com/2015/04/15/government-will-now-tell-youre-fly-list-except-wont/>.

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entering the United States on terrorism grounds.<sup>9</sup> She has previously requested, obtained, and reported on documents obtained via the FOIA on a range of national security-related issues.<sup>10</sup>

Thus, Ms. Currier should be classified as a “news media” requester for purposes of fee assessments.

### **Request for Public Interest Fee Waiver**

Ms. Currier requests a waiver of fees because disclosure of the requested records “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. § 286.12(l)(1).

Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government. First, the request concerns “identifiable operations or activities of the Federal Government[.]” 32 C.F.R. § 286.12(l)(2)(i). Specifically, the requested records will shed light on how (and whether) DOD officials were involved in the creation of restrictions limiting the ability of travelers from certain countries to enter the United States.

Second, disclosure of the requested records is “likely to contribute significantly to public understanding of those operations or activities.” *Id.* § 286.12(l)(2)(ii). The requested records will be “meaningfully informative” because they will shed more light on how the executive orders were developed and how DOD helped to implement them. *Id.* § 286.12(l)(2)(ii)(A). Furthermore, the requested records will “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.” *Id.* § 286.12(l)(2)(ii)(B). Ms. Currier does not seek this information for herself, but to incorporate into news reporting that will educate the public. Representatives of the news media such as Ms. Currier presumptively satisfy this factor. *Id.*

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<sup>9</sup> Cora Currier, *Why the U.S. Won't Allow a Dying Iranian Sociologist to Join His Family*, PROPUBLICA (Nov. 20, 2012), <https://www.propublica.org/article/why-the-us-wont-allow-a-dying-iranian-sociologist-to-join-his-family>.

<sup>10</sup> Cora Currier, *Newly Released Records Show the US Paid \$6 Million for Civilian Harm in Afghanistan*, THE INTERCEPT (Mar. 3, 2015), <https://theintercept.com/2015/03/04/newly-released-records-show-us-paid-6-million-afghan-civilian-harm/>.

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Third, the records are not primarily in the requester's commercial interest. Ms. Carrier seeks the requested information for newsgathering purposes and expects to incorporate it into journalistic work product. Such requests are not considered for a commercial purpose. *Id.* § 286.12(1)(2)(iii).

Thus, DOD should grant a public interest fee waiver for this request. Should the agency decline a fee waiver, Ms. Carrier agrees to pay up to \$100 for the processing of this request. If the estimated fees will exceed this limit, please inform me before you begin processing.

Thank you for your consideration of this request. As DOD regulations provide, we will anticipate your determination on expedited processing within ten (10) calendar days. *Id.* § 286.8(e)(1). If you have any questions or concerns, please do not hesitate to contact me at (415) 830-6664 or [marcia@zeitgeist.law](mailto:marcia@zeitgeist.law).

Regards,

A handwritten signature in blue ink, appearing to read 'Marcia Hofmann', with a stylized, cursive script.

Marcia Hofmann

# Exhibit 14

# Exhibit 14

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



**ZEITGEIST**

LAW PC

25 Taylor Street, San Francisco, CA 94102

+1 415.830.6664

April 3, 2017

Kevin Krebs  
Assistant Director, FOIA/Privacy Unit  
Executive Office for U.S. Attorneys  
U.S. Department of Justice  
Room 7300  
600 E Street NW  
Washington, DC 20530

**Re: Freedom of Information Act Request and Request for Expedited Processing**

Dear Mr. Krebs:

This is an expedited request under the Freedom of Information Act, 5 U.S.C. § 552. I am submitting it to the Department of Justice (DOJ) Executive Office for United States Attorneys (EOUSA) on behalf of Cora Carrier, a staff journalist at The Intercept.

**Requested Records**

On January 27, 2017, President Trump signed Executive Order No. 13,769, entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States.” Among other things, the order banned nationals of Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen from entering the United States for 90 days. The order was eventually enjoined in part or full by several federal courts, including the Ninth Circuit Court of Appeals.

On March 6, 2017, President Trump signed Executive Order No. 13,780, which had the same title as its predecessor. This new order also restricted travel to the United States from several predominantly Muslim countries. To date, portions of this order have been blocked by two federal district courts. The government is appealing those decisions to the Fourth Circuit and Ninth Circuit.



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Ms. Currier requests all agency records from January 20, 2017 to the present concerning Executive Order No. 13,769 and Executive Order No. 13,780.

We urge EOUSA to process this request consistent with DOJ policy directing a presumption of disclosure.<sup>1</sup>

This request includes, but is not limited to:

- A. Records related to briefings, discussions, talking points, emails (whether through .gov email addresses or private third-party services such as Gmail) or other communications:
  - 1. Among EOUSA personnel, including supervisors, officers, and managers;
  - 2. Between EOUSA officials and offices of United States Attorneys;
  - 3. Between EOUSA officials and the Executive Office of the President (EOP) or other White House offices;
  - 4. Between EOUSA officials and other federal agencies, including the Department of Homeland Security and Department of State; and
  - 5. Between EOUSA officials and members of Congress or congressional staffers, including aides to the House Judiciary Committee.
- B. Records reflecting EOUSA analysis of and response to judicial orders staying the enforcement of the executive orders, including discussions of legal liability for failing to follow those judicial orders.

Please produce any responsive records you identify in electronic format.

### **Request for Expedited Processing**

This requests warrants expedited processing under two standards: 28 C.F.R. §§ 16.5(e)(1)(ii) and (iv).

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<sup>1</sup> See Dep't of Justice Office of Information Policy, *President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines: Creating a "New Era of Open Government"* (2009), <https://www.justice.gov/oip/blog/foia-post-2009-creating-new-era-open-government>.

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A. Urgency to Inform the Public Standard

This request pertains to information about which there is “[a]n urgency to inform the public about an actual or alleged Federal Government activity,” and it is made by a requester “primarily engaged in disseminating information.” *Id.* § 16.5(e)(1)(ii).

There is an urgency to inform the public about the federal government’s implementation of highly controversial restrictions banning nationals of several Muslim-majority countries from entering the United States. Thousands of people across the country have protested these restrictions. Several different federal courts issued temporary relief against Order No. 13,769 citing constitutional concerns. Then-Acting Attorney General Sally Yates declined to instruct the DOJ to defend that executive order because she was “not convinced” that it was consistent with the DOJ’s “solemn obligation to always seek justice and stand for what is right”—and she was promptly fired and replaced by the President.<sup>2</sup> Executive Order No. 13,780 was intended to cure the legal deficiencies of the first travel ban, but to date, two federal courts have enjoined enforcement of that order, as well.<sup>3</sup>

These events have been the subject of articles from news outlets throughout the world. In fact, a Google News search for the string “Trump ‘executive order’ ‘travel ban’” returns close to two million results.<sup>4</sup>

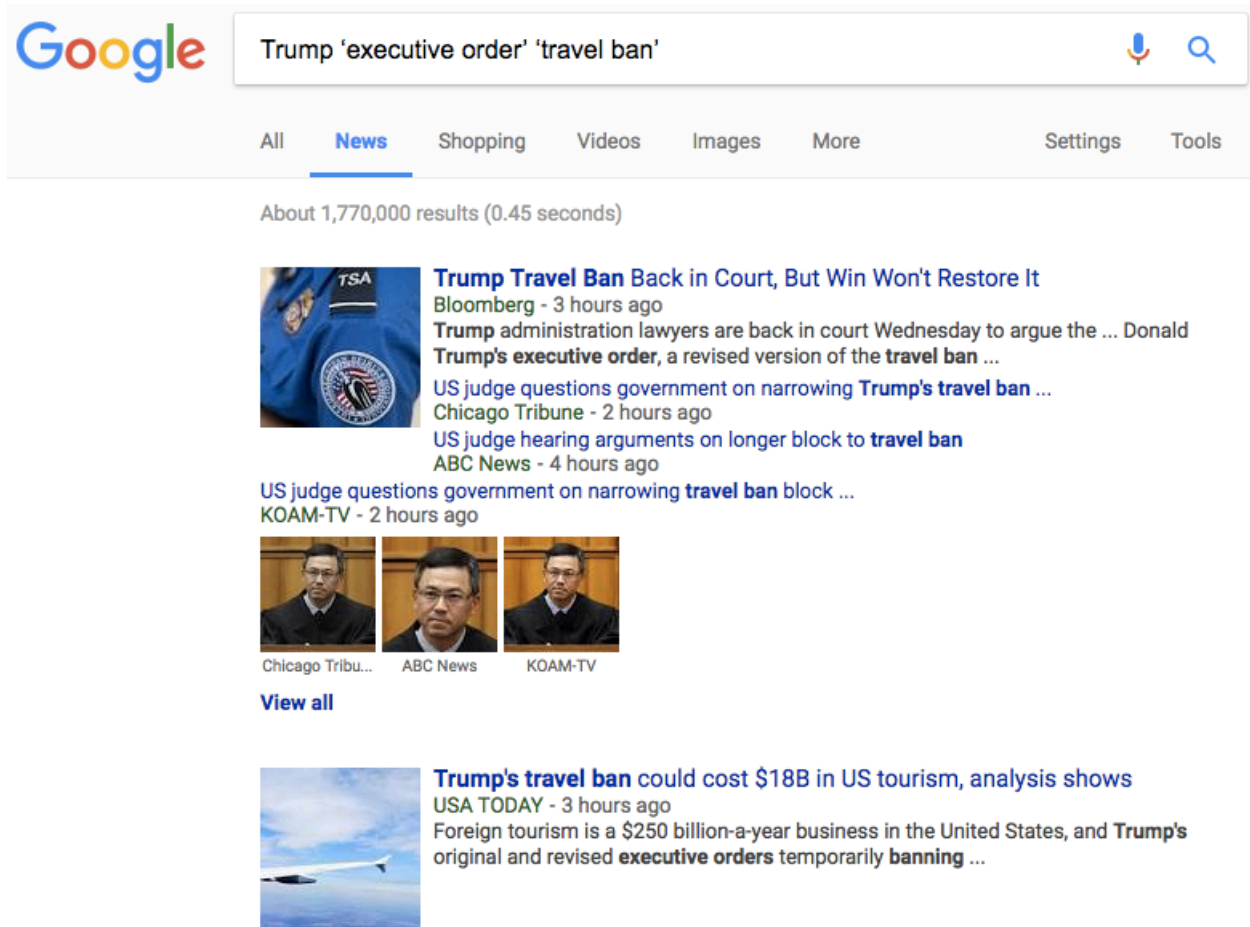
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<sup>2</sup> Mark Landler, Matt Apuzzo & Eric Lichtblau, *Trump Fires Acting Attorney General*, THE NEW YORK TIMES (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/politics/trump-immigration-ban-memo.html>.

<sup>3</sup> See Order Granting Motion to Convert Temporary Restraining Order to a Preliminary Injunction, *Hawai’i v. Trump*, No. 1:17-cv-00050-DKW-KSC, at 6, 16-17 (D. Haw. March 29, 2017) (notice of appeal filed March 30, 2017); Memorandum Opinion, *Int’l Refugee Assistance Project v. Trump*, No. 8:17-cv-00361-TDC, at 9, 28-33 (D. Md. March 16, 2017) (notice of appeal filed March 18, 2017).

<sup>4</sup> <https://goo.gl/b5OIn7>.

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The screenshot shows a Google search interface with the query "Trump 'executive order' 'travel ban'". The search results are filtered to "News". The top result is titled "Trump Travel Ban Back in Court, But Win Won't Restore It" from Bloomberg, dated 3 hours ago. Below the title, a snippet of the article is visible: "Trump administration lawyers are back in court Wednesday to argue the ... Donald Trump's executive order, a revised version of the travel ban ...". To the left of the text is a small image of a TSA uniform. Below the main result, there are three smaller images of men in suits, each with a caption: "Chicago Tribu...", "ABC News", and "KOAM-TV". A "View all" link is present below these images. The second main result is titled "Trump's travel ban could cost \$18B in US tourism, analysis shows" from USA TODAY, dated 3 hours ago. A snippet of the article is visible: "Foreign tourism is a \$250 billion-a-year business in the United States, and Trump's original and revised executive orders temporarily banning ...". To the left of this text is a small image of a plane flying over water.

Google

Trump 'executive order' 'travel ban'

All News Shopping Videos Images More Settings Tools

About 1,770,000 results (0.45 seconds)

**Trump Travel Ban Back in Court, But Win Won't Restore It**  
Bloomberg - 3 hours ago  
Trump administration lawyers are back in court Wednesday to argue the ... Donald Trump's executive order, a revised version of the travel ban ...  
US judge questions government on narrowing Trump's travel ban ...  
Chicago Tribune - 2 hours ago  
US judge hearing arguments on longer block to travel ban  
ABC News - 4 hours ago  
US judge questions government on narrowing travel ban block ...  
KOAM-TV - 2 hours ago

Chicago Tribu... ABC News KOAM-TV

View all

**Trump's travel ban could cost \$18B in US tourism, analysis shows**  
USA TODAY - 3 hours ago  
Foreign tourism is a \$250 billion-a-year business in the United States, and Trump's original and revised executive orders temporarily banning ...

Here is a sample of news articles published by major press organizations within the United States and internationally discussing recent developments related to this matter:

Laura Jarrett, *Federal Judge Extends Ruling Halting Travel Ban Indefinitely*, CNN (March 30, 2017), <http://www.cnn.com/2017/03/29/politics/hawaii-trump-travel-ban-extended>.

Kartikay Mehrotra and Erik Larson, *Trump Travel Ban Back in Court, But Win Won't Restore It*, BLOOMBERG (March 29, 2017), <https://www.bloomberg.com/politics/articles/2017-03-29/trump-travel-ban-back-in-court-but-even-a-win-won-t-restore-it>.

Bart Jansen, *Trump's Travel Ban Could Cost \$18B in U.S. Tourism, Analysis Shows*, USA TODAY (March 29, 2017), <http://www.usatoday.com/story/news/world/2017/03/29/trumps-travel-ban-could-cost-18b-us-tourism-travel-analysts-say/99708758>.

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Josh Gerstein, *Is Trump Stalling a Travel Ban Appeal at 9th Circuit?*, POLITICO (March 28, 2017), <http://www.politico.com/blogs/under-the-radar/2017/03/donald-trump-travel-ban-ninth-circuit-appeal-236575>.

Cogan Schneier, *Web of Litigation Grows Around Trump Travel Ban*, NATIONAL LAW JOURNAL (March 28, 2017), <http://www.nationallawjournal.com/id=1202782264436/Web-of-Litigation-Grows-Around-Trump-Travel-Ban?slreturn=20170229201754>.

Andrea Noble, *Full Fourth Circuit to Consider Hearing Case on Trump's Travel Limits*, WASHINGTON TIMES (March 27, 2017), <http://www.washingtontimes.com/news/2017/mar/27/trump-travel-ban-full-4th-circuit-court-appeals-co>.

Ryan Teague Beckwith, *President Trump's Own Words Keep Hurting His Travel Ban*, TIME (March 16, 2017), <http://time.com/4703614/travel-ban-judges-donald-trump-words>.

Alexander Burns, *2 Federal Judges Rule Against Trump's Latest Travel Ban*, NEW YORK TIMES (March 15, 2017), <https://www.nytimes.com/2017/03/15/us/politics/trump-travel-ban.html>.

Vivian Salama and Alicia Caldwell, *DHS Report Disputes Threat From Banned Nations*, AP (Feb. 24, 2017), <http://bigstory.ap.org/article/39f1f8e4ceed4a30a4570f693291c866/dhs-intel-report-disputes-threat-posed-travel-ban-nations>.

The requested information will help the public better understand the circumstances surrounding the creation and execution of the travel restrictions, as well as how EOUSA analyzed and responded to the judicial decisions prompted by them. Further, as explained below in support of the request for “news media” treatment, Ms. Currier is “primarily engaged in disseminating information.”

#### B. Widespread and Exceptional Media Interest Standard

The requested records relate to “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 28 C.F.R. § 16.5(e)(1)(iv).

As noted above, the subject of this request has been extensively covered by press around the world over the past few weeks.

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Further, the requested records relate directly to questions about the government's integrity that affect public confidence. Numerous federal courts have found the travel restrictions in both executive orders are likely unconstitutional. The requested information will help shed light on how EOUSA interacted with other parts of the government as the events of the past few weeks unfolded. It will also help the public understand the motivations behind the travel restrictions, the steps that have been taken to remedy the constitutional deficiencies identified by the courts, and how the Executive branch has worked to enforce and craft its defense of the executive orders.

Pursuant to 28 C.F.R. § 16.5(e)(3), I certify this statement to be true and correct.

### **Request for "News Media" Fee Status**

Ms. Currier is a representative of the news media and does not seek the requested records for commercial use. Accordingly, fees associated with the processing of this request should be limited to reasonable duplication costs. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Ms. Currier is a representative of the news media because she "gathers information of potential interest to a segment of the public, uses [her] editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Id.*; 28 C.F.R. § 16.10(b)(6).

Cora Currier is a staff reporter for The Intercept. The Intercept is a digital news publication that was founded in 2013 with a mission to report on national security and foreign policy issues. The Intercept has since expanded to a staff of more than twenty reporters producing investigative reporting, analysis, commentary, and multimedia content focused on national security, politics, civil liberties, technology, criminal justice, the media, and more. The Intercept's coverage has been recognized with awards from the Online News Association, the American Society of Magazine Editors, the New York Press Club, and others.

Ms. Currier has covered national security, counterterrorism, and immigration since joining the newsroom in 2014. Prior to that, she covered similar topics for the investigative news site ProPublica. She has reported on issues pertinent to the recent travel ban, including CBP's policy on collecting social media information from foreign travelers,<sup>5</sup> government efforts to counter

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<sup>5</sup> Cora Currier, *The US Government Wants to Read Travelers' Tweets Before Letting Them In*, THE INTERCEPT (Oct. 21, 2016), <https://theintercept.com/2016/10/21/the-u-s-government-wants-to-read-travelers-tweets-before-letting-them-in/>.

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violent extremism, the No Fly list and other watchlisting procedures,<sup>6</sup> and in the past, has covered the cases of individuals blocked from entering the United States on terrorism grounds.<sup>7</sup> She has previously requested, obtained, and reported on documents obtained via the FOIA on a range of national security-related issues.<sup>8</sup>

Finally, we note that per DOJ regulations, a request for records that supports the news-dissemination function of the requester is not considered to be for a commercial use. *Id.* 16.10(b)(6).

Thus, Ms. Currier should be classified as “news media” requesters for purposes of fee assessments.

### **Request for Public Interest Fee Waiver**

Ms. Currier requests a waiver of fees because disclosure of the requested records “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(1)(i)-(ii).

First, the request will “shed light on the operations or activities of the federal government.” *Id.* § 16.10(k)(2)(i). Specifically, the records will show how EOUSA officials were involved in the legal defense of restrictions on the ability of travelers from certain countries to enter the United States.

Second, disclosure of the requested records is likely to contribute significantly to public understanding” of this issue. *Id.* § 16.10(k)(2)(ii). Such disclosure will be “meaningfully

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<sup>6</sup> Cora Currier, *Government May Now Tell You Why You’re on a “No Fly” List, But Not Always*, THE INTERCEPT (April 15, 2015), <https://theintercept.com/2015/04/15/government-will-now-tell-youre-fly-list-except-wont/>.

<sup>7</sup> Cora Currier, *Why the U.S. Won’t Allow a Dying Iranian Sociologist to Join His Family*, PROPUBLICA (Nov. 20, 2012), <https://www.propublica.org/article/why-the-us-wont-allow-a-dying-iranian-sociologist-to-join-his-family>.

<sup>8</sup> Cora Currier, *Newly Released Records Show the US Paid \$6 Million for Civilian Harm in Afghanistan*, THE INTERCEPT (Mar. 3, 2015), <https://theintercept.com/2015/03/04/newly-released-records-show-us-paid-6-million-afghan-civilian-harm/>.



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informative” because it will give the public additional detail about DOJ’s defense of the executive orders. *Id.* § 16.10(k)(2)(ii)(A). The requested records will also “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.” *Id.* § 16.10(k)(2)(ii)(B). Ms. Carrier does not seek this information for herself, but to incorporate into news reporting that will educate the public. It is presumed that representatives of the news media such as Ms. Carrier satisfy this factor. *Id.*

Finally, the records are not primarily in the requester’s commercial interest. *Id.* § 16.10(k)(2)(iii). Ms. Carrier seeks the requested information for newsgathering purposes and expects to incorporate it into journalistic work product.

Thus, EOUSA should grant a public interest fee waiver for this request. Should the agency decline a fee waiver, Ms. Carrier agrees to pay up to \$100 for the processing of this request. If the estimated fees will exceed this limit, please inform me before you begin processing.

Thank you for your consideration of this request. As DOJ regulations provide, we will anticipate your determination on expedited processing within ten (10) calendar days. *Id.* § 16.5(e)(4). If you have any questions or concerns, please do not hesitate to contact me at (415) 830-6664 or [marcia@zeitgeist.law](mailto:marcia@zeitgeist.law).

Regards,

A handwritten signature in blue ink that reads "Marcia Hofmann". The signature is fluid and cursive, with the first name "Marcia" and last name "Hofmann" clearly distinguishable.

Marcia Hofmann

# Exhibit 15

# Exhibit 15

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



**ZEITGEIST**

LAW PC

25 Taylor Street, San Francisco, CA 94102  
+1 415.830.6664

April 3, 2017

Federal Bureau of Investigation  
Attn: FOI/PA Request  
Record/Information Dissemination Section  
170 Marcel Drive  
Winchester, CA 22602-4843

**Re: Freedom of Information Act Request and Request for Expedited Processing**

Dear FOIA Officers:

This is an expedited request under the Freedom of Information Act, 5 U.S.C. § 552. I am submitting it to the Federal Bureau of Investigation (FBI) on behalf of Cora Currier, a staff journalist at The Intercept.

**Requested Records**

On January 27, 2017, President Trump signed Executive Order No. 13,769, entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States.” Among other things, the order banned nationals of Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen from entering the United States for 90 days. The order was enjoined in part or full by several federal courts, one of which was upheld by the Ninth Circuit Court of Appeals.

On March 6, 2017, President Trump signed Executive Order No. 13,780, which had the same title as its predecessor. This new order also restricted travel to the United States from several predominantly Muslim countries. To date, portions of this order have been blocked by two federal district courts. The government is appealing those decisions to the Fourth Circuit and Ninth Circuit.

Ms. Currier requests agency records from January 20, 2017 to the present concerning the FBI’s analysis of the impact of Executive Order No. 13,769 and Executive Order No. 13,780.

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We urge the Bureau to process this request consistent with Justice Department policy directing a presumption of disclosure.<sup>1</sup>

This request includes, but is not limited to:

- A. Analyses, reports or assessments produced by the FBI about the impact of the executive orders' travel restrictions on national security.
- B. Analyses, reports or assessments produced by the FBI about the security risks posed by individuals from the nations covered by the executive orders, about the use of citizenship as an indicator of a terrorist threat to the United States, or otherwise evaluating the effectiveness of the travel ban in preventing national security threats.

Please produce any responsive records you identify in electronic format.

### **Request for Expedited Processing**

This request warrants expedited processing under two standards: 28 C.F.R. §§ 16.5(e)(1)(ii) and (iv).

A. Urgency to Inform the Public Standard

This request pertains to information about which there is “[a]n urgency to inform the public about an actual or alleged Federal Government activity,” and it is made by a requester “primarily engaged in disseminating information.” *Id.* § 16.5(e)(1)(ii).

There is an urgency to inform the public about the federal government’s implementation of highly controversial restrictions banning nationals of several Muslim-majority countries from entering the United States. Thousands of people across the country have protested these restrictions. Several different federal courts issued temporary relief against Order No. 13,769 citing constitutional concerns. Then-Acting Attorney General Sally Yates declined to instruct the DOJ to defend that executive order because she was “not convinced” that it was consistent with the DOJ’s “solemn obligation to always seek justice and stand for what is right”—and she was

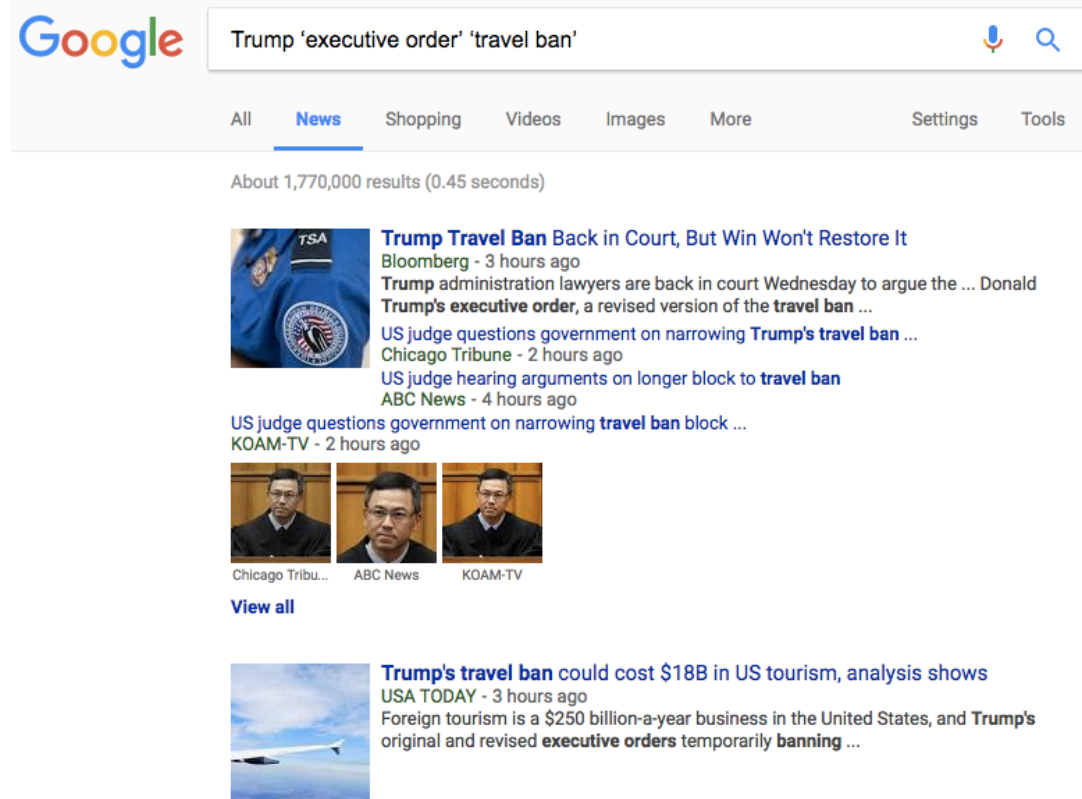
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<sup>1</sup> See Dep’t of Justice Office of Information Policy, *President Obama’s FOIA Memorandum and Attorney General Holder’s FOIA Guidelines: Creating a “New Era of Open Government”* (2009), <https://www.justice.gov/oip/blog/foia-post-2009-creating-new-era-open-government>.

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promptly fired and replaced by the President.<sup>2</sup> Executive Order No. 13,780 was intended to cure the legal deficiencies of the first travel ban, but to date, two federal courts have enjoined enforcement of that order, as well.<sup>3</sup>

These events have been the subject of articles from news outlets throughout the world. In fact, a Google News search for the string “Trump ‘executive order’ ‘travel ban’” returns close to two million results.<sup>4</sup>



<sup>2</sup> [Mark Landler](https://www.nytimes.com/2017/01/30/us/politics/trump-immigration-ban-memo.html), Matt Apuzzo & Eric Lichtblau, *Trump Fires Acting Attorney General*, THE NEW YORK TIMES (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/politics/trump-immigration-ban-memo.html>.

<sup>3</sup> See Order Granting Motion to Convert Temporary Restraining Order to a Preliminary Injunction, *Hawai'i v. Trump*, No. 1:17-cv-00050-DKW-KSC, at 6, 16-17 (D. Haw. March 29, 2017) (notice of appeal filed March 30, 2017); Memorandum Opinion, *Int'l Refugee Assistance Project v. Trump*, No. 8:17-cv-00361-TDC, at 9, 28-33 (D. Md. March 16, 2017) (notice of appeal filed March 18, 2017).

<sup>4</sup> <https://goo.gl/b5OIIn7>.

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Page 4

Here is a sample of news articles published by major press organizations within the United States and internationally discussing recent developments related to this matter:

Laura Jarrett, *Federal Judge Extends Ruling Halting Travel Ban Indefinitely*, CNN (March 30, 2017), <http://www.cnn.com/2017/03/29/politics/hawaii-trump-travel-ban-extended>.

Kartikay Mehrotra and Erik Larson, *Trump Travel Ban Back in Court, But Win Won't Restore It*, BLOOMBERG (March 29, 2017), <https://www.bloomberg.com/politics/articles/2017-03-29/trump-travel-ban-back-in-court-but-even-a-win-won-t-restore-it>.

Bart Jansen, *Trump's Travel Ban Could Cost \$18B in U.S. Tourism, Analysis Shows*, USA TODAY (March 29, 2017), <http://www.usatoday.com/story/news/world/2017/03/29/trumps-travel-ban-could-cost-18b-us-tourism-travel-analysts-say/99708758>.

Josh Gerstein, *Is Trump Stalling a Travel Ban Appeal at 9th Circuit?*, POLITICO (March 28, 2017), <http://www.politico.com/blogs/under-the-radar/2017/03/donald-trump-travel-ban-ninth-circuit-appeal-236575>.

Cogan Schneier, *Web of Litigation Grows Around Trump Travel Ban*, NATIONAL LAW JOURNAL (March 28, 2017), <http://www.nationallawjournal.com/id=1202782264436/Web-of-Litigation-Grows-Around-Trump-Travel-Ban?slreturn=20170229201754>.

Andrea Noble, *Full Fourth Circuit to Consider Hearing Case on Trump's Travel Limits*, WASHINGTON TIMES (March 27, 2017), <http://www.washingtontimes.com/news/2017/mar/27/trump-travel-ban-full-4th-circuit-court-appeals-co>.

Ryan Teague Beckwith, *President Trump's Own Words Keep Hurting His Travel Ban*, TIME (March 16, 2017), <http://time.com/4703614/travel-ban-judges-donald-trump-words>.

Alexander Burns, *2 Federal Judges Rule Against Trump's Latest Travel Ban*, NEW YORK TIMES (March 15, 2017), <https://www.nytimes.com/2017/03/15/us/politics/trump-travel-ban.html>.

Vivian Salama and Alicia Caldwell, *DHS Report Disputes Threat From Banned Nations*, AP (Feb. 24, 2017), <http://bigstory.ap.org/article/39f1f8e4ceed4a30a4570f693291c866/dhs-intel-report-disputes-threat-posed-travel-ban-nations>.



April 3, 2017  
FBI FOIA Request  
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Page 5

The requested information will help the public better understand the circumstances surrounding the creation and execution of the travel restrictions, as well as how DOJ has responded to the public outcry and judicial decisions bearing on them. Further, as explained below in support of the request for “news media” treatment, Ms. Currier is “primarily engaged in disseminating information.”

B. Widespread and Exceptional Media Interest Standard

The requested records relate to “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 28 C.F.R. § 16.5(e)(1)(iv).

As noted above, the subject of this request has been extensively covered by press around the world over the past few weeks.

Further, the requested records relate directly to questions about the government’s integrity that affect public confidence. Numerous federal courts have found the travel restrictions in both executive orders are likely unconstitutional. The requested information will help shed light on how FBI has interacted with the White House, Congress, and others as the events of the past few weeks unfolded. It will also help the public understand the motivations behind the travel restrictions, the steps that have been taken to remedy the constitutional deficiencies identified by the courts, and how the Executive branch has worked to enforce and craft its defense of the executive orders.

Pursuant to 28 C.F.R. § 16.5(e)(3), I certify this statement to be true and correct.

**Request for “News Media” Fee Status**

Ms. Currier is a representative of the news media and does not seek the requested records for commercial use. Accordingly, fees associated with the processing of this request should be limited to reasonable duplication costs. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Ms. Currier is a representative of the news media because she “gathers information of potential interest to a segment of the public, uses [her] editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *Id.*; 28 C.F.R. § 16.10(b)(6).

Cora Currier is a staff reporter for The Intercept. The Intercept is a digital news publication that was founded in 2013 with a mission to report on national security and foreign policy issues. The

April 3, 2017  
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Intercept has since expanded to a staff of more than twenty reporters producing investigative reporting, analysis, commentary, and multimedia content focused on national security, politics, civil liberties, technology, criminal justice, the media, and more. The Intercept's coverage has been recognized with awards from the Online News Association, the American Society of Magazine Editors, the New York Press Club, and others.

Ms. Currier has covered national security, counterterrorism, and immigration since joining the newsroom in 2014. Prior to that, she covered similar topics for the investigative news site ProPublica. She has reported on issues pertinent to the recent travel ban, including CBP's policy on collecting social media information from foreign travelers,<sup>5</sup> government efforts to counter violent extremism, the No Fly list and other watchlisting procedures,<sup>6</sup> and in the past, has covered the cases of individuals blocked from entering the United States on terrorism grounds.<sup>7</sup> She has previously requested, obtained, and reported on documents obtained via the FOIA on a range of national security-related issues.<sup>8</sup>

Finally, we note that per DOJ regulations, a request for records that supports the news-dissemination function of the requester is not considered to be for a commercial use. *Id.* 16.10(b)(6).

Thus, Ms. Currier should be classified as "news media" requesters for purposes of fee assessments.

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<sup>5</sup> Cora Currier, *The US Government Wants to Read Travelers' Tweets Before Letting Them In*, THE INTERCEPT (Oct. 21, 2016), <https://theintercept.com/2016/10/21/the-u-s-government-wants-to-read-travelers-tweets-before-letting-them-in/>.

<sup>6</sup> Cora Currier, *Government May Now Tell You Why You're on a "No Fly" List, But Not Always*, THE INTERCEPT (April 15, 2015), <https://theintercept.com/2015/04/15/government-will-now-tell-youre-fly-list-except-wont/>.

<sup>7</sup> Cora Currier, *Why the U.S. Won't Allow a Dying Iranian Sociologist to Join His Family*, PROPUBLICA (Nov. 20, 2012), <https://www.propublica.org/article/why-the-us-wont-allow-a-dying-iranian-sociologist-to-join-his-family>.

<sup>8</sup> Cora Currier, *Newly Released Records Show the US Paid \$6 Million for Civilian Harm in Afghanistan*, THE INTERCEPT (Mar. 3, 2015), <https://theintercept.com/2015/03/04/newly-released-records-show-us-paid-6-million-afghan-civilian-harm/>.

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### **Request for Public Interest Fee Waiver**

Ms. Currier requests a waiver of fees because disclosure of the requested records “is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(1)(i)-(ii).

First, the request will “shed light on the operations or activities of the federal government.” *Id.* § 16.10(k)(2)(i). Specifically, the records will shed light on how the FBI was involved in the creation and execution of restrictions on the ability of travelers from certain countries to enter the United States.

Second, disclosure of the requested records is likely to contribute significantly to public understanding” of this issue. *Id.* § 16.10(k)(2)(ii). Such disclosure will be “meaningfully informative” because it will give the public additional detail about DOJ’s implementation and defense of the executive orders. *Id.* § 16.10(k)(2)(ii)(A). The requested records will also “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.” *Id.* § 16.10(k)(2)(ii)(B). Ms. Currier does not seek this information for herself, but to incorporate into news reporting that will educate the public. It is presumed that representatives of the news media such as Ms. Currier satisfy this factor. *Id.*

Finally, the records are not primarily in the requester’s commercial interest. *Id.* § 16.10(k)(2)(iii). Ms. Currier seeks the requested information for newsgathering purposes and expects to incorporate it into journalistic work product.

Thus, the FBI should grant a public interest fee waiver for this request. Should the FBI decline a fee waiver, Ms. Currier agrees to pay up to \$100 for the processing of this request. If the estimated fees will exceed this limit, please inform me before you begin processing.

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Thank you for your consideration of this request. As DOJ regulations provide, we will anticipate your determination on expedited processing within ten (10) calendar days. *Id.* § 16.5(e)(4). If you have any questions or concerns, please do not hesitate to contact me at (415) 830-6664 or [marcia@zeitgeist.law](mailto:marcia@zeitgeist.law).

Regards,

A handwritten signature in blue ink that reads "Marcia Hofmann". The signature is written in a cursive, flowing style.

Marcia Hofmann

# Exhibit 16

# Exhibit 16

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



Homeland  
Security

April 4, 2017

**SENT VIA E-MAIL TO: marcia@zeitgeist.law**

Marcia Hofmann  
Zeitgeist Law PC  
25 Taylor St  
San Francisco, CA 94102

Re: **2017-HQFO-00610**

Dear Hofmann:

This letter acknowledges receipt of your April 3, 2017, Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), for records related to briefings, discussions, talking points, emails (whether through .gov email addresses or private third-party services such as Gmail) or other communications: among DHS and CBP personnel, including supervisors, officers, managers, and union representatives; from or about travelers asking for clarification or about the ban's effects; between DHS or CBP officials and the Executive Office of the President or other White House offices; between DHS or CBP officials and members of Congress or congressional staffers, including aids to the House Judiciary Committee; between DHS or CBP officials and the staff or management of commercial airlines; between DHS or CBP officials and local and state agencies, including local law enforcement and agents at ports of entry such as General Edward Lawrence Logan International Airport (BOS), Los Angeles International Airport (LAX), Washington Dulles International Airport (IAD), Seattle-Tacoma International Airport (SEA), San Francisco International Airport (SFO), Dallas/Fort Worth International Airport (DFW), and John F. Kennedy International Airport (JFK); between DHS or CBP officials and nonprofits or policy think tanks such as the Center for Immigration Studies, Federation for American Immigration Reform, the Center for Security Policies, the Heritage Foundation, the Investigative Project on Terrorism; between DHS or CBP officials and non-government representatives and outside consultants, including private firms such as Guiliani Partners; and between DHS or CBP officials and reporters from Breitbart News, Fox News, The Daily Caller, The Daily Wire, the Washington Times, and the Free Beacon regarding the executive orders. Records reflecting analysis and response of DHS or CBP officials to judicial orders staying the enforcement of the executive order, including discussions of legal liability for failing to follow those orders. Any analyses, reports, or assessments about the security risks posed by individuals from the nations covered by the executive orders. Any analyses, reports, or other documents assessing the impact or effectiveness of the travel restrictions in preventing terrorist or national security threats. Any analyses, reports, or other documents assessing the use of citizenship as an indicator of a terrorist threat to the United States, including the report entitled "Citizenship Likely an Unreliable Indicator of Terrorist Threat to the United States," which was prepared at the request of the DHS Acting Under Secretary for Intelligence and Analysis. Any



records related to the Inspector General's review of the implementation of Executive Order No. 13,769 including directives to DHS staff about the retention of records relevant to the investigation. This office received your request on April 3, 2017.

As it relates to your request for expedited processing and fee waiver, your request is granted.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' 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. As your request seeks documents that will require a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2017-HQFO-00610**. Please refer to this identifier in any future correspondence. To check the status of your FOIA request, you may contact this office at 1-866-431-0486 or 202-343-1743, or you may check the status of your request online at <http://www.dhs.gov/foia-status>.

Sincerely,

A handwritten signature in black ink, appearing to read 'LaEbony Livingston'.

LaEbony Livingston  
FOIA Program Specialist

# Exhibit 17

# Exhibit 17

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



United States Department of State

Washington, D.C. 20520

APR 04 2017

Dear Requester,

RE: Any and all records/correspondence regarding E.O. No. 13,780  
and muslim travel Ban b/w DOS, E.O.P., White House, Congress,  
visa applicants, non-profits, etc.

This is in response to your request dated 04/03/2017, which was received on 04/03/2017. We have assigned Case Control Number F-2017-08348 and will begin the processing of your request based upon the information provided in your communication.

The cut-off date is the date the search is initiated unless you have provided a specific timeframe.

After consideration of your request for expedited processing under the Department's rules governing Freedom of Information Act requests, we have determined that your request does warrant expedited processing.

We have considered your request for a fee waiver. Based upon the information provided in your letter, your request for a fee waiver has been granted; therefore, your request will be processed at no charge to you.

We will notify you as soon as responsive material has been retrieved and reviewed.

Should you want to contact us, you may call our FOIA Requester Service Center at (202) 261-8484 or send an email to FOIAstatus@state.gov. Please refer to the Case Control Number in any communication.

Sincerely,

Requester Communications Branch  
Office of Information Programs & Services

Office of Information Programs and Services  
U.S. Department of State, SA-2  
Washington, DC 20522-8100  
Website: [www.foia.state.gov](http://www.foia.state.gov)

Inquiries:  
Phone: 1-202-261-8484  
FAX: 1-202-261-8579  
E-mail: FOIAstatus@state.gov

# Exhibit 18

# Exhibit 18

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



**U.S. Department of Justice**  
Office of Information Policy  
*Suite 11050*  
1425 New York Avenue, NW  
Washington, DC 20530-0001

Telephone: (202) 514-3642

April 13, 2017

Ms. Marcia Hofmann  
Zeitgeist Law, P.C.  
25 Taylor Street  
San Francisco, CA 94102  
[marcia@zeitgeist.law](mailto:marcia@zeitgeist.law)

Re: DOJ-2017-003341 (AG)  
DOJ-2017-003345 (DAG)  
DOJ-2017-003346 (OLA)  
DOJ-2017-003347 (PAO)  
VRB:DRH:JMS

Dear Ms. Hofmann:

This is to acknowledge receipt of your letter, on behalf of Cora Carrier, dated and received in this Office on April 3, 2017, in which you requested records pertaining Executive Order 13769 and its successor, Executive Order 13780, "Protecting the Nation from Foreign Terrorist Entry Into the United States." This response is made on behalf of the Offices of the Attorney General, Deputy Attorney General, Legislative Affairs, and Public Affairs.

You have requested expedited processing of the request pursuant to the Department's standard permitting expedition for requests involving "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." See 28 C.F.R. § 16.5(e)(1)(ii) (2016). Based on the information you have provided, I have determined that your request for expedited processing should be granted. Accordingly, your request has been assigned to an Attorney-Advisor in this Office and records searches have been initiated in the Offices of the Attorney General, Deputy Attorney General, Legislative Affairs, and Public Affairs.

Although your request has been granted expedited processing, we are required to advise you that the records you seek require searches in other offices, and so your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii). Accordingly, we have not yet completed a search to determine whether there are records within the scope of your request. The time needed to process your request will necessarily depend on the complexity of our records search and on the volume and complexity of any records located. Your request has been assigned to the expedited track, and will be processed as soon as practicable.

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request. In your letter, Ms. Carrier agreed to pay fees up to \$100 in the event that a fee waiver is not granted.

If you have any questions or wish to discuss the processing of your request, you may contact James Smith, the Attorney-Advisor processing your request, by telephone at the above number or you may write to him at Office of Information Policy, United States Department of

-2-

Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001. Lastly, you may contact our FOIA Public Liaison at the above telephone number to have any concerns you may have addressed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Vanessa R. Brinkmann", with a small "BR" monogram at the end.

Vanessa R. Brinkmann  
Senior Counsel



# Exhibit 19

# Exhibit 19

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



U.S. Department of Justice

Office of Legal Counsel

---

Washington, D.C. 20530

April 5, 2017

Marcia Hofmann  
Zeitgeist Law PC  
marcia@zeitgeist.law  
O.B.O. The Intercept

**Re: FOIA Tracking No. FY17-184**

Dear Ms. Hofmann:

This letter acknowledges receipt of your April 3, 2017 Freedom of Information Act ("FOIA") request to the Office of Legal Counsel ("OLC") on behalf of The Intercept, in which you sought "records from February 1, 2017 to the present concerning the [OLC's] analysis and implementation of Executive Order No. 13,769 and Executive Order No. 13,780." We received your request on April 3, 2017, and it has been assigned tracking number **FY17-184**.

Your request for expedited processing has been granted and your request has been assigned to the "expedited" processing track. Because of the considerable number of FOIA requests received by OLC before your request, including other previously expedited requests, our staff has not yet been able to complete a search to determine whether there are documents within the scope of your request. Please note that it also is likely that we will be unable to respond to your request within the twenty-day statutory deadline. I regret the necessity of this delay, but I assure you that your request will be given priority and processed as soon as practicable.

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request. We note that in the event your fee waiver is denied, you have agreed to pay fees up to \$100.

In the meantime, if you have any questions or wish to discuss your request, you may contact Melissa Golden, our Lead Paralegal and FOIA Specialist and FOIA Liaison, at (202) 514-2053, or at Office of Legal Counsel, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Room 5511, Washington, DC 20530.

Sincerely,

A handwritten signature in blue ink, reading "Paul P. Colborn", is written over a horizontal line.

Paul P. Colborn  
Special Counsel

# Exhibit 20

# Exhibit 20

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



**U.S. Department of Justice**  
Office of Information Policy  
*Suite 11050*  
1425 New York Avenue, NW  
Washington, DC 20530-0001

Telephone: (202) 514-3642

Marcia Hofmann, Esq.  
Zeitgeist Law PC  
25 Taylor Street  
San Francisco, CA 94102  
[marcia@zeitgeist.law](mailto:marcia@zeitgeist.law)

Re: Appeal No. DOJ-AP-2017-003429  
Request No.EOUSA-2017-001021  
SRO:JNW

**VIA: FOIAonline**

Dear Ms Hofmann:

This is to advise you that your administrative appeal on behalf of your client, Cora Currier of The Intercept, from the action of the Executive Office for United States Attorneys (EOUSA) was received in this Office on April 10, 2017. You appealed from EOUSA's denial of your client's request for expedited treatment of her Freedom of Information Act request.

After carefully considering your appeal, and based on the information presented, I believe that expedited processing of your client's request is warranted. Accordingly, I am remanding your client's request to EOUSA, where it will be processed as quickly as practicable.

If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

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X 

Sean R. O'Neill

Chief Administrative Appeals Staff

# Exhibit 21

# Exhibit 21

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION



U.S. Department of Justice

**Federal Bureau of Investigation**  
*Washington, D.C. 20535*

April 27, 2017

MS. MARCIA HOFMANN  
ZEITGEIST LAW PC  
25 TAYLOR STREET  
SAN FRANCISCO, CA 94102

FOIPA Request No.: 1371948-000  
Subject: FBI's Analysis of Impact of  
Executive Orders 13769 and 13780  
(January 20, 2017 - Present)

Dear Ms. Hofmann:

This is in reference to your letter directed to the Federal Bureau of Investigation (FBI), in which you requested expedited processing for the above-referenced Freedom of Information Act (FOIA) request. Pursuant to the Department of Justice (DOJ) standards permitting expedition, expedited processing can only be granted when it is determined that a FOIPA request involves one or more of the below categories.

You have requested expedited processing according to:

- ☐ **28 C.F.R. §16.5 (e)(1)(i):** "Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual."
- ☒ **28 C.F.R. §16.5 (e)(1)(ii):** "An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information."
- ☐ **28 C.F.R. §16.5 (e)(1)(iii):** "The loss of substantial due process of rights."
- ☐ **28 C.F.R. §16.5 (e)(1)(iv):** "A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence."

You have provided enough information concerning the statutory requirements permitting expedition; therefore, your request is approved.

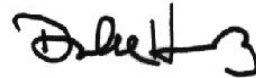
For questions regarding our determinations, visit the [www.fbi.gov/foia](http://www.fbi.gov/foia) website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.



You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing [ogis@nara.gov](mailto:ogis@nara.gov). Alternatively, you may contact the FBI's FOIA Public Liaison by emailing [foipaquestions@ic.fbi.gov](mailto:foipaquestions@ic.fbi.gov). If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hardy", with a stylized flourish at the end.

David M. Hardy  
Section Chief  
Record/Information  
Dissemination Section  
Records Management Division

# Exhibit 22

# Exhibit 22

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION

**Subject:** (17-F-0778) Update of Freedom of Information Act Request for Expedited Processing (UNCLASSIFIED)

**From:** "Jenkins, Cheryl D CIV WHS (US)" <cheryl.d.jenkins2.civ@mail.mil>

**Date:** 5/5/17, 12:16 PM

**To:** "marcia@zeitgeist.law" <marcia@zeitgeist.law>

CLASSIFICATION: UNCLASSIFIED

Dear Ms. Hoffman:

We have taken an additional review of your request and are granting your request for expedited processing, in accordance with Department of Defense (DoD) Regulation 5400.7-R. We have initiated the necessary search actions with the appropriate components of the Office of the Secretary of Defense (OSD).

For your awareness, please understand that the granting of expedited processing does not provide for a guarantee that your request will be completed by a certain date, as all of our required procedures for searching and reviewing any records located, must be followed.

Cheryl Jenkins  
FOIA Analyst  
Office of Secretary of Defense/Joint Staff  
Freedom of Information Division (FOID)  
Comm: 571-372-0445  
[cheryl.d.jenkins2.civ@mail.mil](mailto:cheryl.d.jenkins2.civ@mail.mil)

.....  
Please note that the Office of Government Information Services (OGIS) offers services to requesters who have disputes with Federal agencies. If you have concerns about the processing of your request, please contact OGIS at:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, MD 20740  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 202-741-5770  
Fax: 202-741-5769

CLASSIFICATION: UNCLASSIFIED

—Attachments:—

17-F-0778 Pal Request Form.pdf

50.8 KB

# Exhibit 23

# Exhibit 23

*Cora Currier v. DHS, et al.*

Case No. 3:17-cv-01799-JSC

DECLARATION OF MARCIA HOFMANN IN SUPPORT OF PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR PRELIMINARY INJUNCTION

July 17, 2017

Marcia Hofmann  
Zeitgeist Law Firm  
25 Taylor Street  
San Francisco, CA 94102

Re: CBP-2017-031844

Dear Ms. Hofmann:

This is an initial partial response to your clients' Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated February 1, 2017, which seeks records from U.S. Customs and Border Protection (CBP). Your clients requested all agency records from January 20, 2017 to present concerning CBP's analysis and implementation of the Executive Order. The records included in this response have been deemed responsive to your request.

This release includes a total of 56 pages of records responsive to your clients' request, marked as EO FOIA CBP 0000000001-0000000056. CBP has determined that 53 pages of the records are partially released, pursuant to Title 5 U.S.C. § 552 (b)(5), (b)(6), (b)(7)(C) and (b)(7)(E). Three pages, marked as EO FOIA CBP 0000000025-0000000027, are being withheld in full pursuant to Title 5 U.S.C. § 552 (b)(5), (b)(6), and (b)(7)(C).

**Exemption 5** protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege.

- **Deliberative Process Privilege**

The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter- or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

- **Attorney Work-Product Privilege**

The attorney-work product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation.

- **Attorney-Client Privilege**

The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his client based upon, and thus reflecting those facts, as well as communications between

attorneys that reflect client-supplied information. The attorney-client privilege is not limited to the context of litigation.

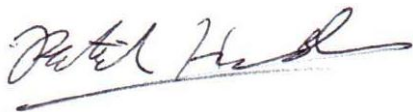
**Exemption (b)(6)** exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, driver license, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

**Exemption (b)(7)(C)** protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate.

**Exemption (b)(7)(E)** protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

As this matter is currently in litigation, if you need further assistance or would like to discuss any aspect of this response, please contact Matthew J. Berns, Trial Attorney, Department of Justice, Civil Division, Federal Programs Branch.

Sincerely,

A handwritten signature in dark ink, appearing to read "Patrick Howard", with a horizontal line drawn underneath it.

Patrick Howard  
Branch Chief  
U.S. Customs and Border Protection, FOIA Division  
Privacy and Diversity Office

Enclosure(s)



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Attorneys for Plaintiff CORA CURRIER

**UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

CORA CURRIER,

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY,  
 et al.,

Defendants.

Case No. 3:17-cv-01799-JSC

**[PROPOSED] ORDER GRANTING  
 PLAINTIFF CORA CURRIER'S  
 MOTION FOR A PRELIMINARY  
 INJUNCTION**

Date: August 24, 2017

Time: 9:00 a.m.

Place: Courtroom F, 15th Floor

Magistrate Judge Jacqueline Scott Corley

This matter came on for hearing before the Court on Plaintiff's Motion for a Preliminary Injunction. Having given full consideration to all of Plaintiff's papers, evidence, and the relevant authorities, all of Defendants' responses thereto, and the oral presentations of counsel, and good cause appearing, in accordance with Fed. R. Civ. P. 65(b), it is **HEREBY ORDERED**:

1. That Plaintiff's motion for a preliminary injunction is granted; and it is
2. **FURTHER ORDERED** that Defendants shall complete the processing of

1 Plaintiff's February 1, 2017 and April 3, 2017 Freedom of Information Act requests and produce or  
2 identify all responsive records no later than September 5, 2017; and it is

3 3. **FURTHER ORDERED** that Defendants shall provide Plaintiff with an index and  
4 declaration, as specified in *Vaughn v. Rosen*, 484 F.2d 820, 826-8 (D.C. Cir. 1973), stating the  
5 justification for the withholding of any records responsive to Plaintiff's requests within 30 days of  
6 the entry of this Order; and it is  
7

8 4. **FURTHER ORDERED** that Defendants shall file with the Court and serve upon  
9 Plaintiff's counsel within 30 days of the entry of this Order an affidavit or declaration attesting to  
10 and detailing Defendants' compliance with it.

11 \* \* \*

12 **ORDER**

13  
14 IT IS SO ORDERED.

15 DATED: \_\_\_\_\_  
16 HON. JACQUELINE SCOTT CORLEY  
17 UNITED STATES MAGISTRATE JUDGE  
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