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ASSOCIATION and HUMAN RIGHTS WATCH

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

AMERICAN IMMIGRATION COUNCIL,  
AMERICAN IMMIGRATION LAWYERS  
ASSOCIATION, and HUMAN RIGHTS  
WATCH,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND  
IMMIGRATION SERVICES, UNITED  
STATES CUSTOMS AND BORDER  
PROTECTION, and UNITED STATES  
IMMIGRATION AND CUSTOMS  
ENFORCEMENT,

Defendants.

**Case No.**

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

## **INTRODUCTION**

1  
2 1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et*  
3 *seq.*, seeking to compel the U.S. Citizenship and Immigration Services (“USCIS”), U.S. Customs and  
4 Border Protection (“CBP”), and U.S. Immigration and Customs Enforcement (“ICE”) to immediately  
5 release records and data regarding its Migrant Protection Protocols (“MPP”), otherwise known as  
6 “Remain in Mexico.” This information is critical to understanding a program that threatens the due  
7 process rights of noncitizens facing removal and has operated in relative darkness. The MPP is a new  
8 program first announced by former Secretary of Homeland Security Kirstjen M. Nielsen on December  
9 20, 2018 and implemented at the San Ysidro Port of Entry in California on January 28, 2019. It requires  
10 asylum seekers who present themselves at the southern border of the U.S. to remain in Mexico for the  
11 duration of their asylum proceedings. While a purported goal of the program is to address the security  
12 crisis at the southern border, the program actually subjects asylum seekers—who are often escaping  
13 life-threatening situations in their home countries such as violence and criminal armed groups—to a  
14 heightened risk of kidnapping, disappearance, trafficking, sexual assault, and murder in Mexico.  
15 Individuals subject to the MPP, many of whom are indigent or grapple with trauma and other  
16 psychological issues, also lack food and shelter and experience logistical hurdles to participation in  
17 court proceedings in the United States. For example, they do not have access to key safeguards such as  
18 *pro bono* counsel and legal education programs, which are often available to noncitizens in the U.S.  
19 Lack of access to counsel is particularly problematic where reports indicate that most noncitizens in  
20 the MPP proceedings cannot appear in person before an immigration judge and instead must defend  
21 themselves from removal over video teleconference (“VTC”). Collectively, these conditions make it  
22 exceedingly difficult if not impossible for asylum seekers in the MPP program to meaningfully apply  
23 for asylum. Given that the agencies have publicly shared very little information about the MPP,  
24 information about how the program functions is largely anecdotal and the full scope of these problems  
25 remains unknown. Defendants’ lack of transparency hinders the ability of individuals subject to the  
26 MPP, advocates, policymakers, and the courts, to assess the full scope of harm and threats to due  
27 process posed by the MPP.  
28

2. On March 11, 2020, the United States Supreme Court stayed the Ninth Circuit’s preliminary injunction of the MPP, allowing the MPP program to continue. On April 10, 2020, the government filed a petition for a writ of certiorari with the Supreme Court. The Supreme Court has not yet granted or denied this petition. Given that it is yet unclear if and how the Supreme Court will rule on the legality of the MPP program, it is especially urgent and critical that the details of the program be made available to the public.

3. The global COVID-19 pandemic has further exacerbated the precarious situation for asylum seekers created by the MPP. The Executive Office for Immigration Review (“EOIR”) and the Department of Homeland Security (“DHS”) have postponed MPP hearings through June 19, 2020. These postponements mean that individuals in the MPP program must wait in dangerous conditions in Mexico even longer. To make matters worse, most shelters in Mexico are no longer accepting new arrivals due to COVID-19, so individuals newly placed in the MPP cannot easily find shelter.<sup>1</sup>

4. Given the lack of public transparency about the program, on December 21, 2019, Plaintiffs American Immigration Council (“the Council”), American Immigration Lawyers Association (“AILA”), and Human Rights Watch (“HRW”) submitted FOIA Requests to DHS, attached hereto as Exhibit A (“Requests”), seeking records and data that reflect DHS’ current policies and practices regarding the MPP. Plaintiffs sought expedited processing of their Requests under 28 C.F.R. § 16.5(e) and 6 C.F.R. § 5.5(e). Plaintiffs intend to widely disseminate this information free of charge in order to educate the public about this program.

5. DHS received these Requests on January 24, 2020. On February 3 and 4, 2020, DHS transferred three of the Requests to FOIA Officers at USCIS, CBP, and ICE. *See* Exhibits B and C. Plaintiffs have received from USCIS an acknowledgment of receipt of Plaintiffs’ FOIA request and denial of Plaintiffs’ expedited processing request. *See* Exhibit D. Plaintiffs have received from CBP a notice of a tracking number change, a denial of Plaintiffs’ expedited processing request, *see* Exhibit

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<sup>1</sup> *See* Email from U.S. Department of Justice to Nareeneh Sohbatian, Immigration Pro Bono Supervisory Attorney, Winston & Strawn LLP (May 10, 2020, 05:01 PM PST) (on file with authors); *see also* *Letter from MPP Service Providers Re: COVID-19 and the Remain in Mexico/“Migrant Protection Protocols” Policy* (April 14, 2020), <https://www.humanrightsfirst.org/sites/default/files/LetterfromMPPServiceProvidersonCOVID19Update.pdf>.

E, and a fee waiver disposition. Plaintiffs have not received any correspondence or response from ICE. As a result, the MPP program continues to operate in opacity, to the detriment of noncitizens, the courts, and the public.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

7. This Court has jurisdiction to grant declaratory and further proper relief pursuant to 28 U.S.C. §§ 2201-2202 and Federal Rules of Civil Procedure 57 and 65.

8. Venue lies in this District under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

### **INTRADISTRICT ASSIGNMENT**

9. Assignment to the Oakland/San Francisco Division is proper because Plaintiff Human Rights Watch has an office in San Francisco, California.

### **PARTIES**

10. Plaintiff American Immigration Council (“the Council”) is a tax-exempt, not-for-profit educational and charitable organization. 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.

11. Plaintiff American Immigration Lawyers Association (“AILA”) is a nonpartisan, tax-exempt, not-for-profit organization under Section 501(c)(6) of the Internal Revenue Code. AILA is a national association of immigration lawyers established in 1946 to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members. It has two central goals:

1 Increase member participation in advocacy before Congress, the judiciary, federal agencies, and the  
2 media, for immigration-related interests of its clients and society and increase the level of knowledge  
3 and professionalism, and foster the professional responsibility, of its members. To further these twin  
4 goals, AILA provides its members and the public with continuing legal education, information, and  
5 resources, primarily through its website, [www.aila.org](http://www.aila.org). AILA updates its website daily with the latest  
6 immigration news and information, including agency policy guidance, policy interpretations, and  
7 policy memoranda.

8 12. Plaintiff Human Rights Watch (“HRW”) is a 501(c)(3) not-for-profit organization  
9 registered in the U.S. under EIN: 13-2875808 with its principal place of business at 350 Fifth Avenue,  
10 34th Floor, New York, NY 10118. HRW has offices all over the world, including in San Francisco,  
11 California. HRW’s mission is to investigate and report human rights abuses in every corner of the  
12 world. HRW directs its advocacy towards governments, armed groups, and businesses, pushing them  
13 to change or enforce their laws, policies, and practices, to protect those most at risk, from vulnerable  
14 minorities and civilians in wartime, to refugees and children in need. HRW publishes its materials and  
15 information on its website, <https://www.hrw.org/>, almost all free of charge.

16 13. Defendant USCIS is an agency of the United States government and an agency under  
17 the meaning of 5 U.S.C. § 552(f). USCIS is a component agency of DHS.

18 14. Defendant CBP is an agency of the United States government and an agency under the  
19 meaning of 5 U.S.C. § 552(f). CBP is a component agency of DHS. CBP is a law enforcement agency  
20 in charge of border management and control.

21 15. Defendant ICE is an agency of the United States government and an agency under the  
22 meaning of 5 U.S.C. § 552(f). ICE is a component agency of DHS.

23 16. Defendants have custody and control over the records Plaintiffs seek to make publicly  
24 available under 5 U.S.C. § 552(a)(2).

## STATEMENT OF FACTS

### *Overview of the Migrant Protection Protocols*

17. DHS announced the MPP on January 24, 2019.<sup>2</sup> The MPP requires that asylum seekers entering or seeking admission to the U.S. wait outside of the U.S. in Mexico for the duration of their immigration proceedings.<sup>3</sup> From its inception, the program has been plagued by safety and due process concerns, precisely because of this focus on expediency while operating in secrecy.

18. Established in January 2019, the program – also referred to as “Remain in Mexico” – has grown steadily, resulting in the return of more than 59,000 asylum seekers to Mexican border cities, where kidnappings and violence have surged.<sup>4</sup> The program has directly contributed to the creation of encampments in Mexican border towns that often lack running water and basic hygiene.<sup>5</sup> The towns where the encampments are located are extremely dangerous. For example, the town of Matamoros, Mexico, which lies outside of a U.S. entry point at Brownsville, Texas, is classified by the U.S. Department of State as a level four security risk, akin to the security risk ascribed to Syria.<sup>6</sup> Powerful Mexican drug cartels have moved in to exploit these encampments by means of torture, kidnappings, and extortion.<sup>7</sup> Individuals who arrive as families at the border can then face separation.<sup>8</sup> Reports have documented the kidnapping and deaths of asylum seekers subject to the MPP.<sup>9</sup> In

<sup>2</sup> See *Migrant Protection Protocols*, HOMELAND SECURITY (Jan. 24, 2019), <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

<sup>3</sup> *Id.*

<sup>4</sup> Caitlin Dickerson, *Confusion on the Border as Appeals Court Rules Against Trump’s ‘Remain in Mexico’ Policy*, N.Y. TIMES (Feb. 28, 2020) <https://www.nytimes.com/2020/02/28/us/migrants-court-remain-in-mexico-mpp-injunction.html>.

<sup>5</sup> Eiten Peled, *Immigration Policies Put Migrant Families at Serious Risk of Violence*, UNICEF USA, <https://www.unicefusa.org/stories/immigration-policies-put-migrant-families-serious-risk-violence/36827>; see also Michelle Hackman, *At Migrant Camp in Mexico, Crowds and Complaints Swell*, THE WALL STREET JOURNAL (Nov. 23, 2019) (accessible at <https://www.wsj.com/articles/at-migrant-camp-in-mexico-crowds-and-complaints-swell-11574510400>).

<sup>6</sup> *Mexico Travel Advisory*, US DEP’T STATE – BUREAU OF CONSULATE AFFAIRS, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/mexico-travel-advisory.html>.

<sup>7</sup> *This American Life: The Out Crowd*, CHICAGO PUBLIC RADIO (Nov. 15, 2019) (accessible at <https://www.thisamericanlife.org/688/the-out-crowd>).

<sup>8</sup> *US: Family Separation Harming Children, Families*, HUMAN RIGHTS WATCH (Jul. 11, 2019) <https://www.hrw.org/news/2019/07/11/us-family-separation-harming-children-families#>.

<sup>9</sup> We Can’t Help You Here, HUMAN RIGHTS WATCH (July 2, 2019) <http://bit.ly/2Eo3OG8>; Emily Green, *Trump’s Asylum Policies Sent Him Back to Mexico. He Was Kidnapped Five Hours Later By a Cartel*, VICE NEWS (Sep. 16, 2019) <http://bit.ly/2PqPAKH>; *This American Life: The Out Crowd*, CHICAGO PUBLIC RADIO (Nov. 15, 2019) (accessible at <https://www.thisamericanlife.org/688/the-out-crowd>).

1 addition, adult family members subject to the MPP may be separated from children who accompanied  
2 them.<sup>10</sup>

3 19. The Trump Administration has expressed its strong commitment to the MPP. Despite  
4 well-documented reports that the MPP is contributing to a compounding humanitarian crisis, the  
5 administration is expanding the scope of the MPP both categorically and geographically. In January  
6 2020, the administration expanded the MPP to apply to Brazilian asylum-seekers.<sup>11</sup> In October 2019,  
7 the administration expanded the application of the MPP to new U.S. ports of entry along the southern  
8 border.<sup>12</sup>

9 20. The challenges posed by the MPP have already had an extreme and adverse effect on  
10 the ability of individuals to seek asylum in the U.S. Currently, only 0.1% of asylum seekers held in the  
11 MPP program have been granted asylum, compared to the 20% who were granted asylum outside of  
12 the MPP program.<sup>13</sup>

13 21. The current scope and operation of the MPP remains unclear. The decision to send a  
14 person or family back under the MPP is discretionary and is made by individual CBP officers or Border  
15 Patrol agents. Individuals who cross the border at the same time may be treated differently, with one  
16 person sent back under the MPP and the other person allowed to seek asylum through the normal  
17 process. CBP retains discretion to take any individual out of the MPP on a case-by-case basis.

18 22. There is little public information regarding how the MPP operates. As of January 2020,  
19 the MPP has been instituted at seven border towns. The agencies collectively implementing the MPP  
20 appear to lack coordination. They have not provided clarity concerning the procedures governing the  
21 MPP and implement the program haphazardly across MPP entry sites.

22 <sup>10</sup> *US: Family Separation Harming Children, Families*, HUMAN RIGHTS WATCH (Jul. 11, 2019)  
23 <https://www.hrw.org/news/2019/07/11/us-family-separation-harming-children-families#>.

24 <sup>11</sup> *See* Camilo Montoya-Galvez, *U.S. to Require Brazilian Asylum-Seekers to Wait in Mexico for Court Hearings*, CBS NEWS (Jan. 29, 2020) <https://www.cbsnews.com/news/remain-in-mexico-expansion-us-to-require-brazilian-asylum-seekers-to-wait-in-mexico-for-hearings/>.

25 <sup>12</sup> *See DHS Begins MPP Returns at Nogales Port of Entry in Arizona*, US DEP'T OF HOMELAND  
26 SECURITY (Jan. 2, 2020) <https://www.dhs.gov/news/2020/01/02/dhs-begins-mpp-returns-nogales-port-entry-arizona>; *see also DHS Expands MPP Operations to Eagle Pass*, US DEP'T OF HOMELAND  
27 SECURITY (Oct. 28, 2019) <https://www.dhs.gov/news/2019/10/28/dhs-expands-mpp-operations-eagle-pass>.

28 <sup>13</sup> *See* Gustavo Solis, *Remain in Mexico Has a 0.1% Asylum Grant Rate*, L.A. TIMES (Dec. 15, 2019)  
<https://www.latimes.com/world-nation/story/2019-12-15/remain-in-mexico-has-a-0-01-percent-asylum-grant-rate>.



***Plaintiffs' FOIA Requests and Defendants' Responses***

23. In order to shed light on the MPP and obtain information to further public understanding about the program, Plaintiffs submitted four FOIA Requests to the Senior Director of FOIA Operations at DHS on December 21, 2019. One request was directed to DHS; one to USCIS, one to CBP, and one to ICE. *See* Exhibit A.

24. The Requests seek documents relating to instructions, directions, procedures, or guidance concerning the MPP issued to personnel at Defendant agencies. *See* Exhibit A.

25. The Requests also seek data from Defendant agencies as well as inter-agency efforts, agreements, and coordination concerning implementation of the MPP. *See* Exhibit A.

26. Finally, the Requests seek communications relating to the MPP amongst or including former and current agency officials. *See* Exhibit A.

27. In addition to data and documents, the Requests ask that Defendants waive all associated processing fees because disclosure of the records 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)(iii). *See* Exhibit A.

***DHS Response to Plaintiffs' FOIA Request***

28. On February 3 and 4, 2020, Plaintiffs received an acknowledgment of receipt by DHS in three letters. In those letters, DHS indicated that it transferred Plaintiffs' Requests to USCIS, CBP, and ICE. *See* Exhibit B.

29. On February 5, 2020, Plaintiffs received another acknowledgment of receipt by DHS. In this letter, DHS denied Plaintiffs' request for expedited processing and stated that it was transferring portions of Plaintiffs' Requests to CBP and USCIS. *See* Exhibit C. Specifically, the letter noted that the following requests would be transferred:

1. Instructions, directives, or guidance to U.S. Department of Homeland Security (DHS) employees on the MPP, including but not limited to, the following:

a) Guidance related to how the DHS agencies must process individuals who are not amenable to MPP (e.g., individuals in "special circumstances" and unaccompanied children).



b) Guidance related to the (1) facilitation of attorney access to tent court facilities and (2) facilitation of access to the tent court facilities for legal observers, reporters, and the public;

2. Notes, transcripts, or audio of daily interagency calls on MPP;

4. Emails, texts, or other communications relating to the MPP amongst or including the following individuals:

a) Acting Director of U.S. Citizenship and Immigration Services (USCIS) Ken Cuccinelli.

b) Former Acting United States Secretary of Homeland Security Kevin McAleenan.

c) Former United States Secretary of Homeland Security Kirstjen Nielsen.

d) Acting Commissioner of U.S. Customs and Border Protection (CBP) Mark Morgan.

e) Executive Office for Immigration Review (EOIR) Director James McHenry.

f) Senior Advisor to the President Stephen Miller;

5. Final agreements, protocols, or other binding documents between the U.S. government and the government of Mexico relating to the MPP;

6. Final agreements, protocols, or other binding documents between the U.S. government and the International Organization for Migration (IOM) regarding the Assisted Voluntary Return Program (AVRP) for people in MPP; and

7. Data or information regarding individuals subject to MPP who have chosen to return to Mexico through the IOM's AVRP, including the data used to produce the following statement in the October 28th Assessment of the Migration Protection Protocols: "As of mid-October, almost 900 aliens in MPP have participated in the AVR program."

*See Exhibit C.*

30. On March 17, 2020, Plaintiffs received another letter from DHS withholding responsive documents in their entirety. Plaintiffs are appealing this response and it is not the subject of this complaint.

***USCIS Response to Plaintiffs' FOIA Request***

31. On February 12, 2020, Plaintiffs received an acknowledgment of receipt by USCIS where USCIS denied Plaintiffs' request for expedited processing. *See* Exhibit D.

32. The correspondence from USCIS does not constitute a "determination" requiring Plaintiffs to exhaust administrative remedies before filing this complaint. A response must include: (1) the agency's "determination and the reasons therefore," (2) the requestor's right to "seek assistance from the FOIA Public Liaison of the agency," and (3) "in the case of an adverse determination—the right of such person to appeal to the head of the agency, within a period determined by the head of the agency that is not less than 90 days after the date of such adverse determination; and the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services." 5 U.S.C. § 552(a)(6)(A)(i).

33. An agency's failure to provide a response with this information within the statutory time period empowers a requestor to file a complaint in a federal district court. 5 U.S.C. § 552(a)(6)(C)(i); *See Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 64 (D.C. Cir. 1990).

***CBP Response to Plaintiffs' FOIA Request***

34. On February 7 and March 7, 2020, Plaintiffs received correspondence from CBP with tracking information for the FOIA. On March 30, 2020, Plaintiffs received a denial of their request to expedite their CBP FOIA request. *See* Exhibit E. Like USCIS, CBP has not provided a determination on the FOIA request and therefore Plaintiffs have exhausted their administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

***ICE Response to Plaintiffs' FOIA Request***

35. Plaintiffs have received no acknowledgment letter or other communication from ICE since DHS referred the request to ICE.

36. USCIS, CBP, and ICE have failed to make timely determinations on Plaintiffs' December 21, 2019 FOIA requests within 20 business days as required under the statute. 5 U.S.C. § 552(a)(6)(A)(i). After failing to acknowledge receipt of the FOIA requests for weeks after they were submitted, DHS finally referred the requests to USCIS, CBP, and ICE on February 3 and 4, 2020. USCIS and CBP then acknowledged receipt of the referred FOIAs on February 7 (USCIS) and

February 12 (CBP). ICE has never acknowledged receipt of the FOIA request. The twenty business days for making a determination on the FOIA requests has long expired. 5 U.S.C. § 552(a)(6)(A)(i).

37. Because Defendants have failed to respond to Plaintiffs' Requests within the applicable statutory period, any administrative remedies are deemed exhausted. 5 U.S.C. § 552(a)(6)(C)(i).

### **CLAIM FOR RELIEF**

#### **FIRST CAUSE OF ACTION**

##### **Violation of the Freedom of Information Act, 5 U.S.C. § 552: Failure to Respond within Time Required**

38. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs.

39. Defendants are obligated under 5 U.S.C. § 552(a)(6)(A)(i) to respond to Plaintiffs' FOIA Requests within 20 business days. Defendants may invoke an additional 10 days under 5 U.S.C. § 552(a)(6)(B).

40. Plaintiffs have a legal right to such a response and no legal basis exists for Defendants' failure to timely respond.

41. As described above, Defendants failed to respond within the statutorily mandated time limits.

42. Defendants' failure to disclose all responsive records within the statutory timeframe violates 5 U.S.C. §§ 552(a)(6)(A)(i) and 552(B).

#### **SECOND CAUSE OF ACTION**

##### **Violation of the Freedom of Information Act, 5 U.S.C. § 552: Failure to Conduct an Adequate Search for Responsive Records**

43. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs.

44. Defendants are obligated under 5 U.S.C. § 552(a)(3)(C) to conduct a reasonable search for records responsive to Plaintiffs' FOIA Requests.

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

46. As described above, Defendants have not conducted an adequate search for responsive records.

47. Defendants' failure to conduct a reasonable search for records responsive to Plaintiffs' Requests violates 5 U.S.C. § 552(a)(3)(C).

### THIRD CAUSE OF ACTION

#### **Violation of the Freedom of Information Act, 5 U.S.C. § 552: For Improper Withholding of Responsive Records**

48. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs.

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

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

51. As described above, Defendants have not disclosed responsive records.

52. Defendants' failure to disclose all responsive records violates 5 U.S.C. § 552(a)(3)(A).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray for judgment against Defendants, and that the Court:

- a. Order Defendants to expeditiously conduct an adequate search for all records responsive to Plaintiffs' FOIA Requests in accordance with 5 U.S.C. § 552(a)(3)(C);
- b. Order Defendants to expeditiously disclose all responsive, non-exempt records and enjoin Defendants from improperly withholding records;
- c. Declare that USCIS, CBP, and ICE's failure to conduct an adequate search violates 5 U.S.C. § 552(a)(3)(C);
- d. Declare that USCIS, CBP, and ICE's failure to disclose the records responsive to Plaintiffs' Requests violates FOIA, 5 U.S.C. § 552(a)(3)(A);
- e. Declare that USCIS, CBP, and ICE's failure to promptly produce records responsive to Plaintiffs' Requests violates FOIA, 5 U.S.C. §§ 552(a)(6)(A)(i) and (B);

- 1 f. Award Plaintiffs reasonable attorneys' fees and other litigation costs pursuant to  
2 5 U.S.C. § 552(a)(4)(E) and any other applicable statute or regulation; and  
3 g. Grant such other relief as the Court may deem just, equitable, and appropriate.  
4

5 Dated: May 13, 2020

Respectfully submitted,

6 WINSTON & STRAWN LLP

7  
8 By: /s/ David P. Enzminger

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AMERICAN IMMIGRATION LAWYERS

17 ASSOCIATION, and HUMAN RIGHTS WATCH  
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# Exhibit A



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION



December 21, 2019

Senior Director of FOIA Operations  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW STOP-0655  
Washington, DC 20598-0655

**Re: Freedom of Information Act Request for Records Held by the U.S. Department of Homeland Security (DHS)**

Dear Senior Director:

The American Immigration Council (Council), the American Immigration Lawyers Association (AILA), and Human Rights Watch (HRW) ("Requesters") submit the following Freedom of Information Act (FOIA) request for records regarding the Migrant Protection Protocols ("MPP"), otherwise known as "Remain in Mexico," announced by the Department of Homeland Security (DHS) on January 24, 2019.<sup>1</sup> In accordance with 5 U.S.C. § 552(a)(6)(A)(i), we expect a response to this request within 20 working days, unless otherwise permitted by statute.

**1. REQUEST FOR INFORMATION**

For the period December 2019 to the present:

- Instructions, directives, or guidance to U.S. Department of Homeland Security (DHS) employees on the MPP, including but not limited to, the following:
  - Guidance related to how the DHS agencies must process individuals who are not amenable to MPP (e.g., individuals in "special circumstances" and unaccompanied children).<sup>2</sup>
  - Guidance related to the (1) facilitation of attorney access to tent court facilities and (2) facilitation of access to the tent court facilities for legal observers, reporters, and the public.

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<sup>1</sup> Department of Homeland Security, "Migrant Protection Protocols" (January 24, 2019), <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

<sup>2</sup> See Customs and Border Protection, "MPP Guiding Principles" (January 28, 2019), <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>.



- Notes, transcripts, or audio of daily interagency calls on MPP.
- The document titled or referred to as “Red Team Report.”<sup>3</sup>
- Emails, texts, or other communications relating to the MPP amongst or including the following individuals:
  - Acting Director of U.S. Citizenship and Immigration Services (USCIS) Ken Cuccinelli.
  - Former Acting United States Secretary of Homeland Security Kevin McAleenan.
  - Former United States Secretary of Homeland Security Kirstjen Nielsen.
  - Acting Commissioner of U.S. Customs and Border Protection (CBP) Mark Morgan.
  - Executive Office for Immigration Review (EOIR) Director James McHenry.
  - Senior Advisor to the President Stephen Miller.
- Final agreements, protocols, or other binding documents between the U.S. government and the government of Mexico relating to the MPP.
- Final agreements, protocols, or other binding documents between the U.S. government and the International Organization for Migration (IOM) regarding the Assisted Voluntary Return Program (AVRP) for people in MPP.
- Data or information regarding individuals subject to MPP who have chosen to return to Mexico through the IOM’s AVRP, including the data used to produce the following statement in the October 28th Assessment of the Migration Protection Protocols: “As of mid-October, almost 900 aliens in MPP have participated in the AVR program.”<sup>4</sup>

## 2. FEE WAIVER REQUEST

Requesters seek a fee waiver because the information they seek 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 [requesters]....” 5 U.S.C. § 552(a)(4)(A)(iii).

### *A. Disclosure Will Contribute to Public Understanding of DHS Operations*

As noted previously, DHS announced the MPP, otherwise known as “Remain in Mexico,” on January 24, 2019, imposing the requirement that asylum-seekers wait in Mexico while the U.S. government adjudicates their asylum claims. Mandating that asylum-seekers wait in Mexico while they pursue their asylum claims is an unprecedented shift in U.S. asylum policy and

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<sup>3</sup> Hamed Aleaziz, “US Border Officials Pressured Asylum Officers To Deny Entry To Immigrants Seeking Protection, A Report Finds,” BuzzFeed News (Nov. 15, 2019), <http://bit.ly/36Fh8Sh>.

<sup>4</sup> See Department of Homeland Security, “Assessment of the Migrant Protection Protocols” (October 28, 2019), [https://www.dhs.gov/sites/default/files/publications/assessment\\_of\\_the\\_migrant\\_protection\\_protocols\\_mpp.pdf](https://www.dhs.gov/sites/default/files/publications/assessment_of_the_migrant_protection_protocols_mpp.pdf)

procedure. Though this shift implicates serious safety and due process concerns, DHS has not made guidance or information about how the MPP operates available to the public, advocates, attorneys, and asylum-seekers directly impacted by this new program.

Further, while DHS implementation of the MPP is premised on improving the process to seek asylum in the United States, while observing the safety of asylum-seekers, public reporting about the program casts doubts on these purported governmental objectives. Media outlets and non-governmental organizations have exposed the systemic infringement on due process rights, such as the right to notice of and access to court hearings, inherent in the MPP.<sup>5</sup> Reports have also documented the physical harm – including kidnapping and death – that asylum-seekers have faced while awaiting decisions on their asylum claims in Mexico.<sup>6</sup>

As the agency that oversees immigration enforcement on the U.S.-Mexico border, DHS plays a crucial role in the implementation of the MPP. This request seeks the disclosure of information that will enhance the public's understanding of DHS's operations regarding the program. As outlined further below, Requesters intend to make the information received in response to this request available to the public at no charge. Further, Requesters have significant audience reach, which includes varied segments of the U.S. public.

The Council regularly provides information to the public based on its FOIA requests.<sup>7</sup> In keeping with its track record of synthesizing or otherwise publishing information on governmental operations gleaned from FOIA requests, the Council intends to post documents received in response to this FOIA request on its publicly accessible website. For calendar year 2019 (January 1, 2019-present), the website had 2.6 million pageviews from 1.5 million unique visitors.

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<sup>5</sup> Molly O'Toole, "Trump Administration Appears to Violate Law in Forcing Asylum Seekers Back to Mexico, Officials Warn," Los Angeles Times (Aug. 28, 2019), <https://lat.ms/2th7YwW>; Human Rights Watch, *U.S. Move Puts More Asylum Seekers at Risk: Expanded 'Remain in Mexico' Program Undermines Due Process* (September 25, 2019), <http://bit.ly/2Ps51T6>; Human Rights First, *Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy* (October 2019), <http://bit.ly/34wuyPn>; Judy Perry Martinez, *Due Process Concerns at U.S.-Mexico Border*, American Bar Association (Oct. 2019), <http://bit.ly/2swT7OC>.

<sup>6</sup> Human Rights Watch, *We Can't Help You Here* (July 2, 2019), <http://bit.ly/2Eo3OG8>; Emily Green, "Trump's Asylum Policies Sent Him Back to Mexico. He Was Kidnapped Five Hours Later By a Cartel.," Vice News (Sept. 16, 2019), <http://bit.ly/2PqPAKH>; This American Life, "The Out Crowd," National Public Radio (Nov. 15, 2019), <http://bit.ly/2PuzK1X>.

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AILA also widely disseminates information to its members and the public in the form of continuing legal education materials, information, and resources, primarily through its website, <https://www.aila.org/>.<sup>8</sup> Those who visit AILA's website include immigration attorneys and their individual and employer clients, media representatives, U.S businesses, foreign nationals, law students, elected officials, government employees, and other interested members of the public. Moreover, information posted to AILA's website is often linked to the websites of other organizations and immigration law firms. AILA also disseminates the information through its newsletters, social media, and other print and electronic publications.

HRW uses its extensive contacts in the media to draw greater attention to the issues, and HRW employees often comment on issues in the media. For example, HRW was mentioned in media 347,234 times in 2018, an average of nearly 1000 a day. HRW's media mentions spanned 189 countries and at least 58 languages. Human Rights Watch has 4.2 million followers on its English-language Twitter account, and 2.6 million Facebook followers. Human Rights Watch intends to make the information provided in response to this request to publicly available at no charge.<sup>9</sup>

*B. Disclosure of the Information Is Not in the Commercial Interest of the Requesters*

The Council is a not-for-profit organization and has no commercial interest in the present request. See e.g. 6 C.F.R. § 5.11(k)(3)(i)-(ii). This request furthers the Council's work to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. As with all other reports and information available on the Council's website, the information 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.

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<sup>8</sup> See *AILA Receives Records Relating to EOIR Misconduct in FOIA Lawsuit*, AILA Doc. No. 13111458 (last updated November 1, 2018), available at <https://www.aila.org/infonet/eoir-records-relating-misconduct>; *CBP Releases Officer's Reference Tool Documents*, AILA Doc. No. 18112701 (last updated October 21, 2019), available at <https://www.aila.org/infonet/gr-foia-cbp-table>; *FOIA Response Highlights Importance of Independent Judges, Court Reform*, AILA Doc. No. 18040300 (Last Updated April 23, 2018), available at <https://www.aila.org/infonet/foia-response-labor-agreement-between-eoir-naij>.

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Given that FOIA's fee-waiver requirements are to "be liberally construed in favor of waivers for noncommercial requesters," a waiver of all fees is justified and warranted in this case. See *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

### 3. REQUEST TO EXPEDITE

Requesters also ask that DHS expedite this request because they can demonstrate that expedited treatment is warranted under the statute and governing regulations. See 5 U.S.C. § 552(a)(6)(E)(I); 6 C.F.R. § 5.5(e). The FOIA is intended to ensure the public has timely access to information regarding governmental operations. This objective is particularly heightened regarding MPP – a program implemented without transparency that directly impacts the lives of thousands of asylum-seekers every day.

As outlined by DHS regulations, a request qualifies for expedited treatment where it is demonstrated that:

**"(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."

6 C.F.R. § 5.5(e). The courts have interpreted the "compelling need" language in the statute to encompass three factors: "(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." See *Protect Democracy Project, Inc. v. U.S. Department of Defense*, 263 F.Supp.3d 293, 298-99 (D.C. Cir. 2017) (citing *Al-Fayed v. C.I.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001)).

A FOIA request need not meet all criteria but the present request nonetheless meets all requirements for expedited treatment. In the first instance, it has been widely documented that the MPP has resulted in threats to the life and physical safety of thousands of asylum-seekers who are forced to wait in Mexico while the U.S. government adjudicates their asylum claims – asylum-seekers have been kidnapped, physically assaulted and killed.<sup>10</sup>

Second, Requesters are primarily engaged in the dissemination of information and intend to make the information they receive via this request available to the public. DHS has released little to no public information regarding this program and the lack of information has generated confusion and concern as asylum-seekers, advocates and the media are unclear about the program's contours and procedures. Given the dangers to asylum-seekers and lack of transparency regarding due process, there is an urgent need for the public to understand how this program operates.

Third, the manner in which the MPP has been designed (to the extent publicly known) appears to have a systemically adverse impact on the due process rights of asylum-seekers, given the lack of clarity regarding immigration court procedures, including as to how asylum-seekers are processed for deportation proceedings, how they receive notice, how they can present and challenge evidence and what the program's access to counsel policies entail.<sup>11</sup> These are significant lines of inquiry as all these procedures reflect established due process safeguards that an asylum-seeker must receive in a court proceeding in the United States.

Finally, the MPP is a "matter of widespread and exceptional media interest," which has generated many questions about the "government's integrity," thereby affecting "public confidence." The MPP appears intended to discourage asylum-seekers from seeking protection in the United States, thus conflicting with a long-standing history of welcoming those fleeing persecution. Alarming, asylum officers – DHS employees – have publicly voiced concern about the program's legality and morality, serving to raise legitimate questions about the government's integrity and shaking public confidence in the immigration agencies tasked with enforcing immigration law and administering asylum claims in the United States.<sup>12</sup>

#### 4. EXEMPTIONS

If DHS concludes that statutory exemptions apply to any of the information requested, please describe in detail the nature of the information withheld, the specific exemption or privilege upon

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<sup>10</sup> See *supra*, n. 6.

<sup>11</sup> See *supra*, n. 5.

<sup>12</sup> Molly O'Toole, "Asylum Officers Rebel Against Trump Policies They Say are Immoral and Illegal," Los Angeles Times (Nov. 15, 2019), <https://lat.ms/36Dx2wD>; Priscilla Alvarez, "Senate Report: Whistleblowers Blast Trump Administration's Immigration Policies," CNN (Nov. 22, 2019), <https://cnn.it/2EriyUk>; Tanvi Misra, "'Remain in Mexico' Policy Faces Internal Critiques at House Hearing," Roll Call (Nov. 29, 2019), <http://bit.ly/2S0buWW>.

which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

## 5. FORMAT OF PRODUCTION

Requesters seek the data in a workable format, such as Microsoft Excel. ***Please also provide a glossary or other descriptive records containing definitions of acronyms, numerical codes or terms contained in data responsive to this request, if those terms are not in the form template and/or publicly defined.***

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Pursuant to 5 U.S.C. § 552(a)(vi), I certify the statement in support of the request for expedited treatment to be true and correct to the best of my knowledge and belief.

Thank you in advance for your attention to this request. If you have any questions regarding this request, please feel free to email or call Emily Creighton at the contact information under the first signature block below.

Sincerely,

/s/ Emily Creighton

Emily Creighton  
American Immigration Council  
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AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION



December 21, 2019

Senior Director of FOIA Operations  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW STOP-0655  
Washington, DC 20598-0655

**Re: Freedom of Information Act Request for Records Held by U.S. Citizenship and Immigration Services (USCIS)**

Dear Senior Director:

The American Immigration Council (Council), the American Immigration Lawyers Association (AILA), and Human Rights Watch (HRW) (“Requesters”) submit the following Freedom of Information Act (FOIA) request for records regarding the Migrant Protection Protocols (“MPP”), otherwise known as “Remain in Mexico,” announced by the Department of Homeland Security (DHS) on January 24, 2019.<sup>1</sup> In accordance with 5 U.S.C. § 552(a)(6)(A)(i), we expect a response to this request within 20 working days, unless otherwise permitted by statute.

**1. REQUEST FOR INFORMATION**

For the period between December 1, 2018 to the present:

*Documents:*

- Any instructions, directives, or guidance to USCIS employees on the MPP as follows:
  - DHS and USCIS-generated forms used to process individuals pursuant to the MPP.
  - USCIS procedures for processing noncitizens subject to the MPP who express a fear of return to Mexico and are referred to an asylum officer for a *non-refoulement* interview.
- Training, PowerPoint presentations, or guidelines on conducting *non-refoulement* interviews.
  - How and when decisions to grant or deny the *non-refoulement* exception to the MPP are subjected to supervisory review.

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<sup>1</sup> See Department of Homeland Security, *Migrant Protection Protocols* (January 24, 2019), <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.



- DHS and USCIS policy or guidance regarding the use of telephonic MPP non-refoulement interviews, including any policy or guidance regarding problems in audio quality.
  - Training materials used to train asylum officers in San Francisco on MPP non-refoulement interviews.
  - DHS and USCIS policies regarding supervisory review of non-refoulement interviews, including any policy or guidance regarding a requirement to clear certain approvals through USCIS headquarters.
  - DHS and USCIS policies regarding the receipt and use of nontestimonial evidence (for example, physical documents or other pieces of tangible evidence) during *non-refoulment* interviews.
- Interagency agreements within CBP, EOIR, and U.S. Immigration and Customs Enforcement (ICE) regarding the MPP program.
  - DHS and USCIS policies regarding the particular social groups which may be used to evaluate individuals for fear of persecution in Mexico.<sup>2</sup>
  - The grievance filed by the American Federation of Government Employees (AFGE) Local 1924 on August 1, 2019 against then-Acting USCIS Principal Deputy Director Ken Cuccinelli, as well as USCIS's rejection of that grievance on August 29, 2019.
  - The Refugee, Asylum and International Operations (RAIO) Research Unit, News Summary Bulletin July 2019.<sup>3</sup>

*Data:*

- For each month since MPP has been in place:
  - the total number of individuals that USCIS has processed as part of the MPP.
  - the total number of individuals by nationality processed as part of the MPP.
  - the age of the individuals processed as part of the MPP.
  - the initial agency of custody (Border Patrol vs. CBP Office of Field Operations) that processed individuals as part of MPP.
  - the total number of individuals considered family units.
  - the total number of single adults processed as part of the MPP.

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<sup>2</sup> See Shattered Refugee, Appendix N

<sup>3</sup> See *supra* n. 2, Stevens Testimony at 10

- The total number of *nonrefoulement* interviews provided.
- Number of individuals that USCIS has processed as part of the MPP that any DHS employee has identified as having a fear of return to Mexico and have been referred to USCIS for a *nonrefoulement* interview.
  - Grant/denial rates for individuals who have received *nonrefoulement* interviews as part of the MPP.
  - For each grant/denial, whether the decision was subjected to supervisor review and whether the initial decision by an asylum officer was affirmed or overturned.
  - A copy of the MPP Referral Cases spreadsheet referenced in *Shattered Refuge, Appendix I*, as sent on May 24, 2019, with subject line “RE: MPP Referral Cases at PDN – El Paso Port of Entry May 23, 2019,” and any similar spreadsheets or master spreadsheet regarding MPP referral cases.
- Number of asylum officers that have left the asylum officer position in the past six years, by month and by office.

*Communications:*

- Minutes, transcripts, or audio of daily interagency calls regarding MPP.
- All guidance, instructions, memoranda, or reports that USCIS asylum officers have been provided relating to reports or concerns about harm or danger that noncitizens have encountered or will encounter upon return to Mexico, including country conditions.
- Reports about Mexico and the states of Baja California, Chihuahua, and Tamaulipas.
- Any communications to and from former RAIO Director John Lafferty regarding MPP.
- Any communications to and from Ken Cuccinelli, Jennifer Higgins, John Lafferty, John Zadrozny, Mark Koumans, Kathy Nuebel Kovarick, Joseph Edlow, Matthew D. Emerich, Robert Law, Lora Ries, Tracy Renaud, and Molly Groom, regarding or providing input into, the so-called “red team report” on MPP referenced in the following article: <https://www.buzzfeednews.com/article/hamedaleaziz/dhs-asylum-report-mpp-immigration-remain-mexico>.

### 3. FEE WAIVER REQUEST

Requesters seek a fee waiver because the information they seek 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 [requesters]....” 5 U.S.C. § 552(a)(4)(A)(iii).

#### *A. Disclosure Will Contribute to Public Understanding of USCIS Operations*

As noted previously, DHS announced the MPP, otherwise known as “Remain in Mexico,” on January 24, 2019, imposing the requirement that asylum-seekers wait in Mexico while the U.S.

government adjudicates their asylum claims. Mandating that asylum-seekers wait in Mexico while they pursue their asylum claims is an unprecedented shift in U.S. asylum policy and procedure. Though this shift implicates serious safety and due process concerns, DHS has not made guidance or information about how the MPP operates available to the public, advocates, attorneys, and asylum-seekers directly impacted by this new program.

Further, while DHS implementation of the MPP is premised on improving the process to seek asylum in the United States, while observing the safety of asylum-seekers, public reporting about the program casts doubts on these purported governmental objectives. Media outlets and non-governmental organizations have exposed the systemic infringement on due process rights, such as the right to notice of and access to court hearings, inherent in the MPP.<sup>4</sup> Reports have also documented the physical harm – including kidnapping and death – that asylum-seekers have faced while awaiting decisions on their asylum claims in Mexico.<sup>5</sup>

As one of the DHS agencies tasked with immigration adjudications, USCIS plays a crucial role in the implementation of the MPP. This request seeks the disclosure of information that will enhance the public's understanding of USCIS's operations regarding the program. As outlined below, the Council and AILA intend to make the information received in response to this request available to the public at no charge. Further, both requesters have significant audience reach, which includes varied segments of the U.S. public.

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A FOIA request need not meet all criteria but the present request nonetheless meets all requirements for expedited treatment. In the first instance, it has been widely documented that the MPP has resulted in threats to the life and physical safety of thousands of asylum-seekers who are forced to wait in Mexico while the U.S. government adjudicates their asylum claims – asylum-seekers have been kidnapped, physically assaulted and killed.<sup>9</sup>

Second, as noted above, Requesters are primarily engaged in the dissemination of information and intend to make the information they receive via this request available to the public. USCIS has released little to no public information regarding this program and the lack of information has generated confusion and concern as asylum-seekers, advocates and the media are unclear about the program’s contours and procedures. Given the dangers to asylum-seekers and lack of transparency regarding due process, there is an urgent need for the public to understand how this program operates.

Third, the manner in which the MPP has been designed (to the extent publicly known) appears to have a systemically adverse impact on the due process rights of asylum-seekers, given the lack of clarity regarding immigration court procedures, including as to how asylum-seekers are processed for deportation proceedings, how they receive notice, how they can present and challenge evidence and what the program’s access to counsel policies entail.<sup>10</sup> These are significant lines of inquiry as all these procedures reflect established due process safeguards that an asylum-seeker must receive in a court proceeding in the United States.

Finally, the MPP is a “matter of widespread and exceptional media interest,” which has generated many questions about the “government’s integrity,” thereby affecting “public confidence.” The MPP appears intended to discourage asylum-seekers from seeking protection in the United States, thus conflicting with a long-standing history of welcoming those fleeing persecution. Alarming, asylum officers – DHS employees – have publicly voiced concern about the program’s legality and morality, serving to raise legitimate questions about the government’s integrity and shaking public confidence in the immigration agencies tasked with enforcing immigration law and administering asylum claims in the United States.<sup>11</sup>

#### 4. EXEMPTIONS

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<sup>9</sup> See *supra*, n. 5.

<sup>10</sup> See *supra*, n. 4.

<sup>11</sup> Molly O’Toole, “Asylum Officers Rebel Against Trump Policies They Say are Immoral and Illegal,” Los Angeles Times (Nov. 15, 2019), <https://lat.ms/36Dx2wD>; Priscilla Alvarez, “Senate Report: Whistleblowers Blast Trump Administration’s Immigration Policies,” CNN (Nov. 22, 2019), <https://cnn.it/2EriyUk>; Tanvi Misra, “‘Remain in Mexico’ Policy Faces Internal Critiques at House Hearing,” Roll Call (Nov. 29, 2019), <http://bit.ly/2S0buWW>.

If USCIS concludes that statutory exemptions apply to any of the information requested, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

## 5. FORMAT OF PRODUCTION

Requesters seek the data in a workable format, such as Microsoft Excel. ***Please also provide a glossary or other descriptive records containing definitions of acronyms, numerical codes or terms contained in data responsive to this request, if those terms are not in the form template and/or publicly defined.***

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Pursuant to 5 U.S.C. § 552(a)(vi), I certify the statement in support of the request for expedited treatment to be true and correct to the best of my knowledge and belief.

Thank you in advance for your attention to this request. If you have any questions regarding this request, please feel free to email or call Emily Creighton at the contact information under the first signature block below.

Sincerely,

/s/ Emily Creighton

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AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION



December 21, 2019

Senior Director of FOIA Operations  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW STOP-0655  
Washington, DC 20598-0655

**Re: Freedom of Information Act Request for Records Held by U.S. Customs and Border Protection (CBP)**

Dear Senior Director:

The American Immigration Council (Council), the American Immigration Lawyers Association (AILA), and Human Rights Watch (HRW) (“Requesters”) submit the following Freedom of Information Act (FOIA) request for records regarding the Migrant Protection Protocols (“MPP”), otherwise known as “Remain in Mexico,” announced by the Department of Homeland Security (DHS) on January 24, 2019.<sup>1</sup> In accordance with 5 U.S.C. § 552(a)(6)(A)(i), we expect a response to this request within 20 working days, unless otherwise permitted by statute.

**1. REQUEST FOR RECORDS**

For the period between December 2018 to the present:

*Documents:*

- Instructions, directives, or guidance (including musters) to U.S. Customs and Border Protection (CBP) employees on the Migrant Protection Protocols (MPP) as follows:
  - Any memoranda or muster on MPP.
  - DHS or CBP-generated forms used to process individuals pursuant to MPP.
  - CBP’s preparation and service of forms or charging documents after initial apprehension of individuals subject to the MPP.
  - CBP’s procedures for providing notice of court hearings to individuals subject to MPP.
  - CBP’s procedures for individuals subject to the MPP when they arrive in the United States for an immigration court hearing.

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<sup>1</sup> Department of Homeland Security, “Migrant Protection Protocols” (January 24, 2019), <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

- CBP procedures for individuals subject to the MPP who express a fear of return to Mexico, including how and when to refer individuals for a *non-refoulement* interview and what office under DHS conducts these interviews.
- CBP procedures for processing individuals already in Mexico who present themselves at a port of entry at a time other than their court hearing, and who express a fear of returning to Mexico, as referenced by Acting CBP Commissioner Mark Morgan on November 14, 2019.<sup>2</sup>
- CBP's procedures for coordinating with USCIS, the Executive Office for Immigration Review (EOIR), and U.S. Immigration and Customs Enforcement (ICE) to implement the MPP program.
- Treatment of individuals whose cases have been terminated or who have been granted relief, including the issuance of "[t]ear sheets [] to indicate a date when the individual can check in with U.S. officials regarding the status of the appeal."<sup>3</sup>

*Data:*

- Total number of individuals that CBP has processed as part of the MPP, by week, by port of entry at which the individual was returned to Mexico, and by Border Patrol Sector or the Office of Field Operations, corrected to account for any previous double-counting of individuals in MPP.
- Number of individuals that CBP has processed as part of the MPP that CBP has identified as having a fear of return to Mexico and referred for a *nonrefoulement* interview, by month.
- Data that demonstrates individuals placed in the MPP program are reentering the United States with the help of cartels.
- Number of individuals that CBP has processed as part of MPP that CBP has determined are exempt from MPP, by month.
- The MPP Referral Cases spreadsheet referenced in *Shattered Refuge, Appendix I*, and any similar spreadsheets or master spreadsheet regarding MPP referral cases.<sup>4</sup>

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<sup>2</sup> CBP, Press Briefing by Acting CBP Commissioner Mark Morgan, November 14, 2019, <https://www.whitehouse.gov/briefings-statements/press-briefing-acting-cbp-commissioner-mark-morgan-2/> ("At any given time, if anybody in the MPP process that's waiting in Mexico fears for their safety concern, all they have to do is go to a U.S. port of entry and claim that, and they will be allowed to go through that process.") (hereinafter Mark Morgan Press Briefing).

<sup>3</sup> Gustavo Solis, "CBP's Explanation for Writing Fake Court Dates on Migrants' Paperwork Doesn't Make Sense, Lawyers Say," The San Diego Union-Tribune (Nov. 13, 2019), <http://bit.ly/34sKxOd>.

<sup>4</sup> Office of U.S. Senator Jeff Merkley, *Shattered Refuge: A U.S. Senate Investigation into the Trump Administration's Gutting of Asylum* (Nov. 2019), at Appendix I,

*Communications:*

- Communications to or from Acting CBP Commissioner Mark Morgan, Deputy CBP Commissioner Robert E. Perez, Border Patrol Chief Carla L. Provost, Office of Field Operations Executive Assistant Commissioner Todd C. Owen, the Director of Field Operations for the San Diego, El Paso, and Laredo Field Offices, and the Port Directors of the following ports of entry (Laredo, Brownsville, San Ysidro, Calexico, Eagle Pass, and El Paso), related to the safety of migrants in Mexico, including
  - Communications relating to specific incidents of criminal activity against any individuals in MPP, such as the murder of a 35-year-old Salvadoran father who was returned to Tijuana as part of MPP.<sup>5</sup>
  - Communications between CBP and The International Organization for Migration (IOM) regarding the safety of migrants in Mexico who have been subject to MPP, as referenced in the November 14, 2019 press conference by Acting CBP Commissioner Mark Morgan.<sup>6</sup>
- Communications to and from Acting CBP Commissioner Mark Morgan regarding Human Rights First reports on the harm suffered by individuals in Mexico during MPP.<sup>7</sup>
- Communications to and from Acting CBP Commissioner Mark Morgan, Deputy CBP Commissioner Robert E. Perez, Office of Field Operations Executive Assistant Commissioner Todd C. Owen, the Director of Field Operations for the Laredo Field Office, and the Port Directors for the Laredo and Brownsville ports of entry, regarding attorney, legal observer, reporter, and public access to MPP courts, including tent court facilities and immigration adjudication centers (IACs).

**2. FEE WAIVER REQUEST**


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<https://www.merkley.senate.gov/imo/media/doc/SHATTERED%20REFUGEE%20-%20A%20US%20Senate%20Investigation%20into%20the%20Trump%20Administration%20Gutting%20of%20Asylum.pdf>.

<sup>5</sup> Wendy Fry, Asylum-seeker killed in Tijuana was dismembered, San Diego Union-Tribune (Dec. 13, 2019), <https://www.sandiegouniontribune.com/news/border-baja-california/story/2019-12-13/asylum-seeker-killed-in-tijuana-was-dismembered>.

<sup>6</sup> Mark Morgan Press Briefing (“And what IOM told our personnel on that visit is that they’re not hearing any complaints of people fearing for their lives when they’re in — or their safety — when they’re in that shelter environment.”), <https://www.whitehouse.gov/briefings-statements/press-briefing-acting-cbp-commissioner-mark-morgan-2/>.

<sup>7</sup> See, e.g., Human Rights First, *Trump Administration Delivers Asylum Seekers to Grave Danger in Mexico: 200+ Publicly Reported Cases of Rape, Kidnapping, and Assault Just the Tip of the Iceberg* (Sept. 2019), <https://www.humanrightsfirst.org/sites/default/files/MPP-One-Pager-September-2019.pdf>; Human Rights First, *Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy* (Oct. 2019), <https://www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf>.

Requesters seek a fee waiver because the information they seek 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 [requesters]....” 5 U.S.C. § 552(a)(4)(A)(iii).

*A. Disclosure Will Contribute to Public Understanding of CBP Operations Pertaining to the Migrant Protection Protocols*

As noted previously, DHS announced the MPP, otherwise known as “Remain in Mexico,” on January 24, 2019, imposing the requirement that asylum-seekers wait in Mexico while the U.S. government adjudicates their asylum claims. Mandating that asylum-seekers wait in Mexico while they pursue their asylum claims is an unprecedented shift in U.S. asylum policy and procedure. Though this shift implicates serious safety and due process concerns, DHS has not made guidance or information about how the MPP operates available to the public, advocates, attorneys, and asylum-seekers directly impacted by this new program.

Further, while DHS implementation of the MPP is premised on improving the process to seek asylum in the United States, while observing the safety of asylum-seekers, public reporting about the program casts doubts on these purported governmental objectives. Media outlets and non-governmental organizations have exposed the systemic infringement on due process rights, such as the right to notice of and access to court hearings, inherent in the MPP.<sup>8</sup> Reports have also documented the physical harm – including kidnapping and death - that asylum-seekers have faced while awaiting decisions on their asylum claims in Mexico.<sup>9</sup>

As the DHS agency tasked with enforcement on the U.S.-Mexico border, CBP plays a crucial role in the implementation of the MPP. This request seeks the disclosure of information that will enhance the public’s understanding of CBP’s operations regarding the program. As outlined further below, the Requesters intend to make the information received in response to this request available to the public at no charge. Further, Requesters have significant audience reach, which includes varied segments of the U.S. public.

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<sup>8</sup> Molly O’Toole, “Trump Administration Appears to Violate Law in Forcing Asylum Seekers Back to Mexico, Officials Warn,” Los Angeles Times (Aug. 28, 2019), <https://lat.ms/2th7YwW>; Human Rights Watch, *U.S. Move Puts More Asylum Seekers at Risk: Expanded ‘Remain in Mexico’ Program Undermines Due Process* (September 25, 2019), <http://bit.ly/2Ps51T6>; Human Rights First, *Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy* (October 2019), <http://bit.ly/34wuyPn>; Judy Perry Martinez, *Due Process Concerns at U.S.-Mexico Border*, American Bar Association (Oct. 2019), <http://bit.ly/2swT7OC>.

<sup>9</sup> Human Rights Watch, *We Can’t Help You Here* (July 2, 2019), <http://bit.ly/2Eo3OG8>; Emily Green, “Trump’s Asylum Policies Sent Him Back to Mexico. He Was Kidnapped Five Hours Later By a Cartel.,” Vice News (Sept. 16, 2019), <http://bit.ly/2PqPAKH>; This American Life, “The Out Crowd,” National Public Radio (Nov. 15, 2019), <http://bit.ly/2PuzK1X>.

The Council regularly provides information to the public based on its FOIA requests.<sup>10</sup> In keeping with its track record of synthesizing or otherwise publishing information on governmental operations gleaned from FOIA requests, the Council intends to post documents received in response to this FOIA request on its publicly accessible website. For calendar year 2019 (January 1, 2019-present), the Council received 2.6 million pageviews from 1.5 million unique visitors.

AILA also widely disseminates information to its members and the public in the form of continuing legal education materials, information, and resources, primarily through its website, <https://www.aila.org/>.<sup>11</sup> Those who visit AILA's website include immigration attorneys and their individual and employer clients, media representatives, U.S businesses, foreign nationals, law students, elected officials, government employees, and other interested members of the public. Moreover, information posted to AILA's website is often linked to the websites of other organizations and immigration law firms. AILA also disseminates the information through its newsletters, social media, and other print and electronic publications.

HRW uses its extensive contacts in the media to draw greater attention to the issues, and HRW employees often comment on issues in the media. For example, HRW was mentioned in media 347,234 times in 2018, an average of nearly 1000 a day. HRW's media mentions spanned 189 countries and at least 58 languages. Human Rights Watch has 4.2 million followers on its English-language Twitter account, and 2.6 million Facebook followers. Human Rights Watch intends to make the information provided in response to this request to publicly available at no charge.<sup>12</sup>

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<sup>10</sup> See, e.g., Guillermo Cantor and Walter Ewing, American Immigration Council, *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered* (August 2017) (examining records of alleged misconduct by Border Patrol employees), [http://bit.ly/Council\\_StillNoActionTaken](http://bit.ly/Council_StillNoActionTaken); American Immigration Council, *Enforcement Overdrive: A Comprehensive Assessment of ICE's Criminal Alien Program* (November 2015) (analyzing data obtained from ICE on the CAP program), [http://bit.ly/Council\\_ICE\\_CAP](http://bit.ly/Council_ICE_CAP).

<sup>11</sup> See *AILA Receives Records Relating to EOIR Misconduct in FOIA Lawsuit*, AILA Doc. No. 13111458 (last updated November 1, 2018), available at <https://www.aila.org/infonet/eoir-records-relating-misconduct>; *CBP Releases Officer's Reference Tool Documents*, AILA Doc. No. 18112701 (last updated October 21, 2019), available at <https://www.aila.org/infonet/gr-foia-cbp-table>; *FOIA Response Highlights Importance of Independent Judges, Court Reform*, AILA Doc. No. 18040300 (Last Updated April 23, 2018), available at <https://www.aila.org/infonet/foia-response-labor-agreement-between-eoir-naij>.

<sup>12</sup> See, e.g., Human Rights Watch, *"I Still Need You": The Detention and Deportation of Californian Parents* (May 2017) (examining records of parents deported and separated from their US citizen children), <https://www.hrw.org/report/2017/05/15/i-still-need-you/detention-and-deportation-californian-parents>; Human Rights Watch, *"Forced Apart (By the Numbers): Non-Citizens Deported Mostly for Nonviolent Offenses* (April 2009) (examining records related to the practice of removing non-citizens for non-violent, non-serious offenses), <https://www.hrw.org/report/2009/04/15/forced-apart-numbers/non-citizens-deported-mostly-nonviolent-offenses>.

*B. Disclosure of the Information Is Not in the Commercial Interest of the Requesters*

The Council is a not-for-profit organization and has no commercial interest in the present request. *See e.g.* 6 C.F.R. § 5.11(k)(3)(i)-(ii). This request furthers the Council's work to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. As with all other reports and information available on the Immigration 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.

AILA is a nonpartisan, 501(c)(6) tax-exempt not-for-profit organization with no commercial interest in the present request. AILA provides its members and the public with continuing legal education, information, and resources, primarily through its website, [www.aila.org](http://www.aila.org), that is updated daily with the latest immigration news and information, including agency guidance, interpretations and policy memoranda. As described above, AILA seeks the requested information for the purpose of disseminating it to the general public, free of charge.

HRW is a non-governmental organization with no commercial interest in the present request. HRW employs over 450 professionals, among them lawyers, journalists, and academics who work to uncover and report on human rights issues around the world. In order to reach the broadest audience possible, the organization publishes detailed reports on human rights issues of interest to a broad spectrum of people. These reports are made available in print and on Human Rights Watch's website at no charge (<https://www.hrw.org/>).

Given that FOIA's fee-waiver requirements are to "be liberally construed in favor of waivers for noncommercial requesters," a waiver of all fees is justified and warranted in this case. *See Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

### **3. REQUEST TO EXPEDITE**

Requesters also ask that CBP expedite this request because they can demonstrate that expedited treatment is warranted under the statute and governing regulations. *See* 5 U.S.C. § 552(a)(6)(E)(I); 6 C.F.R. § 5.5(e). The FOIA is intended to ensure the public has timely access to information regarding governmental operations. This objective is particularly heightened regarding MPP – a program implemented without transparency that directly impacts the lives of thousands of asylum-seekers every day.

As outlined by DHS regulations, a request qualifies for expedited treatment where it is demonstrated that:



“(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.”

6 C.F.R. § 5.5(e). The courts have interpreted the “compelling need” language in the statute to encompass three factors: “(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.” See *Protect Democracy Project, Inc. v. U.S. Department of Defense*, 263 F.Supp.3d 293, 298-99 (D.C. Cir. 2017) (citing *Al-Fayed v. C.I.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001)).

A FOIA request need not meet all criteria but the present request nonetheless meets all requirements for expedited treatment. In the first instance, it has been widely documented that the MPP has resulted in threats to the life and physical safety of thousands of asylum-seekers who are forced to wait in Mexico while the U.S. government adjudicates their asylum claims – asylum-seekers have been kidnapped, physically assaulted and killed.<sup>13</sup>

Second, Requesters are primarily engaged in the dissemination of information and intend to make the information they receive via this request available to the public. CBP has released little to no public information regarding this program and the lack of information has generated confusion and concern as asylum-seekers, advocates and the media are unclear about the program’s contours and procedures. Given the dangers to asylum-seekers and lack of transparency regarding due process, there is an urgent need for the public to understand how this program operates.

Third, the manner in which the MPP has been designed (to the extent publicly known) appears to have a systemically adverse impact on the due process rights of asylum-seekers, given the lack of clarity regarding immigration court procedures, including as to how asylum-seekers are processed for deportation proceedings, how they receive notice, how they can present and challenge evidence and what the program’s access to counsel policies entail.<sup>14</sup> These are significant lines of inquiry as all these procedures reflect established due process safeguards that an asylum-seeker must receive in a court proceeding in the United States.

Finally, the MPP is a “matter of widespread and exceptional media interest,” which has generated many questions about the “government’s integrity,” thereby affecting “public confidence.” The MPP appears intended to discourage asylum-seekers from seeking protection in the United States, thus conflicting with a long-standing history of welcoming those fleeing

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<sup>13</sup> See *supra*, n. 9.

<sup>14</sup> See *supra*, n. 8.



persecution. Alarming, asylum officers – DHS employees – have publicly voiced concern about the program’s legality and morality, serving to raise legitimate questions about the government’s integrity and shaking public confidence in the immigration agencies tasked with enforcing immigration law and administering asylum claims in the United States.<sup>15</sup>

#### 4. EXEMPTIONS

If CBP concludes that statutory exemptions apply to any of the information requested, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

#### 5. FORMAT OF PRODUCTION

Requesters seek the data in a workable format, such as Microsoft Excel. ***Please also provide a glossary or other descriptive records containing definitions of acronyms, numerical codes or terms contained in data responsive to this request, if those terms are not in the form template and/or publicly defined.***

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Pursuant to 5 U.S.C. § 552(a)(vi), I certify the statement in support of the request for expedited treatment to be true and correct to the best of my knowledge and belief.

Thank you in advance for your attention to this request. If you have any questions regarding this request, please feel free to email or call Emily Creighton at the contact information under the first signature block below.

Sincerely,

/s/ Emily Creighton

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<sup>15</sup> Molly O’Toole, “Asylum Officers Rebel Against Trump Policies They Say are Immoral and Illegal,” Los Angeles Times (Nov. 15, 2019), <https://lat.ms/36Dx2wD>; Priscilla Alvarez, “Senate Report: Whistleblowers Blast Trump Administration’s Immigration Policies,” CNN (Nov. 22, 2019), <https://cnn.it/2EriyUk>; Tanvi Misra, “‘Remain in Mexico’ Policy Faces Internal Critiques at House Hearing,” Roll Call (Nov. 29, 2019), <http://bit.ly/2S0buWW>.

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December 21, 2019

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**Re: Freedom of Information Act Request for Records Held by U.S. Immigrations and Customs Enforcement (ICE)**

Dear Senior Director:

The American Immigration Council (Council), the American Immigration Lawyers Association (AILA), and Human Rights Watch (HRW) ("Requesters") submit the following Freedom of Information Act (FOIA) request for records regarding the Migrant Protection Protocols ("MPP"), otherwise known as "Remain in Mexico," announced by the U.S. Department of Homeland Security (DHS) on January 24, 2019.<sup>1</sup> In accordance with 5 U.S.C. § 552(a)(6)(A)(i), we expect a response to this request within 20 working days, unless otherwise permitted by statute.

**1. REQUEST FOR INFORMATION**

For the period between December 1, 2018 to the present:

- List of Office of the Principal Legal Advisor (OPLA) offices participating as counsel for U.S. Immigration and Customs Enforcement (ICE)/DHS in the MPP, by city and state
- Instructions, directives, or guidance to OPLA/ICE employees on the MPP as follows:
  - Description of ICE and OPLA's role in the MPP.
  - Motions to terminate, motions to change venue, and motions for a custody redetermination hearing ("bond motions") for individuals in MPP.
  - Appeals for individuals granted relief in MPP.
  - Guidance clarifying whether individuals transported or escorted by ICE to/from/during MPP hearings are in ICE custody.
  - If individuals subject to the MPP are considered in ICE custody when transported to MPP hearings.

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<sup>1</sup> Department of Homeland Security, "Migrant Protection Protocols" (January 24, 2019), <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

- ICE’s transportation practices for individuals subject to the MPP.
- Standards of detention for individuals subject to the MPP.
- Alternatives to detention for individuals in the MPP, such as parole, bond, or release on recognizance.
- ICE coordination with USCIS, EOIR, and CBP regarding the MPP program including:
  - Guidance on attorney access to MPP and tent court facilities.
  - Guidance on access to tent courts for legal observers, reporters, and the public
  - A copy of any contracts with private security firms such as Paragon Security to transport individuals from ports of entry to immigration courts in El Paso and San Diego, as well as to provide security at CBP port courts in Brownsville and Laredo, as part of the MPP program.
  - Any guidance provided to ICE OPLA regarding these contracts and the roles of security guards under those contracts.
  - Any policies provided to these security contractors regarding treatment of individuals in MPP, attorney access, and public access.
  - Any internal and interagency communications, directives, or guidance relating to legal access at immigration courts conducting MPP hearings, including attorney visitation and appearance, and legal group presentations (such as “know your rights” or “legal orientation programs”).
  - Minutes, transcripts, or audio of daily interagency calls on MPP.

## 2. FEE WAIVER REQUEST

Requesters seek a fee waiver because the information they seek 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 [requesters]....” 5 U.S.C. § 552(a)(4)(A)(iii).

### *A. Disclosure Will Contribute to Public Understanding of ICE Operations*

As noted previously, DHS announced the MPP, otherwise known as “Remain in Mexico,” on January 24, 2019, imposing the requirement that asylum-seekers wait in Mexico while the U.S. government adjudicates their asylum claims. Mandating that asylum-seekers wait in Mexico while they pursue their asylum claims is an unprecedented shift in U.S. asylum policy and procedure. Though this shift implicates serious safety and due process concerns, DHS has not made guidance or information about how the MPP operates available to the public, advocates, attorneys, and asylum-seekers directly impacted by this new program.

Further, while DHS implementation of the MPP is premised on improving the process to seek asylum in the United States, while observing the safety of asylum-seekers, public reporting about the program casts doubts on these purported governmental objectives. Media outlets and non-

governmental organizations have exposed the systemic infringement on due process rights, such as the right to notice of and access to court hearings, inherent in the MPP.<sup>2</sup> Reports have also documented the physical harm—including kidnapping and death—that asylum-seekers have faced while awaiting decisions on their asylum claims in Mexico.<sup>3</sup>

As one of the DHS agencies tasked with immigration enforcement, ICE plays a crucial role in the implementation of the MPP. This request seeks the disclosure of information that will enhance the public's understanding of ICE's operations regarding the program. As outlined further below, Requesters intend to make the information received in response to this request available to the public at no charge. Further, Requesters have significant audience reach, which includes varied segments of the U.S. public.

The Council regularly provides information to the public based on its FOIA requests.<sup>4</sup> In keeping with its track record of synthesizing or otherwise publishing information on governmental operations gleaned from FOIA requests, the Council intends to post documents received in response to this FOIA request on its publicly accessible website. For calendar year 2019 (January 1, 2019-present), the Council has received 2.6 million pageviews from 1.5 million unique visitors.

AILA also widely disseminates information to its members and the public in the form of continuing legal education materials, information, and resources, primarily through its website <https://www.aila.org/>.<sup>5</sup> Those who visit AILA's website include immigration attorneys and their

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<sup>2</sup> Molly O'Toole, "Trump Administration Appears to Violate Law in Forcing Asylum Seekers Back to Mexico, Officials Warn," Los Angeles Times (Aug. 28, 2019), <https://lat.ms/2th7YwW>; Human Rights Watch, *U.S. Move Puts More Asylum Seekers at Risk: Expanded 'Remain in Mexico' Program Undermines Due Process* (September 25, 2019), <http://bit.ly/2Ps51T6>; Human Rights First, *Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy* (October 2019), <http://bit.ly/34wuyPn>; Judy Perry Martinez, *Due Process Concerns at U.S.-Mexico Border*, American Bar Association (Oct. 2019), <http://bit.ly/2swT7OC>.

<sup>3</sup> Human Rights Watch, *We Can't Help You Here* (July 2, 2019), <http://bit.ly/2Eo3OG8>; Emily Green, "Trump's Asylum Policies Sent Him Back to Mexico. He Was Kidnapped Five Hours Later By a Cartel.," Vice News (Sept. 16, 2019), <http://bit.ly/2PqPAKH>; This American Life, "The Out Crowd," National Public Radio (Nov. 15, 2019), <http://bit.ly/2PuzK1X>.

<sup>4</sup> See, e.g., Guillermo Cantor and Walter Ewing, American Immigration Council, *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered* (August 2017) (examining records of alleged misconduct by Border Patrol employees), [http://bit.ly/Council\\_StillNoActionTaken](http://bit.ly/Council_StillNoActionTaken); American Immigration Council, *Enforcement Overdrive: A Comprehensive Assessment of ICE's Criminal Alien Program* (November 2015) (analyzing data obtained from ICE on the CAP program), [http://bit.ly/Council\\_ICE\\_CAP](http://bit.ly/Council_ICE_CAP).

<sup>5</sup> See *AILA Receives Records Relating to EOIR Misconduct in FOIA Lawsuit*, AILA Doc. No. 13111458 (last updated November 1, 2018), available at <https://www.aila.org/infonet/eoir-records-relating-misconduct>; *CBP Releases Officer's Reference Tool Documents*, AILA Doc. No. 18112701 (last updated October 21, 2019), available at <https://www.aila.org/infonet/gr-foia-cbp-table>; *FOIA Response Highlights Importance of Independent Judges, Court Reform*, AILA Doc. No. 18040300 (Last Updated

individual and employer clients, media representatives, U.S. businesses, foreign nationals, law students, elected officials, government employees, and other interested members of the public. Moreover, information posted to AILA's website is often linked to the websites of other organizations and immigration law firms. AILA also disseminates the information through its newsletters, social media, and other print and electronic publications.

HRW uses its extensive contacts in the media to draw greater attention to the issues, and HRW employees often comment on issues in the media. For example, HRW was mentioned in media 347,234 times in 2018, an average of nearly 1000 a day. HRW's media mentions spanned 189 countries and at least 58 languages. HRW has 4.2 million followers on its English-language Twitter account and 2.6 million Facebook followers. HRW intends to make the information provided in response to this request publicly available at no charge.<sup>6</sup>

*B. Disclosure of the Information Is Not in the Commercial Interest of the Requesters*

The Council is a not-for-profit organization and has no commercial interest in the present request. See e.g. 6 C.F.R. § 5.11(k)(3)(i)-(ii). This request furthers the Council's work to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. As with all other reports and information available on the Council's website, the information 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.

AILA is a nonpartisan, 501(c)(6) tax-exempt not-for-profit organization with no commercial interest in the present request. AILA provides its members and the public with continuing legal education, information, and resources, primarily through its website, [www.aila.org](http://www.aila.org), that is updated daily with the latest immigration news and information, including agency guidance, interpretations, and policy memoranda. As described above, AILA seeks the requested information for the purpose of disseminating it to the general public, free of charge.

HRW is a non-governmental organization with no commercial interest in the present request. HRW employs over 450 professionals, among them lawyers, journalists, and academics who work to uncover and report on human rights issues around the world. In order to reach the

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April 23, 2018), available at <https://www.aila.org/infonet/foia-response-labor-agreement-between-eoir-naij>.

<sup>6</sup> See, e.g., Human Rights Watch, *"I Still Need You": The Detention and Deportation of Californian Parents* (May 2017) (examining records of parents deported and separated from their US citizen children), <https://www.hrw.org/report/2017/05/15/i-still-need-you/detention-and-deportation-californian-parents>; Human Rights Watch, *"Forced Apart (By the Numbers): Non-Citizens Deported Mostly for Nonviolent Offenses"* (April 2009) (examining records related to the practice of removing non-citizens for non-violent, non-serious offenses), <https://www.hrw.org/report/2009/04/15/forced-apart-numbers/non-citizens-deported-mostly-nonviolent-offenses>

broadest audience possible, the organization publishes detailed reports on human rights issues of interest to a broad spectrum of people. These reports are made available in print and on Human Rights Watch's website at no charge (<https://www.hrw.org/>).

Given that FOIA's fee-waiver requirements are to "be liberally construed in favor of waivers for noncommercial requesters," a waiver of all fees is justified and warranted in this case. See *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

### 3. REQUEST TO EXPEDITE

Requesters also ask that ICE expedite this request because they can demonstrate that expedited treatment is warranted under the statute and governing regulations. See 5 U.S.C. § 552(a)(6)(E)(i); 6 C.F.R. § 5.5(e). The FOIA is intended to ensure the public has timely access to information regarding governmental operations. This objective is particularly heightened regarding MPP—a program implemented without transparency that directly impacts the lives of thousands of asylum-seekers every day.

As outlined by DHS regulations, a request qualifies for expedited treatment where it is demonstrated that:

"(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."

6 C.F.R. § 5.5(e). The courts have interpreted the "compelling need" language in the statute to encompass three factors: "(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." See *Protect Democracy Project, Inc. v. U.S. Department of Defense*, 263 F.Supp.3d 293, 298-99 (D.C. Cir. 2017) (citing *Al-Fayed v. C.I.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001)).

A FOIA request need not meet all criteria but the present request nonetheless meets all requirements for expedited treatment. In the first instance, it has been widely documented that the MPP has resulted in threats to the life and physical safety of thousands of asylum-seekers who are forced to wait in Mexico while the U.S. government adjudicates their asylum claims—asylum-seekers have been kidnapped, physically assaulted, and killed.<sup>7</sup>

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<sup>7</sup> See *supra*, n. 3.



Second, Requesters are primarily engaged in the dissemination of information and intend to make the information they receive via this request available to the public. ICE has released little to no public information regarding this program and the lack of information has generated confusion and concern as asylum-seekers, advocates, and the media are unclear about the program's contours and procedures. Given the dangers to asylum-seekers and lack of transparency regarding due process, there is an urgent need for the public to understand how this program operates.

Third, the manner in which the MPP has been designed (to the extent publicly known) appears to have a systemically adverse impact on the due process rights of asylum-seekers, given the lack of clarity regarding immigration court procedures, including as to how asylum-seekers are processed for deportation proceedings, how they receive notice, how they can present and challenge evidence and what the program's access to counsel policies entail.<sup>8</sup> These are significant lines of inquiry as all these procedures reflect established due process safeguards that an asylum-seeker must receive in a court proceeding in the United States.

Finally, the MPP is a "matter of widespread and exceptional media interest," which has generated many questions about the "government's integrity," thereby affecting "public confidence." The MPP appears intended to discourage asylum-seekers from seeking protection in the United States, thus conflicting with a long-standing history of welcoming those fleeing persecution. Alarming, asylum officers—DHS employees—have publicly voiced concern about the program's legality and morality, serving to raise legitimate questions about the government's integrity and shaking public confidence in the immigration agencies tasked with enforcing immigration law and administering asylum claims in the United States.<sup>9</sup>

#### 4. EXEMPTIONS

If ICE concludes that statutory exemptions apply to any of the information requested, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

#### 5. FORMAT OF PRODUCTION

Requesters seek the data in a workable format, such as Microsoft Excel. ***Please also provide a glossary or other descriptive records containing definitions of acronyms, numerical codes, or***

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<sup>8</sup> See *supra*, n. 2.

<sup>9</sup> Molly O'Toole, "Asylum Officers Rebel Against Trump Policies They Say are Immoral and Illegal," Los Angeles Times (Nov. 15, 2019), <https://lat.ms/36Dx2wD>; Priscilla Alvarez, "Senate Report: Whistleblowers Blast Trump Administration's Immigration Policies," CNN (Nov. 22, 2019), <https://cnn.it/2EriyUk>; Tanvi Misra, "'Remain in Mexico' Policy Faces Internal Critiques at House Hearing," Roll Call (Nov. 29, 2019), <http://bit.ly/2S0buWW>.

***terms contained in data responsive to this request, if those terms are not in the form template and/or publicly defined.***

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Pursuant to 5 U.S.C. § 552(a)(vi), I certify the statement in support of the request for expedited treatment to be true and correct to the best of my knowledge and belief.

Thank you in advance for your attention to this request. If you have any questions regarding this request, please feel free to email or call Emily Creighton at the contact information under the first signature block below.

Sincerely,

/s/ Emily Creighton

Emily Creighton  
American Immigration Council  
1331 G Street, NW, Suite 200  
Washington, DC 20005  
(202) 507-7540  
[ecreighton@immcouncil.org](mailto:ecreighton@immcouncil.org)

Laura Lynch  
American Immigration Lawyers Association  
1331 G Street, NW, Suite 300  
Washington, DC 20005  
[llynch@aila.org](mailto:llynch@aila.org)

Clara Long  
Human Rights Watch  
350 Sansome Street #1000  
San Francisco, CA 94104  
[longc@hrw.org](mailto:longc@hrw.org)

# Exhibit B



**Homeland  
Security**

*Privacy Office, Mail Stop 0655*

February 4, 2020

**SENT VIA E-MAIL TO: [ecreighton@immcouncil.org](mailto:ecreighton@immcouncil.org)**

Emily Creighton  
American Immigration Council  
1331 G Street NW, Suite 200  
Washington, DC 20005

**Re: 2020-HQFO-00456**

Dear Ms. Creighton:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), Privacy Office, dated December 21, 2019, and received in this office on January 24, 2020. You requested documents regarding:

1. any instructions, directives, or guidance to USCIS employees on the MPP as follows:

a) DHS and USCIS-generated forms used to process individuals pursuant to the MPP.

b) USCIS procedures for processing noncitizens subject to the MPP who express a fear of return to Mexico and are referred to an asylum officer for a nonrefoulement interview.

2. Training, PowerPoint presentations, or guidelines on conducting non-refoulement interviews.

a) How and when decisions to grant or deny the non-refoulement exception to the MPP are subjected to supervisory review.

b) DHS and USCIS policy or guidance regarding the use of telephonic MPP nonrefoulement interviews, including any policy or guidance regarding problems in audio quality.

c) Training materials used to train asylum officers in San Francisco on MPP nonrefoulement interviews.

d) DHS and USCIS policies regarding supervisory review of non-refoulement interviews, including any policy or guidance regarding a requirement to clear certain approvals through USCIS headquarters.

e) DHS and USCIS policies regarding the receipt and use of nontestimonial evidence (for example, physical documents or other pieces of tangible evidence) during non-refoulement interviews.

3. Interagency agreements within CBP, EOIR, and U.S. Immigration and Customs Enforcement (ICE) regarding the MPP program.

4. DHS and USCIS policies regarding the particular social groups which may be used to evaluate individuals for fear of persecution in Mexico.

5. The grievance filed by the American Federation of Government Employees (AFGE) Local 1924 on August 1, 2019 against then-Acting USCIS Principal Deputy Director Ken Cuccinelli, as well as USCIS's rejection of that grievance on August 29, 2019.

6. The Refugee, Asylum and International Operations (RAIO) Research Unit, News Summary Bulletin July 2019.

7. For each month since MPP has been in place:

a) the total number of individuals that USCIS has processed as part of the MPP.

b) The total number of individuals by nationality processed as part of the MPP.

c) The age of the individuals processed as part of the MPP.

d) The initial agency of custody (Border Patrol vs. CBP Office of Field Operations) that processed individuals as part of MPP.

e) The total number of individuals considered family units.

f) The total number of single adults processed as part of the MPP.

g) The total number of nonrefoulement interviews provided.

8. Number of individuals that USCIS has processed as part of the MPP that any DHS employee has identified as having a fear of return to Mexico and have been referred to USCIS for a nonrefoulement interview.

a) Grant/denial rates for individuals who have received nonrefoulement interviews as part of the MPP.

b) For each grant/denial, whether the decision was subjected to supervisor review and whether the initial decision by an asylum officer was affirmed or overturned.

c) A copy of the MPP Referral Cases spreadsheet referenced in Shattered Refuge, Appendix/, as sent on May 24, 2019, with subject line "RE: MPP Referral Cases at PDN - El Paso Port of Entry May 23, 2019," and any similar spreadsheets or master spreadsheet regarding MPP referral cases.

9. Number of asylum officers that have left the asylum officer position in the past six years, by month and by office.

10. Minutes, transcripts, or audio of daily interagency calls regarding MPP.

11. All guidance, instructions, memoranda, or reports that USCIS asylum officers have been provided relating to.

Due to the subject matter of your request, I am transferring this request to the FOIA Officer for U.S. Citizenship & Immigration Services (**USCIS**), for processing under the FOIA and direct response to you. Please find their contact information below:

**U.S. Citizenship & Immigration Services (USCIS)**

National Records Center, FOIA/PA Office

P. O. Box 648010

Lee's Summit, MO. 64064-8010

FOIA Officer/Public Liaison: Jill Eggleston

Phone: 1-800-375-5283 (USCIS Contact Center)

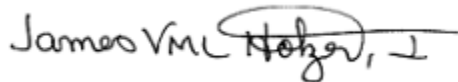
Fax: 816-350-5785

E-mail: [uscis.foia@uscis.dhs.gov](mailto:uscis.foia@uscis.dhs.gov)

USCIS Website

If you need to contact our office again about this matter, please refer to **2020-HQFO-00456**. You may contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

A handwritten signature in black ink that reads "James V. Holzer, Jr." with a stylized flourish at the end.

James Holzer  
Deputy Chief Privacy Officer (A)  
Deputy Chief FOIA Officer



**Homeland  
Security**

*Privacy Office, Mail Stop 0655*

February 3, 2020

**SENT VIA E-MAIL TO: [ecreighton@immcouncil.org](mailto:ecreighton@immcouncil.org)**

Emily Creighton  
American Immigration Council  
1331 G Street NW, Suite 200  
Washington, DC 20005

**Re: 2020-HQFO-00454**

Dear Ms. Creighton:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), Privacy Office, dated December 21, 2019, and received in this office on January 24, 2020. You requested documents regarding:

1. instructions, directives, or guidance (including musters) to U.S. Customs and Border Protection (CBP) employees on the Migrant Protection Protocols (MPP) as follows:
  - a. Any memoranda or muster on MPP.
  - b. DHS or (BP-generated forms used to process individuals pursuant to MPP.
  - c. CBP's preparation and service of forms or charging documents after initial apprehension of individuals subject to the MPP.
  - d. CBP's procedures for providing notice of court hearings to individuals subject to MPP.
  - e. CBP's procedures for individuals subject to the MPP when they arrive in the United States for an immigration court hearing.
  - f. CBP procedures for individuals subject to the MPP who express a fear of return to Mexico, including how and when to refer individuals for a non-refoulement interview and what office under DHS conducts these interviews.
  - g. CBP procedures for processing individuals already in Mexico who present themselves at a port of entry at a time other than their court hearing, and who express a fear of returning to Mexico, as referenced by Acting CBP Commissioner Mark Morgan on November 14, 2019.



- h. CBP's procedures for coordinating with USCIS, the Executive Office for Immigration Review (EOIR), and U.S. Immigration and Customs Enforcement (ICE) to implement the MPP program.
  - i. Treatment of individuals whose cases have been terminated or who have been granted relief, including the issuance of "[t]ear sheets [] to indicate a date when the individual can check in with U.S. officials regarding the status of the appeal."
2. Total number of individuals that CBP has processed as part of the MPP, by week, by port of entry at which the individual was returned to Mexico, and by Border Patrol Sector or the Office of Field Operations, corrected to account for any previous double-counting of individuals in MPP.
  3. Number of individuals that CBP has processed as part of the MPP that CBP has identified as having a fear of return to Mexico and referred for a nonrefoulement interview, by month.
  4. Data that demonstrates individuals placed in the MPP program are reentering the United States with the help of cartels.
  5. Number of individuals that CBP has processed as part of MPP that CBP has determined are exempt from MPP, by month.
  6. The MPP Referral Cases spreadsheet referenced in Shattered Refuge, Appendix I, and any similar spreadsheets or master spreadsheet regarding MPP referral cases.
  7. Communications to or from Acting CBP Commissioner Mark Morgan, Deputy CBP Commissioner Robert E. Perez, Border Patrol Chief Carla L. Provost, Office of Field Operations Executive Assistant Commissioner Todd C. Owen, the Director of Field Operations for the San Diego, El Paso, and Laredo Field Offices, and the Port Directors of the following ports of entry (Laredo, Brownsville, San Ysidro, Calexico, Eagle Pass, and El Paso), related to the safety of migrants in Mexico, including:
    - a. communications relating to specific incidents of criminal activity against any individuals in MPP, such as the murder of a 35-year-old Salvadoran father who was returned to Tijuana as part of MPP.
    - b. Communications between CBP and The International Organization for Migration (IOM) regarding the safety of migrants in Mexico who have been subject to MPP, as referenced in the November 14, 2019 press conference by Acting CBP Commissioner Mark Morgan.
  8. Communications to and from Acting CBP Commissioner Mark Morgan regarding Human Rights First reports on the harm suffered by individuals in Mexico during MPP.

9. Communications to and from Acting CBP Commissioner Mark Morgan regarding Human Rights First reports on the harm suffered by individuals in Mexico during MPP.
10. Communications to and from Acting CBP Commissioner Mark Morgan, Deputy CBP Commissioner Robert E. Perez, Office of Field Operations Executive Assistant Commissioner Todd C. Owen, the Director of Field Operations for the Laredo Field Office, and the Port Directors for the Laredo and Brownsville ports of entry, regarding attorney, legal observer, reporter, and public access to MPP courts, including tent court facilities and immigration adjudication centers (IACs).

Due to the subject matter of your request, I am transferring this request to the FOIA Officer for U. S. Customs & Border Protection (CBP), for processing under the FOIA and direct response to you. Please see below for their contact information:

**U. S. Customs & Border Protection (CBP)**

FOIA Officer

U.S. Customs and Border Protection

90 K Street, NE

FOIA Division

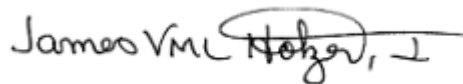
Washington, DC 20229

Phone: 202-325-0150

CBP Website

If you need to contact our office again about this matter, please refer to **2020-HQFO-00454**. You may contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

A handwritten signature in black ink that reads "James VML Holzer, J." with a stylized flourish at the end.

James Holzer  
Deputy Chief Privacy Officer (A)  
Deputy Chief FOIA Officer



**Homeland  
Security**

*Privacy Office, Mail Stop 0655*

February 3, 2020

**SENT VIA E-MAIL TO: [ecreighton@immcouncil.org](mailto:ecreighton@immcouncil.org)**

Emily Creighton  
American Immigration Council  
1331 G Street NW, Suite 200  
Washington, DC 20005

**Re: 2020-HQFO-00453**

Dear Ms. Creighton:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), Privacy Office, dated December 21, 2019, and received in this office on January 24, 2020. You requested documents regarding:

1. list of Office of the Principal Legal Advisor (OPLA) offices participating as counsel for U.S. Immigration and Customs Enforcement (ICE)/DHS in the MPP, by city and state.
2. Instructions, directives, or guidance to OPLA/ICE employees on the MPP as follows:
  - a) description of ICE and OPLA's role in the MPP.
  - b) Motions to terminate, motions to change venue, and motions for a custody redetermination hearing ("bond motions") for individuals in MPP.
  - c) Appeals for individuals granted relief in MPP.
  - d) Guidance clarifying whether individuals transported or escorted by ICE to/from/during MPP hearings are in ICE custody.
  - e) If individuals subject to the MPP are considered in ICE custody when transported to MPP hearings.
3. ICE's transportation practices for individuals subject to the MPP.
4. Standards of detention for individuals subject to the MPP.
5. Alternatives to detention for individuals in the MPP, such as parole, bond, or release on recognizance.
6. ICE coordination with USCIS, EOIR, and CBP regarding the MPP program including:

- a) guidance on attorney access to MPP and tent court facilities.
- b) Guidance on access to tent courts for legal observers, reporters, and the public.
- c) A copy of any contracts with private security firms such as Paragon Security to transport individuals from ports of entry to immigration courts in El Paso and San Diego, as well as to provide security at CBP port courts in Brownsville and Laredo, as part of the MPP program.
- d) Any guidance provided to ICE OPLA regarding these contracts and the roles of security guards under those contracts.
- e) Any policies provided to these security contractors regarding treatment of individuals in MPP, attorney access, and public access.
- f) Any internal and interagency communications, directives, or guidance relating to legal access at immigration courts conducting MPP hearings, including attorney visitation and appearance, and legal group presentations (such as "know your rights" or "legal orientation programs").
- g) Minutes, transcripts, or audio of daily interagency calls on MPP.

Due to the subject matter of your request, I am transferring this request to the FOIA Officer for United States Immigration & Customs Enforcement (ICE), for processing under the FOIA and direct response to you. Please find their contact information below:

**United States Immigration & Customs Enforcement (ICE)**

Freedom of Information Act Office

500 12th Street, SW, Stop 5009

Washington, D.C. 20536-5009

FOIA Officer: Fernando Pineiro

FOIA Requester Service Center Contact: Fernando Pineiro

Phone: 866-633-1182

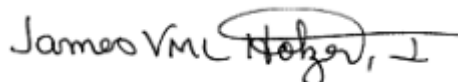
Fax: 202-732-4265

E-mail: [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov)

ICE Website

If you need to contact our office again about this matter, please refer to **2020-HQFO-00453**. You may contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,



James Holzer  
Deputy Chief Privacy Officer (A)  
Deputy Chief FOIA Officer

# Exhibit C



**Homeland  
Security**

*Privacy Office, Mail Stop 0655*

February 5, 2020

**SENT VIA E-MAIL TO: [ecreighton@immcouncil.org](mailto:ecreighton@immcouncil.org)**

Emily Creighton  
American Immigration Council  
1331 G Street NW, Suite 200

Washington, DC 20005

**Re: 2020-HQFO-00455**

Dear Ms. Creighton:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated December 21, 2019, and to your request for expedited handling and a waiver of all assessable FOIA fees. Specifically, you requested:

1. instructions, directives, or guidance to U.S. Department of Homeland Security (DHS) employees on the MPP, including but not limited to, the following:
  - a) Guidance related to how the DHS agencies must process individuals who are not amenable to MPP (e.g., individuals in "special circumstances" and unaccompanied children).
  - b) Guidance related to the (1) facilitation of attorney access to tent court facilities and (2) facilitation of access to the tent court facilities for legal observers, reporters, and the public.
2. Notes, transcripts, or audio of daily interagency calls on MPP.
3. The document titled or referred to as "Red Team Report."
4. Emails, texts, or other communications relating to the MPP amongst or including the following individuals:
  - a) Acting Director of U.S. Citizenship and Immigration Services (USCIS) Ken Cuccinelli.
  - b) Former Acting United States Secretary of Homeland Security Kevin McAleenan.
  - c) Former United States Secretary of Homeland Security Kirstjen Nielsen.

d) Acting Commissioner of U.S. Customs and Border Protection (CBP) Mark Morgan.

e) Executive Office for Immigration Review (EOIR) Director James McHenry.

f) Senior Advisor to the President Stephen Miller.

5. Final agreements, protocols, or other binding documents between the U.S. government and the government of Mexico relating to the MPP.

6. Final agreements, protocols, or other binding documents between the U.S. government and the International Organization for Migration (IOM) regarding the Assisted Voluntary Return Program (AVRP) for people in MPP.

7. Data or information regarding individuals subject to MPP who have chosen to return to Mexico through the IOM's AVRP, including the data used to produce the following statement in the October 28th Assessment of the Migration Protection Protocols: "As of mid-October, almost 900 aliens in MPP have participated in the AVR program."

Our office received your request on January 24, 2020.

Your request for expedited treatment is hereby denied.

Under the DHS FOIA regulations, expedited processing of a FOIA request is warranted if the request involves "circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," 6 C.F.R. Part 5 § 5.5(e)(1)(i); "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," 6 C.F.R. Part 5 § 5.5(e)(1)(ii); "the loss of substantial due process rights," 6 C.F.R. Part 5 § 5.5(e)(1)(iii); or "a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence," 6 C.F.R. Part 5 § 5.5(e)(1)(iv). Requesters seeking expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct pursuant to 6 C.F.R. Part 5 § 5.5(e)(3).

Your request for expedited processing is denied because you do not qualify under any category pursuant to 6 C.F.R. Part 5 § 5.5(e)(1). You have not established that lack of expedited treatment in this case will pose an imminent threat to the life or physical safety of an individual. You have not established the loss of substantial due process rights. While you may be primarily engaged in the dissemination of information, you have not detailed with specificity why you feel there is an urgency to inform the public about MPP. Qualifying urgency would need to exceed the public's right to know about government activity generally. You also did not offer sufficient supporting evidence of an interest of the public greater than the public's general interest in MPP. Finally, you did not establish this is a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.



We have queried the appropriate component of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the analysts in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

If you deem the decision to deny expedited treatment of your request an adverse determination, you have the right to appeal. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to: Privacy Office, Attn: FOIA Appeals, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0655, Washington, D.C. 20528-0655, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.5(e)(2). Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS FOIA regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

Please note that this office will only be addressing **item 3**.

Furthermore, due to the subject matter of your request, I am transferring **items 1-2, 4-7** to the FOIA Officer for U. S. Customs & Border Protection (CBP) and U.S. Citizenship & Immigration Services (USCIS), for processing under the FOIA and direct response to you. Please find their contact information below:

U. S. Customs & Border Protection (CBP)

FOIA Officer

U.S. Customs and Border Protection

90 K Street, NE

FOIA Division

Washington, DC 20229

Phone: 202-325-0150

CBP Website

U.S. Citizenship & Immigration Services (USCIS)

National Records Center, FOIA/PA Office

P. O. Box 648010

Lee's Summit, MO. 64064-8010

FOIA Officer/Public Liaison: Jill Eggleston

Phone: 1-800-375-5283 (USCIS Contact Center)

Fax: 816-350-5785

E-mail: [uscis.foia@uscis.dhs.gov](mailto:uscis.foia@uscis.dhs.gov)

USCIS Website

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. Part 5 § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' 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 under 6 C.F.R. Part 5 § 5.5(c). As your request seeks documents that will require a thorough and wide-ranging search,

DHS will invoke a 10-day extension for your request pursuant to 6 C.F.R. Part 5 § 5.5(c). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

You have requested a fee waiver. The DHS FOIA regulations at 6 C.F.R. Part 5 § 5.11(k) set forth six factors DHS must evaluate to determine whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns “the operations or activities of the government,” (2) Whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons, (4) Whether the contribution to public understanding of government operations or activities will be “significant,” (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure, and (6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Upon review of the subject matter of your request, and an evaluation of the six factors identified above, DHS has determined that it will conditionally grant your request for a fee waiver. The fee waiver determination will be based upon a sampling of the responsive documents received from the various DHS program offices as a result of the searches conducted in response to your FOIA request. DHS will, pursuant to DHS FOIA regulations applicable to non-commercial requesters, provide two hours of search time and process the first 100 pages at no charge to you. If upon review of these documents, DHS determines that the disclosure of the information contained in those documents does not meet the factors permitting DHS to waive the fees, then DHS will at that time either deny your request for a fee waiver entirely, or will allow for a percentage reduction in the amount of the fees corresponding to the amount of relevant material found that meets the factors allowing for a fee waiver. In either case, DHS will promptly notify you of its final decision regarding your request for a fee waiver and provide you with the responsive records as required by applicable law.

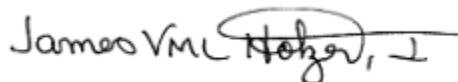
In the event that your fee waiver is denied, and you determine that you still want the records, provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester you will be charged for any search time and duplication beyond the free two hours and 100 pages mentioned in the previous paragraph. You will be charged 10 cents per page for duplication and search time at the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. In the event that your fee waiver is denied, we will construe the submission of your request as an agreement to pay up to \$25.00. This office will contact you before accruing any additional fees.

We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the analysts in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2020-HQFO-00455**. Please refer to this identifier in any future correspondence. The status of your FOIA request is now available online and can be accessed at: <https://www.dhs.gov/foia-status>, by using this FOIA request number.

If you have any questions, or would like to discuss this matter, please feel free to contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

A handwritten signature in black ink that reads "James VML Holzer, J." with a stylized flourish at the end.

James Holzer  
Deputy Chief Privacy Officer (A)  
Deputy Chief FOIA Officer

# Exhibit D

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

COW2020000185

February 12, 2020

Emily Creighton  
American Immigration Council  
1331 G St. NW, Suite 200  
Washington, DC 20005

Dear Emily Creighton:

We received the referral of your request for information on February 5, 2020 from the Privacy Office, Referral Number 2020-HQFO-00455.

You specifically requested:

"1. Instructions, directives, or guidance to U.S. Department of Homeland Security (DHS) employees on the MPP, including but not limited to, the following:

- a) Guidance related to how the DHS agencies must process individuals who are not amenable to MPP (e.g., individuals in "special circumstances" and unaccompanied children).
- b) Guidance related to the (1) facilitation of attorney access to tent court facilities and (2) facilitation of access to the tent court facilities for legal observers, reporters, and the public.

2. Notes, transcripts, or audio of daily interagency calls on MPP.

3. The document titled or referred to as "Red Team Report."

4. Emails, texts, or other communications relating to the MPP amongst or including the following individuals:

- a) Acting Director of U.S. Citizenship and Immigration Services (USCIS) Ken Cuccinelli.
- b) Former Acting United States Secretary of Homeland Security Kevin McAleenan.
- c) Former United States Secretary of Homeland Security Kirstjen Nielsen.
- d) Acting Commissioner of U.S. Customs and Border Protection (CBP) Mark Morgan.
- e) Executive Office for Immigration Review (EOIR) Director James McHenry.
- f) Senior Advisor to the President Stephen Miller.

5. Final agreements, protocols, or other binding documents between the U.S. government and the government of Mexico relating to the MPP.

6. Final agreements, protocols, or other binding documents between the U.S. government and the International Organization for Migration (IOM) regarding the Assisted Voluntary Return Program (AVRP) for people in MPP.

7. Data or information regarding individuals subject to MPP who have chosen to return to Mexico through the IOM's AVRP, including the data used to produce the following statement in the October 28th Assessment of the Migration Protection Protocols: "As of mid-October, almost 900 aliens in MPP have participated in the AVR program."



COW2020000185

Page 2

USCIS will respond to Items 1-2 and Items 4-7 of your request. The DHS Privacy Office is responding to Item 3. Regarding Item 4, USCIS will conduct a search for USCIS official Ken Cuccinelli's emails, texts, or other communications relating to MPP.

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: COW2020000185. 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 (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 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, Jill Eggleston, 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](mailto: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



COW2020000185

Page 3

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](mailto:OGIS@nara.gov)  
Website: [ogis.archives.gov](http://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.

This office now offers an online delivery option. If you would like to receive the requested records online, you will need to register this request at [first.uscis.gov](http://first.uscis.gov). If you do not already have a MyUSCIS account you will be prompted to create one. Once logged on, click the "Register Request" link where you will be asked to enter your control number COW2020000185 and the following six digit PIN: 684210. If you do not wish to take advantage of this option, we will be providing your records on a Compact Disc (CD) for use on your personal computer. To request your responsive records on paper, please include your control number and write to the above address Attention: FOIA/PA Officer, or fax them to (802) 860-6908.

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](http://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.





U.S. Citizenship  
and Immigration  
Services

— NEW —

## USCIS FOIA IS GOING DIGITAL!

USCIS is moving to an end-to-end digital FOIA process! The FOIA Office is excited to introduce phase one – **paperless delivery of your response**. You can now digitally access responsive records as soon as they are processed, eliminating mail time and removing the risk of receiving a CD that may be damaged in the mail. This delivery option is just one of several enhancements that we are currently putting in place to make it easier for you to submit a request to our office and help reduce the time it takes to receive responsive records.

### Signing up for Digital Delivery is Quick and Easy:

In the attached acknowledgement letter, follow the instructions on how to set up an account through myUSCIS and link that account to your case. Once complete, you will be able to log into the digital delivery center to view and / or download responsive records, once available. *If you already have a myUSCIS account, simply login and link the case to your existing account.* Once you have linked your case to your account, we will notify you through email once your case has been processed and your records are ready to be accessed.

### More Digital Greatness is Coming Soon:

We are also excited to highlight some additional enhancements that will make it easier to make and manage your request, and receive responsive records more quickly, to include:

- Online FOIA request submission
- Faster case processing
- Online personal case management

*If you do not wish to take advantage of this option, we will be providing your records through the mail on a Compact Disc (CD) for use on your personal computer. To request your responsive records on paper, please include your control number and write to the above address Attention: FOIA/PA Officer, or fax your request to (816) 350-5785.*

# Exhibit E



**From:** [Sohbatian, Nareeneh](#)  
**To:** [Montoya, Gwen](#)  
**Subject:** Set 3 -FW: FOIA Expedited Processing Disposition Reached for CBP-2020-032348  
**Date:** Friday, April 3, 2020 2:08:34 PM

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## **Nareeneh Sohbatian**

### **Immigration Pro Bono Supervisory Attorney**

Winston & Strawn LLP  
333 S. Grand Avenue  
Los Angeles, CA 90071-1543

D: +1 213-615-1806

F: +1 213-615-1750

[Bio](#) | [VCard](#) | [Email](#) | [winston.com](#)



---

**From:** Emily Creighton <[ECreighton@immcouncil.org](mailto:ECreighton@immcouncil.org)>  
**Sent:** Monday, March 30, 2020 5:43 PM  
**To:** Sohbatian, Nareeneh <[NSohbatian@winston.com](mailto:NSohbatian@winston.com)>; Enzminger, David <[DEnzminger@winston.com](mailto:DEnzminger@winston.com)>  
**Subject:** Fw: FOIA Expedited Processing Disposition Reached for CBP-2020-032348

FYI

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**From:** [admin@foiaonline.gov](mailto:admin@foiaonline.gov) <[admin@foiaonline.gov](mailto:admin@foiaonline.gov)>  
**Sent:** Monday, March 30, 2020 7:41 AM  
**To:** Emily Creighton <[ECreighton@immcouncil.org](mailto:ECreighton@immcouncil.org)>  
**Subject:** FOIA Expedited Processing Disposition Reached for CBP-2020-032348

Your request for Expedited Processing for the FOIA request CBP-2020-032348 has been denied. Additional details for this request are as follows:

- Request Created on: 02/06/2020
- Request Description: 1. Instructions, directives, or guidance to U.S. Department of Homeland Security (DHS) employees on the MPP, including but not limited to, the following:
  - a) Guidance related to how the DHS agencies must process individuals who are not amenable to MPP (e.g., individuals in "special circumstances" and unaccompanied children).
  - b) Guidance related to the (1) facilitation of attorney access to tent court facilities and (2) facilitation of access to the tent court facilities for legal observers, reporters, and the public.
- 2. Notes, transcripts, or audio of daily interagency calls on MPP.
- 3. The document titled or referred to as "Red Team Report."

4. Emails, texts, or other communications relating to the MPP amongst or including the following individuals:

- a) Acting Director of U.S. Citizenship and Immigration Services (USCIS) Ken Cuccinelli.
- b) Former Acting United States Secretary of Homeland Security Kevin McAleenan.
- c) Former United States Secretary of Homeland Security Kirstjen Nielsen.
- d) Acting Commissioner of U.S. Customs and Border Protection (CBP) Mark Morgan.
- e) Executive Office for Immigration Review (EOIR) Director James McHenry.
- f) Senior Advisor to the President Stephen Miller.

5. Final agreements, protocols, or other binding documents between the U.S. government and the government of Mexico relating to the MPP.

6. Final agreements, protocols, or other binding documents between the U.S. government and the International Organization for Migration (IOM) regarding the Assisted Voluntary Return Program (AVRP) for people in MPP.

7. Data or information regarding individuals subject to MPP who have chosen to return to

Mexico through the IOM's AVRP, including the data used to produce the following statement in the October 28th Assessment of the Migration Protection Protocols: "As of mid-October, almost 900 aliens in MPP have participated in the AVR program."

- Expedited Processing Original Justification: The MPP is a matter of widespread and exceptional media interest
- Expedited Processing Disposition Reason: Does not meet requirements per DHS regulations.