



June 28, 2024

**Filed Electronically Via FOIA FIRST**

National Records Center (NRC)  
FOIA/PA Office  
P.O. Box 648010  
Lee's Summit, MO 64064-8010

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 U.S. Citizenship and Immigration Services's ("USCIS") role in the interdiction of migrants encountered at sea by the U.S. Coast Guard ("USCG"). 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 USCIS as described below:

1. Records relating to USCIS's guidance, procedures, and training materials for conducting credible fear or protection screening interviews for migrants interdicted at sea, including but not limited to intra-agency agreements or policy memoranda, and the current and prior versions of any form, worksheet, or assessment completed by USCIS during these interviews.
2. Records relating to USCIS's guidance, procedures, and training materials for conducting credible fear or protection screening interviews for migrants interdicted at sea who have been determined to be minors and unaccompanied minors, including but not limited to intra-agency agreements or policy memoranda, and the current and prior versions of any form, worksheet, or assessment completed by USCIS during these interviews.

3. Records relating to USCIS's guidance, procedures, and training materials for conducting well-founded fear interviews for and assessing the refugee claims of migrants transferred to the Migrant Operations Center (MOC) at Naval Station Guantanamo Bay, Cuba, including but not limited to the current and prior versions of any form completed by USCIS during these interviews.
4. USCIS's guidance, procedures, and training materials relating to language access for migrants interdicted by USCG at sea who have limited English proficiency.
5. Records relating to USCIS's guidance, procedures, and training materials for determining whether an interdicted migrant manifests a credible or well-founded fear of return, including but not limited to the current and prior versions of any form completed by USCIS when making these fear determinations.
6. Records relating to USCIS's implementation or updates to the following policies outlined in the October 13, 1993, US 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.
7. All credible fear and well—founded fear forms completed for interdicted migrants since the start of FY2021.
8. All data collected and maintained by USCIS for each migrant interdicted at sea by USCG since the start of FY2021, including but not limited to the following data elements:
  - a. Year of birth;
  - b. Gender
  - c. Nationality
  - d. Month and year of interdiction;
  - e. Month and year of credible fear or protection screening interview
  - f. Disposition.
9. All operative data dictionaries, data entry procedures, and standard operating procedures for the Migrant Information Tracking System and any other USCIS data system storing data on migrants interdicted at sea by USCG since the start of FY2021.

One potential repository for this data may be the Migrant Information Tracking System, which is described as a “centralized repository for information relating to migrants interdicted at sea.”<sup>1</sup>

## 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 any data be provided in a workable format, such as Microsoft Excel or comma-separated values (CSV) format. If terms or codes are not in the form template and/or publicly defined, please provide a glossary or other descriptive records containing definitions of acronyms, numerical codes, or terms contained in data responsive to this request. 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

Requester 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.<sup>2</sup>

U.S. Citizenship and Immigration Services is the component of the DHS that oversees lawful immigration to the United States.<sup>3</sup> Within USCIS, the International and Refugee Affairs Division (“IRAD”) is the office tasked with conducting “protection screenings for certain migrants

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<sup>1</sup> U.S. Dep’t of Homeland Security, Privacy Impact Assessment for the Migrant Information Tracking System, Feb. 3, 2010, 2, [https://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_uscis\\_mits.pdf](https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_uscis_mits.pdf).

<sup>2</sup> 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)).

<sup>3</sup> U.S. Dep’t of Homeland Security, Operational and Support Components, <https://www.dhs.gov/operational-and-support-components> (last visited June 27, 2024).

interdicted at sea.”<sup>4</sup> As such, USCIS can establish policies and procedures that govern the screening interviews used to protect migrants interdicted at sea by the USCG. Thus, the records requested concern operations or activities of USCIS, particularly how it conducts protection screenings of migrants interdicted at sea.

Second, disclosure of the requested procedures and data will contribute to the understanding of how USCIS conducts these interviews. 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.<sup>5</sup> An article by ProPublica concluded that unlike the U.S.-Mexico border, which is closely monitored by advocates, the courts and the press, immigration enforcement at sea takes place out of public view limiting the public’s understanding of USCG’s interdiction policies.<sup>6</sup> 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.<sup>7</sup>

However, USCIS established protocols for interviewing migrants interdicted at sea and a system of records for collecting their information. Department of Homeland Security published a Privacy Impact Assessment (“PIA”) for the Migrant Information Tracking System, which USCIS uses to store information about migrants interdicted by USCG and interviewed by USCIS.<sup>8</sup> The PIA briefly describes the interview process, but more information is needed for advocates to assist individuals interdicted by the USCG at sea particularly as the number of migrants interdicted continues to climb.<sup>9</sup> Media reports also suggest that current practices for migrants interdicted deviate from some of the processes described in the PIA, which states that the policy of the United States is to provide migrants interdicted with a meaningful opportunity to seek protection from persecution or torture.<sup>10</sup>

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

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<sup>4</sup> U.S. Citizenship and Immigration Services, Refugee, Asylum and International Operations Directorate, <https://www.uscis.gov/about-us/organization/directorates-and-program-offices/refugee-asylum-and-international-operations-directorate> (last visited June 27, 2024).

<sup>5</sup> 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>.

<sup>6</sup> 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/>.

<sup>7</sup> 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](https://www.ntd.com/dhs-says-haitians-attempting-boat-crossing-to-us-face-immediate-repatriation_979702.html).

<sup>8</sup> U.S. Dep’t of Homeland Security, Privacy Impact Assessment for the Migrant Information Tracking System, Feb. 3, 2010, 2, [https://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_uscis\\_mits.pdf](https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_uscis_mits.pdf).

<sup>9</sup> See supra n. 5.

<sup>10</sup> U.S. Dep’t of Homeland Security, Privacy Impact Assessment for the Migrant Information Tracking System, Feb. 3, 2010, 2, [https://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_uscis\\_mits.pdf](https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_uscis_mits.pdf).

information on governmental operations shared 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. Requester plans to distribute information obtained from these FOIA disclosures to interested media. This dissemination of requested records through the Council's website and via interested media will reach the public and will contribute to the public's understanding of USCIS's role in the process of interdicting and repatriating migrants found at sea.

Finally, disclosure is likely to contribute significantly to the public's understanding of this issue. In light of the dearth of publicly available information, the records requested will inform the public about the role USCIS personnel play in the process of interdicting migrants encountered at sea by the U.S. Coast Guard. Agency documents suggest that USCIS plays a key role in determining whether or not migrants interdicted at sea will be repatriated because migrants determined to be refugees will not be repatriated.<sup>11</sup> Migrants interdicted at sea by the USCG are interviewed by USCIS to determine whether the migrant should be returned to their country of origin or resettled in a third country.<sup>12</sup> Advocates have raised serious concerns about the fate of individuals, particularly children, who are repatriated to nations facing civil instability, such as Haiti.<sup>13</sup> 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, held in USCG assets, and interviewed by USCIS to determine whether they should be repatriated, climbs.<sup>14</sup>

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

## 2. *Disclosure of the Information is not in Requester'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 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,

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 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](https://supportkind.org/wp-content/uploads/2024/04/24_Maritime-Interdictions-of-Unaccompanied-Children.pdf).

<sup>14</sup> 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>.

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 Requester