



September 29, 2022

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”), along with Main Street Legal Services of the City University of New York School of Law, (jointly referred to as “Requesters”) submit 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

- 1) For the period between January 1, 2021, to the present:
 - a) Communications such as correspondence, emails, or memoranda, sent or received by immigration judges, including Assistant Chief Immigration Judges (ACIJs), regarding the adjudication of cases where the respondents are Haitian nationals. This includes, but is not limited to, communications involving cases where respondents were detained at the Richwood Correctional Center, the El Paso Processing Center and the Torrance County Detention Facility.
 - b) Records¹ created, sent or received by immigration judges and ACIJs, or the Chief Immigration Judge regarding Haitian respondents’ right to file applications for relief, including but not limited to asylum applications.

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.

- c) Records created, sent or received by immigration judges, ACIJs, or the Chief Immigration Judge regarding the need to file an application for relief as a condition for immigration judges to grant bond requests.
 - d) Records created, sent or received by immigration judges, ACIJs, or the Chief Immigration Judge regarding Haitian respondents' right to access to legal counsel.
 - e) Records created, sent or received by immigration judges, ACIJs, or the Chief Immigration Judge regarding availability of language interpretation for Creole speakers.
- 2) Current guidelines, procedures, protocols, training materials or policies regarding how immigration judges make bond determinations and whether respondents are flight risks, including portions of the EOIR policy manual related to bond proceedings.

II. FORMAT OF PRODUCTION

Requesters seek 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.

Requesters also ask 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

Requesters seek 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 are 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

²6 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)).

1) *Disclosure Will Contribute to Public Understanding of EOIR Operations*

a) *The request concerns the operations of the government, i.e. EOIR.*

EOIR administers the nation's immigration courts and its immigration judges are tasked with decision-making in individual removal proceedings.³ Guidance, policies and other EOIR records that will further the public's understanding about why certain individuals detained by ICE failed to receive the full panoply of due process rights is of critical importance to the public. An email obtained by the Council through a previous FOIA request suggests that immigration judges exchanged information about strategies to adjudicate the cases of Haitian nationals.⁴ This FOIA request seeks information on whether these strategies were widely adopted.

b) *Disclosure will contribute to the public's understanding of EOIR's treatment of Haitian nationals.*

This request seeks information that will shed light on the treatment of Haitian nationals by U.S. government agencies. Mistreatment of Haitians arriving at the U.S.-Mexico border garnered widespread attention from media, the public, and government officials. When U.S. Customs and Border Protection ("CBP") agents charged at Haitian migrants on horseback to stop them from entering the country, President Biden called those acts "outrageous."⁵ U.S. Department of Homeland Security (DHS) Secretary Alejandro Mayorkas 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."⁶ Despite this condemnation, discriminatory treatment of Haitian immigrants has continued. As they seek protection in the United States, Haitian nationals have encountered obstacles to obtaining legal counsel, accessing basic information about their rights, and gathering information about their cases.⁷ On December 16, 2021, members of Congress wrote a letter to DHS Secretary Mayorkas, Acting ICE Director Tae Johnson, and the President of CoreCivic Damon T. Hinninger, the private corporation that operates the Tarrant County

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.

⁴ Email from Judge W. Lee Abbott to Judge Brian Palmer regarding Richwood Correction Center cases, Dec. 10, 2021, on file with author.

⁵ 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>.

⁶ 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>.

⁷ 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/>.

Detention Facility, where dozens of Haitian migrants were detained, describing the significant problems faced by Haitian nationals at this detention facility, such as lack of access to counsel and language access barriers when communicating with officers.⁸

Information about the treatment of Haitian nationals in immigration proceedings is badly lacking. The records sought will help ascertain whether barriers to due process exist for Haitian nationals who recently entered the country. Greater agency transparency will also allow greater accountability with respect to how immigration agencies treat Haitian immigrants. In referring to the treatment of Haitians at the border, Vice-President Kamala Harris stated, “There needs to be consequences and accountability.”⁹ 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 will contribute to the public’s understanding of EOIR’s operations, and in particular, its treatment of Haitian nationals.

c) *Disclosure contributes to an understanding of the subject by the public at large.*

Information published by the Council reaches a wide audience, including varied segments of the U.S. public. In calendar year 2021, the Council’s website received more than 2.6 million page views from about 1.5 million visitors. The Council also regularly shares information with national print and news media.

The Council regularly provides information to the public based on its FOIA requests.¹⁰ 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. It also plans to share documents and other information with news media. The Council will make the information available to the public at no charge.

Main Street Legal Services is part of the City University of New York School of Law, an educational institution that operates a program of scholarly research. Main Street Legal Services (“MSLS”) provides a platform for the exploration, development, and implementation of ideas and strategies

⁸ 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.

⁹ Constantino, *supra* note 4.

¹⁰ 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.

to close the growing legal divide between citizens and non-citizens of the United States of America. Main Street Legal Services empowers a diverse rising generation of social justice lawyers to confront the degradation of the rights of citizens and non-citizens alike by training them in immigration law and policy work.

Main Street Legal Services further serves as a non-profit legal services provider and offers community support through trainings, public education campaigns and organizing support. Main Street Legal Services plans to disseminate information obtained as a result of this FOIA on its webpage which contains resources, reports, and other documents relating to immigration policies and practices. Border policies regarding the treatment of immigrants have tremendous impacts on the communities represented by MSLS. As a publicly accessible webpage connected to a legal education institution, its audience includes students, legal practitioners, and community members who have an interest in further disseminating this FOIA to the greater community for the purposes of educating and informing.

Requesters' demonstrated commitment to disseminate this type of information through publicly accessible means and free of charge will contribute to the public's understanding of EOIR's treatment of Haitian nationals.

d) Disclosure will significantly contribute to the public's understanding of how EOIR continues to process Haitian nationals.

There has been very little information published about the case outcomes for Haitian nationals in removal proceedings. Emails like the one obtained by the Council and materials that contextualize these internal discussions will further the public's understanding of how the government treats Haitian nationals beyond the detention context. Requesters also are in the process of analyzing publicly available data on case outcomes of Haitian nationals detained at the Torrance Detention Facility who were then released and their cases transferred to other EOIR locations.

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

2) Disclosure of the information is not in the commercial interest of the Requesters.

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 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.

Main Street Legal Services is a non-profit organization and has no commercial interest in the present request. This request furthers MSLS' objectives of pressing for progressive, humane, and fair interpretations of the law on behalf of members of the most excluded, marginalized, and criminalized groups through policy and advocacy projects in partnership with community-based organizations.

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

Raul A. Pinto, Esq.

On behalf of the Requesters