

**NATIONAL
IMMIGRANT
JUSTICE CENTER**
A HEARTLAND ALLIANCE PROGRAM

February 27, 2023

Submitted electronically

The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, D.C. 20528

Re: Freedom of Information Act Request – U.S.-Mexico agreements

Dear FOIA Officer:

Under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, I request the following records in the custody and control of U.S. Department of Homeland Security (DHS):

1. Any agreements between the United States and the government of Mexico relating to the return or removal of any third country nationals to Mexico who had sought entry into the United States.
2. Any DHS memos, policy, procedures or guidance relating to processing of third country nationals for return or removal to Mexico under any agreements signed between the United States and Mexico.

Please limit the search to responsive records produced from September 1, 2022 to present.

Please consider this request ongoing, and consider all responsive records until the date of completion of the processing of this request. Electronic versions of the requested documents are preferred. If all or part of any of this request is denied, please specify the exemption(s) claimed for withholding each record. If some portion(s) of the requested records are determined to be exempt, please provide the remaining non-exempt portions. 5 U.S.C. §552(b). We reserve the right to appeal any decision(s) to withhold information and expect that you will list the address and office to which such an appeal may be directed. 5 U.S.C. §552(a)(6)(A)(i).

Request for Fee Waiver

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and a fee waiver under FOIA to the fullest extent permitted by law and as permitted under the applicable DHS regulations.

Expedited processing is appropriate because the requests involve “[a]n urgency to inform the public about an actual or alleged government activity, if made by a person primarily engaged in disseminating information,” and “the loss of substantial due process rights,” and “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” *See* 6 CFR § 5.5(e)(iv).

Requester, Heartland Alliance's National Immigrant Justice Center (NIJC), is a non-profit entity under Section 501(c)(3) of the Internal Revenue code. Dedicated to ensuring human rights protections and access to justice for all immigrants, refugees, and asylum seekers, NIJC provides direct legal services to and advocates for these populations through policy reform, impact litigation, and public education. Through its work, NIJC advocates for individual clients as well as conducts extensive research into immigration detention facilities. As such, the primary purpose of the Requester is to inform the legal community, lawmakers, and the public about the proposed and current proposals for new detention facilities, and the impact this will have on local communities. Providing the requested information will contribute significantly to public understanding of immigration enforcement policymaking, and used to educate local communities and lawmakers.

In amending the FOIA statute, Congress intended for liberal construction of all fee waiver provisions for non-commercial Requesters. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'")

Requester has undertaken extensive work concerning the legal defense of asylum seekers and refugees, including publishing analysis and providing legal representation for those subject to policies that restrict people from seeking asylum and force them to return to Mexico.¹ This FOIA request seeks to obtain information to further the public's understanding of government's programs that involve returning people to Mexico without providing the opportunity for asylum or refugee protections in the United States. Access to this information is required for the public to meaningfully evaluate the Department of Homeland Security's policies and practices, and to inform the public if government wrongdoing or abuses are occurring.

The Requester is entitled to a waiver of all costs because the information sought "is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the [Requester's] commercial interest." 5 U.S.C. § 552(a)(4)(A)(iii); 6 CFR § 5.11(k)(1)(i)(ii). NIJC has a proven track-record of compiling and disseminating information to the public about government functions and activities. We intend to make any records obtained in response to our FOIA requests— and an analysis thereof – publicly available on our website, www.immigrantjustice.org, and through other means of communication.

The Requester is also entitled to a waiver of search-related fees as "a representative of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 CFR § 5.11(k)(2)(iii). Under the 2016 amendments to FOIA, "a representative of the news media," means "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii). "News" means "information that is about current events or that would be of current interest to the public." *Id.* Examples of news media entities includes "alternative media" that disseminate their publications for free "through telecommunications services," *i.e.*, the internet. *Id.* As noted above, NIJC has a track record of turning raw material into reports and other publications for distribution to the general public, which it does at no charge. You should therefore not charge NIJC any search-related costs for this FOIA request.

¹ *See, i.e.*, "NIJC Condemns Biden Administration Expansion Of Title 42 To Block Venezuelans From Asylum Process," October 13, 2022, <https://immigrantjustice.org/press-releases/nijc-condemns-biden-administration-expansion-title-42-block-venezuelans-asylum>.

The documents subject to this request are not sought for any commercial use. Thus, in the alternative, we understand that no fee may be charged for the first two hours of search time or for the first 100 pages of duplication. 5 U.S.C. § 552(a)(4)(A)(iv)(II); 28 C.F.R. § 16.10(d)(4). If you decline to waive these fees, and if these fees will exceed \$100.00, please notify us of the amount of these fees before fulfilling this request.

Please reply to this request within twenty (20) working days, or as required by statute. 5 U.S.C. § 552(a)(6)(A)(i). If you have any questions regarding this request, please feel free to email me at jfranzblau@heartlandalliance.org or call me at 202-879-4312.

Sincerely,

/s/ Jesse Franzblau

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