



Mongthu Zago  
FOIL Counsel  
Records Access Officer  
Executive Chamber  
State Capitol  
Albany, NY 12224

June 21, 2016

**RE: REQUEST FOR RECORDS UNDER THE FREEDOM OF INFORMATION LAW**

Dear Ms. Zago:

The Center for Constitutional Rights, Jewish Voice for Peace, and Palestine Legal—all non-profit advocacy and public education organizations—submit this request for information regarding Governor Andrew Cuomo’s Executive Order No. 157, issued on June 5, 2016, pursuant to the New York Freedom of Information Law (FOIL), Sections 84-90 of the Public Officers Law, and its implementing regulations, 21 NYCRR Part 1401. The Governor’s Order has generated substantial public interest and controversy, as it requires state officials to create a blacklist of organizations and businesses that have expressed political opposition to the Israeli government’s continuing human rights violations in the Occupied Palestinian Territory (West Bank, including East Jerusalem, and Gaza) by answering Palestinian civil society’s call to boycott, divest from, and sanction Israel’s businesses and institutions until there is a just resolution to Palestinian aspirations for recognition and human rights.

**We request:**

1. Any and all public records concerning Executive Order No. 157 (“the Order”), signed by Governor Andrew Cuomo on June 5, 2016—including but not limited to:
  - a. Records related to “BDS” or “Boycott Divestment Sanctions,” and/or “Campaign Against Israel,” or related to the boycott of Israel.
  - b. Records related to the issuance of this Order, including its origins, purpose, and standards for its enforcement.
  - c. Records related to the timing of the issuance of this Order.
  - d. Records related to the legality or legal justification for the Order
  - e. Records related to the June 5, 2016 event at the Harvard Club of New York where the Order was signed, including but not limited to the list of invited guests and/or communications with invited guests;

- f. Records referencing the Order in relation to New York State Senate bills S6378A (Jan. 8, 2016), S6086 (Nov. 6, 2015), and/or S8017 (June 6, 2016), and/or Assembly bills A8220A (June 12, 2015) and/or A9036 (Jan. 19, 2016).
- g. Communications between Governor Cuomo or his staff and the governor of another state or his/her/their staff regarding the Order and Requests 1(a) and 1(b), *supra*.
- h. Communications between Governor Cuomo or his staff and any of the following individuals, including government officials, regarding the Order and Requests 1(a) and 1(b), *supra*:
  - i. Jerrold Nadler, United States Congressman, New York 10th District
  - ii. John Flanagan, New York State Senate Majority Leader
  - iii. Jack Martins, New York State Senator, District 7
  - iv. Todd Kaminski, New York State Senator, District 9
  - v. Michael Gianaris, New York State Senator, District 12
  - vi. Carl Heastie, New York State Assembly Speaker
  - vii. Charles Lavine, New York State Assemblyman, District 13
  - viii. Phil Goldfeder, New York State Assemblyman, District 23
  - ix. David Weprin, New York State Assemblyman, District 24
  - x. Nily Rozic, New York State Assemblywoman, District 25
  - xi. Helene Weinstein, New York State Assemblywoman, District 41
  - xii. Walter Mosley, New York State Assemblyman, District 57
- i. Communication between Governor Cuomo or his staff and any of the following organizations and foreign governments, or officers of the following organizations and/or foreign governments, including their agents, or individuals speaking on behalf of the following organizations and/or foreign governments regarding the subject matter referenced in Request 1(a) and 1(b), *supra*:
  - i. The Government of Israel, to include:
    - 1. The Consulate General of Israel in New York
    - 2. The Permanent Mission of Israel to the United Nations
  - ii. American Israel Public Affairs Committee
  - iii. American Jewish Committee

- iv. Anti-Defamation League
  - v. Conference of Presidents of Major Jewish Organizations
  - vi. Governors Against BDS
  - vii. Israel Project
  - viii. Jewish Community Relations Council of New York
  - ix. Orthodox Union
  - x. StandWithUs
  - xi. UJA-Federation of New York (a/k/a United Jewish Appeal – Federation of Jewish Philanthropies of New York)
  - xii. Zionist Organization of America
2. All records concerning New York State Senate bills S6378A (Jan. 8, 2016), S6086 (Nov. 6, 2015), and/or S8017 (June 6, 2016), and/or Assembly bills A8220A (June 12, 2015) and/or A9036 (Jan. 19, 2016) (“the Bills”)—including, but not limited to:
- a. Ten-day memoranda or documents produced to track legislation or negotiate amendments referencing the Bills.
  - b. Communications between Governor Cuomo or his staff and any of the individuals listed in Request No. 1(h), *supra*, regarding the Bills.
  - c. Communication between Governor Cuomo or his staff and any of the following organizations, officers of the following organizations, or individuals speaking on behalf of the organizations listed in Request No. 1(i), *supra*, regarding the Bills.

\*\*\*

### **Timing and Definitions**

Pursuant to Section 89(3) of the Public Officers Law, we expect a response within five (5) business days of your receipt of the Request. Please release information responding to this request on a rolling basis.

Records. For purposes of this request, “records” shall include but not be limited to any telephone messages, voice-mail messages, hand-written notes, emails, text messages, computer files, paper files, plans, reports, statements, memoranda, opinions, folders, papers, communications as defined below, and any other records as defined by Section 86 of the Public Officers Law. Records shall also include but not be limited to paper records, electronic records, audiotapes, videotapes, photographs, and back-up tapes.

Communications. “Communications” shall include but not be limited to any correspondences, instructions, agreements, emails, telephone messages, voice mail messages, text messages, instant message or chat logs, daily agendas, calendars, information about

scheduled meetings and/or discussions, whether in-person or over the telephone or via video-conference, agendas for those meetings and/or discussions, participants included in those meetings and/or discussions, minutes of any such meetings and/or discussions, the topics discussed at those meetings and/or discussions, email regarding meetings and/or discussions, email, facsimiles, cables, text messages, instant message or chat logs, or communications sent as a result of those meetings and/or discussions, transcripts or notes of any such meetings and/or discussions to the extent they relate to the aforementioned requested information, and any other communications as understood by the common usage of the term.

### **Format and Exemptions/Redactions**

We request to receive all information responsive to our request in searchable electronic format, whenever possible. Electronic records should be produced in their unlocked native format with all original metadata and original filenames. Please keep email families together; an email and all of its attachments should be produced so long as at least one of those is responsive. When searching emails, please search all folders, including inbox, subject matter folders, sent items, archived items, and deleted items. Please produce all metadata fields for emails, including BCC and all others. Paper records should be scanned and produced as searchable PDF files. Please deliver the records by email to the email address below.

If this request is denied in whole or in part, please identify the appropriate appellate authority and justify all specific deletions by reference to exemptions in the statute. In addition, do not redact any non-responsive information from any records; we request the complete copies of any records with any responsive information.

### **Fee Waiver**

The above requests are a matter of public interest, as the order and the constitutional concerns it raises has garnered significant attention in the media.<sup>1</sup> Accordingly, we request a fee waiver and expedited processing. The disclosure of the information sought is not for commercial

---

<sup>1</sup> See Jesse McKinley, *Cuomo to Halt State Business With Groups that Back Boycott of Israel*, N.Y. TIMES (June 5, 2016), <http://www.nytimes.com/2016/06/06/nyregion/cuomo-new-york-israel-boycott-bds-movement.html>; Jacob Kornbluh, *N.Y. Governor Cuomo Signs Executive Order Against BDS*, HAARETZ (June 5, 2016), <http://www.haaretz.com/israel-news/1.723240>; Ben Norton, *NY Gov. Cuomo Signs "Unconstitutional, McCarthyite" Pro-Israel Exec. Order Punishing BDS Boycott Movement*, SALON (June 5, 2016), [http://www.salon.com/2016/06/05/ny\\_gov\\_cuomo\\_signing\\_unconstitutional\\_mccarthyite\\_pro\\_israel\\_exec\\_order\\_punishing\\_bds\\_boycott\\_movement/](http://www.salon.com/2016/06/05/ny_gov_cuomo_signing_unconstitutional_mccarthyite_pro_israel_exec_order_punishing_bds_boycott_movement/); Glenn Greenwald & Andrew Fishman, *Andrew Cuomo and Other Democrats Launch Severe Attack on Free Speech to Protect Israel*, THE INTERCEPT (June 6, 2016), <https://theintercept.com/2016/06/06/andrew-cuomo-and-other-democrats-launch-severe-attack-on-free-speech-to-protect-israel/>; Dave Zirin, *Andrew Cuomo Would Have Blacklisted Muhammad Ali*, THE NATION (June 8, 2016), <http://www.thenation.com/article/andrew-cuomo-would-have-blacklisted-muhammad-ali/>; Editorial Board, *Cuomo's Anti-Israel Boycott Order is Disturbing*, NEWSDAY (June 8, 2016), <http://www.newsday.com/opinion/editorial/andrew-cuomo-s-anti-israel-boycott-order-is-disturbing-1.11890954>; Ben Sales, *Praised and Reviled, Cuomo's Anti-BDS Order Seen as a Game Changer by Both Sides*, TIMES OF ISRAEL (June 10, 2016), <http://www.timesofisrael.com/praised-and-reviled-cuomos-anti-bds-order-seen-as-game-changer-by-both-sides/>.

purposes; instead, it will contribute to the public's understanding of government operations.<sup>2</sup> The global campaign to boycott, divest from, and sanction (BDS) Israel until it complies with international law and respects Palestinian rights was initiated by Palestinian civil society in 2005, following the example of the struggle against apartheid South Africa. BDS is a nonviolent strategy that allows people of conscience to play an effective role in the Palestinian struggle for freedom, justice and equality in their homeland when all other diplomatic efforts have failed to achieve their rights. Supporters of BDS include South African rights activist Archbishop Desmond Tutu and "The Color Purple" author Alice Walker, among many others.<sup>3</sup> Religious institutions, including the United Church of Christ and the Presbyterian Church (USA) have embraced aspects of BDS,<sup>4</sup> as have many racial justice activists,<sup>5</sup> immigrant rights activists, and labor organizations. Most recently, the Connecticut AFL-CIO passed a resolution supporting BDS.<sup>6</sup>

The U.S. has a long and rich history of boycotts aimed at achieving political change, including the Montgomery bus boycott in the 1950s, the California grape boycott in the 1960s, and the boycott of apartheid South Africa in the 1980s. In 1982, the U.S. Supreme Court held that boycotts to bring about political, economic, and social change – like boycotts of Israel – are a political form of expression protected by the First Amendment rights of speech, assembly, association, and petition.<sup>7</sup> The Court noted that engagement in political boycotts, like other forms of speech concerning public issues, "occupies the highest rung of the hierarchy of First Amendment values."<sup>8</sup>

---

<sup>2</sup> Letter of Robert Freeman, Executive Director, NYS Committee on Open Government, Opinion No. 11745, available at <http://docs.dos.ny.gov/coog/ftext/f11745.htm> (last visited June 8, 2016) ("[T]here is nothing in the Freedom of Information Law that prohibits an agency from waiving the fee for copies.").

<sup>3</sup> See *Cultural Boycott*, PALESTINIAN BDS NAT'L COMM. <http://bdsmovement.net/activecamps/cultural-boycott>.

<sup>4</sup> Churches have signed on to the Kairos Palestine Document, which calls for boycotts, divestment, and sanctions, rather than BDS itself. Kairos Palestine, *A Moment of Truth: A Word of Faith, Hope and Love from the Heart of Palestinian Suffering*, (Dec. 11, 2009), <http://www.kairospalestine.ps/index.php/about-us/kairos-palestine-document>; see *UCC Votes for Divestment, Boycotts of Companies that Profit from Occupation of Palestinian Territories*, UNITED CHURCH OF CHRIST (June 30, 2015), [http://www.ucc.org/news\\_general\\_synod\\_israel\\_palestine\\_resolution\\_06302015](http://www.ucc.org/news_general_synod_israel_palestine_resolution_06302015).

<sup>5</sup> See Ishaan Tharoor, *The Growing Solidarity Between #BlackLivesMatter and Palestinian Activists*, WASH. POST (Oct. 15, 2015), <https://www.washingtonpost.com/news/worldviews/wp/2015/10/15/the-growing-solidarity-between-blacklivesmatter-and-palestinian-activists/>.

<sup>6</sup> Ali Abunimah, *Connecticut Labor Federation Backs Israel Boycott*, ELEC. INTIFADA (Nov. 11, 2015), <https://electronicintifada.net/blogs/ali-abunimah/connecticut-labor-federation-backs-israel-boycott>.

<sup>7</sup> *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982).

<sup>8</sup> *Id.* at 913 (quoting *Carey v. Brown*, 447 U. S. 455, 467 (1980)). As the American Jewish Congress wrote in an *amicus curiae* brief to the Supreme Court in support of the civil rights boycott: "[T]he practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process. For this reason, politically motivated economic boycotts have a long and honored history in America." Brief for the American Jewish Congress as Amicus Curiae Supporting Petitioners, 1981 WL 390216, p. 9–10,

Executive Order 157 is one more action in a long, coordinated effort to silence critics of human rights abuses in Occupied Palestine,<sup>9</sup> but the Order has nonetheless drawn significant criticism due to its specific language and the way in which it was issued. Columbia University Law School Professor Katherine Franke called the Order “clearly unconstitutional.”<sup>10</sup> Simon McCormack, New York Civil Liberties Union Communications Officer, wrote that “government can’t penalize people or entities on the basis of their free expression, and political boycotts are a form of free expression.”<sup>11</sup> In response to similar legislation in another state, Harvard Law Review concluded that state governments “are announcing their disdain for a marginal political movement whose goals they strenuously oppose. This motive could not be more antithetical to the core values of the First Amendment. Fortunately, Supreme Court precedents make clear that attempts to disqualify contractors for support of BDS are foreclosed by the First Amendment.”<sup>12</sup> It is clear that there is a significant public interest in understanding how this Order came about.

The Center for Constitutional Rights is a not-for-profit, public interest, legal, and public education organization founded in 1966 that engages in litigation, public advocacy, and the production of publications in the fields of civil and international human rights. CCR also publishes newsletters, know-your-rights handbooks, and other similar materials for public dissemination.<sup>13</sup> CCR operates a website, [www.ccrjustice.org](http://www.ccrjustice.org), which addresses the issues on

---

*NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982) (citation and quotations omitted). Moreover, the American Jewish Congress believed that “boycotts which have important economic, social, and political purposes constitute an exercise of basic constitutional rights which have always rested on the highest rung of the hierarchy of First Amendment values.” *Id.* at 12 (citation and quotations omitted).

<sup>9</sup> See PALESTINE LEGAL & CTR. FOR CONSTITUTIONAL RIGHTS, *THE PALESTINE EXCEPTION TO FREE SPEECH: A MOVEMENT UNDER ATTACK IN THE US* (2015), available at <http://palestinelegal.org/s/Palestine-Exception-Report-Final-rqau.pdf>.

<sup>10</sup> Daniel Sieradski, *Andrew Cuomo’s Anti-Free Speech Move on B.D.S.*, N.Y. TIMES (June 12, 2016), <http://www.nytimes.com/2016/06/13/opinion/andrew-cuomos-anti-free-speech-move-on-bds.html>. Franke and the late Michael Ratner, President Emeritus of CCR, previously wrote that “there surely is something deeply suspect about the government’s turn to blacklists as a tool to punish, shame, and censor citizens who are engaging in important debates about Israel and Palestine.” Katherine Franke & Michael Ratner, *Just as Boycotts are Making a Difference for LGBTQ People, Some Lawmakers Want to Shut Them Down*, SLATE (Apr. 29, 2016), [http://www.slate.com/blogs/outward/2016/04/29/a\\_new\\_york\\_bill\\_penalizing\\_boycotts\\_is\\_a\\_threat\\_to\\_democracy.html](http://www.slate.com/blogs/outward/2016/04/29/a_new_york_bill_penalizing_boycotts_is_a_threat_to_democracy.html).

<sup>11</sup> Simon McCormack, *Gov. Cuomo’s BDS Blacklist is an Affront to Free Expression*, HUFFINGTON POST (June 9, 2016), [http://www.huffingtonpost.com/simon-mccormack/gov-cuomos-bds-blacklist-free-expression\\_b\\_10383198.html](http://www.huffingtonpost.com/simon-mccormack/gov-cuomos-bds-blacklist-free-expression_b_10383198.html).

<sup>12</sup> *South Carolina Disqualifies Companies Supporting BDS from Receiving State Contracts*, 129 HARV. L. REV. 2029, 2038 (2016), available at <http://harvardlawreview.org/2016/05/s-c-code-ann-11-35-3500-2015/>.

<sup>13</sup> See, e.g., CTR. FOR CONSTITUTIONAL RIGHTS, *STOP AND FRISK: THE HUMAN IMPACT* (2012), available at <http://ccrjustice.org/sites/default/files/attach/2015/08/the-human-impact-report.pdf>; CTR. FOR CONSTITUTIONAL RIGHTS & NAT’L LAWYERS GUILD, *THE JAILHOUSE LAWYER’S HANDBOOK* (5th ed. 2010), available at [http://ccrjustice.org/sites/default/files/assets/Report\\_JailHouseLawyersHandbook.pdf](http://ccrjustice.org/sites/default/files/assets/Report_JailHouseLawyersHandbook.pdf); CTR. FOR CONSTITUTIONAL RIGHTS, *IF AN AGENT KNOCKS* (2009), available at [http://ccrjustice.org/sites/default/files/assets/files/CCR\\_If\\_An\\_Agent\\_Knocks.pdf](http://ccrjustice.org/sites/default/files/assets/files/CCR_If_An_Agent_Knocks.pdf); *FAQs About the FBI Informant Program and the No Fly List*, CTR. FOR CONSTITUTIONAL RIGHTS (May 20, 2015), <http://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/faqs-about-fbi->

which CCR works. The website includes material on topical civil and human rights issues and material concerning CCR's work. The CCR regularly files Freedom of Information Act cases, and makes the information produced by government agencies available through its website, in original form, and further shares the information released under FOIA through reports, production guides and other written materials.<sup>14</sup> All of this material is freely available to the public. CCR also engages in public advocacy related to its FOIA cases through public events and the media.<sup>15</sup> In addition, CCR regularly issues press releases, operates a listserv of over 50,000 members, and issues "action alerts" that notify supporters and the general public about developments and operations pertaining to CCR's work. CCR has a communications department and regularly appears in the news, including in relation to its FOIA work.

Jewish Voice for Peace is a national, grassroots not-for-profit organization inspired by Jewish tradition to work for a just and lasting peace according to principles of human rights, equality, and international law for all the people of Israel and Palestine. JVP has around 10,000 dues-paying members, 60 chapters in cities and on campuses across the country, as well as a Rabbinic Council, an Artist Council, an Academic Advisory Council, and an Advisory Board made up of leading U.S. intellectuals and artists. JVP's website ([jvp.org](http://jvp.org)) includes material on JVP's work and the human rights situation in Israel/Palestine,<sup>16</sup> JVP operates a listserv of over 200,000 members and issues "action alerts" and collects signatures for petitions pertaining to JVP's campaigns. JVP regularly issues press releases and appears in the news often.

Palestine Legal, a project of Tides Center, is a not-for-profit, public interest, legal and public education organization that engages in public advocacy and litigation support, and publishes materials on civil liberties and civil rights issues. Published materials include reports,

---

[informant-program-and-no-fly](#); Center for Constitutional Rights, *Waiting for Fahd: One Family's Hope for Life Beyond Guantanamo*, YOUTUBE (Dec. 2, 2014), <https://www.youtube.com/watch?v=-TjKEIvGguA>; see also CTR. FOR CONSTITUTIONAL RIGHTS, ANNUAL REPORT 2015, at 20–23 (2015), available at [http://ccrjustice.org/sites/default/files/attach/2015/11/CCR\\_AR\\_2015.pdf](http://ccrjustice.org/sites/default/files/attach/2015/11/CCR_AR_2015.pdf).

<sup>14</sup> See, e.g., DETENTION WATCH NETWORK & CTR. FOR CONSTITUTIONAL RIGHTS, *BANKING ON DETENTION: 2016 UPDATE* (2016), available at [http://www.detentionwatchnetwork.org/sites/default/files/reports/Banking%20on%20Detention%202016%20Update\\_DWN,%20CCR.pdf](http://www.detentionwatchnetwork.org/sites/default/files/reports/Banking%20on%20Detention%202016%20Update_DWN,%20CCR.pdf); CTR. FOR CONSTITUTIONAL RIGHTS, *PRELIMINARY BRIEFING GUIDE: NEWLY RELEASED DOCUMENTS CHRONICLE AGENCY'S DECEPTION ABOUT OPTING-OUT OF "SECURE COMMUNITIES" PROGRAM* (2011), available at <http://ccrjustice.org/sites/default/files/assets/Uncover-the-Truth-FOIA-Briefing-Guide-2-17-111.pdf>; *FOIA: Ghost Detention and Extraordinary Rendition Case*, CTR. FOR CONSTITUTIONAL RIGHTS (Dec. 6, 2011), <http://ccrjustice.org/home/what-we-do/our-cases/foia-ghost-detention-and-extraordinary-rendition-case>.

<sup>15</sup> See, e.g., Zachery Morris, *The Gaza Freedom Flotilla Attack: Five Years Later*, CCR BLOG (June 5, 2015), <http://ccrjustice.org/home/blog/2015/06/05/gaza-freedom-flotilla-attack-five-years-later>; Maria LaHood & Matt Howard, Center for Constitutional Rights, *Poisoning Iraq*, HUFFINGTON POST (Dec. 3, 2014), [http://www.huffingtonpost.com/the-center-for-constitutional-rights/poisoning-iraq\\_b\\_6262538.html](http://www.huffingtonpost.com/the-center-for-constitutional-rights/poisoning-iraq_b_6262538.html); Press Release, Ctr. for Constitutional Rights, *Detention Watch Network & CCR File FOIA Lawsuit Seeking Information on Immigration Lockup Quota* (Jan. 30, 2014), <http://ccrjustice.org/home/press-center/press-releases/detention-watch-network-ccr-file-foia-lawsuit-seeking-information>.

<sup>16</sup> See, e.g., JEWISH VOICE FOR PEACE, *STIFLING DISSENT: HOW ISRAEL'S DEFENDERS USE FALSE CHARGES OF ANTI-SEMITISM TO LIMIT THE DEBATE OVER ISRAEL ON CAMPUS* (2015), available at <http://stiflingdissent.org/>.

newsletters, know-your-rights handbooks, fact sheets and other similar materials for public dissemination.<sup>17</sup> Palestine Legal's website, [www.palestinelegal.org](http://www.palestinelegal.org), includes information on topical civil rights issues, on Palestine Legal's work, and provides access to Palestine Legal's publications, all freely available to the public. In addition, Palestine Legal regularly issues press releases and has an online following of nearly 10,000, including on social media platforms and through an electronic mailing list. Palestine Legal regularly appears in the news.

Please contact the requesters (c/o Baher Azmy, Legal Director, Center for Constitutional Rights, [bazmy@ccrjustice.org](mailto:bazmy@ccrjustice.org), 212-614-6427) in advance of charging any fees in order to authorize a practical limitation of fees for this matter if any fees are to be charged.

Please let me know if you have any questions. I look forward to your response within five business days as required by law.

Sincerely,

A handwritten signature in black ink, appearing to read 'Baher Azmy', with a stylized, cursive script.

Baher Azmy  
Legal Director  
Center for Constitutional Rights  
666 Broadway, 7<sup>th</sup> Floor  
New York, New York 10012  
[bazmy@ccrjustice.org](mailto:bazmy@ccrjustice.org)  
(212) 614-6464

---

<sup>17</sup> See, e.g., PALESTINE SOLIDARITY LEGAL SUPPORT [PALESTINE LEGAL] & CTR. FOR CONSTITUTIONAL RIGHTS, *LEGAL & TACTICAL GUIDE: PALESTINIAN HUMAN RIGHTS ADVOCACY IN THE U.S.* (2013), available at <http://palestinelegal.org/s/3-Legal-and-Tactical-Guide-Palestinian-Human-Rights-Advocacy-in-the-US-jetp.pdf>; *Know Your Rights*, PALESTINE LEGAL, <http://palestinelegal.org/know-your-rights>.