

# **EXHIBIT I**



International Refugee  
Assistance Project



April 20, 2022

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

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

Dear Freedom of Information Appeals Office:

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

### **ORIGINAL REQUEST**

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

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

### **APPEAL**

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

<sup>14</sup> “Speak Out reader opinion: Biden should approve humanitarian parole for Afghans,” January 2, 2022, <https://www.chicagotribune.com/suburbs/daily-southtown/opinion/ct-sta-speak-out-st-0106-20220105-6b15tcezujhs7mfxhhdr6ceotm-story.html>.



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

Thank you for your consideration of this appeal.

Sincerely,

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

Stephen Poellot  
Legal Strategy Director  
On behalf of Requesters

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