

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

AMERICAN IMMIGRATION COUNCIL
and INTERNATIONAL REFUGEE
ASSISTANCE PROJECT,

Plaintiffs,

v.

U.S. CITIZENSHIP AND
IMMIGRATION SERVICES and U.S.
DEPARTMENT OF HOMELAND
SECURITY,

Defendants.

Civil Action No. 1:22-cv-5312

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, seeking to compel U.S. Citizenship and Immigration Services (“USCIS”), a component of the U.S. Department of Homeland Security (“DHS”), to immediately release records relating to USCIS’s adjudication of humanitarian parole applications of Afghan nationals, as well as aggregate data related to humanitarian parole applications, applications for fee waivers associated with these applications, and records relating to USCIS’s processing of asylum seekers and refugees.

2. In the aftermath of the United States’ military withdrawal from Afghanistan and subsequent Taliban takeover, humanitarian parole and other methods that allow Afghans to seek safety in the United States have become crucial.

3. Despite efforts to evacuate thousands of vulnerable Afghans after the Taliban takeover, thousands of others who helped the U.S. mission in Afghanistan, as well as their family members, could not reach the safety of the United States.¹

4. President Biden tasked DHS to coordinate the U.S. government's efforts to assist vulnerable Afghans seeking to resettle in the United States in what became known as Operation Allies Welcome.²

5. Humanitarian parole thus has been a key part of DHS's efforts to bring Afghans to the United States. It allows Afghans who have not arrived at a U.S. port of entry and who may be inadmissible or ineligible for admission into the United States, to enter the country.³

6. These applicants for humanitarian parole—many of whom are seeking to be reunited with their families in the United States—often face grave danger under the Taliban-controlled Afghan government, and others live in tenuous situations in temporary accommodations in foreign countries or on U.S. military bases overseas while they await decisions on their applications. Such applicants often are targeted by the Taliban for their work (or the work of a family member) furthering the U.S. government efforts in Afghanistan or for their U.S. mission-aligned ideological beliefs.

7. In the nearly twelve months since the U.S. announced its intent to withdraw from Afghanistan, over 45,000 applications for humanitarian parole have been filed by Afghans in vulnerable situations. Yet, and despite President Biden's directive, reports citing agency sources

¹ See, e.g., Miriam Jordan, *Afghans Who Bet on Fast Path to the U.S. Are Facing a Closed Door*, NEW YORK TIMES, February 16, 2022, <https://www.nytimes.com/2022/02/16/us/afghan-refugees-humanitarian-parole.html>.

² U.S. Dep't of Homeland Security, FACT SHEET ON OPERATION ALLIES WELCOME, <https://www.dhs.gov/publication/fact-sheet-operation-allies-welcome> (last visited June 22, 2022).

³ U.S. Citizenship and Immigration Services, INFORMATION FOR AFGHAN NATIONALS ON REQUESTS TO USCIS FOR HUMANITARIAN PAROLE, <https://www.uscis.gov/humanitarian/humanitarian-parole/information-for-afghan-nationals-on-requests-to-uscis-for-humanitarian-parole> (last visited June 22, 2022).

indicate that USCIS has processed less than 2,500 of these applications, of which 2,200 have been denied.⁴

8. To inform individuals and advocates about how this slow and ineffective processing has impacted Afghan nationals, including as it relates to the high rate of rejected applicants, the International Refugee Assistance Project (“IRAP”) filed a FOIA request with USCIS on October 26, 2021, and a second request jointly with the American Immigration Council (the “Council”) on March 15, 2022.

9. Despite the urgency for potential beneficiaries of humanitarian parole applications, USCIS has not responded to Plaintiffs’ requests. Indeed, in part due to the urgent situation of many applicants, USCIS granted expedited processing to IRAP’s initial FOIA request.

10. Yet to date, IRAP and the Council have not received a single record in response to their FOIA requests.

11. Immediate disclosure of the requested records is necessary to inform humanitarian parole applicants, advocates, and the public about the agency’s performance in processing humanitarian parole applications for Afghan nationals. Only with a better understanding of the current process and timelines for processing humanitarian parole applications can Afghan nationals make plans to reunify with family members and secure safety in the United States.

12. Plaintiffs bring this action under the FOIA for declaratory, injunctive, and other appropriate relief.

⁴ Gabrielle Hays, *How humanitarian parole works, and why so many Afghan families are waiting to be reunited*, PBS NEWSHOUR, May 5, 2022, <https://www.pbs.org/newshour/nation/how-humanitarian-parole-works-and-why-so-many-afghan-families-are-waiting-to-be-reunited>.

JURISDICTION AND VENUE

13. This Court has jurisdiction pursuant to 5 U.S.C. §§ 552(a)(4)(B), (a)(6)(C)(i), (a)(6)(E)(iii). Because this action arises under FOIA against an agency of the United States, this Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

14. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1) because IRAP’s principal place of business is in this district.

15. This Court has jurisdiction to grant declaratory and further necessary or proper relief pursuant to 5 U.S.C. §§ 552(a)(4)(B) and (a)(6)(E)(iii), 28 U.S.C. §§ 2201-2202 and the Federal Rules of Civil Procedure 57 and 65.

16. The Plaintiffs have exhausted any and all administrative remedies in connection with this FOIA request.

PARTIES

17. Plaintiff American Immigration Council (the “Council”) is a tax-exempt, not-for-profit educational and charitable organization under Section 501(c)(3) of the Internal Revenue Code, with its principal place of business at 1331 G Street NW, Suite 200, Washington, D.C. 20005. Founded in 1987, the Council works 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. Through its research and analysis, the Council has become a leading resource for policymakers and opinion makers at the national, state, and local levels who seek to understand the power and potential of immigration and to develop policies that are based on facts rather than myths. The Council also seeks, through court action and other measures, to hold the government accountable for unlawful conduct and restrictive interpretations of the law and for failing to

ensure that the immigration laws are implemented and executed in a manner that comports with due process.

18. Plaintiff International Refugee Assistance Project (“IRAP”) is a 501(c)(3) nonprofit and nonpartisan organization, with its principal place of business at One Battery Park Plaza, 4th Floor, New York, NY 10004, that organizes law students and lawyers to develop and enforce a set of legal and human rights for refugees and displaced persons, including Afghan allies who face ongoing threats of violence because of their service to the U.S. government. IRAP is currently class counsel in litigation representing thousands of Afghan class members who have experienced delays in processing their Special Immigrant Visas. IRAP also provides direct legal representation to hundreds of Afghans seeking safe passage to the United States and other third countries, including more than one hundred currently pending Afghan humanitarian parole applicants. IRAP utilizes media and systemic policy advocacy, direct legal aid, and impact litigation to serve the world’s most persecuted individuals and empower the next generation of human rights leaders. IRAP maintains extensive self-help and practitioner guides on refugee and asylee processing, including guides for Afghan refugee processing and materials for the legal community to advise Afghan parolees about options for durable status such as asylum.

19. Defendant U.S. Department of Homeland Security (“DHS”) is an agency of the United States government and an agency within the meaning of 5 U.S.C. § 552(f).

20. Defendant U.S. Citizenship and Immigration Services (“USCIS”) is a subcomponent of DHS, 8 C.F.R. § 100.1, and an agency within the meaning of 5 U.S.C. § 552(f). USCIS has been delegated authority to administer certain provisions of the Immigration and Nationality Act. 8 C.F.R. § 100.1.

STATEMENT OF FACTS

I. *Background – DHS Makes Humanitarian Parole Available for Afghan Evacuees Outside the United States.*

21. In July 2021, President Biden announced that the U.S. military mission in Afghanistan would conclude by the end of August 2021.⁵

22. Subsequent to the withdrawal of the U.S. military presence in Afghanistan, the Taliban entered Kabul and seized control of the Afghan elected government.⁶ Data from the U.S. Department of State indicates that the United States evacuated 124,000 individuals from Afghanistan in the weeks leading up to the U.S. withdrawal, including U.S. citizens, U.S. legal permanent residents, Afghans who held or applied for Special Immigrant Visas, and Afghans who worked with or for the United States in Afghanistan, as well as their family members.⁷

23. However, thousands of Afghans who were employed to aid U.S. efforts remain in Afghanistan and have sought to leave the country fearing retribution from the Taliban.⁸

24. These fears are well-founded. The Office of the U.N. High Commissioner for Human Rights (“UNHCHR”) received credible allegations that the Taliban carried out reprisal killings of a number of former Afghan military personnel.⁹ The UNHCHR also stated that the Taliban detained and killed civilians and their family members who worked for prior administrations. *Id.*

⁵ Joseph R. Biden, PRESIDENT OF THE UNITED STATES IN THE EAST ROOM (July 8, 2021), available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/08/remarks-by-president-biden-on-the-drawdown-of-u-s-forces-in-afghanistan/>

⁶ Congressional Research Service, *U.S. Military Withdrawal and Taliban Takeover in Afghanistan: Frequently Asked Questions* at 1, Sept. 17, 2021, available at <https://crsreports.congress.gov/product/pdf/R/R46879>.

⁷ *Id.* at 22.

⁸ *Id.*

⁹ *Id.*

25. As part of Operation Allies Welcome, DHS was instructed to lead and coordinate ongoing efforts across the federal government to support vulnerable Afghans, including those who worked alongside the U.S. in Afghanistan, as they safely resettle in the United States. Part of this effort includes granting humanitarian parole to Afghan nationals seeking to enter into the United States.¹⁰

26. USCIS is the subcomponent of DHS that adjudicates applications for humanitarian parole.¹¹

27. USCIS instructs individuals outside the United States, including Afghan nationals, to apply for humanitarian parole by filing Form I-131, Application for a Travel Document, with USCIS.¹²

28. Humanitarian parole allows these individuals who may be inadmissible or otherwise ineligible for admission into the United States to enter the country for a temporary period.

29. An individual may apply for humanitarian parole on their own behalf as a self-petitioner, and a petitioner also can request humanitarian parole on behalf of another person, or a beneficiary.¹³

30. USCIS grants parole if the applicant can demonstrate, based on all the evidence submitted and available to USCIS, that a) there are urgent humanitarian or significant public

¹⁰U.S. Department of Homeland Security, *Operation Allies Welcome*, available at https://www.dhs.gov/sites/default/files/publications/21_1110-opa-dhs-resettlement-of-at-risk-afghans.pdf.

¹¹ U.S. Citizenship and Immigration Services, HUMANITARIAN OR SIGNIFICANT PUBLIC BENEFIT PAROLE FOR INDIVIDUALS OUTSIDE THE UNITED STATES, <https://www.uscis.gov/humanitarian/humanitarianpublicbenefitparoleindividualsoutsideUS> (last visited June 22, 2022).

¹² *Id.*

¹³ *Id.*

benefit reasons for the beneficiary to be in the United States; and b) the beneficiary merits a favorable exercise of discretion. *Id.*

31. In nearly a year, over 45,000 applications for humanitarian parole had been submitted by vulnerable Afghan nationals, many of whom are in immediate danger from the Taliban and/or are seeking to reunite with their family members in the United States. Despite the assurances of the U.S. government, and based on reports citing agency sources, approximately 5% of these applications have been processed. Of this 5%, almost 88% of these processed applications have been denied.¹⁴

32. In its December 2021 report to Congress, DHS stated that the vast majority of Afghan evacuees who entered the United States received humanitarian parole from U.S. Customs and Border Protection (“CBP”) officers at U.S. ports of entry.¹⁵ However, the report does not include information regarding humanitarian parole applications filed with USCIS. To Plaintiffs’ knowledge, there is no such public reporting regarding data related to humanitarian parole applications filed with USCIS.

II. *Plaintiff IRAP’s First Request for Information under the FOIA and Defendants Failure to Timely Respond.*

33. IRAP filed the first FOIA request with USCIS on October 26, 2021 (the “October 26 Request”). A copy of IRAP’s October 26 Request is attached as Exhibit A.

34. IRAP requested the following information:

¹⁴ Gabrielle Hays, *How humanitarian parole works, and why so many Afghan families are waiting to be reunited*, PBS NEWSHOUR, May 5, 2022, <https://www.pbs.org/newshour/nation/how-humanitarian-parole-works-and-why-so-many-afghan-families-are-waiting-to-be-reunited>.

¹⁵ Operation Allies Welcome Afghan Evacuee Report, DEP’T OF HOMELAND SECURITY (Dec. 2021), <https://www.dhs.gov/sites/default/files/2022-03/DMO-OSEM%20-%20Department%20of%20Homeland%20Security%20Operation%20Allies%20Welcome%20Afghan%20Evacuee%20Report.pdf>

- a. Guidance, procedures, policies, directives or similar documents regarding the processing of humanitarian parole by, for, or on behalf of Afghan nationals issued since January 1, 2021; and
- b. Lesson plans, training materials, operating policies and procedures or similar documents regarding the adjudication of humanitarian parole applications in effect since January 1, 2021.

35. In its request, IRAP asked USCIS to expedite the processing for the FOIA request pursuant to 5 U.S.C. § 552(a)(6)(E) due to the urgent need to inform the public and service providers about USCIS's processing of Afghan humanitarian parole applications.

36. On October 27, 2021, USCIS confirmed receipt of the October 26 Request, and assigned it No. COW2021004410 (the "October 27 Letter"). A copy of USCIS' October 27 Letter is attached as Exhibit B.

37. USCIS's October 27 Letter also denied IRAP's request to expedite the processing of the October 26 Request.

38. IRAP appealed USCIS's denial of its request to expedite on January 24, 2022 (the "January 24 Appeal"). A copy of the January 24 Appeal is attached here as Exhibit C.

39. On February 10, 2022, USCIS notified IRAP that it granted IRAP's January 24 appeal approving the request for expedited processing (the "February 10 Decision"). A copy of USCIS' February 10 Decision is attached here as Exhibit D.

40. Despite the grant of expedited processing, USCIS has not produced records responsive to IRAP's October 26 Request.

41. Defendants' conduct violates the requirements of the FOIA and deprives IRAP the opportunity to timely inform legal representatives, advocates, and the public about the

policies and attendant delays affecting the processing of these applications. IRAP accordingly seeks relief from this Court.

II. *Plaintiffs' Second FOIA Request and Defendants' Response*

42. On March 15, 2022, Plaintiffs IRAP and the Council, filed a request under FOIA to USCIS (the "March 15 Request"). A copy of Plaintiffs' March 15 Request is attached here as Exhibit E. The request sought the following information:

- a. Aggregate data regarding humanitarian parole applications filed with the agency since January 1, 2020;
- b. Aggregate data regarding filing fees received by USCIS for humanitarian parole applications;
- c. Aggregate data regarding fee waiver requests associated with applications for humanitarian parole;
- d. Records pertaining to agency guidance, policies, procedures or training materials about USCIS's processing of fee waiver requests associated with humanitarian parole applications filed for Afghan nationals;
- e. Records relating to agency guidance, policies, procedures or training about USCIS's processing of asylum or refugee applications filed by Afghan nationals; and
- f. USCIS's procedures regarding video interviews of refugee or asylum applicants.

43. Plaintiffs asked USCIS to expedite the processing of the March 15 Request given the urgent need to inform the public about the delays in processing these applications.

44. In a letter dated March 16, 2022, USCIS assigned control number COW2022001403 to Plaintiffs' March 15 Request and requested that Plaintiffs clarify their

request (the “March 16 Letter”). A copy of USCIS’ March 16 Letter is attached here as Exhibit F.

45. On March 30, 2022, Plaintiffs responded to USCIS’s request to narrow the scope of the request by clarifying the dates of responsive documents sought. Plaintiffs also suggested agency subcomponents where responsive documents may be found (the “March 30 Letter”). A copy of Plaintiffs’ March 30 Letter is attached here as Exhibit G.

46. That same day, USCIS sent a letter to Plaintiffs acknowledging receipt of the March 15 Request and denying Plaintiffs’ request for expedited processing (the “March 30 Denial”). A copy of USCIS’ March 30 Denial is attached here as Exhibit H.

47. On April 20, 2022, Plaintiffs filed an administrative appeal of USCIS’s determination to deny expedited processing of the March 15 Request with the USCIS FOIA Appeals Office (the “April 20 Appeal”). A copy of Plaintiffs’ April 20 Appeal is attached here as Exhibit I.

48. USCIS has not responded to the Plaintiffs’ appeal.

49. Defendants failed to provide Plaintiffs with the required response within the times prescribed by the FOIA. *See* 5 U.S.C. § 552(a)(6)(B). Plaintiffs’ request remains pending and USCIS has failed to make the legally required determination on the request or produce responsive records.

50. Defendants’ conduct violates the requirements of the FOIA and deprives Plaintiffs the opportunity to timely inform legal representatives, advocates, and the public about the delays affecting the processing of these applications. Plaintiffs accordingly seek relief from this Court.

CLAIM FOR RELIEF

**FIRST CAUSE OF ACTION
(All Plaintiffs v. Defendants)**

Violation of the Freedom of Information Act, 5 U.S.C. § 552, for Failure to Conduct a Reasonable Search.

51. The Plaintiffs hereby incorporate, as fully set forth herein, each and every allegation contained in paragraphs 1– 50 above.

52. Defendants have violated their obligation under the FOIA by failing to make a reasonable effort to search for records sought by Plaintiffs’ requests. 5 U.S.C. § 552(a)(6)(A).

**SECOND CAUSE OF ACTION
(Plaintiff IRAP v. Defendants)**

**Violation of the Freedom of Information Act for
Failure to Respond within the Time Required**

53. The Plaintiffs hereby incorporate, as fully set forth herein, each and every allegation contained in paragraphs 1– 41 above.

54. Under the FOIA, the Defendants were required to respond to IRAP’s October 26, 2021, FOIA request and to notify IRAP of USCIS’s determination within thirty days of receiving the request. 5 U.S.C. § 552(a)(6)(A).

55. Additionally, after USCIS granted IRAP’s request for expedited processing on February 10, 2022, USCIS was required to process IRAP’s request “as soon as practicable.” 5 U.S.C. § 552(a)(6)(E)(iii).

56. The agency failed to provide a response as required by the law, which amounts to a violation of the FOIA.

**THIRD CAUSE OF ACTION
(Plaintiff IRAP v. Defendants)**

Violation of the Freedom of Information Act, 5 U.S.C. § 552, for Failure to Disclose Responsive Records

57. The Plaintiffs hereby incorporate, as fully set forth herein, each and every allegation contained in paragraphs 1– 41 above.

58. Defendants have failed to produce any records responsive to IRAP’s October 26, 2021, request.

59. Defendants are obligated under 5 U.S.C. § 552(a)(3) to promptly produce records responsive to IRAP’S October 26 FOIA request.

60. The Plaintiffs have a legal right to obtain such records, and no legal basis exists for Defendants’ failure to disclose them.

61. Defendants’ failure to disclose all responsive records violates their statutory obligations to make requested records “promptly available to the public.” 5 U.S.C. § 552(a).

62. Additionally, after USCIS granted IRAP’s request for expedited processing on February 10, 2022, USCIS was required to process Plaintiff IRAP’s request “as soon as practicable.” 5 U.S.C. § 552(a)(6)(E)(iii).

**FOURTH CAUSE OF ACTION
(All Plaintiffs v. Defendants)**

**Violation of the Freedom of Information Act for
Failure to Respond within the Time Required**

63. The Plaintiffs hereby incorporate, as fully set forth herein, each and every allegation contained in paragraphs 1– 32, 42-50 above.

64. Under the FOIA, the Defendants were required to respond to Plaintiffs' March 15, 2022, FOIA request and to notify Plaintiffs of USCIS's determination within thirty days of receiving the request. 5 U.S.C. § 552(a)(6)(A).

65. The agency failed to provide a response as required by the law, which amounts to a violation of the FOIA.

66. Defendants' failure to make the requisite determination and to communicate it to the Plaintiffs violates the FOIA. 5 U.S.C. § 552(a)(6)(E)(iii).

**FIFTH CAUSE OF ACTION
(All Plaintiffs v. Defendants)**

**Violation of the Freedom of Information Act, 5 U.S.C. § 552, for Failure to Disclose
Responsive Records**

67. The Plaintiffs hereby incorporate, as fully set forth herein, each and every allegation contained in paragraphs 1– 32, 42-50 above.

68. Defendants have failed to produce any records responsive to Plaintiffs' March 15, 2022, FOIA request.

69. Defendants are obligated under 5 U.S.C. § 552(a)(3) to promptly produce records responsive to the Plaintiffs' FOIA request.

70. The Plaintiffs have a legal right to obtain such records, and no legal basis exists for Defendants' failure to disclose them.

71. Defendants' failure to disclose all responsive records violates their statutory obligations to make requested records "promptly available to the public." 5 U.S.C. § 552(a).

**SIXTH CAUSE OF ACTION
(All Plaintiffs v. Defendants)**

Violation of the Freedom of Information Act, 5 U.S.C. § 552, for Failure to Respond to Plaintiffs' Appeal of USCIS's Decision to Deny Expedited Processing

72. The Plaintiffs hereby incorporate, as fully set forth herein, each and every allegation contained in paragraphs 1– 32, 42-50 above.

73. Under the FOIA, Defendants were required to respond to Plaintiffs' April 20, 2022, administrative appeal of USCIS's decision to deny Plaintiffs' request for expedited processing within 20 days of receipt of such appeal. 5 U.S.C. § 552(a)(6)(A)(ii).

74. The Defendants have failed to make a determination with respect to Plaintiffs' administrative appeal, which constitutes a violation of the FOIA.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully pray for judgment against Defendants as follows:

- a. Order Defendants to expeditiously conduct an adequate search for all records responsive to the Plaintiffs' FOIA requests in accordance with 5 U.S.C. § 552(a)(3)(C);
- b. Declare that Defendants' failures to timely produce the required determination applicable to the Plaintiff IRAP's October 26, 2021, request and Plaintiffs' March 15, 2022, request violate FOIA, 5 U.S.C. § 552(a)(6)(A)(i);
- c. Declare that Defendants' failure to disclose the records responsive to the Plaintiffs' requests violates FOIA, 5 U.S.C. § 552(a)(3)(A), as well as the regulations promulgated thereunder;

d. Order Defendants to process responsive non-exempt records in their entirety, to disclose the requested records in their entirety, and to make the records available to Plaintiffs within thirty (30) days, and enjoin Defendants from improperly withholding records;

e. Award the Plaintiffs reasonable attorneys' fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E), the Equal Access to Justice Act, and any other applicable statute or regulation; and

f. Grant such other relief as the Court may deem just, equitable, and appropriate.

Dated: June 23, 2022

Respectfully submitted,

WINSTON & STRAWN LLP

By: /s/ Jeffrey L. Kessler

Jeffrey L. Kessler
Jeffrey J. Amato
Kerry C. Donovan
Jay Wexler
Gabi Wolk
Malik Williams
200 Park Avenue
New York, NY 10166-4193
Telephone: 212-294-6700
Facsimile: 212-294-4700
JKessler@winston.com
JAmato@winston.com
KCDonovan@winston.com
JWexler@winston.com
GWolk@winston.com
MWilliams@winston.com

AMERICAN IMMIGRATION COUNCIL

By: /s/ Emily Creighton

Emily Creighton (*pro hac forthcoming*)
Raul Pinto
1331 G St. NW, Suite 200
Washington D.C., 20005
Telephone: 202-507-7500
Ecreighton@immcouncil.org
Rpinto@immcouncil.org

EXHIBIT A



International Refugee
Assistance Project

October 26, 2021

National Records Center, FOIA/PA Office
P. O. Box 648010
Lee's Summit, MO. 64064-8010
Phone: 1-800-375-5283
Fax: 816-350-5785
E-mail: uscis.foia@uscis.dhs.gov

Sent via FIRST portal.

**RE: FOIA Request for Records Related to Humanitarian Parole for
Afghan nationals.**

Dear Freedom of Information Officer:

This letter constitutes a request pursuant to the Freedom of Information Act (FOIA) on behalf of the International Refugee Assistance Project (IRAP). IRAP seeks a fee waiver and expedited processing.

RECORDS REQUESTED

IRAP seeks disclosure of:

1. All guidance (including guidance issued via e-mail), procedures, policies, directives, and similar documents regarding the processing of humanitarian parole requests (for both urgent humanitarian reasons and significant public benefit) by USCIS (including, but not limited to, applications filed via Form I-131 and Form I-134) by, for, or on behalf of Afghan nationals, inside and outside Afghanistan, issued since January 1, 2021.
2. All lesson plans, training materials, current operating policies and procedures, and similar documents related to the adjudication of humanitarian parole requests by USCIS (for both urgent humanitarian reasons and significant public benefit), including, but not limited to, any training and guidance

provided to new permanent or temporary RAIO staff or detailees, in effect since January 1, 2021.

THE REQUESTOR

IRAP is a 501(c)(3) nonprofit and nonpartisan organization that organizes law students and lawyers to develop and enforce a set of legal and human rights for refugees and displaced persons. IRAP utilizes media and systemic policy advocacy, direct legal aid, and impact litigation to serve the world's most persecuted individuals and empower the next generation of human rights leaders.

IRAP publishes reports, know-your-rights documents, and other educational materials that are widely disseminated to the public, including through its website. These materials are made available to everyone—including tax-exempt organizations, non-profit groups, lawyers, law students, refugees, and other displaced people—free of charge. IRAP also maintains a blog; publishes an electronic newsletter distributed to subscribers via email; and releases information via social media platforms such as Twitter and Facebook. Material obtained through FOIA are an integral part of this work, and IRAP routinely publishes materials that it obtains through FOIA.

Accordingly, IRAP is a “representative of the news media” within the meaning of the FOIA. *See* 5 U.S.C. § 552(a)(4)(A)(iii) (defining a representative of the news media as an entity that “gathers information of potential interest to a segment of the public” and “uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience”); *accord Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1397 (D.C. Cir. 1989). Other non-profits who similarly engage in media advocacy, in addition to other policy advocacy and legal work, have been found to be a “representative of a news media” within the meaning of the FOIA. *See, e.g., Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (concluding that the ACLU is a news representative); *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (same for the EPIC); *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (same for Judicial Watch, a public interest law firm with a website and a radio show).

EXPEDITED PROCESSING

IRAP requests expedited treatment for this FOIA request pursuant to 5 U.S.C. § 552(a)(6)(E). As noted above, IRAP is a “representative of the news media,” 5 U.S.C. § 552(a)(4)(A)(iii), and there is an “urgency to inform the public concerning the actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). In particular,

there is an urgent need to inform the public and service providers about the records subject to this request, as they would shed light on the Administrations' humanitarian parole processing capabilities. Humanitarian parole provides much-needed humanitarian relief to individuals seeking safety in urgent crises, such as the collapse of the Afghan government after the U.S. withdrawal. Since the fall of Kabul in August 2021, thousands of Afghan individuals have applied for humanitarian parole. These applicants face grave danger under the Taliban-governed Afghanistan and others live in tenuous situations on U.S. military bases overseas or on U.S. soil. Yet they face significant delays in processing, preventing their ability to access protection. There is widespread media attention and strong ongoing public interest¹ surrounding the lengthy processing for Afghans seeking relief from the Taliban through humanitarian parole. Those applying for humanitarian parole, the public, and service providers urgently seek clarity about the process as the safety and security of many hinge on these applications.

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief.

FEE WAIVER

IRAP seeks a full fee waiver 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). IRAP 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 how it intends to accomplish the processing of humanitarian parole applications of Afghan nationals. There is very little public understanding of the process or the timing that individuals can expect from their humanitarian parole application. As IRAP and other service providers work with individuals facing danger in Afghanistan, records to clarify why Afghans face such significant delays in humanitarian parole processing are necessary.

¹ See Grace Nieland, *Veterans United Foundation donates \$100K to help Afghan families with MU ties*, October 19, 2021 https://www.columbiamissourian.com/news/higher_education/veterans-united-foundation-donates-100k-to-help-afghan-families-with-mu-ties/article_0983eb90-3056-11ec-92b4-032eb7715ffe.html; Ally Peters, *With many interpreters, families still trying to leave Afghanistan, a local organization offers help*, September 21, 2021 <https://www.rochesterfirst.com/news/with-many-interpreters-families-still-trying-to-leave-afghanistan-a-local-organization-offers-help/>; Dianne Solis, *Cornyn meets with Afghans, who tell him of the many left behind in their homeland*, October 15, 2021 <https://www.dallasnews.com/news/immigration/2021/10/15/texas-sen-cornyn-meets-with-afghans-who-tell-him-of-the-many-left-behind-in-their-homeland/>

In any event, as discussed *supra*, IRAP is a “representative of the news media” and does not seek the records requested for commercial use. Accordingly, should the government assess fees for the processing of this request, those fees should be “limited to reasonable standard charges for document duplication” alone. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

* * *

Thank you for your consideration of this request. Please provide the requested records to:

Sunil Varghese
International Refugee Assistance Project
One Battery Park Plaza, 4th floor
New York, NY 10004
svarghese@refugeerights.org

Please notify us in advance if the cost of producing the documents requested exceeds \$100.00. If you have any questions regarding this request, please contact Sunil Varghese at (512) 699-8411 or svarghese@refugeerights.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sunil Varghese', with a stylized flourish at the end.

Sunil Varghese

Policy Director

EXHIBIT B

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010



U.S. Citizenship
and Immigration
Services

COW2021004410

October 27, 2021

Sunil Varghese
International Refugee Assistance Project (IRAP)
One Battery Park Plaza, 4th Floor
New York, NY 10004

Dear Sunil Varghese:

We received your request for information relating to all guidance regarding the processing of humanitarian parole requests.

Specifically you have requested:

All guidance (including guidance issued via e-mail), procedures, policies, directives, and similar documents regarding the processing of humanitarian parole requests (for both urgent humanitarian reasons and significant public benefit) by USCIS (including, but not limited to, applications filed via Form 1-131 and Form 1-134) by, for, or on behalf of Afghan nationals, inside and outside Afghanistan, issued since January 1, 2021. All lesson plans, training materials, current operating policies and procedures, and similar documents related to the adjudication of humanitarian parole requests by USCIS (for both urgent humanitarian reasons and significant public benefit), including, but not limited to, any training and guidance provided to new permanent or temporary RAIO staff or detailees, in effect since January 1, 2021.

Your request was received in this office on October 26, 2021. We may need to contact you at a later date to discuss the scope of your request.

Your request is being handled under the provisions of the Freedom of Information Act (5 U.S.C. § 552). It has been assigned the following control number: COW2021004410. Please cite this number in all future correspondence about your request.

We respond to requests on a first-in, first-out basis and on a multi-track system. Your request has been placed in the complex track (Track 2).

Based on the information you provided, we have determined that expedited processing of your request is not warranted. The Department of Homeland Security Freedom of Information Act regulation at 6 C.F.R. § 5.5(e)(1) requires that you demonstrate that your request warrants expedited treatment because it involves:

- (i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information;
- (iii) The loss of substantial due process rights; or
- (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

Additionally, 6 C.F.R. § 5.5(e)(3) requires that a requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. Furthermore, requests for expedited processing that are based on paragraph

COW2021004410

Page 2

(e)(1)(iv) of this section must be submitted to the Senior Director of FOIA Operations, the Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW STOP-0655, Washington, D.C. 20598-0655. If you can demonstrate any further showing as to the nature and degree of (i), (ii), or (iii) of the above categories, please submit this additional information to this office for reconsideration.

You have the right to file an administrative appeal within 90 days of the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. You may file an administrative FOIA appeal to USCIS at: USCIS FOIA/PA Appeals Office, 150 Space Center Loop, Suite 500, Lee's Summit, MO 64064-2139. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison, Jennifer Piatieski, for assistance at:

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010
Telephone: (800) 375-5283
E-Mail: FOIAPAQuestions@uscis.dhs.gov

A FOIA Public Liaison is an agency official to whom FOIA requesters can raise concerns about the service the requester has received from the agency's FOIA Office. FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal Agencies. The OGIS does not have the authority to handle requests made under the Privacy Act of 1974. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
Telephone: (202) 741-5770 or (877) 684-6448
Email: OGIS@nara.gov
Website: ogis.archives.gov

Your request for a fee waiver has been granted.

Consistent with 6 C.F.R. § 5.5(a) of the Department of Homeland Security (DHS) FOIA regulations, USCIS processes FOIA requests according to their order of receipt. Although USCIS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances. Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Additionally, due to the scope and nature of your request, USCIS will need to locate, compile, and review responsive records from multiple offices, both at headquarters and in the field. USCIS may also need to consult with another agency or other component of the Department of Homeland Security that have a substantial interest in the responsive information. Due to these unusual circumstances, USCIS will invoke a 10-day extension for your request

COW2021004410

Page 3

pursuant to 5 U.S.C. § 552(a)(6)(B). Please contact our office if you would like to limit the scope of your request or to agree on a different timetable for the processing of your request. We will make every effort to comply with your request in a timely manner.

The National Records Center (NRC) has the responsibility to ensure that personally identifiable information (PII) pertaining to U.S. Citizenship and Immigration Services (USCIS) clients is protected. In our efforts to safeguard this information, we may request that additional information be provided to facilitate and correctly identify records responsive to your request. Though submission of this information is voluntary, without this information, your request may be delayed while additional steps are taken to ensure the correct responsive records are located and processed. Further, if we are unable to positively identify the subject of the record we may be unable to provide records responsive to your FOIA request.

You may check the status of your FOIA request online at first.uscis.gov/#/check-status. If you have any questions concerning your pending FOIA/PA request, or to check the status of a pending application or petition, please call The National Customer Service Center at (800) 375-5283. Please be aware that the National Records Center no longer accepts FOIA/PA related questions directly by phone.

All FOIA/PA related requests, including address changes, must be submitted in writing and be signed by the requester. Questions concerning this FOIA/PA request may be mailed to the FOIA/PA Officer at the PO Box listed at the top of the letterhead or emailed to FOIAPAQuestions@uscis.dhs.gov. Please include the control number listed above on all correspondence with this office. You can now submit a new FOIA request online using our new Freedom of Information Act Records SysTem (FIRST). If you wish to submit a new FOIA/PA request, please visit www.uscis.gov/FOIA for instructions and requirements.

Sincerely,



Jennifer Piatetski
Acting Director, FOIA Operations

EXHIBIT C



International Refugee
Assistance Project

January 24, 2022

USCIS FOIA/PA Appeals Office
150 Space Center Loop, Suite 500
Lee's Summit, MO
64064-2139

**RE: Freedom of Information Act Appeal: Expedited Processing Appeal for
Records Related to Humanitarian Parole for Afghan Nationals**

Dear Freedom of Information Appeals Office:

This letter constitutes an appeal pursuant to the Freedom of Information Act (FOIA) of the denial of the International Refugee Assistance Project's (IRAP's) expedited processing request.

ORIGINAL REQUEST

In a letter dated October 26, 2021 IRAP requested disclosure of guidance, procedures, policies, directives, and similar documents regarding the processing of humanitarian parole requests by USCIS (copy enclosed as Exhibit A).

At the same time, IRAP requested expedited treatment of the request, pursuant to 5 U.S.C. § 552(a)(6)(E). On October 27, 2021, IRAP received a letter denying the expedited processing request (copy enclosed as Exhibit B).

APPEAL

IRAP writes to appeal the expedited processing denial. The Department of Homeland Security Freedom of Information Act regulation at 6 C.F.R. § 5.5(e)(1) requires that the request warrants expedited treatment because it involves:



International Refugee
Assistance Project

- (i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information;
- (iii) The loss of substantial due process rights; or
- (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

IRAP appeals the determination to deny expedited processing because information about humanitarian parole for Afghans meets each of the aforementioned categories, any of which would be sufficient for expedited processing.

First, this request meets the standard that “the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” Several of IRAP’s clients and tens of thousands more Afghans applying for humanitarian parole are experiencing extremely lengthy delays in their application adjudication and difficulties without this information. As of December 2021, U.S. Citizenship and Immigration Services (USCIS) has received approximately 40,000 humanitarian parole applications from Afghans. These at-risk Afghans are in urgent need for protection from persecution and violence because they actively face threats of death or other forms of harm. Humanitarian parole is currently the most feasible protection mechanism available to them as the U.S. Refugee Admissions Program is rebuilding and is not fully operational to process their applications.¹ There have been numerous reports of threats and violence against journalists, U.S.-affiliated Afghans, LGBTQ+ individuals, women, and religious minorities in Afghanistan which highlights the urgency of their

¹ Alexander Ward, Connor O'Brien, and Quint Forgey, “‘Looks like’ House Appropriations will allocate \$740B for defense,” *Politico*, January 4, 2022, <https://www.politico.com/newsletters/national-security-daily/2022/01/04/looks-like-house-approps-will-allocate-740b-for-defense-495591>.



International Refugee
Assistance Project

applications.² The humanitarian crisis and economic crisis facing Afghans with parole applications is also escalating, leaving many without sufficient food or medical care.³ Without public information about the humanitarian parole application process, Afghans with pending applications will be left without solutions to safety and will likely experience significant harm.

Second, IRAP meets the second standard for expedited processing as an organization engaged in disseminating information. IRAP publishes reports, including information about humanitarian parole applications, that are disseminated to the public through its website.⁴ IRAP clients and potential clients may access this website and are relying on the website to disseminate up-to-date information about humanitarian parole applications. In the case of this request, it is particularly urgent to highlight any changes or processing requirements imposed by the government for humanitarian parole applications, as having improper documentation can add significant time to application processing. As detailed above, such delays could have dire consequences for applicants.

Third, public availability of guidance and policies around humanitarian parole is crucial for due process, especially given that it is the sole one available to many Afghans at risk. Access to such information will help people understand how to apply for this benefit and whether they are or they are not likely to obtain the benefit.

Fourth, there is and continues to be “widespread and exceptional media interest” relevant to the lengthy processing for Afghans seeking relief from the Taliban through

² Human Rights Watch, “Afghanistan: Taliban Kill, ‘Disappear’ Ex-Officials Raids Target Former Police, Intelligence Officers,” November, 30, 2021, www.hrw.org/news/2021/11/30/afghanistan-taliban-kill-disappear-ex-officials; Al Jazeera, “Watchdog: 30 recent cases of violence against Afghan journalists,” October, 28, 2021, www.aljazeera.com/news/2021/10/28/afghanistan-journalists-watchdog-violence-taliban-media; Ben Wescott, “Angry and afraid, Afghanistan’s LGBTQ community say they’re being hunted down after Taliban takeover,” CNN, September, 18, 2021, www.cnn.com/2021/09/17/middleeast/afghanistan-lgbtq-evacuation-intl-hnk-dst/index.html.

³ Jane Ferguson, “Afghanistan has become the world’s largest humanitarian crisis,” New Yorker, January, 5, 2022, www.newyorker.com/news/dispatch/afghanistan-has-become-the-worlds-largest-humanitarian-crisis; NPR, “The United Nations says Afghanistan’s economy is collapsing ‘right before our eyes,’” December, 10, 2021, www.npr.org/2021/12/10/1062946434/the-united-nations-says-afghanistans-economy-is-collapsing-before-our-eyes.

⁴ IRAP Support, <https://support.iraplegalinfo.org/hc/en-us>.



International Refugee
Assistance Project

humanitarian parole and it is impacting the “public confidence” in the government’s integrity. This concern has been catalogued by numerous media outlets,⁵ is evidenced by a bicameral Congressional letter to USCIS,⁶ and outpouring from veterans,⁷ faith groups, and concerned Americans.⁸

The significant delays in processing humanitarian parole applications are preventing at-risk Afghans from accessing protection. This is a matter of dire concern for those living in dangerous conditions in Afghanistan and other countries and is a matter of widespread public attention. Due to these concerns about the government’s slow processing, this request for detailed information regarding the policies and practice guidelines for humanitarian parole for Afghans is an urgent request. For the reasons outlined in this letter, expedited processing of this request is not only warranted by statute, but also urgently needed by IRAP’s clients and other Afghans seeking protection.

Thank you for your consideration of this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Sunil Varghese", with a horizontal line underneath.

Sunil Varghese
Policy Director

One Battery Park Plaza, 4th Floor
New York, NY 10004
svarghese@refugeerights.org

⁵ Beth Bailey, “Humanitarian parole denials risk Afghan lives,” Washington Examiner, December 22, 2021, <https://www.washingtonexaminer.com/opinion/humanitarian-parole-denials-risk-afghan-lives>.

⁶ “Joint Letter to Biden Administration Expressing Concern Regarding Humanitarian Parole Denials for Afghans,” December 14, 2021, <https://www.hrw.org/news/2021/12/16/joint-letter-biden-administration-expressing-concern-regarding-humanitarian-parole>.

⁷ Phil McCausland, “Veterans leading Afghan evacuations demand help from Biden and Congress,” December 1, 2021, <https://www.nbcnews.com/news/us-news/veterans-leading-afghan-evacuations-demand-biden-congress-help-rcna3525>.

⁸ “Speak Out reader opinion: Biden should approve humanitarian parole for Afghans,” January 2, 2022, <https://www.chicagotribune.com/suburbs/daily-southtown/opinion/ct-sta-speak-out-st-0106-20220105-6bl5tcezujs7mfxhhdr6ceotm-story.html>.

EXHIBIT D

U.S. Department of Homeland Security
150 Space Center Loop, Suite 500
Lee's Summit, MO 64064-2139



U.S. Citizenship
and Immigration
Services

February 10, 2022

APP2022000377

Sunil Varghese
International Refugee Assistance
One Battery Park Plaza, 4th Floor
New York, NY 10004

Dear Sunil Varghese:

This is in response to your Freedom of Information Act / Privacy Act (FOIA/PA) request received in this office pertaining to 1. All guidance (including guidance issued via e-mail), procedures, policies, directives, and similar documents regarding the processing of humanitarian parole requests (for both urgent humanitarian reasons and significant public benefit) by USCIS (including, but not limited to, applications filed via Form I-131 and Form I-134) by, for, or on behalf of Afghan nationals, inside and outside Afghanistan, issued since January 1, 2021. 2. All lesson plans, training materials, current operating policies and procedures, and similar documents related to the adjudication of humanitarian parole requests by USCIS (for both urgent humanitarian reasons and significant public benefit), including, but not limited to, any training and guidance provided to new permanent or temporary RAIO staff or detailees, in effect since January 1, 2021, dated January 24, 2022.

Based on additional information obtained in reviewing your appeal, it has been determined that your request for expedited treatment be granted.

Upon further research, I have learned that the National Records Center is already processing your case in conformance with what would have been my remand specification, making further action from my office unnecessary. In any future correspondence with the National Records Center, please refer to case number COW2021004410.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan D. Hughes".

Alan D. Hughes, Associate Counsel
Commercial and Administrative Law Division
Department of Homeland Security
Citizenship and Immigration Services

EXHIBIT E



International Refugee
Assistance Project



March 15, 2022

National Records Center, FOIA/PA Office
P. O. Box 648010
Lee's Summit, MO. 64064-8010
Phone: 1-800-375-5283
Fax: 816-350-5785
E-mail: uscis.foia@uscis.dhs.gov

Sent via to USCIS FOIA Portal

RE: FOIA Request for Records Related to Humanitarian Parole Data and Refugee Processing for Afghan nationals.

Dear Freedom of Information Officer:

This letter constitutes a request pursuant to the Freedom of Information Act ("FOIA") on behalf of the International Refugee Assistance Project ("IRAP") and the American Immigration Council (the "Council") (hereinafter "Requestors"). Requestors seek a fee waiver and expedited processing of this request.

I. RECORDS REQUESTED

1. Requestors seek disclosure of the following records¹ prepared, received, transmitted, collected and/or maintained by U.S. Citizenship and Immigration Services ("USCIS") regarding the processing of applications for humanitarian parole:
 - a. Aggregate data or statistics related to humanitarian parole applications filed since January 1, 2020, including but not limited to data or statistics on the number of humanitarian parole applications received, approved, issued requests for evidence, denied, and still pending, broken down by country of citizenship and location of the intended beneficiary.
 - b. Aggregate data or statistics related to total amount of filing fees submitted to USCIS for humanitarian parole applications since January 1, 2020, broken down by country of citizenship of intended beneficiaries.

¹ For purposes of the Request, the term "records" includes but is not limited to all 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, spreadsheets, charts, 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. Aggregate data or statistics related to the total number of fee waiver requests for humanitarian parole applications received, approved, denied, and still pending, broken down by country of citizenship of intended beneficiaries.
 - d. Current guidance, policies, directives, training materials, and similar documents regarding the processing of fee waiver requests for humanitarian parole applications of Afghan nationals issued after January 1, 2021.
2. The following records relating to the processing of asylum seekers or refugees:
 - a. Current guidance, policies, directives, training materials, and similar documents regarding the processing of Afghan refugees or asylum applicants.
 - b. Current video interview procedures regarding the processing of refugee or asylum applicants, including but not limited to USCIS Asylum Division Video-facilitated Interviews Standard Operating Procedures.

II. FORMAT OF PRODUCTION

To the extent that data is responsive to our request, Requestors 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.

For non-data files, Requestors 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. THE REQUESTORS

IRAP is a 501(c)(3) nonprofit and nonpartisan organization that organizes law students and lawyers to develop and enforce a set of legal and human rights for refugees and displaced persons. IRAP utilizes media and systemic policy advocacy, direct legal aid, and impact litigation to serve the world's most persecuted individuals and empower the next generation of human rights leaders.

The Council is a 501(c)(3) non-profit public interest organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of U.S. immigration laws, protect the legal rights of noncitizens and citizens, and educate the public about the enduring contributions of immigrants. Through research and analysis, the Council informs policymakers at the national, state, and local levels who seek to understand the power and potential of immigration and to develop policies that are based on facts rather than myths. The Council also seeks to hold the government accountable for unlawful conduct and restrictive interpretations of

the law and for failing to ensure that the immigration laws are implemented and executed in a manner that comports with due process through the pursuit of transparency and impact litigation.

IV. EXPEDITED PROCESSING

Requestors seek expedited treatment for this FOIA request pursuant to 5 U.S.C. § 552(a)(6)(E). As noted below, there is an “urgency to inform the public concerning the actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). In particular, there is an urgent need to inform the public and service providers about the records subject to this request, as they would shed light on the Administrations’ humanitarian parole processing capabilities. Humanitarian parole provides much-needed humanitarian relief to individuals seeking safety in urgent crises, such as the collapse of the Afghan government after the United States’ withdrawal of its military presence in Afghanistan. Since the fall of Kabul in August 2021, thousands of Afghan individuals have applied for humanitarian parole.² These applicants face grave danger under the Taliban-governed Afghanistan and others live in tenuous situations on U.S. military bases overseas or on U.S. soil.

Yet Afghan evacuees face significant delays in processing their applications for humanitarian parole, stymying their ability to access protection. There is widespread media attention and strong ongoing public interest surrounding the lengthy processing for Afghans seeking relief from the Taliban through humanitarian parole.³ This coverage includes the expensive fees USCIS charges, and the challenges faced by applicants who attempt to pay these fees or request fee waivers.⁴ Further, the refugee resettlement program has not proved to be an adequate alternative. The program is rife with delays and even temporary suspensions despite attempts to expedite refugee processing for Afghans.⁵ Those applying for humanitarian parole and refugee resettlement, the

² U.S. Dept. of Homeland Security, Operation Allies Welcome Afghan Evacuee Report 6 (December 2021), <https://www.lirs.org/wp-content/uploads/2022/01/DHS-Operation-Allies-Welcome-Afghan-Evacuee-Report-FINAL-1.28.22.pdf>.

³ See, e.g., Grace Nieland, *Veterans United Foundation donates \$100K to help Afghan families with MU ties*, Columbia Missourian, October 19, 2021 https://www.columbiamissourian.com/news/higher_education/veterans-united-foundation-donates-100k-to-help-afghan-families-with-mu-ties/article_0983eb90-3056-11ec-92b4-032eb7715ffe.html; Ally Peters, *With many interpreters, families still trying to leave Afghanistan, a local organization offers help*, RochesterFirst.com, September 21, 2021 <https://www.rochesterfirst.com/news/with-many-interpreters-families-still-trying-to-leave-afghanistan-a-local-organization-offers-help/>; Dianne Solis, *Cornyn meets with Afghans, who tell him of the many left behind in their homeland*, Dallas Morning News, October 15, 2021 <https://www.dallasnews.com/news/immigration/2021/10/15/texas-sen-cornyn-meets-with-afghans-who-tell-him-of-the-many-left-behind-in-their-homeland/>; Aline Barros, *US Inundated with Humanitarian Parole Requests from Afghans*, Voice of America, February 15, 2022, <https://www.voanews.com/a/us-received-overwhelming-number-of-humanitarian-parole-requests-from-afghans-/6441411.html>.

⁴ See, e.g., Jasmine Aguilera, *Tens of Thousands of Afghans Who Fled The Taliban Are Now Marooned in America's Broken Immigration Bureaucracy*, Time Magazine, January 26, 2022 (“The U.S. government has twice rejected their applications to be reunited with [the applicant] through an ad-hoc channel called humanitarian parole. While the rejection documents cite a problem with the fees that [the applicant] attempted to pay—a total of \$1,150”), <https://time.com/6141516/afghans-humanitarian-parole/>; Brian Osgood, *‘Feeling of betrayal’: Afghans await US response on parole*, Al Jazeera News, February 15, 2022 (noting over \$6000 in fees paid for an Afghans 11 family members, and millions of dollars in fees received by USCIS), <https://www.aljazeera.com/news/2022/2/15/feeling-of-betrayal-afghans-await-us-response-on-parole>.

⁵ See, e.g., Miriam Jordan, *Afghans Who Bet on Fast Path to the U.S. Are Facing a Closed Door*, New York Times,

public, and service providers urgently need information about delays in processing humanitarian parole applications, associated fee waiver processing, and refugee resettlement, as the safety and security of many hinges on these applications.

I hereby certify that the foregoing is true and correct to the best of my knowledge and belief.

V. FEE WAIVER

Requestors seek a fee waiver 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 Will Contribute to the Public Understanding of USCIS Operations.*

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.⁶

USCIS is the component within the U.S. Department of Homeland Security (“DHS”) with authority to review parole requests for all nationalities. Due to the dire humanitarian crisis that unfolded in Afghanistan after the United States withdrawal of troops from the country, President Biden directed DHS to lead and coordinate ongoing efforts across the federal government to support vulnerable Afghans, including those who worked alongside the United States, resettle in our nation.⁷ Humanitarian parole is a key component of the U.S. government’s efforts to resettle Afghans arriving in the United States as part of the evacuation effort.

Despite this praiseworthy goal, reports suggest the implementation of humanitarian parole as an option for protection of Afghan evacuees has not been effective. In its report to Congress, DHS reported that the “vast majority of Afghan evacuees who entered the U.S. were granted humanitarian parole by CBP on a case-by-case basis at a U.S. port of entry.”⁸ However, media reports state that DHS has processed less than five percent of the applications for humanitarian parole received since July 2021.⁹

February 16, 2022, <https://www.nytimes.com/2022/02/16/us/afghan-refugees-humanitarian-parole.html> (noting that the refugee program takes several years); Laura Gomez, *U.S. halts resettlement of new refugees, prioritizes release of Afghan evacuees*, Nov. 15, 2021, <https://www.azmirror.com/2021/11/15/u-s-halts-resettlement-of-new-refugees-prioritizes-release-of-afghan-evacuees/>; Stef W. Kight & Jonathan Swan, *Scoop: White House plans expedited resettlement for Afghan refugees*, Axios, January 25, 2022 <https://www.axios.com/biden-afghan-refugee-fast-track-qatar-afghanistan-57d744d0-7bf9-4ab1-a947-6be7a23a1102.html>.

⁶ 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)).

⁷ U.S. Dept. of Homeland Security, Operation Allies Welcome, <https://www.dhs.gov/allieswelcome> (last visited March 11, 2022).

⁸ DHS, *supra* note 2, at 6.

⁹ Jordan, *supra* note 5.

This request is in the public interest because it meets all the necessary criteria. First, Requestors seek information that concerns USCIS' operations; in particular, requesters seek information about how the agency implements its humanitarian parole program with respect to Afghan applicants. The requested information will shed light on USCIS operations, including whether the humanitarian parole program is meeting its goals after the U.S. government announced that humanitarian parole would be a tool to assist Afghan evacuees.

Second, disclosure of this data will contribute not only to Requestors' understanding of whether humanitarian parole effectively assisted Afghan evacuees, but also will help the public at large discern whether humanitarian parole—a tool deployed by the U.S. government to aid Afghan evacuees enter the United States—is effective. There is very little knowledge of the applications adjudication process or the processing times related to humanitarian parole or refugee applications, or the agency's performance in adjudicating these applications. As IRAP and other service providers work with individuals facing danger in Afghanistan, records to clarify why Afghans face such significant delays in humanitarian parole and refugee processing are necessary.

Finally, the agency's disclosure of these records to Requestors will significantly contribute to the public's understanding of whether humanitarian parole has been effective. The seemingly contradictory data included in DHS' report to Congress and the numbers published in the media has contributed to confusion as to USCIS' effective use of humanitarian parole.

Both IRAP and the Council are non-partisan, non-profit organizations that have experience in disseminating information obtained through FOIA. IRAP publishes reports, know-your-rights documents, and other educational materials that are widely disseminated to the public, including through its website. These materials are made available to everyone—including tax-exempt organizations, non-profit groups, lawyers, law students, refugees, and other displaced people—free of charge. IRAP also maintains a blog; publishes an electronic newsletter distributed to subscribers via email; and releases information via social media platforms such as Twitter and Facebook. Material obtained through FOIA are an integral part of this work, and IRAP routinely publishes materials that it obtains through FOIA.

The Council regularly provides information, including fact sheets, reports and other publications to the public based on its FOIA requests.¹⁰ This information reaches 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. In keeping with its track record of synthesizing or otherwise publishing information on governmental

¹⁰ See, e.g., American Immigration Council, "The Electronic Nationality Verification Program: An Overview" (Jan. 26, 2021), <https://www.americanimmigrationcouncil.org/research/electronic-nationality-verification-program-overview>; Guillermo Cantor *et al.*, "Changing Patterns of Interior Immigration Enforcement in the United States," 2016 -2018, American Immigration Council (July 1, 2019), <https://americanimmigrationcouncil.org/research/interior-immigration-enforcement-united-states-2016-2018>; American Immigration Council, "Stays of Removal Responses from EOIR" (May 2019), https://americanimmigrationcouncil.org/sites/default/files/foia_documents/board_of_immigration_appeals_interpretation_of_stay_of_removal_foia_production.pdf; Guillermo Cantor & Walter Ewing, "Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered, American Immigration Council" (Aug. 2017), http://bit.ly/Council_StillNoActionTaken.

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.

Requestors' demonstrated ability to disseminate information requested to the public will contribute to the public's understanding of USCIS' 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 the public's understanding.

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

2. *Disclosure of the information is not in Requestors' Commercial Interest.*

Requestors have 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 protocols the agency implemented to process humanitarian parole applications and the progress it made in implementing them.

As previously mentioned, IRAP plans to make disclosures obtained through this request available to IRAP's audience, which includes other tax-exempt organizations, non-profit groups, lawyers, law students, refugees, and other displaced people, free of charge. IRAP, as a not-for-profit organization has no commercial interest in the present request.

The Council, as a not-for-profit organization, also 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, 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 requesters.

* * *

Thank you for your consideration of this request. Please provide the requested records to:

Stephen Poellot
International Refugee Assistance Project
One Battery Park Plaza, 4th floor
New York, NY 10004
spoellot@refugeerights.org

Please notify us in advance if the cost of producing the documents requested exceeds \$100.00. If you have any questions regarding this request, please contact Stephen Poellot at (516) 701-4666 or spoellot@refugeerights.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Poellot', written over a horizontal line.

Stephen Poellot
Legal Strategy Director

EXHIBIT F

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010



U.S. Citizenship
and Immigration
Services

COW2022001403

March 16, 2022

Stephen Poellot
International Refugee Assistance Project
1 Battery Park Plaza, 4th Floor
New York, NY 10004

Dear Stephen Poellot:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office on March 15, 2022 relating to humanitarian parole applications. Part 1c of your request stated that you would like aggregate data or statistics related to the total number of fee waiver requests for humanitarian parole applications received, approved, denied, and still pending, broken down by country of citizenship of intended beneficiaries.

Your request is being handled under the provisions of the Freedom of Information Act (5 U.S.C. § 552). It has been assigned the following control number: COW2022001403. Please cite this number in all future correspondence about your request.

Consistent with 6 C.F.R. § 5.3(b) of the Department of Homeland Security (DHS) FOIA regulations, your request must describe the records sought in sufficient detail to enable our personnel to locate them with a reasonable amount of effort. Upon initial review, United States Citizenship and Immigration Services (USCIS) does not find that you have adequately described the records sought. In accordance with 6 C.F.R. § 5.3(c), USCIS FOIA needs clarification from you regarding the records you are requesting. To the extent possible, please provide specific information that may assist our office with identifying the requested records, such as a time period you wish to have a records search conducted on. You may respond with the clarification by U.S. mail or electronic mail. Please clearly mark the letter, envelope, and/or email "COW2022001403 Clarification" for our staff to track your correspondence accordingly.

In order to be considered timely, your response must be postmarked or received by electronic mail within 30 working days of the date of this letter. To aid you in adequately describing the records sought, you may contact USCIS's FOIA Public Liaison, Jennifer Piatetski, for assistance at:

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010
Telephone: (800) 375-5283
E-Mail: FOIAPAQuestions@uscis.dhs.gov

If you do not respond with clarification of the records you are requesting, your request may be administratively closed by our office in accordance with 6 C.F.R. § 5.3(c). This administrative closure does not prejudice your ability to submit a new request for further consideration with additional information.

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All FOIA/PA related requests, including address changes, must be submitted in writing. Please include the Control Number listed above on all correspondence with this office. Requests may be mailed to the FOIA/PA Officer at the PO Box listed at the top of the letterhead, emailed to FOIASIG.NRC@uscis.dhs.gov, or sent by fax to (802) 860-6908. You may also submit FOIA/PA related questions to our email address at FOIASIG.NRC@uscis.dhs.gov.

Sincerely,



Cynthia Munita
Director, FOIA Operations

EXHIBIT G



International Refugee
Assistance Project



March 30, 2022

National Records Center, FOIA/PA Office

P. O. Box 648010

Lee's Summit, MO. 64064-8010

Phone: 1-800-375-5283

Fax: 816-350-5785

E-mail: FOIASIG.NRC@uscis.dhs.gov

E-mail: uscis.foia@uscis.dhs.gov

E-mail : FOIAPAQuestions@uscis.dhs.gov

Sent via email

**RE: Request Control No. COW2022001403 Clarification
FOIA Request for Records Related to Humanitarian Parole Data and
Refugee Processing for Afghan nationals.**

Dear Freedom of Information Officer:

This letter is in response to your March 16, 2022 correspondence requesting that we provide specific information to clarify the request we submitted on March 15, 2022 under the Freedom of Information Act ("FOIA"). The agency's March 16 letter suggests that requesters failed to provide sufficient detail to allow agency personnel to locate the records sought.

First, we disagree with the agency's characterization that the March 15 request does not provide enough detail for agency personnel to locate the records. The "linchpin inquiry" when evaluating whether a request reasonably describes the records sought is "whether the agency is able to determine precisely what records (are) being requested." *New Orleans Workers' Ctr. for Racial Just. v. United States Immigr. & Customs Enft*, 373 F. Supp. 3d 16, 32 (D.D.C. 2019) (quoting *Yeager v. DEA*, 678 F.2d 315, 326 (D.C. Cir. 1982)).

We note that, as suggested in your letter, items numbered 1.a., 1.b. and 1.d. provided the agency with a distinct time period to conduct a search. To clarify, item 1.c. should also be limited to records relating to fee waiver applications filed since January 1, 2020. Further, items listed in subsection 2 relate to "current" training materials, which requires the agency to disclose records in effect when the agency conducts its search for responsive documents. Accordingly, the timeframe of the search is specifically defined as previously stated and as clarified herein.

It may be helpful to clarify that the definition of records provided in our request does not apply to items 1.a. through 1.c. These items request "aggregate data or statistics" about applications for humanitarian parole and accompanying fee waiver petitions. Requestors do not seek communications relating to individuals' applications.

We also are willing to replace "regarding" in 1.d, 2.a and 2.b with "referencing or describing" to the extent that more clearly defines the documents we seek.

Finally, though we cannot know precisely where the agency maintains the records sought, from what we understand, some items in Section 1 might be found in Humanitarian Affairs Branch (HAB). The USCIS website states that humanitarian parole applications are reviewed by (HAB), and that USCIS officers then adjudicate the applications. However, the website also states that HAB may transfer review of applications to other USCIS components with jurisdiction over the request. Moreover, the website does not clarify if HAB adjudicates and/or tracks fee waiver requests. As such, requesters clarify that they seek data about adjudications by HAB and any other USCIS component with jurisdiction over applications for humanitarian parole, including fee waiver requests that may be granted by the USCIS service centers or lockboxes.

Further, items in Section 2 require the agency to search for “guidance, policies, directives, training materials, and similar documents” and specifically lists one example of a relevant USCIS Asylum Division document. As with the records requested in Section 1, we cannot know precisely where the agency maintains the records, but based on the USCIS website, records might be found in the Refugee, Asylum, and International Operations Directorate. The details provided in the FOIA, in addition to suggested locations to be searched, provide the agency with sufficient information regarding the location of the records sought. *See Yagman v. Pompeo*, 868 F.3d 1075, 1081 (9th Cir. 2017) (request not required to describe “documents or databases by name,” but to provide “some reasonable description”).

Accordingly, we request that USCIS conduct a search for responsive records in accordance with the aforementioned parameters.

If you have any questions, please do not hesitate to contact us.

Sincerely,



Stephen Poellot
Legal Strategy Director

EXHIBIT H

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
National Records Center
P.O. Box 648010
Lee's Summit, MO 64064-8010



U.S. Citizenship
and Immigration
Services

COW2022001403

March 30, 2022

Stephen Poellot
International Refugee Assistance Project
1 Battery Park Plaza, 4th Floor
New York, NY 10004

Dear Stephen Poellot:

We received your request for information relating to humanitarian parole applications. Specifically, you requested:

1. Disclosure of the following records prepared, received, transmitted, collected and/or maintained by U.S. Citizenship and Immigration Services ("USCIS") regarding the processing of applications for humanitarian parole:

a. Aggregate data or statistics related to humanitarian parole applications filed since January 1, 2020, including but not limited to data or statistics on the number of humanitarian parole applications received, approved, issued requests for evidence, denied, and still pending, broken down by country of citizenship and location of the intended beneficiary.

b. Aggregate data or statistics related to total amount of filing fees submitted to USCIS for humanitarian parole applications since January 1, 2020, broken down by country of citizenship of intended beneficiaries.

c. Aggregate data or statistics related to the total number of fee waiver requests for humanitarian parole applications received, approved, denied, and still pending since January 1, 2020, broken down by country of citizenship of intended beneficiaries.

d. Current guidance, policies, directives, training materials, and similar documents regarding the processing of fee waiver requests for humanitarian parole applications of Afghan nationals issued after January 1, 2021.

2. The following records relating to the processing of asylum seekers or refugees:

a. Current guidance, policies, directives, training materials, and similar documents regarding the processing of Afghan refugees or asylum applicants.

b. Current video interview procedures regarding the processing of refugee or asylum applicants, including but not limited to USCIS Asylum Division Video-facilitated Interviews Standard Operating Procedures.

Your request was received in this office on March 15, 2022. We may need to contact you at a later date to discuss the scope of your request.

Your request is being handled under the provisions of the Freedom of Information Act (5 U.S.C. § 552). It has been assigned the following control number: COW2022001403. Please cite this number in all future correspondence about your request.

We respond to requests on a first-in, first-out basis and on a multi-track system. Your request has been placed in the complex track (Track 2).

Based on the information you provided, we have determined that expedited processing of your request is

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not warranted. The Department of Homeland Security Freedom of Information Act regulation at 6 C.F.R. § 5.5(e)(1) requires that you demonstrate that your request warrants expedited treatment because it involves:

- (i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information;
- (iii) The loss of substantial due process rights; or
- (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

Additionally, 6 C.F.R. § 5.5(e)(3) requires that a requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. Furthermore, requests for expedited processing that are based on paragraph (e)(1)(iv) of this section must be submitted to the Senior Director of FOIA Operations, the Privacy Office, U.S. Department of Homeland Security, 245 Murray Lane SW STOP-0655, Washington, D.C. 20598-0655. If you can demonstrate any further showing as to the nature and degree of (i), (ii), or (iii) of the above categories, please submit this additional information to this office for reconsideration.

You have the right to file an administrative appeal within 90 days of the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. You may file an administrative FOIA appeal to USCIS at: USCIS FOIA/PA Appeals Office, 150 Space Center Loop, Suite 500, Lee's Summit, MO 64064-2139. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison, Cynthia Munita, for assistance at:

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010
Telephone: (800) 375-5283
E-Mail: FOIAPAQuestions@uscis.dhs.gov

A FOIA Public Liaison is an agency official to whom FOIA requesters can raise concerns about the service the requester has received from the agency's FOIA Office. FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal Agencies. The OGIS does not have the authority to handle requests made under the Privacy Act of 1974. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001

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Telephone: (202) 741-5770 or (877) 684-6448

Email: OGIS@nara.gov

Website: ogis.archives.gov

Your request for a fee waiver has been granted.

Consistent with 6 C.F.R. § 5.5(a) of the Department of Homeland Security (DHS) FOIA regulations, USCIS processes FOIA requests according to their order of receipt. Although USCIS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances. Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Additionally, due to the scope and nature of your request, USCIS will need to locate, compile, and review responsive records from multiple offices, both at headquarters and in the field. USCIS may also need to consult with another agency or other component of the Department of Homeland Security that have a substantial interest in the responsive information. Due to these unusual circumstances, USCIS will invoke a 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B). Please contact our office if you would like to limit the scope of your request or to agree on a different timetable for the processing of your request. We will make every effort to comply with your request in a timely manner.

The National Records Center (NRC) has the responsibility to ensure that personally identifiable information (PII) pertaining to U.S. Citizenship and Immigration Services (USCIS) clients is protected. In our efforts to safeguard this information, we may request that additional information be provided to facilitate and correctly identify records responsive to your request. Though submission of this information is voluntary, without this information, your request may be delayed while additional steps are taken to ensure the correct responsive records are located and processed. Further, if we are unable to positively identify the subject of the record we may be unable to provide records responsive to your FOIA request.

You may check the status of your FOIA request online at first.uscis.gov/#/check-status. If you have any questions concerning your pending FOIA/PA request, or to check the status of a pending application or petition, please call The National Customer Service Center at (800) 375-5283. Please be aware that the National Records Center no longer accepts FOIA/PA related questions directly by phone.

All FOIA/PA related requests, including address changes, must be submitted in writing and be signed by the requester. Questions concerning this FOIA/PA request may be mailed to the FOIA/PA Officer at the PO Box listed at the top of the letterhead or emailed to FOIAPAQuestions@uscis.dhs.gov. Please include the control number listed above on all correspondence with this office. You can now submit a new FOIA request online using our new Freedom of Information Act Records SysTem (FIRST). If you wish to submit a new FOIA/PA request, please visit www.uscis.gov/FOIA for instructions and requirements.

Sincerely,



Cynthia Munita
Director, FOIA Operations

EXHIBIT I



International Refugee
Assistance Project



April 20, 2022

USCIS FOIA/PA Appeals Office
150 Space Center Loop, Suite 500
Lee's Summit, MO
64064-2139

**RE: FOIA Appeal: Expedited Processing Denial
COW2022001409REQ**

Dear Freedom of Information Appeals Office:

This letter constitutes an appeal pursuant to the Freedom of Information Act (FOIA) of the March 30, 2022 decision by U.S. Citizenship and Immigration Services' (USCIS) FOIA Operations Office denying the International Refugee Assistance Project (IRAP) and the American Immigration Council's (Council) (together, "Requesters") request to expedite the processing of Requesters' March 15, 2022 FOIA request.

ORIGINAL REQUEST

In a letter dated March 15, 2022 submitted via USCIS FOIA Portal, Requesters sought disclosure of aggregate data related to the processing of humanitarian parole requests and requests for fee waivers by USCIS, in addition to guidance, policies, directives, and similar documents regarding the processing of Afghan refugee or asylum applications (copy enclosed as Exhibit A).

At the same time, Requesters sought expedited treatment of the request, pursuant to 5 U.S.C. § 552(a)(6)(E). On March 30, 2022, Requesters received a letter denying the expedited processing request (copy enclosed as Exhibit B).

APPEAL

Requesters appeal the expedited processing denial. The Department of Homeland Security Freedom of Information Act regulation at 6 C.F.R. § 5.5(e)(1) states that a request warrants expedited treatment when it involves:

- (i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information;



International Refugee
Assistance Project



- (iii) The loss of substantial due process rights; or
- (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

Requesters appeal the determination to deny expedited processing because information about humanitarian parole, refugee and asylee processing for Afghans meets each of the aforementioned categories, any of which would be sufficient for expedited processing.

- a. *Denial of expedited request poses an imminent threat to the life of Afghan humanitarian parole applicants stuck in Afghanistan and other dangerous situations.*

This request meets the standard that “the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” Several of IRAP’s clients and tens of thousands more Afghans applying for humanitarian parole are experiencing extremely lengthy delays in their application adjudication and difficulties without this information. As of December 2021, USCIS has received approximately 40,000 humanitarian parole applications for Afghan nationals outside the United States.¹ Many of these at-risk Afghans are in urgent need of protection from persecution and violence because they actively face threats of death or other forms of harm in Afghanistan.

Humanitarian parole is currently the most feasible protection mechanism available to them as the U.S. Refugee Admissions Program is rebuilding and is not fully operational to process their applications in a reasonable time.² There have been numerous reports of threats and violence against journalists, U.S.-affiliated Afghans, LGBTQ+ individuals, women, and religious minorities in Afghanistan which highlights the urgency of their applications.³ The humanitarian crisis and economic crisis facing

¹ Aline Barros, *US Inundated With Humanitarian Parole Requests From Afghans*, VOICE OF AMERICA, Feb. 15, 2022, <https://www.voanews.com/a/us-received-overwhelming-number-of-humanitarian-parole-requests-from-afghans-/6441411.html#:~:text=The%20Biden%20administration%20received%20more,VOA%20by%20U.S.%20immigration%20of%20oficials>.

² Alexander Ward, Connor O’Brien, and Quint Forgey, *‘Looks like’ House Approps will allocate \$740B for defense*, POLITICO, Jan. 4, 2022, <https://www.politico.com/newsletters/national-security-daily/2022/01/04/looks-like-house-approps-will-allocate-740b-for-defense-495591>.

³ Human Rights Watch, *Afghanistan: Taliban Kill, ‘Disappear’ Ex-Officials Raids Target Former Police, Intelligence Officers*, Nov. 30, 2021, www.hrw.org/news/2021/11/30/afghanistan-taliban-kill-disappear-ex-officials; Associated Press, *Watchdog: 30 recent cases of violence against Afghan journalists*, ALJAZEERA, Oct. 28, 2021, www.aljazeera.com/news/2021/10/28/afghanistan-journalists-watchdog-violence-taliban-media; Ben Wescott, *Angry and afraid, Afghanistan's LGBTQ community say they're being hunted down after Taliban takeover*, CNN, Sept. 18, 2021, www.cnn.com/2021/09/17/middleeast/afghanistan-lgbtq-evacuation-intl-hnk-dst/index.html.



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Assistance Project



Afghanistan is also escalating, leaving many without sufficient food or medical care.⁴ Without greater access to information about the humanitarian parole application process, Afghans with pending applications will be left without solutions to safety and will likely experience significant harm. Further, additional information about the adjudication of refugee and asylee applications is vitally important to this population.

b. Request is urgent, and Requesters are mainly organizations engaged in disseminating information.

Requesters also meet the second standard for expedited processing as organizations engaged in disseminating information. The standard established by courts for an organization to meet the element of dissemination of information is to demonstrate that the dissemination of information be not merely incidental to other activities. *Landmark Legal Found. V. E.P.A.*, 910 F. Supp. 2d 270, 276 (D.D.C. 2012). For example, courts have held that organizations that “disseminat[e] information regarding civil rights and voting rights to educate the public, promote effective civil rights laws, and ensure their enforcement by the Department of Justice,” meet the standard. *Leadership Conference on Civil Rights v. Gonzales*, 404 F.Supp.2d 246, 260 (D.D.C. 2005). Similarly, an organization qualifies when it has a “core mission ... to inform public understanding on operations and activities of government,” including by “gather[ing] and disseminat[ing] information that is likely to contribute significantly to the public understanding of executive branch operations and activities.” *Protect Democracy Project, Inc. v. U.S. Dep’t of Def.*, 263 F. Supp. 3d 293, 298 (D.D.C. 2017).

Some of the Council’s core functions are to educate the public to promote fair and rational immigration policies and to use communication strategies to change the way people think about immigration.⁵ As a strategy to accomplish these goals, the Council uses FOIA to secure data and documentation from government agencies, which it then analyzes to publish reports to share the information publicly, devoting an entire section of its website to “Government Transparency” efforts.⁶ As such, the Council has a proven track record for disseminating information obtained through FOIA requests. For example, the Council has published documents related to the U.S. Department of Homeland Security’s implementation of the family separation policy, highlighting the harms of the policy, the inefficiencies

⁴ Jane Ferguson, *Afghanistan has become the world’s largest humanitarian crisis*, NEW YORKER, January, 5, 2022, www.newyorker.com/news/dispatch/afghanistan-has-become-the-worlds-largest-humanitarian-crisis; Associated Press, *The United Nations says Afghanistan’s economy is collapsing ‘right before our eyes,’* NPR, Dec., 10, 2021, www.npr.org/2021/12/10/1062946434/the-united-nations-says-afghanistans-economy-is-collapsing-before-our-eyes.

⁵ American Immigration Council, *About the American Immigration Council* <https://www.americanimmigrationcouncil.org/about/our-mission> (last visited April 18, 2022).

⁶ American Immigration Council, *Government Transparency*, <https://www.americanimmigrationcouncil.org/what-we-do/government-transparency> (last visited April 18, 2022).



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Assistance Project



of the program, and the government's justifications for its implementation.⁷ In 2021, the Council's website had 2,613,267 page views from 1,580,956 visitors. Also, the Council regularly shares information with national print and news media.

IRAP publishes reports, including information about humanitarian parole, refugee, and asylum applications, that are disseminated to the public through its website.⁸ IRAP's core mission involves systemic advocacy, including through publications that rely on information about the workings of the government obtained in part from Freedom of Information Act requests. Relevant reports include recommendations for the U.S. Refugee Admissions Program, options for humanitarian pathways for at-risk Afghans, and family reunification delays.⁹ Additionally, IRAP distills information about U.S. government processing into accessible guides translated in multiple languages on a dedicated legal information website.¹⁰ IRAP clients and potential clients may access this website and rely on the website to disseminate up-to-date information about humanitarian parole applications.

Additionally, courts must consider three factors to determine whether the requisite urgency exists: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity. *Energy Pol'y Advocs. v. U.S. Dep't of the Interior*, 2021 WL 4306079, at 3 (D.D.C. 2021). In this regard, an expedite request must identify a specific reason to conclude that obtaining the requested documents is time sensitive. *Id.* at 4.

In the case of this request, it is particularly urgent to highlight data around humanitarian parole and fee waiver applications received, pending, granted and denied as well as any processing requirements imposed by the government for Afghan refugee and asylum applications. The extensive media attention cited above illustrates the current exigency to the American public of these issues. Further, as detailed above, processing delays of relief applications could have dire consequences for applicants. Applicants'

⁷ American Immigration Council, Government Documents on Family Separation, <https://www.americanimmigrationcouncil.org/FOIA/government-documents-family-separation-tracking-policys-evolution-implementation-and-harm> (last visited April 18, 2022).

⁸ International Refugee Assistance Project, News & Resources, https://refugeerights.org/news-resources?keyword=&issue=0&language=0&news_resources_type=publication (last visited April 18, 2022).

⁹ IRAP, Human Rights First, and InterAction, Fulfilling America's Promise: Options to make U.S. humanitarian protection pathways viable for at-risk Afghans 1 (Nov. 2021), <https://refugeerights.org/wp-content/uploads/2021/11/Afghan-Evacuation-Administration-Memo-FORMATTED.pdf>; IRAP, Rebuilding the U.S. Refugee Program for the Future – 22 Recommendations for 2022 4 (Jan. 11, 2022), <https://refugeerights.org/wp-content/uploads/2022/01/USRAP-Recs-Report-FINAL.pdf>; IRAP, Families in Limbo : What the Biden Administration Can Do Now to Address Unreasonable Delays in Refugee and Asylee Family Reunification 4 (March 2021), <https://refugeerights.org/news-resources/families-in-limbo-what-the-biden-administration-can-do-now-to-address-unreasonable-delays-in-refugee-and-asylee-family-reunification-march-9-2021>.

¹⁰ IRAP, I'm looking for information about refugee status or immigration pathways, <https://support.iraplegalinfo.org/hc/en-us/categories/360003007932-I-m-looking-for-information-about-refugee-status-or-immigration-pathways> (last visited April 18, 2022).



International Refugee
Assistance Project



interest to have their petitions adjudicated in a timely manner is a “significant recognized interest.” *Id.* Adoption of swift ameliorative measures depend on the public’s knowledge of the delays. Prompt exposure of information about this government program can raise awareness of the delays with public officials and the public at large so that these delays are properly addressed.

c. The loss of applicant’s substantial due process rights is at risk.

Public availability of guidance and policies around humanitarian parole, refugee and asylee processing is crucial for due process, especially for many Afghans at risk. Access to such information will help people understand how to apply for these benefits and whether they are or they are not likely to obtain the benefit. Due process protections are particularly at issue in light of reports suggesting that the administration sought to process Afghans for refugee status within 30 days of their arrival at the military site in Qatar, when it usually takes the government two to five years to resettle refugees in the United States. The public urgently needs to know whether this fast-track process has led to denials that may have circumvented due process requirements. This potential loss of applicant’s due process justifies the expedited processing of Requesters’ FOIA request.

d. There is widespread and exceptional media interest in this issue.

Additionally, there is and continues to be “widespread and exceptional media interest” relevant to the lengthy processing for Afghans seeking relief from the Taliban through humanitarian parole and other pathways and it is impacting the public confidence in the government’s integrity. This concern has been catalogued by numerous media outlets,¹¹ is evidenced by a bicameral Congressional letter to USCIS,¹² and outpouring from veterans,¹³ faith groups, and concerned Americans.¹⁴

On February 10, 2022, IRAP was granted expedited treatment of a similar FOIA request (seeking records related to policies and procedures for Afghan humanitarian parole applications) after successfully appealing the denial of expedited processing (copy enclosed as Exhibit C). There is no meaningful basis to distinguish the present request for expedited processing from the one that was granted just a few weeks ago.

¹¹ Beth Bailey, *Humanitarian parole denials risk Afghan lives*, WASHINGTON EXAMINER, Dec. 22, 2021, <https://www.washingtonexaminer.com/opinion/humanitarian-parole-denials-risk-afghan-lives>.

¹² Joint Letter to Biden Administration Expressing Concern Regarding Humanitarian Parole Denials for Afghans (Dec. 14, 2021), *available at* <https://www.hrw.org/news/2021/12/16/joint-letter-biden-administration-expressing-concern-regarding-humanitarian-parole>.

¹³ Phil McCausland, *Veterans leading Afghan evacuations demand help from Biden and Congress*, NBC NEWS, Dec. 1, 2021, <https://www.nbcnews.com/news/us-news/veterans-leading-afghan-evacuations-demand-biden-congress-help-rna3525>.

¹⁴ “Speak Out reader opinion: Biden should approve humanitarian parole for Afghans,” January 2, 2022, <https://www.chicagotribune.com/suburbs/daily-southtown/opinion/ct-sta-speak-out-st-0106-20220105-6b15tcezujs7mfxhhdr6ceotm-story.html>.



International Refugee
Assistance Project



The significant delays in processing humanitarian parole, refugee, and asylee applications are preventing at-risk Afghans from accessing protection. This is a matter of dire concern for those living in dangerous conditions in Afghanistan and other countries and is a matter of widespread public attention. Due to these concerns about the government's slow processing, this request for data regarding humanitarian parole for Afghans and policies related to refugee and asylum processing is an urgent request. For the reasons outlined in this letter, expedited processing of this request is not only warranted by statute, but also urgently needed by Afghans seeking protection and the public.

Thank you for your consideration of this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Poellot".

Stephen Poellot
Legal Strategy Director
On behalf of Requesters

One Battery Park Plaza, 4th Floor
New York, NY 10004
spoellot@refugeerights.org