



June 28, 2024

Filed Electronically Via Secure Released

Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. AVE SE
Washington, DC 20528-065

Re: Freedom of Information Act Request on Migrant Interdictions

Dear FOIA Officer:

The American Immigration Council (the “Council”) submits this request for records under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, regarding the Department of Homeland Security’s (“DHS”) policy of interdicting migrants encountered at sea. Requestor seeks a fee waiver of any fee imposed by the agency because the records sought will contribute to the public’s understanding of DHS’s operations, and release of the information is not in Requestor’s commercial interest.

I. REQUEST FOR INFORMATION

Requestor seeks the following records prepared, received, transmitted, collected or maintained by DHS as described below:

1. Records relating to DHS’s guidance, procedures, and training materials for interdicting a vessel with migrants at sea, including but not limited to intra-agency agreements, business rules, or policy memoranda.
2. Records relating to DHS’s guidance, procedures, and training materials for determining whether an interdicted migrant is a minor and the treatment of interdicted migrant minors, including but not limited to intra-agency agreements, business rules, or policy memoranda.
3. Records relating to DHS’s guidance, procedures, and training materials for determining whether an interdicted minor migrant is *unaccompanied*, including but not limited to intra-agency agreements, business rules, or policy memoranda.

4. Records relating to DHS's guidance, procedures, and training materials for determining whether a minor interdicted at sea may be a victim of trafficking, including but not limited to intra-agency agreements, business rules, or policy memoranda.
5. Records relating to DHS's guidance, procedures, and training materials for determining whether an interdicted migrant manifests a fear of return, including but not limited to intra-agency agreements, business rules, or policy memoranda.
6. Records relating to DHS's guidance, procedures, and training materials for repatriating interdicted migrants to their countries of origin or other third countries, including records that apply to the return of unaccompanied minors. Records may include but are not limited to intra-agency agreements, business rules, or policy memoranda.
7. DHS's guidance, procedures, and training materials relating to providing language access during interdiction and subsequent proceedings for migrants interdicted by USCG who have limited English proficiency.
8. DHS's procedures and training materials for transferring custody of interdicted migrants from one DHS subcomponent to another, including but not limited to the following:
 - a. Transferring custody of interdicted migrants manifesting a fear of return or expressing a fear of return to their countries of origin from USCG to Immigration & Customs Enforcement (ICE) at the Guantanamo Bay Migrant Operations Center;
 - b. Transferring unaccompanied children to the custody of Customs & Border Protection (CBP) or the Office of Refugee Resettlement (ORR); and
 - c. Transferring migrants requiring medical treatment.
9. Records relating to the agency's implementation or updates to the following policies outlined in the October 13, 1993 U.S. Department of Justice Legal Counsel memorandum titled *Immigration Consequences of Undocumented Aliens' Arrival in the United States Territorial Waters*:
 - a. The type of proceedings to which migrants interdicted at sea in U.S. territorial waters are entitled; and
 - b. The definition of "territorial waters" for purposes of the proceedings to which interdicted migrants are entitled.

II. FORMAT OF PRODUCTION

Requestor seeks responsive electronic records in a machine-readable, native file format, with all metadata and load files. We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. For non-data files, Requestor asks that the records be provided electronically in a text-searchable, static-image format (PDF),

in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

III. FEE WAIVER REQUEST

Requestor seeks a waiver of the fees that may apply to this request on the grounds that disclosure of the requested records is in the public interest and is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor." 5 U.S.C. § 552(a)(4)(A)(iii).

1. *Disclosure of the Information Is in the Public Interest*

Disclosure of the requested records is in the public interest because the request meets all the applicable regulatory criteria. The public interest criteria is satisfied when (1) the request concerns operations or activities of the government; (2) disclosure is likely to contribute to an understanding of government operations or activities; (3) disclosure contributes to an understanding of the subject by the public at large; and (4) disclosure is likely to contribute significantly to such understanding.¹

The U.S. Department of Homeland Security ("DHS") is an agency of the U.S. government. One of DHS's missions is to administer and enforce U.S. immigration laws.² Further, the U.S. Coast Guard ("USCG") is the subcomponent of DHS tasked with carrying out migrant interdictions. As such, DHS can establish policies and procedures that govern the interdiction of migrants at sea, as well as the process to which interdicted migrants will be entitled. Thus, the records requested concern operations or activities of the government.

Second, disclosure of the requested procedures will contribute to the understanding of how DHS treats and processes migrants interdicted at sea. Maritime interdictions date back to 1981, when the U.S. government adopted a then-unprecedented policy of interdicting migrants found at sea in an attempt to curb unauthorized migration of Haitian nationals.³ Recent media reports suggest there is confusion between the USCG's "lifesaving work" at sea and the subcomponent's mission to interdict migrants encountered in the agency's operations.⁴ An article by ProPublica concluded that unlike at the U.S.-Mexico border, which is closely monitored by advocates, the courts and the

¹ 6 C.F.R. § 5.11(k)(2) (2017) (DHS regulations outlining criteria for responses to requests for fee waivers under FOIA); see also *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004) (citing 28 C.F.R. § 16.11(k)(2)).

² U.S. Dep't of Homeland Security, *Secure U.S. Borders and Manage Safe, Orderly, and Humane Immigration Processes*, <https://www.dhs.gov/secure-us-borders-and-approaches> (last visited June 27, 2024).

³ A.G. Mariam, *International Law and the Preemptive Use of State Interdiction Authority on the High Seas: the Case of Suspected Illegal Haitian Immigrants Seeking Entry Into the U.S.*, 12 MD. J. INT'L L. 211, 212 (1988), <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1309&context=mjil>.

⁴ John Konrad, *The Harsh Reality of US Coast Guard Migrant Policy*, GCAPTAIN, Dec. 10, 2023, <https://gcaptain.com/harsh-reality-us-coast-guard-uscg-migrant-policy/>.

press, immigration enforcement at sea takes place out of public view limiting the public's understanding of USCG's interdiction policies.⁵ Additionally, DHS refused to answer questions about the standards the agency uses to determine whether those interdicted at sea have a legal basis or credible fear that warrants U.S. entry.⁶

Disclosure of the requested records will contribute to an understanding of the subject by the public at large. The Council has an extensive track record of publishing and synthesizing information on governmental operations produced in responses to FOIA requests. The Council intends to provide information received in response to this FOIA request on its publicly accessible website. In 2022, the Council received more than 2.6 million page views from more than 1.6 million visitors. The Council also regularly shares information with national print and news media. Requestor plans to distribute information obtained from these FOIA disclosures to interested media. Dissemination of the requested records through the Council's website and via interested media will reach the public and contribute to the public's understanding of the procedures followed by USCG to interdict migrants at sea, procedures that have been unknown to the public in the past.

Finally, disclosure is likely to contribute significantly to public's understanding of this issue. In light of the dearth of publicly available information, the records requested will inform the public about DHS's procedures regarding the processing and treatment of migrants interdicted on vessels. Advocates have raised serious concerns about the fate of individuals, particularly children, who are repatriated to nations facing civil instability, such as Haiti.⁷ The requested records will provide advocates with a deeper understanding of the applicable rules to assist those interdicted at sea, especially children who have been repatriated. Production of these records is necessary, as the number of individuals interdicted at sea and held in USCG assets climbs.⁸

Thus, the request for information meets the public interest element for the fee waiver request rule.

2. *Disclosure of the Information is not in Requestor's Commercial Interest.*

Requestor has no commercial interest in the records requested, and this request aims at furthering public understanding of government conduct: specifically, as described above, the urgent need for the public to understand the treatment and processing of migrants interdicted at sea. The Council, as a not-for-profit organization, has no commercial interest in the present request. This request furthers the Council's work to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal

⁵ *Id.*

⁶ Ryan Morgan, *DHS Says Haitians Attempting Boat Crossing to US Face 'Immediate Repatriation,'* NTD NEWS, March 16, 2024, https://www.ntd.com/dhs-says-haitians-attempting-boat-crossing-to-us-face-immediate-repatriation_979702.html.

⁷ Kids in Need of Defense, *Maritime Interdictions of Unaccompanied Children*, Apr. 2024, https://supportkind.org/wp-content/uploads/2024/04/24_Maritime-Interdictions-of-Unaccompanied-Children.pdf.

⁸ Seth Freed Wessler, *When the Coast Guard Intercepts Unaccompanied Kids*, PROPUBLICA, Dec. 7, 2023, <https://www.propublica.org/article/when-the-coast-guard-intercepts-unaccompanied-kids>.

rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. As with all other reports and information available on the Council's website, as well as information frequently disseminated to the public via electronic newsletters, the information the Council receives in response to this FOIA request will be available to immigration attorneys, noncitizens, policymakers, and other interested members of the public free of charge.

As FOIA's fee-waiver requirements must be liberally construed in favor of waivers for noncommercial requestors, a waiver of all fees is justified and warranted in this case.

Thank you for your attention to this request. If you have any questions regarding this request, please do not hesitate to contact me.

Very truly yours,

/s/ Raul A. Pinto

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on behalf of Requestor