

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION; INTERNATIONAL
REFUGEE ASSISTANCE PROJECT, INC.,

Plaintiffs,

v.

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT; UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY; UNITED STATES
DEPARTMENT OF STATE; UNITED
STATES COAST GUARD; UNITED
STATES NAVY; UNITED STATES
CITIZENSHIP AND IMMIGRATION
SERVICES,

Defendants.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF FOR
VIOLATION OF THE FREEDOM OF
INFORMATION ACT, 5 U.S.C. § 552**

Case No. 24-cv-7290

INTRODUCTION

1. Plaintiffs American Civil Liberties Union (“ACLU”) and the International Refugee Assistance Project, Inc. (“IRAP”) bring this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief to compel the disclosure of certain records held by Defendants United States Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”), United States Department of State (“DOS” or “State Department”), United States Coast Guard (“USCG” or “Coast Guard”), United States Navy (“Navy”), and United States Citizenship and Immigration Services (“USCIS”).

2. For decades, the USCG has intercepted refugees fleeing by sea and either returned them to persecution or detained them in a secretive offshore facility in Guantánamo Bay known as

the Migrant Operations Center (“MOC”) until they are accepted for resettlement by a third country. The criteria that the USCG uses to determine whether a migrant should be transferred to the MOC or repatriated is not disclosed to the public and, based on independent human rights research and news reports, may not comport with U.S. or international law.

3. The use of unknown standards to screen migrants on USCG vessels is particularly troubling because individuals interdicted at sea are not afforded the same screenings as those encountered by DHS on land. Interdictions and forced repatriations have allowed the United States government to prevent migrants from accessing the protections they would be entitled to at the U.S. border. And these events have largely unfolded in the shadows.

4. Refugees who do manage to pass these screenings are subjected to prolonged detention in extremely concerning conditions at facilities like the MOC. Recent MOC detainees reported a lack of drinkable water, exposure to open sewage, inadequate schooling and medical care for children, and collective punishment in response to perceived violations of opaque facility rules. One family, represented by Plaintiff IRAP, was not permitted confidential communication with their attorneys for months and ultimately received only one 30-minute phone call.

5. On December 16, 2022, Plaintiffs submitted a FOIA request to Defendants seeking records regarding the procedures applied to migrants interdicted at sea and the subsequent treatment of detained persons at the MOC. *See* Request Under Freedom of Information Act (“FOIA Request” or “Request”). A true and correct copy of the Request is attached as **Exhibit A**.

6. To date, none of the Defendants have released any responsive records.

7. The failure of Defendants to identify and release responsive records is of great public concern because the Request relates to policies governing the interdiction, detention, and processing of migrants held in near-total secrecy at an offshore detention site.

8. Timely disclosure of the requested information is necessary so that the public can evaluate whether the government is complying with its international and domestic legal obligations with respect to the treatment of migrants. Access to information about interdiction processes, the screening of migrants at sea, and the subsequent detention conditions at facilities such as the MOC are increasingly critical in light of recent reports that the Biden administration is considering using the facility to detain intercepted Haitian asylum seekers in the event of a mass exodus.

9. Plaintiffs now ask the Court for an injunction requiring Defendants to process the Request immediately. Plaintiffs also seek an order enjoining Defendants from assessing fees for the processing of the Request.

JURISDICTION AND VENUE

10. This Court has federal subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1346.

11. Venue lies in this district pursuant to 28 U.S.C. § 1402 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

12. Plaintiff ACLU is a nationwide, non-profit, non-partisan 26 U.S.C. § 501(c)(3) organization with its principal place of business in New York City. The ACLU is dedicated to the principles of liberty and equality and to ensuring that the government complies with the Constitution and laws. The ACLU educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties. The Immigrants' Rights Project of the ACLU defends immigrants' rights in the United States and informs the public about immigration enforcement practices of the U.S. federal government. Obtaining information

about government activity, analyzing that information, and widely publishing and disseminating it to the public are critical and substantial components of the ACLU's work.

13. Plaintiff IRAP is a non-profit U.S.C. § 501(c)(3) organization headquartered in New York City. IRAP provides direct legal assistance to refugees and works with a global network of student advocates, pro bono partners, and volunteers to deliver legal solutions for displaced people. Disseminating information is an integral component of IRAP's mission. And to engage in its mission-driven work, IRAP relies on FOIA requests, such as the requests underlying this lawsuit, to understand governmental policies affecting asylum seekers and other displaced people on the move. IRAP intends to use the data sought in the instant request to educate the public about the interdiction and detention of migrants and inform its advocacy and legal services. IRAP recently published a report on the MOC, which details the experiences of migrants detained at the facility and the human rights violations they faced.¹

14. Defendant DHS is a federal agency in the Executive Branch of the United States within the meaning of 5 U.S.C. § 552(f)(1).

15. Defendant ICE is a component agency of DHS and a federal agency within the meaning of 5 U.S.C. § 552(f)(1).

16. Defendant USCIS is a component agency of DHS and a federal agency within the meaning of 5 U.S.C. § 552(f)(1).

17. Defendant USCG is a component agency of DHS and a federal agency within the meaning of 5 U.S.C. § 552(f)(1).

¹ International Refugee Assistance Project, *Offshoring Human Rights: Detention of Refugees at Guantánamo Bay*, <https://refugeerights.org/news-resources/offshoring-human-rights-detention-of-refugees-at-guantanamo-bay>.

18. Defendant Navy is a component agency of Department of Defense (“DOD”) and a federal agency within the meaning of 5 U.S.C. § 552(f)(1).

19. Defendant DOS is a federal agency in the Executive Branch of the United States within the meaning of 5 U.S.C. § 552(f)(1).

FACTUAL BACKGROUND

U.S. Interdiction of Migrants at Sea

20. The US government has a longstanding practice of intercepting refugees at sea who are fleeing persecution before they can reach the United States and claim asylum. Once intercepted, migrants are held in the custody of the USCG, pending repatriation to their home countries. Some are identified for screening for possible humanitarian protection, and the very small number who pass the screenings are detained at the MOC, under a veil of near-total secrecy, where they have little ability to communicate with the outside world until they are resettled to a willing third country.

21. When migrants are apprehended at sea, Coast Guard officers do not ask about fear of return to their home countries—as is required at land borders. Rather, they only refer people for screening if they exhibit signs of fear or affirmatively assert a fear of return. Upon observing such “manifestation of fear,” Coast Guard officers must alert USCIS to conduct initial screening interviews. These screening interviews are conducted by USCIS via satellite phone or in person on a Coast Guard boat while migrants are in the middle of a precarious journey in open waters.

22. There is no publicly available information about what standard the government uses to screen migrants for potential humanitarian protection. For example, individuals interdicted at sea do not receive traditional “credible fear screenings,” which require a determination by an asylum officer that an individual possesses a “credible fear of persecution” or demonstrates a

“significant possibility” of eligibility for asylum. Such screenings are afforded to those who present themselves at a land border.

23. The lack of transparency regarding these at-sea screenings is especially alarming because the government does not afford migrants interdicted at sea the same protections as immigrants detained on the mainland. Unlike claims for protection made within U.S. borders, fear determinations for those interdicted at sea are not reviewed by an immigration judge and cannot be appealed.

24. The negative implications of the USCG’s secretive screening process are obvious. From 2021 to 2023, the Coast Guard detained around 27,000 people, “a number larger than in any similar period in nearly three decades.” Of these 27,000 cases, USCG officers recorded only 1,900 claims of fear and only passed 3% of people through the initial screening interview. By contrast, over the same period, 60% of asylum applicants on land passed a credible-fear screening interview.

25. The interdiction processes have had a particularly grave impact on Black migrant communities, such as Haitians, who have been systematically denied access to protection in the United States. Of the 1,900 claims of fear USCG recorded from 2021 to 2023, fewer than 300 came from Haitians, although they made up a third of the people detained on Coast Guard vessels.

Detention at the Migrant Operations Center

26. Following the screening interviews, many asylum seekers wait weeks in detention on Coast Guard vessels for a decision. If an asylum seeker receives an unfavorable determination, they are repatriated to their home country. If not, they are transferred to a holding facility such as the MOC for additional screening and potential third-country resettlement.

27. The MOC is a detention center located at the U.S. naval station at Guantánamo Bay. It has been in operation at least since 1991 and has historically been used to house asylum

seekers and refugees apprehended at sea by the U.S. Coast Guard, many of whom are Haitian or Cuban. The U.S. government contracts with the International Organization for Migration and a private prison contractor to help carry out its operations at the MOC.

28. There is almost no government-provided information about the MOC. The most recent official documents were released in 2015 and provide little insight into the Center's operations and the treatment of refugees held there. What limited information the public does have about the MOC presents cause for concern. Accounts from former detained persons describe prison-like conditions at the facility with frequent instances of being confined to their rooms for weeks at a time. Former detainees reported great difficulty accessing and communicating with lawyers or even family members and that they were punished if they shared accounts of mistreatment with anyone outside the facility.

29. At its peak as a detention center in the early 1990s, nearly 12,000 migrants were housed at the MOC or in makeshift refugee camps at Guantánamo. The U.S. government does not disclose any information about who is detained at the MOC, including the number of people currently or previously detained or the length of detention they are subjected to.

30. Disclosure of information relating to the MOC's operation is especially crucial given reports that the Biden administration is considering expanding its use of the facility to detain an anticipated surge of Haitian refugees fleeing the escalating crisis in Haiti by sea.

31. The absence of any public oversight regarding the MOC's operations and the conditions migrants are subjected to places these vulnerable populations at further risk. Disclosure of the requested records is needed to ensure that the U.S. government adheres to its international and domestic legal and human rights obligations.

The FOIA Request

32. On December 16, 2022, Plaintiffs submitted a FOIA request to Defendants seeking the following records:²

(1) Formal or informal policies, guidance, procedures, bulletins, legal or policy memoranda, communications, training materials, contract bids or solicitations, requests for information (RFI), and/or legal opinions pertaining to the MOC and immigration detention at Guantánamo, including but not limited to records concerning:

- a. How determinations are made whether to detain migrants at the MOC;
- b. The apprehension, processing, and detention of migrants interdicted at sea;
- c. The transfer of migrants from the MOC to the mainland United States, third countries, or their country of origin;
- d. The government's legal analysis concerning the rights of migrants detained at the MOC (including the availability of the courts and, in particular, habeas corpus) and the government's responsibilities to them;
- e. Conditions of confinement at the MOC, including but not limited to records concerning:
 - i. Access to counsel;
 - ii. Communication with contacts outside the detention center;
 - iii. Disciplinary policies and, specifically, the use of solitary confinement;
 - iv. Access to medical and psychological services;
 - v. Access to education for children;

² See Exhibit A.

- f. The processing of asylum claims brought by migrants intercepted by the Coast Guard and/or detained at the MOC or at Guantánamo; and
- g. Preparations by the Biden administration to detain an influx of Haitian migrants at the MOC or in designated third countries

(2) Records from the last ten years sufficient to show:

- a. The number of individuals detained monthly at the MOC;
- b. National origin, race, religion, and/or ethnicity of individuals detained at the MOC;
- c. The detention capacity of the MOC;
- d. The number of detainees repatriated to their country of origin, resettled in a third country, or resettled/paroled into the mainland United States; and
- e. The average length of detention for migrants held at the MOC.

33. Plaintiffs sought expedited processing of the Request on the grounds that there is a “compelling need” for these records because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged federal government activity. 5 U.S.C. § 552(a)(6)(E).

34. Plaintiffs sought a waiver of search, review, and reproduction fees on the grounds that disclosure of the requested records is “in the public interest because it 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 requester.” *Id.* § 552(a)(4)(A)(iii). Plaintiffs also sought a waiver of search and review fees on the grounds that the ACLU qualifies as a “representative of the news media” and that the records are not sought for commercial use. *Id.* § 552(a)(4)(A)(ii).

Defendants' Responses to the Request

35. As of the filing date of this Complaint, Defendants have not produced any responsive records in response to the FOIA Request.

36. Defendant USCIS is the only agency that has granted Plaintiffs' request for a fee waiver.

37. All Defendants have denied Plaintiffs' request for expedited processing.

38. Under the statute, Defendants ordinarily have twenty working days to respond to a request. *See* 5 U.S.C. § 552(a)(6)(A)(i). More than twenty working days have passed since Plaintiffs submitted the Request.

39. Plaintiffs have exhausted their administrative remedies with respect to the FOIA Request because the Defendants have failed to comply with FOIA's time limit provisions. *See* 5 U.S.C. § 552(a)(6)(C)(i).

ICE's Response

40. In a letter dated December 24, 2022, ICE acknowledged it received the Request and denied Plaintiffs' request for a fee waiver.

41. On October 17, 2023, Plaintiffs sent a follow-up email inquiring about the status of the Request.

42. On October 23, 2023, ICE responded, noting that the Request was still in queue to be processed.

43. On April 12, 2024, ICE responded noting that requested records were not under their purview and referred instead to the Coast Guard and Navy.

44. Despite the agency's response, ICE is known to be involved in the detention of interdicted migrants pending their screening for humanitarian protection and potential transfer to the MOC.³ On information and belief, ICE has possession and control of the requested records.

DHS's Response

45. On January 6, 2023, DHS responded with a receipt of the FOIA Request and denied the request for a fee waiver. It also requested a narrowing of the period for the Request.

46. On April 5, 2023, Plaintiffs responded that the timeline of the Request could be limited to a ten-year period.

47. On October 17, 2023, Plaintiffs sent a follow-up email inquiring about the status of the Request.

48. On October 18, 2023, DHS stated that the case was closed because they did not receive Plaintiffs' response dated April 5, 2023.

49. On November 1, 2023, Plaintiffs followed up again to reopen the case. To this date, they have received no responsive records.

State Department's Response

50. On January 30, 2023, the State Department confirmed receipt of the Request and sent a clarification email requesting a timeframe for the search.

51. On January 31, 2023, Plaintiffs responded limiting the timeframe to a ten-year period.

³ On March 21, 2024, the U.S. mission to the United Nations responded to queries by the UN Working Group on Enforced Involuntary Disappearances and identified ICE and DOS as responsible for administering the MOC. See OHCHR, *U.S. Response to Communication G/SO 217/1/USA*, <https://www.ohchr.org/sites/default/files/documents/issues/disappearances/comments-states/wgeid132-us-comment.pdf>.

52. On March 31, 2023, the State Department sent an additional clarification email asking if the timeframe could be limited to the past five years instead.

53. On April 3, 2023, Plaintiffs had a phone discussion with the State Department representative and agreed to amend the timeframe for Part I of the Request from ten years to five years, reserving the option to request an additional five years of records if the information provided did not sufficiently respond to the Request.

54. On April 7, 2023, the State Department responded via email acknowledging these changes.

55. On October 17, 2023, Plaintiffs sent a follow-up email inquiring about the status of the Request.

56. On October 23, 2023, the State Department responded, noting that the Request was in the expedited processing track and had an estimated date of completion of October 31, 2024.

USCIS's Response

57. On December 16, 2022, USCIS confirmed receipt of the FOIA Request and granted Plaintiffs' request for a fee waiver.

58. On December 30, 2022, USCIS followed up with a "clarification request" maintaining that the MOC was not a "detention" center and could not be described as such.

59. On February 13, 2023, the Request was administratively closed.

60. On March 17, 2023, Plaintiffs resubmitted the FOIA request.

61. On March 17, 2023, USCIS submitted another clarification request restating that the MOC was not a "detention" center and could not be described as such.

62. On March 30, 2023, Plaintiffs reiterated that they were seeking information about the MOC and migrants held or detained there.

63. On April 18, 2023, USCIS once again stated that “the MOC is not a detention facility and none of the migrants there are detained.” They indicated that Plaintiffs would have to “remove all references to” detention before USCIS would fulfill the FOIA request.

64. On May 5, 2023, Plaintiffs resubmitted the FOIA request to Defendant USCIS without describing the MOC as a “detention” center as required by their clarification request.

65. On October 17, 2023, Plaintiffs sent a follow-up email inquiring about the status of the Request.

66. On October 17, 2023, USCIS responded that the Request was still being processed and Plaintiffs’ position was 726 in a queue of 1,132 requests. They did not provide an estimate of when the request would be fulfilled.

USCG’s Response

67. On March 22, 2023, USCG acknowledged receipt of the Request.

68. On October 17, 2023, Plaintiffs sent a follow-up email inquiring about the status of the Request.

69. On November 30, 2023, the Coast Guard responded that no responsive records were found pertaining to the Request. Plaintiffs submitted an administrative appeal to this response on December 29, 2023.

70. Plaintiffs have not received any response to the appeal from the Coast Guard.

Navy’s Response

71. On April 18, 2024, Plaintiffs submitted a FOIA request with the Navy.

72. The Navy did not acknowledge receipt of the Request and has not yet provided any responsive records to Plaintiffs.

CLAIMS FOR RELIEF

73. The failure of Defendants to make a reasonable effort to search for records responsive to the Request violates the FOIA, 5 U.S.C. § 552(a)(3), and Defendants' corresponding regulations.

74. The failure of Defendants to promptly make available the records sought by the Request violates the FOIA, 5 U.S.C. § 552(a)(3)(A), (a)(6)(A), and Defendants' corresponding regulations.

75. The failure of Defendants to process Plaintiffs' request expeditiously and as soon as practicable violates the FOIA, 5 U.S.C. § 552(a)(6)(E), and Defendants' corresponding regulations.

76. The failure of Defendants to grant Plaintiffs' request for a waiver of search, review, and duplication fees violates the FOIA, 5 U.S.C. § 552(a)(4), (a)(6), and Defendants' corresponding regulations.

77. The failure of Defendants to grant Plaintiffs' request for a limitation of fees violates the FOIA, 5 U.S.C. § 552(a)(4), (a)(6), and Defendants' corresponding regulations.

REQUESTED RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Order Defendants to conduct a thorough search for all responsive records;
 - B. Order Defendants to immediately process and release any responsive records;
 - C. Enjoin Defendants from charging Plaintiffs search, review, or duplication fees for the processing of the Request;
 - D. Award Plaintiffs their costs and reasonable attorneys' fees incurred in this action;
- and

E. Grant such other relief as the Court deems just and proper.

Dated: September 26, 2024

Respectfully submitted,

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