

April 18, 2019

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

RE: FOIA Request for ICE records on parole for detained asylum seekers previously in expedited removal proceedings who have passed a credible fear interview

Dear Freedom of Information Act Officer:

This letter is a request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, by Human Rights First. Human Rights First seeks records from the United States Department of Homeland Security (“DHS”) Immigration and Customs Enforcement (“ICE”) pertaining to the parole from detention of asylum seekers.

Human Rights First also seeks the expedited processing of this request and a fee waiver. *See* 5 U.S.C. §§ 552(a)(6)(E), 552(a)(4)(A)(iii).

In March 2019, the Attorney General issued a decision in *Matter of M-S-*, 27 I&N Dec. 509 (AG 2019), which stripped bond eligibility from detained asylum seekers previously in expedited removal proceedings who had passed a credible fear interview. According to the decision, these asylum seekers are subject to immigration detention unless granted parole by ICE under Section 212(d)(5)(a) of the Immigration and Nationality Act. Human Rights First therefore submits this FOIA request to ascertain number of individuals determined by the Asylum Office to have a credible fear of persecution who have been released from detention on parole as well as the reason(s) parole was otherwise denied by ICE.

RECORDS REQUESTED

- Please disclose the monthly ICE parole request log / report for cases found to have credible fear for calendar years 2017, 2018 and all available data for calendar year 2019, by detainee, including but not limited to:
 - Month;
 - Field office;
 - DCO;
 - Date of credible fear finding;
 - Date interviewed for parole;
 - Date parole decision served;
 - Name;

- A number;
- Final decision;
- Denial category, disaggregated by “identity”; “flight risk”; “danger to the community” additional factors, prior parole denial/no basis for redetermination, etc.; and
- Comments.

THE REQUESTOR

Human Rights First is a national non-profit 501(c)(3) and nonpartisan organization committed to ensuring human rights and the protection of law in the United States and abroad. Human Rights First has worked for more than 40 years to tackle global challenges that demand American leadership, including asylum and refugee policies and practices of the United States government.

Human Rights First publishes press releases, blogs, opinion pieces, reports, policy papers, and our experts are commonly quoted in national publications. All materials published by Human Rights First is available to the public free of cost. Human Rights First also disseminates information through its high traffic website, www.humanrightsfirst.org, which provides in-depth information on a range of U.S. human rights issues, collects resources related to issues of focus for Human Rights First, and archives hundreds of documents related to Human Rights First’s work. Human Rights First also publishes an electronic newsletter, which is distributed to subscribers via email; maintains an extensive blog at www.humanrightsfirst.org/blog; and releases information via social media platforms such as Facebook and Twitter.

Accordingly, Human Rights First is an organization whose “main professional activity or occupation is information dissemination.” 6 C.F.R. § 5.S(d)(3). Human Rights First is also a “representative of the news media” within the meaning of the statute and applicable regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii) (defining a representative of the news media as an entity that “gathers information of potential interest to a segment of the public” and “uses its editorial skills to turn raw materials into a distinct work, and distributes that works to an audience”); *see also National Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1397 (D.C. Cir. 1989) (same); *Electronic Privacy Information Center v. Dep’t of Def.*, 241 F. Supp. 2d 5 (D.D.C. 2003) (nonprofit organizations that gather information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees). Courts have reaffirmed that nonprofit requestors who are not traditional news media outlets can qualify as representatives of the news media for the purposes of the FOIA, including after the 2007 amendments to FOIA. *See ACLU of Washington v. Dep’t of Justice*, No. C09-0642RSL, 2011 WI887731, at *10 (D. Wash. Mar. 10, 2011) (finding that the ACLU qualifies as a “representative of the news media”).

EXPEDITED PROCESSING

Human Rights First requests Track 1 expedited treatment for this FOIA request. This request qualifies for expedited treatment pursuant to 5 U.S.C. § 52(a)(6)(E). As set forth above, there is a “compelling need” for expected processing of this request, *see* 5 U.S.C. § 552(a)(6)(E)(i)(1),

namely, an “urgency to inform the public concerning the actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). Further, delay in processing of this request cannot be justified as the parole request log at issue is maintained regularly by ICE and was previously produced under FOIA request 2016-ICFO-01568 with data from 2014 and 2015 (which has been the subject of continued litigation http://www.aclunc.org/docs/20161020-aclu_hastings_v_ice_complaint.pdf). Human Rights First is therefore entitled to expedited processing of this request.

FEE WAIVER

Human Rights First seeks a full fee waiver on the grounds that disclosure of the requested records is in the public interests and 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 requestor.” 5 U.S.C. § 52(a)(4)(A)(iii). As set forth above, this request aims at furthering public understanding of government conduct: i.e., the rate at which asylum seekers are granted release on parole from immigration detention. To the Requestor's knowledge, the information requested is not currently available to the public. Thus, the records' disclosure will contribute significantly to the public's understanding whether the government grants parole to detained asylum seekers and the reasons for which parole requests are denied. Moreover, Human Rights First does not have any commercial interest in the records' disclosure. In this respect, the request strongly resembles a prior FOIA request by Human Rights First to the Executive Office for Immigration Review within the DOJ in which the government waived all fees associations with responding to the request.¹

In any event, as discussed above, Human Rights First is a “representative of the news media” and does not seek the records requested for commercial use. Accordingly, should the government assess fees for the processing of this request, those fees should be “limited to reasonable standard charges for document duplication” alone. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

* * *

Thank you for your consideration of this request. If this request is denied in whole or in part, we ask that the government justify all redactions by reference to specific FOIA exemptions. We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees. We look forward to your response to our request for expedited processing within 10 business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Notwithstanding our request for expedited processing, we alternatively look forward to your reply to this request within 20 business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

Please respond to Kennji Kizuka, Senior Researcher and Policy Analyst, Refugee Protection, Human Rights First.

¹ In June 2008, EOIR granted Human Rights First a fee waiver on a request for individualized case data for detained asylum seekers, including information on forms of relief sought, custody determinations including bond, and legal representation. *See* FOIA request EOIR# 2008-9309.

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Under penalty of perjury, I certify, to the best of my knowledge and belief, that the above information is true and correct.

/s/ Kennji Kizuka

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