



Homeland
Security

Privacy Office, Mail Stop 0655

December 29, 2022

SENT VIA E-MAIL TO: jfranzblau@heartlandalliance.org

Jesse Franzblau
National Immigrant Justice Center
1331 G St. NW
Washington, District of Columbia 20005

Re: **2023-HQFO-00296**

Dear Jesse Franzblau:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated 11/9/2022, and to your request for expedited handling and a waiver of all assessable FOIA fees. Our office received your request on November 9, 2022. Specifically, you requested:

- “• The agreement between DHS and the government of Mexico (memo of understanding, or other arrangement) announced on October 12, 2022, in which the U.S. and Mexico agreed to return Venezuelans seeking to enter the United States to Mexico.
- DHS memos and policy guidance developed in response to the agreement (memo of understanding, or other arrangement) signed between DHS and the government of Mexico, to return Venezuelans seeking to enter the United States to Mexico.
- Any agreements (memo of understanding, or other arrangement) between DHS and the government of Mexico relating to the return of other third country nationals seeking to enter the United States to Mexico.”

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 specific agreements between DHS and foreign countries. 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 agreements between DHS and foreign countries. 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.

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.

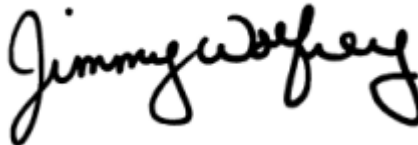
We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the analysts in our office will respond to your request as expeditiously as possible. We appreciate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

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, 2707 Martin Luther King Jr. Avenue, SE, 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.

Your request has been assigned reference number **2023-HQFO-00296**. 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://foiarequest.dhs.gov/app/CheckStatus.aspx>, 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, appearing to read "Jimmy Wolfrey". The signature is written in a cursive, flowing style.

Jimmy Wolfrey
Senior Director, FOIA Operations and Management