



March 6, 2025

Sent via FOIAFirst Portal

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

Re: Freedom of Information Act Request for Records of USCIS Guidance on "Alien Smuggling" Grounds of Inadmissibility

Dear Freedom of Information Officer:

The American Immigration Council (the "Council") and the National Immigration Project submit this request for records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to obtain information regarding U.S. Citizenship and Immigration Services' ("USCIS") application of 8 U.S.C. § 1182(a)(6)(E), i.e. the ground of inadmissibility that applies to an individual who has assisted another person to enter the country in violation of the law, commonly referred to as "alien smuggling."

Requestors seek a fee waiver of any fee imposed by the agency because the records sought will contribute to the public's understanding of USCIS' procedures in applying this ground of inadmissibility, and release of the information is not in Requestors' commercial interest.

I. REQUEST FOR INFORMATION

Requestors seek records¹ prepared, received, transmitted, collected or maintained by USCIS as described below.

1. Agency records from January 1, 2020 until the date the agency conducts a reasonable search amending, updating, supplementing, or providing additional policy guidance as to the application the Adjudicator's Field Manual Chapter 40.6, subsection (e) "Smugglers," including but not limited to, instructions about applying the ground of inadmissibility to individuals who present at ports of entry or turn themselves in to immigration officials and seek protection from persecution. Requestors ask that the agency proactively disclose any

¹For purposes of the Request, unless otherwise specified, the term "records" includes but is not limited to all communications, correspondence, directives, videotapes, audiotapes, e-mails, faxes, guidance, guidelines, standards, instructions, memoranda, policies, procedures, protocols, reports, manuals, technical specifications, and training materials, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications, including text messages, and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

requested records that may be subject to 5 U.S.C. § 552(a)(C) in its Policy Manual webpage, or alternatively, in the agency’s FOIA library.

2. Part J (titled “Alien Smuggling”) of the USCIS Policy Manual Volume 9 - Waivers and Other Forms of Relief and records such as memoranda, guidance, protocols or instructions that contain revisions or updates to Part J adopted from January 1, 2020, until the date the agency conducts a reasonable search. Requestors ask that the agency proactively disclose this record in its Policy Manual webpage, or alternatively, in the agency’s FOIA library because it qualifies as instructions to staff affecting members of the public. 5 U.S.C. § 552(a)(C).
3. Agency records from January 1, 2020, until the date the agency conducts a reasonable search providing guidance, policies, procedures, or protocols regarding the applicability of INA § 212(a)(6)(E), 8 U.S.C. § 1182(a)(6)(E), to applicants for Temporary Protected Status (“TPS”), including but not limited to, specific guidance about Venezuelan nationals and smuggling of close family members.
4. Agency records from January 1, 2020, until the date the agency conducts a reasonable search providing guidance, policies, procedures, or protocols regarding the applicability of INA § 212(a)(6)(E), 8 U.S.C. § 1182(a)(6)(E), to applicants for adjustment of status under the Cuban Adjustment Act (“CAA”), including but not limited to, specific guidance about Cuban nationals and smuggling of close family members.
5. Beginning in March 2021, individualized data maintained by USCIS for Venezuelan nationals who applied for TPS showing (Form I-821):
 - a. Whether USCIS issued a Request for Evidence, Notice of Intent to Deny, or Notice of Intent to Withdraw due to “smuggling” information under INA § 212(a)(6)(E);
 - b. Whether USCIS denied the individual’s application due to a finding of alien smuggling under INA § 212(a)(6)(E); and
 - c. Whether USCIS approved or denied a waiver (Form I-601) after a finding of inadmissibility under INA § 212(a)(6)(E).
6. Beginning on January 1, 2019, individualized data maintained by USCIS for Cuban nationals who applied for adjustment of status under the Cuban Adjustment Act showing:
 - a. Whether USCIS issued a Request for Evidence, Notice of Intent to Deny or Notice of Intent to Withdraw due to “smuggling” information under INA 212(a)(6)(E); and
 - b. Whether USCIS denied the individual’s application due to a finding of “alien smuggling” under INA 212(a)(6)(E).

Source for the data requested in items 5 and 6 may include, but are not limited to, the DHS/USCIS-007 Benefit Information System of Records² and the DHS/USCIS-ICE-CBP-001 Alien File, Index, and National File Tracking System of Records.³

² 81 Fed. Reg. 72069, 71 (Oct. 19, 2016), <https://www.govinfo.gov/content/pkg/FR-2016-10-19/pdf/2016-25192.pdf>.

³ 82 Fed. Reg. 43556, 60 (Sept. 18, 2017), <https://www.govinfo.gov/content/pkg/FR-2017-09-18/pdf/2017-19365.pdf>.

II. FORMAT OF PRODUCTION

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. FEE WAIVER REQUEST

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 of the Information Is in the Public Interest*

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.⁴

USCIS is the component within the U.S. Department of Homeland Security ("DHS") that administers the nation's lawful immigration processes, including humanitarian programs that provide protection to individuals inside the United States.⁵ USCIS adjudicates applications for TPS and applications for adjustment of status based on different eligibility criteria. One of the eligibility pathways to adjustment of status is based on the Cuban Adjustment Act.

The agency publishes the USCIS Policy Manual, which is a centralized online repository for USCIS' immigration policies.⁶ The Policy Manual's stated purpose is to provide transparency of immigration policy to further consistency, quality and efficiency.⁷ Thus, the Policy Manual "assists immigration officers in rendering decisions."⁸ Additionally, USCIS publishes policy memoranda, which guide USCIS adjudicators

⁴ 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)).

⁵ USCIS, What We Do, (last visited March 6, 2025), <https://www.uscis.gov/about-us/mission-and-core-values/what-we-do>.

⁶ USCIS, Policy Manual, About the Policy Manual (last visited March 6, 2025), <https://www.uscis.gov/policy-manual>.

⁷ *Id.*

⁸ *Id.*

as they process applications and petitions for immigration benefits.⁹

The requested records will specifically address how USCIS instructs its adjudicators how to interpret the statute and make the requisite determinations. As such, the request specifically concerns USCIS' operations and activities of the government.

Despite the stated goal of transparency, the Policy Manual inexplicably lacks details about the agency's implementation of important grounds of inadmissibility, including how USCIS officers find which benefit applicants are "smugglers." Unlike other grounds of inadmissibility that have publicly accessible Policy Manual chapters, e.g. "Fraud and Willful Misrepresentation" or "Determining False Claim to U.S. Citizenship," the sections covering the aforementioned inadmissibility ground is not available for the public to see. Policy memoranda on this topic is scant and difficult to find on the USCIS website.

The requested records seek to contribute to the understanding of government operations in two significant ways. First, records such as the Policy Manual will allow benefit applicants, and the public, to understand how adjudicators reached certain decisions. The Policy Manual page with information about Inadmissibility, i.e. Volume 8 Part I, that should contain more details about inadmissibility findings based on "alien smuggling" contains a link to Chapter 40 of the Adjudicator's Field Manual ("AFM") with information about adjudications.¹⁰ However, USCIS' webpage states that the agency retired the AFM, leading to confusion among practitioners about whether the AFM remains current agency practice.

Second, the data requested will contribute to the public's understanding of the scope of the problem. USCIS data reporting includes the number of applications that have been denied on a yearly basis, but it does not include the reasons for such denials. While data exists about the number of alien smuggling cases that are prosecuted,¹¹ the same cannot be said for how often USCIS applies the ground of inadmissibility to individuals applying for immigration benefits such as TPS or adjustment of status.

Thus, the records requested will contribute to a better understanding of USCIS' implementation of these policies.

Additionally, disclosure of the information will contribute to the public's understanding of this practice. As noted, the public lacks detailed information from the agency's perspective about how it makes inadmissibility determinations when these issues are identified. For example, internet research on alien smuggling produces numerous articles about law enforcement arrests charging individuals with the crime of alien smuggling. These stories fail to capture the nuances of this issue by failing to report the number of individuals who have been negatively impacted by a finding of smuggling when they crossed the border with their own children or other family members, particularly if they presented at ports of entry to seek protection from persecution. Attorneys and nonprofit organizations also have developed instructive

⁹ USCIS, Policy Memoranda (last visited March 6, 2025), https://www.uscis.gov/laws-and-policy/policy-memoranda?ddt_mon=&ddt_yr=&query=%22material+support%22&items_per_page=10.

¹⁰ USCIS, Adjudicator's Field Manual (Jan. 15, 2025), <https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm40-external.pdf>.

¹¹ U.S. Sentencing Commission, Quick Facts, Alien Smuggling Offenses (last visited March 6, 2025), <https://www.ussc.gov/research/quick-facts/alien-smuggling>.

materials based on the applicable case law, but these materials do not confirm the agency's procedures.¹²

Finally, the agency's disclosure of these records to Requestors will significantly contribute to the public's understanding of how USCIS makes decisions about rendering individuals as inadmissible due to alien smuggling because USCIS has failed to provide information to the public about this process. Due to the lack of information, Requestors intend to disseminate the records produced by USCIS through its informational channels to ensure the public understands how these findings impact individuals seeking immigration benefits. Thus, release of the records requested herein will provide the public at large with a better understanding of how these determinations are made.

The Council is a non-partisan non-profit organization with vast experience in disseminating information related to immigration in the United States, including information obtained through the FOIA. The Council, regularly provides information, including fact sheets, reports and other publications to the public based on its FOIA requests.¹³ This information reaches a wide audience, which includes varied segments of the U.S. public. The Council intends to provide information received in response to this FOIA request on its publicly accessible website. In 2024, the Council received more than 4.5 million pageviews from almost 3 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 operations shared in responses to FOIA requests, the Council intends to provide information received in response to this FOIA request on its publicly accessible website.

Likewise, the National Immigration Project has the capacity and intent to disseminate widely the requested information to the public. The National Immigration Project will review, analyze, and and/or summarize the information obtained through this FOIA. In addition, NIPNLG's staff will speak publicly and publish related written materials to be shared with the public, organizational members, and the academic community. NIPNLG will make the information available through its websites, which are accessible by any member of the public. Finally, NIPNLG has frequent contact with national print and news media and plans to share information gleaned from FOIA disclosures with interested media.

Requestors' demonstrated ability to effectively convey and disseminate information will contribute to the public's understanding of USCIS' decision-making. Further, Requestors' commitment to share this information widely and free of charge among its networks of website visitors and supporters ensures that disclosure is likely to significantly contribute to the public's understanding of the issue.

¹² See e.g. ILRC, Alien Smuggling: What It Is and How It Can Affect Immigrants (Jul. 18, 2017), <https://www.ilrc.org/resources/alien-smuggling-what-it-and-how-it-can-affect-immigrants>.

¹³ See, e.g., American Immigration Council, "Government Documents Reveal Information about the Development of the CBP One App," (Feb. 28, 2023), <https://www.americanimmigrationcouncil.org/FOIA/government-documents-reveal-information-about-development-cbp-one-app>; 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 (Jul. 1, 2019), <https://americanimmigrationcouncil.org/research/interior-immigration-enforcement-united-states-2016-2018>.

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 how USCIS makes determinations about alien smuggling and how it has impacted applicants for certain benefits.

The Council, as a not-for-profit organization, has no commercial interest in the present request. This request furthers the Council's work to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. As with all other reports and information available on the Council's website, as well as information frequently disseminated to the public via electronic newsletters, the information the Council receives in response to this FOIA request will be available to immigration attorneys, noncitizens, policymakers, and other interested members of the public free of charge. The requested information is sought for the purpose of disseminating it to the public, including through posting it on the Council's website and other publications, and not for the purpose of commercial gain.

The National Immigration Project is a national 501(c)(3), tax-exempt, not-for-profit organization. Its members and supporters include attorneys, legal workers, law students, judges, jailhouse lawyers, grassroots advocates, community organizations, and people who have faced detention or deportation and their loved ones. The National Immigration Project provides technical and litigation assistance, participates in impact litigation, provides legal training to the bar and the bench, and regularly publishes practice advisories and community resources on immigration law topics. The National Immigration Project distributes its written materials through their website, www.nipnlg.org, and shares information about immigration-related issues through public and educational appearances. The requested information is not sought for the purpose of commercial gain.

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

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

Very truly yours,

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