



December 21, 2021

Via Public Access Link

Office of the General Counsel
Attn: FOIA Service Center
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 1903
Falls Church, VA 22041

Re: Freedom of Information Act Request

Dear FOIA Officer:

The American Immigration Council (the “Council” or “Requester”) submits the following Freedom of Information Act (FOIA) request for records regarding immigration courts, including immigration adjudication centers. In accordance with 5 U.S.C. § 552(a)(6)(A)(i), we expect a response to this request within 20 working days, unless otherwise permitted by statute.

I. REQUEST FOR INFORMATION

For the period between January 1, 2021, to the present:

Policies, Procedures and Communication

- 1) Records¹ created, sent or received by immigration judges or any other Executive Office for Immigration Review (EOIR) personnel at EOIR’s El Paso Service Processing Center (the “Processing Center”) to assist immigration judges in determining detained individuals’ flight risk, including the role of the detained individuals’ country of origin in this determination.

¹ The term “records” in this request includes, but is not limited to: communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

- 2) Records created, sent or received by court personnel or judges at the Processing Center regarding instructions on whether individuals are required to submit an application for relief as a condition for an Immigration Judge to grant detainees' petition for bond.
- 3) Records created, sent or received by court personnel or judges at the Processing Center regarding instructions to be given to respondents about their right to file an application for relief, including but not limited to asylum applications.
- 4) Records created, sent or received by court personnel or judges at the Processing Center regarding instructions to be provided to respondents about access to legal counsel.
- 5) Records created, sent or received by Judge Abbott regarding requests for asylum by Haitians since September 1, 2021.

Data Regarding Respondents Appearing Before the EOIR's El Paso Service Processing Center

- 1) Individualized, disaggregated records for each individual who appeared before the Processing Center from September 1, 2021 until present time and who was detained at the Torrance County Detention Facility at the time of the appearance before an immigration judge at the Processing Center, including:
 - a) Person ID variable/anonymized ID variable. Please note that we do not seek personally identifiable information, but we expect the agency to produce any non-identifying variable the agency uses to connect individual-level data across data sets such as the first five digits of the Alien numbers, the first four digits of social security numbers, or any other similar information.
 - b) Biographic information
 - i. Gender
 - ii. Race and ethnicity
 - iii. Country of birth
 - iv. Country of citizenship
 - v. Language(s) spoken
 - c) Hearing information:
 - i. The date of the individual's Master Calendar Hearing
 - ii. Case decision information for the individual, including orders issued by immigration judges.
 - iii. The date of the individual's Individual Hearing
 - d) Records relating to the individual's request for legal representation, including but not limited to motions for a Continuances to seek legal representation and the judge's decisions on the motion.
 - e) Bond information:

- i. Whether the individual requested release on bond.
- ii. Whether the request for bond was granted or denied, and if granted, the amount of the bond.
- iii. The date of individuals' release if granted bond.

II. FORMAT OF PRODUCTION

Requester 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) files. 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, Requester 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 fee waiver because the information sought 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 [requester]..." 5 U.S.C. § 552(a)(4)(A)(iii).

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.²

A. Disclosure Will Contribute to Public Understanding of EOIR Operations

EOIR administers the nation's immigration courts, including the El Paso Service Processing Center, and is tasked with decision-making in individual removal proceedings.³ Information from government sources that will further the public's understanding about the procedures in place at the Processing Center and that may explain any deviations from such procedures in the treatment of immigrants of certain nationalities are of critical importance to the public. The information also

² 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)).

³ See Department of Justice, Executive Office for Immigration Review (EOIR), "Fact Sheet: Executive Office for Immigration Review: An Agency Guide," December 2017, https://www.justice.gov/eoir/page/file/eoir_an_agency_guide/download.

may be useful to legal service providers and advocates working on behalf of immigrants detained at the Torrance County Detention Facility who appear before the immigration courts.

This request seeks information that encompasses the treatment of Haitian nationals by U.S. government agencies, which has garnered wide attention from media, the public, and government officials including President Biden. When U.S. Customs and Border Protection (“CBP”) agents charged at Haitian migrants on horseback to stop them from entering the country, those officials drew condemnation from President Biden who called those acts “outrageous”⁴ and from DHS Secretary Alejandro Mayorkas, who said the images of CBP officers pushing migrants back into the Rio Grande “painfully conjured up the worst elements of our nation’s ongoing battle against systemic racism.”⁵ Discriminatory treatment of Haitian immigrants has continued, however, throughout their experience with our immigration system. Haitian nationals have encountered obstacles to obtaining legal counsel, accessing basic information about their rights, and gathering information about their cases.⁶ On December 16, 2021, members of Congress wrote a letter to DHS Secretary Alejandro Mayorkas, Acting ICE Director Tae Johnson, and the President of CoreCivic Damon T. Hininger, the private corporation that operates the Torrance County Detention Facility, describing the significant problems faced by detainees at the Detention Facility.⁷ The letter noted that detainees at Torrance lacked access to counsel and faced language access barriers in communicating with officers.

The treatment of Haitian immigrants at the Torrance County Detention Facility is an extension of the same abhorrent discrimination Haitian individuals encountered at the border. In referring to the treatment of Haitians at the border, Vice-President Kamala Harris stated, “There needs to be consequences and accountability.”⁸ This FOIA request is in keeping with calls for accountability that have come from the highest levels of this administration. The information sought from EOIR will provide the public, including elected officials, with insight regarding the agency’s treatment of Haitian migrants in our detention and immigration court system. Accordingly, the information requested is likely to contribute to the public’s understanding of EOIR’s operations, and in

⁴ Annika Kim Constantino, *Biden condemns Border Patrol agents’ treatment of Haitian migrants, vows they will face consequences*, CNBC, Sept. 24, 2021, <https://www.cnbc.com/2021/09/24/biden-condemns-border-patrol-treatment-of-haitian-migrants-in-del-rio.html>.

⁵ Katie Rogers and Michael D. Shear, *Biden Condemns Border Patrol Treatment of Haitian Migrants as Expulsions Continue*, THE NEW YORK TIMES, Sept. 24, 2021, <https://www.nytimes.com/2021/09/24/us/politics/biden-border-patrol-haitian-migrants.html>.

⁶ Julian Resendiz, *Advocates want ICE to halt removals, provide access to counsel to Haitians detained in New Mexico facility*, KTMS.COM, Nov. 15, 2021, <https://www.ktms.com/news/border-report/advocates-want-ice-to-halt-removals-provide-access-to-counsel-to-haitians-detained-in-new-mexico-facility/>.

⁷ Letter from Sens. Martin Heinrich and Ben Ray Lujan and U.S. Reps. Melanie Stansbury and Teresa Leger Fernandez to DHS Secretary Alejandro Mayorkas, Acting ICE Director Tae Johnson, and Damon T. Hininger, President and CEO, CoreCivic, *Calling for Increased Oversight at CoreCivic Detention Facility in Torrance County After Asylum Seekers Face Barriers to Legal Representation* (Dec. 16, 2021), https://www.heinrich.senate.gov/download/letter_torrance-county-detention-center_final.

⁸ Constantino, *supra* note 4.

particular, its treatment of the Haitian nationals detained at the Torrance County Detention Facility.

Further, Requester published information can reach a wide audience, which includes varied segments of the U.S. public. In calendar year 2020, the Council's website received more than 2.4 million pageviews from more than 1.4 million visitors. The Council also regularly shares information with national print and news media and plans to distribute information obtained from these FOIA disclosures to interested media. The Council regularly provides information to the public based on its FOIA requests.⁹ In keeping with its track record of synthesizing or otherwise publishing information on governmental operations shared in responses to FOIA requests, the Council intends to post documents received in response to this FOIA request on its publicly accessible website. Requesters intend to make the information received in response to this request available to the public at no charge. The Requester's demonstrated ability to disseminate exactly the types of information requested to the public will contribute to the public's understanding of EOIR's treatment of this vulnerable population. Further, the Council's commitment to disseminate this information widely and free of charge among its network of supporters ensures that disclosure is likely to contribute significantly to such understanding.

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

B. Disclosure of the Information Is Not in the Commercial Interest of the Requester

The Council is a not-for-profit organization and has no commercial interest in the present request. See e.g. 6 C.F.R. § 5.11(k)(3)(i)-(ii). 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, the information that the Council receives in response to this FOIA request will be available to immigration attorneys, noncitizens, and other interested members of the public free of charge. Accordingly, the request is not primarily in the commercial interest of the requester.

⁹ See, e.g., Guillermo Cantor and Walter Ewing, American Immigration Council, Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered (August 2017) (examining records of alleged misconduct by Border Patrol employees), http://bit.ly/Council_StillNoActionTaken; American Immigration Council, Enforcement Overdrive: A Comprehensive Assessment of ICE's Criminal Alien Program (November 2015) (analyzing data obtained from ICE on the CAP program), http://bit.ly/Council_ICE_CAP.

Thank you in advance for your attention to this request. If you have any questions regarding this request, you may contact me at 202-507-7549 or via email at rpinto@immcouncil.org.

Very truly yours,

/s/ Raul A. Pinto,
Senior Staff Attorney