



International Refugee
Assistance Project



March 15, 2022

National Records Center, FOIA/PA Office
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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