

May 22, 2024

Sent via USCIS FOIA Portal (FIRST)

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

Re: Freedom of Information Act Request for USCIS's Revised Guidance to Asylum Officers on Internal Relocation and Related Records  
**Expedited Processing Requested**

Dear Freedom of Information Officer:

The Center for Gender and Refugee Studies ("CGRS") submits 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 Service's (USCIS) revised guidance to Asylum Officers, issued on or about May 9, 2024, "to consider whether an asylum seeker could reasonably relocate to another part of the country of feared persecution when assessing claims of future persecution in all credible fear cases." This guidance was referenced in a press release, entitled "DHS Announces Proposed Rule and Other Measures to Enhance Security, Streamline Asylum Processing," that DHS issued on May 9, 2024.<sup>1</sup> However, the referenced guidance was not included with or linked to the press release.

Requestor also seeks a waiver of any fee imposed by the agency because the records sought will contribute to the public's understanding of USCIS's operations and release of the information is not in Requestor's commercial interest.

#### I. Request for Information

Requestor seeks records<sup>2</sup> prepared, received, transmitted, collected, or maintained by USCIS as described below:

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<sup>1</sup> <https://www.dhs.gov/news/2024/05/09/dhs-announces-proposed-rule-and-other-measures-enhance-security-streamline-asylum>.

<sup>2</sup> For purposes of the Request, unless otherwise specified, 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, 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.

1. Any and all revised guidance USCIS issued to Asylum Officers on or about May 9, 2024 “to consider whether an asylum seeker could reasonably relocate to another part of the country of feared persecution when assessing claims of future persecution in all credible fear cases.”
2. Any records regarding the implementation of the guidance described in (1), above.

CGRS requests that USCIS proactively disclose the records requested in (1) and (2), above, pursuant to 5 U.S.C. § 552(a)(2) and publish these records to its electronic reading room. Section 552(a)(2)(B) requires the agency to proactively make available to the public “statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register.” Section 552(a)(2)(C) requires the agency to proactively make available to the public “administrative staff manuals and instructions to staff that affect a member of the public.” Both provisions apply here. The guidance is also of intense interest to the public at large. *See* Section IV(1), below.<sup>3</sup>

## II. Format of Production

Requestor seeks responsive electronic records in a machine-readable format with all metadata and load files. We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. Requestor asks that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and that the records be provided in separate, Bates-stamped files.

## III. Expedited Processing

Requestor seeks expedited treatment for this FOIA request because there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(1)(ii). Consideration of the possibility of internal relocation during the credible fear process constitutes a significant shift in asylum processing. There is an urgent need to inform the public, asylum seekers, and legal service providers about the content of the records sought in this request, which will shed light on the federal government’s treatment of asylum seekers during the credible fear process and how asylum officers will evaluate their claims for relief. Many of these asylum seekers are highly vulnerable individuals and families who have recently fled violence and are navigating trauma in addition to preparing for their credible fear interviews. Given that their credible fear interviews will determine whether they are able to pursue their claims for asylum or other protection in the United States, it is essential that asylum seekers and other interested stakeholders have a clear understanding of the standards that apply during these interviews.

The credible fear process impacts many recent arrivals to the United States, often those who have entered at our southwestern land border. The situation at the U.S.-Mexico border is

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<sup>3</sup> If the agency determines the guidance and related records that are the subject of this request do not qualify for proactive disclosure, Requestor alternatively asks the agency to nevertheless process this FOIA request on an expedited basis pursuant to 5 U.S.C. § 552.

currently a subject of ongoing intense media and public interest. The guidance that is the subject of this request was issued in furtherance of the Circumvention of Lawful Pathways Rule,<sup>4</sup> which generated intense public interest at the time of its implementation.<sup>5</sup> The announcement of the more recent changes have already generated additional public interest, as evidenced by numerous news articles.<sup>6</sup> Recent polling has shown immigration, asylum, and border management to be among the top issues of concern to Americans.<sup>7</sup>

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

#### IV. 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 criterion 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.<sup>8</sup>

This request is in the public interest because it meets all the necessary criteria. First, Requestor seeks information that concerns the operations of USCIS, a government agency. In particular, Requestor seeks information about how the agency evaluates asylum seekers’ claims during the credible fear process. The requested information will shed light on how asylum officers will assess whether asylum seekers could reasonably relocate to another part of the country of

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<sup>4</sup> 88 Fed. Reg. 31314, (May 16, 2023).

<sup>5</sup> See, e.g., Camila Montoya-Galvez, *Title 42’s end sparks fear and confusion along the U.S.–Mexico border*, CBS News, May 12, 2023, <https://www.cbsnews.com/news/title-42-end-immigration-asylum-us-mexico-border/>; Sarah Smith, *Title 42: Confusion and fear at US border as law change looms*, BBC, May 11, 2023, <https://www.bbc.com/news/world-us-canada-65556004>.

<sup>6</sup> See, e.g., Seung Min Kim and Stephen Groves, *Biden administration will propose tougher asylum standards for some migrants at the border*, AP, May 8, 2024, <https://abcnews.go.com/Politics/wireStory/biden-administration-propose-tougher-asylum-standards-migrants-border-110041924>; Ted Hesson, *Biden set to tighten asylum access at US-Mexico border, sources say*, Reuters, May 8, 2024, <https://www.reuters.com/world/us/biden-set-tighten-asylum-access-us-mexico-border-sources-2024-05-08/>.

<sup>7</sup> See, e.g., Megan Brenan, *Immigration Named Top U.S. Problem for Third Straight Month*, Gallup, April 30, 2024, <https://news.gallup.com/poll/644570/immigration-named-top-problem-third-straight-month.aspx>; *How Americans View the Situation at the U.S.-Mexico Border, Its Causes and Consequences*, Pew Research Center, February 15, 2024, <https://www.pewresearch.org/politics/2024/02/15/how-americans-view-the-situation-at-the-u-s-mexico-border-its-causes-and-consequences/>.

<sup>8</sup> 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)).

feared persecution and are thus ineligible for protection in the United States.

Second, disclosure of the requested information will contribute to the public's and Requestor's understanding of whether USCIS's new guidance is consistent with federal immigration law and the U.S. Constitution. Internal relocation is an aspect of asylum claims that is often litigated up to the courts of appeals. *See, e.g., Akosung v. Barr*, 970 F.3d 1095 (9th Cir. 2020) (remanding where agency erred, *inter alia*, in its evaluation of internal relocation). An understanding of the standards applied during the credible fear process, where applicants are often unrepresented, is critical to safeguarding their rights.

Finally, the agency's disclosure of the requested records will significantly contribute to the public's understanding of how asylum seekers' claims are being evaluated during the credible fear process. In the unlikely event that an asylum seeker retains counsel prior to a credible fear interview, the attorney may not be able to participate in, or even attend, the credible fear interview. *See* 8 U.S.C. § 1225(b)(1)(B)(iv) (affording noncitizens only the right to "consult with a person" of their choosing prior to the interview). This makes an understanding of the applicable standards all the more important for asylum seekers, legal service providers, and other interested stakeholders.

CGRS is a non-partisan organization that has experience in disseminating information related to the rights of asylum seekers in the United States, including information obtained through FOIA. This information reaches a wide audience, which includes varied segments of the U.S. public. Based at the University of California College of the Law, San Francisco, CGRS provides technical assistance and publishes reports, policy analysis, and other educational materials that are widely disseminated, including through its website. Some materials are fully available to the public, and some are made available free of charge to registered users—including members of tax-exempt organizations, non-profit groups, lawyers, academics, law students, refugees, and asylum seekers. CGRS also publishes an electronic newsletter distributed to subscribers via email, regularly conducts nation-wide trainings and webinars, and releases information via social media platforms such as Twitter and Facebook.

Requestor's demonstrated ability to effectively convey and disseminate the information requested will contribute to the public's understanding of the credible fear process and the treatment of asylum seekers subjected to it, an issue of considerable public interest. Further, Requestor's commitment to share this information widely and free of charge among its networks of supporters and anyone who accesses its website ensures that disclosure is likely to significantly contribute to the public's understanding of the issue.

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

## 2. *Disclosure of the information is not in Requestor's Commercial Interest*

Requestor has no commercial interest in the records requested, and this request aims to further public understanding of government conduct—specifically, as described above, the urgent need for the public to understand how USCIS asylum officers assess internal relocation in the credible fear process.

CGRS plans to make disclosures obtained through this request available to its audience, which includes members of other tax-exempt organizations, non-profit groups, refugees, asylum seekers and other migrants, lawyers, academics, and law students, free of charge. As an educational institution and not-for-profit organization, CGRS has no commercial interest in the present request.

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.

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

Sincerely yours,

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