



January 26, 2023

Via Secure Release Portal

U.S. Department of Homeland Security
Privacy Office, Mail Stop 0655
2707 Martin Luther King Jr. Ave. SE
Washington, DC 20528

Freedom of Information Act Request: Memorandum for the Secretary from the Under Secretary for Strategy, Policy, and Plans

Dear FOIA Officer:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's email list contains over 44,000 unique addresses, our Twitter page has approximately 52,900 followers, the Twitter page of our Founder and President has nearly 394,800 followers, our Facebook page has 109,000 followers, and we have another approximately 31,600 followers on GETTR.

I. Background

The Department of Homeland Security published "Implementation of Changes to the Parole Process for Venezuelans." 88 Fed. Reg. 1279 (Jan. 9, 2023). Footnote 11 states "The Secretary authorized the changes following considerations reflected in the Secretary's decision memorandum dated December 22, 2022. See Memorandum for the Secretary from the Under Secretary for Strategy, Policy, and Plans, Acting Commissioner of U.S. Customs and Border Protection, and Director of U.S. Citizenship and Immigration Services, Updates to the Parole Process for Certain Venezuelan Nationals (Dec. 22, 2022)." This decision memorandum has not been made public.

II. Record Requested

AFL requests the following record under the Freedom of Information Act (FOIA), 5 U.S.C. § 552:

- A. The Secretary’s decision memorandum dated December 22, 2022, entitled “Memorandum for the Secretary from the Under Secretary for Strategy, Policy, and Plans, Acting Commissioner of U.S. Customs and Border Protection, and Director of U.S. Citizenship and Immigration Services, Updates to the Parole Process for Certain Venezuelan Nationals.”

III. Custodians

- A. Alejandro Mayorkas
- B. Kristie Canegallo, Chief of Staff
- C. Robert Silvers, Under Secretary for Strategy, Policy, and Plans
- D. Troy A. Miller, Acting Commissioner for U.S. Customs and Border Protection
- E. Ur Jaddou, Director of U.S. Citizenship and Immigration Services

IV. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii), AFL requests a waiver of all search and duplication fees.

V. Expedited Processing

AFL requests expedited processing of this request under the FOIA, and under the Department’s FOIA regulations, 6 CFR § 5.5(e)(1)(ii) and (iii).

The FOIA broadly requires agencies to disclose federal records freely and promptly. The department must liberally construe requests and bears the burden of proving it has made a good faith effort to search for the requested records using methods “which can be reasonably expected to produce the information requested.” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151 (1989); *Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C.Cir.1990). At all times, the FOIA must be construed in accord with the ordinary public meaning of its terms at the time of its enactment to carry out Congress’s open government mandate. *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020).

Under 6 CFR § 5.5(e)(1)(ii), the Department grants expedited processing to requesters who can show that there is “[a]n urgency to inform the public about an actual or

alleged federal government activity”, and that the requester is “primarily engaged in disseminating information.”

The D.C. Circuit has explained that a plaintiff may satisfy the urgency prong by demonstrating that their request seeks documents that are “the subject of a currently unfolding story.” *Al-Fayed v. C.I.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001). This makes sense considering Circuit precedent that explaining that “stale information is of little value. *Payne Enters. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988).

Here, the requested record has been cited as the basis for a rule change without notice and comment; justified in part, by the Department’s determination that the issue is urgent. At the same time, a coalition of 20 states has contested this rule change, and sued to block it in federal court. *See e.g.*, Daniel Weissner, *Biden Policy Allowing Migrants to Enter U.S. Challenged by States*, REUTERS (Jan. 24, 2023), <https://reut.rs/3Hd0M7y>. The initial Biden Administration action, and the suit challenging it, have generated intense public interest, as measured by a spike in Google searches for the term “parole.” GOOGLE TRENDS, <https://bit.ly/3ZXKS9w> (last visited Jan. 26, 2023). Searches for the term have nearly doubled since late December. *Id.* Further, as litigation progresses and the administration continues its efforts to implement the program, the story will undoubtedly continue to unfold. Because the story is currently unfolding, and it has generated intense public interest, AFL’s request satisfies the “urgency to inform the public” prong of the expedited processing test.

DHS’s policy change is plainly “actual or alleged federal government activity.” Lastly, AFL is primarily engaged in the dissemination of information, as acknowledged by the Departments of Defense, Homeland Security and State. We believe our track record of using FOIA to inform the public about government activity speaks for itself on this prong, though we are willing to provide more information upon request.

Because AFL’s request meets all three prongs of the Department’s regulatory test for expedited processing based on urgency to inform the public, DHS should grant the request.

VI. Certification

Pursuant to 6 CFR § 5.5(e)(3), AFL certifies that the above explanations of AFL’s requests for expedited processing are true and correct. AFL also certifies that it will use the provided document to inform the public about the Department’s activities.

VII. Processing and Production

Processing should occur in strict compliance with the processing guidance in the Attorney General’s Memorandum on Freedom of Information Act Guidelines. If you

have any questions about our request or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, then please contact me at FOIA@aflegal.org. If AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

To accelerate your release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

Thank you in advance for your cooperation.

Sincerely,

/s/ Jacob Meckler
America First Legal Foundation