

# **Exhibit A**



September 12, 2019

U.S. Citizenship and Immigration Services  
National Records Center, FOIA/PA Office  
Via electronic submission at [first.uscis.gov](http://first.uscis.gov)

**Re: Freedom of Information Request: Implementation of Third-Country Transit Asylum Bar**

To Whom It May Concern:

Kids in Need of Defense, Inc. (“KIND”) submits this letter as a request for information under the Freedom of Information Act, as amended (FOIA), 5 U.S.C. § 552 *et seq.*, and applicable regulations.

### Background

On July 16, 2019, the Departments of Justice and Homeland Security issued an interim final rule titled “Asylum Eligibility and Procedural Modifications” purporting to create, *inter alia*, a new bar to asylum eligibility for applicants who cannot “demonstrate[] that he or she applied for protection from persecution or torture in at least one country outside the alien’s country of citizenship, nationality, or last lawful habitual residence through which the alien transited in route to the United States . . . .” 84 Fed. Reg. 33,829, 33,843 (July 16, 2019), *to be codified at* 6 C.F.R. 208.13(c)(4) (the Rule). Despite being twice enjoined by a federal judge, on September 11, 2019, the U.S. Supreme Court stayed the injunction, allowing the government to implement the Rule. *Barr v. East Bay Sanctuary Covenant*, No. 19A230, 508 U.S. \_\_\_\_ (Sept. 11, 2019).

In filings in the district court in *East Bay Sanctuary Covenant*, the government referenced a July 15, 2019 e-mail and guidance issued by then-Asylum Division Chief John Lafferty entitled “Interim Final Rule—Asylum Eligibility and Procedural Modifications.”<sup>1</sup> On September 12, media sources reported that updated guidance on the same subject had been distributed to USCIS employees.<sup>2</sup>

### Records

KIND seeks the following records<sup>3</sup>:

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<sup>1</sup> *E.g.*, Opp. Plfs’ Renewed Mot. Nationwide Prelim. Inj., Exh. B., *E. Bay Sanctuary Covenant v. Barr*, No. 4:19-cv-4073 (N.D. Cal. Aug. 29, 2019), Dkt. #66-1 at 1-2 (e-mail from Ashley B. Caudill-Mirillo to Asylum Division Staff citing July 15 Lafferty e-mail).

<sup>2</sup> @Haleziz, Twitter (Sept. 12, 2019, 11:20 am), <https://twitter.com/Haleziz/status/1172168028412203008>.

<sup>3</sup> The term “records” includes, but is not limited to: communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

1. Any policies, guidance, training materials, frequently asked questions (FAQ) lists, related documents, and transmission memos/cover e-mails pertaining to the interim final rule "Asylum Eligibility and Procedural Modifications," 84 Fed. Reg. 33,829 (July 16, 2019), including, without limitation:
  - a. An e-mail from Asylum Division Chief John Lafferty dated on or about July 15, 2019, attaching a guidance document titled "Interim Final Rule—Asylum Eligibility and Procedural Modifications";
  - b. Any updated or different guidance document issued to Asylum Division staff on or about Sept. 12, 2019, regarding the status of the interim final rule following the Supreme Court's Sept. 11 stay order; and
  - c. Any further guidance subsequently issued, until the date of USCIS's final response to this request.

KIND requests these records from July 15, 2019 until the date of your final response to this request.

If, under applicable law, any of the information requested is considered exempt from disclosure, please describe in detail the nature of the information withheld, the specific exemption or privilege on the basis of which it is withheld, and whether portions of documents containing non-exempt or non-privileged information have been provided.

#### Request for Fee Waiver

KIND asks that USCIS waive all fees associated with this request. FOIA provides for such waivers where, as here, disclosure of the information 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," 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. 5.11(k). KIND is able to and expects to widely disseminate the requested information, including through its website (supportkind.org) and/or e-mail lists.

Disclosure of these records is in the public interest as it will contribute significantly to public understanding of the disposition of claims to protection under U.S. asylum law and applicable treaties. Such information is of great public interest given widespread news coverage and public discussion of child migrants, refugees, and asylum seekers. KIND believes these records will reflect a substantial change in policy by USCIS that will affect large numbers of USCIS applicants, and that such records will be of broad interest to current and potential applicants and the immigration bar.

KIND is a non-profit organization providing legal services and other advocacy to ensure the protection of immigrant and refugee children, including asylum seekers who would be affected by the Rule. KIND expects to post information received through this FOIA response on its website and/or that of partner nonprofit organizations and legal service providers, through email lists of similar practitioners, or by similar methods.. By the same token, as KIND is a non-profit organization, the information requested is not primarily, or indeed in any cognizable sense, in the commercial interest of the requester.

#### Request for Expedited Processing

Pursuant to 6 C.F.R. 5.5(e)(1)(ii)-(iii) and the USCIS FOIA Manual, KIND requests expedited processing of this request.

The Rule upends decades of law and practice affecting asylum claims; its legality is subject to substantial question. Attorneys representing asylum applicants subject to the bar urgently require clarity on how USCIS officers will approach affected cases. USCIS's failure affirmatively to post the guidance publicly leaves potentially thousands of affected applicants and their attorneys in the dark as to the governing procedures for this tectonic change in humanitarian law. KIND accordingly requests that this request, which is quite limited and specific, be processed as quickly as possible under USCIS's expedited procedures.

Recipient Details

Please provide all applicable records, in electronic form or hardcopy as appropriate, via electronic delivery or to:

Scott Shuchart  
Kids in Need of Defense, Inc.  
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Washington, DC 20005

Phone: 202-318-0595  
E-mail: sshuchart@supportkind.org

Thank you for your prompt attention to this urgent request.

Pursuant to USCIS's Freedom of Information Act Request Guide, I certify that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Scott A. Shuchart", is written over a light blue rectangular background.

Scott Shuchart  
Senior Director for Legal Strategy