

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

FLORENCE IMMIGRANT & REFUGEE RIGHTS
PROJECT and LAWYERS FOR CIVIL RIGHTS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY and UNITED STATES
CUSTOMS AND BORDER PROTECTION,

Defendants.

Civil Action No. _____

COMPLAINT

1. This action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, seeks to compel United States Customs and Border Protection (“CBP”), a component of the United States Department of Homeland Security (“DHS” collectively, “Defendants”), to release records related to the adjudication of applications for humanitarian parole under section 212(d)(5) of the Immigration and Nationality Act (the “INA”) for individuals seeking entry to the United States.

2. On December 14, 2021, the Florence Immigrant and Refugee Rights Project (“FIRRP”) and Lawyers for Civil Rights (“LCR”) submitted a FOIA request to Defendants seeking records related to humanitarian parole (the “Original Humanitarian Parole Request,” attached as **Exhibit 1**). At CBP’s request, FIRRP and LCR subsequently narrowed the scope of one item requested (“Current Humanitarian Parole Request,” attached as **Exhibit 2**). Over a year later, Defendants have produced no records.

3. The need for information about the adjudication of applications for humanitarian parole is great. Humanitarian parole is a critical means by which immigrants who are otherwise

ineligible may be authorized to enter the country for “humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5). Humanitarian parole has been one of the only avenues for the entry of migrants subject to the controversial Title 42 public health order—a Trump-era mechanism that imposes a ban on asylum seekers from several countries because of public health concerns associated with COVID-19.¹

4. Similarly, humanitarian parole has provided a path to ask for exemptions from other restrictive entry policies at the border like the former “Remain in Mexico” program, which required asylum seekers to wait in Mexico for their cases to be decided; or metering, which limits the number of asylum seekers who can present at the border each day. As the Biden Administration considers other restrictive policies at the border, humanitarian parole will continue to be an important option and mechanism for exemptions for emergency cases. Without access to humanitarian parole, those with exigent circumstances – such as medical emergencies that require immediate intervention not available in Mexico and those with severe risk of suffering domestic violence or an acute risk of human trafficking – have no choice but to remain in harm’s way. However, the criteria and metrics used to approve or deny humanitarian parole requests are opaque because very little information about those processes is publicly available.

5. For all of these reasons, Plaintiffs sought information from Defendants related to how humanitarian parole requests are adjudicated. Yet more than one year after the Current Humanitarian Parole Request was made, Defendants have produced no records. The FOIA Appeals and Policy Branch itself has acknowledged that “CBP’s FOIA Division is “delinquent in responding to [Plaintiffs’] request.”

¹ See, e.g., Eleanor Acer, Kennji Kizuka, and Julia Neusner, *Human Rights Stain, Public Health Farce*, HUMAN RIGHTS FIRST (Dec. 15. 2022) <https://humanrightsfirst.org/library/human-rights-stain-public-health-farce/>.

6. By this civil action, Plaintiffs now ask the Court to issue an injunction requiring Defendants to process the Current Humanitarian Parole Request immediately and to produce the requested records.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

8. Venue lies in the District of Massachusetts pursuant to 5 U.S.C. § 552(a)(4)(B), including because it is the district in which LCR has its principal place of business.

PARTIES

9. FIRRP is a non-profit legal service organization dedicated to providing free legal and social services to adults and unaccompanied minors in immigration custody throughout Arizona. The organization also provides legal orientation and representation to displaced asylum seekers at the U.S./Mexico border through its Border Action Team that operates in Nogales, Sonora, Mexico. The Border Action Team provides frequent “Know Your Rights” orientation presentations to migrants seeking to present at the Nogales Port of Entry and subsequently apply for defensive asylum within the U.S. FIRRP frequently files humanitarian parole applications and Title 42 exemption requests on behalf of clients in urgent circumstances who are displaced and have no other option but to remain at the border due to different deterrence policies.²

10. LCR is a non-profit legal organization that works with communities of color and immigrants to fight discrimination and foster equity through creative and courageous legal advocacy, education, and economic empowerment. Part of LCR’s core mission is public education on areas of interest to the groups LCR represents. As a result, gathering and disseminating

² <https://firrp.org/who/mission/>.

information—particularly from public officials or agencies—is an integral part of LCR’s purpose and function. Materials LCR disseminates are available for free, including through its website,³ to a broad range of individuals and groups, including other not-for-profit organizations, faith communities, students, faculty, and directly affected individuals. LCR also uses information from FOIA requests to conduct immigration-related “Know Your Rights” presentations to various immigrant-serving organizations throughout Massachusetts.

11. The United States Department of Homeland Security (“DHS”) is an agency of the government of the United States of America (the “U.S.” or “United States”).

12. The United States Customs and Border Protection (“CBP”) is an agency within DHS.

FACTUAL ALLEGATIONS

BACKGROUND

13. The duty to adjudicate humanitarian parole requests has existed since Congress enacted the INA. The INA grants the Attorney General the authority to parole aliens into the U.S. temporarily for “humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5). The law further designates authority to grant parole under Section 212(d)(5)(A) at ports-of-entry to various officials, including “port directors.” 8 C.F.R. § 212.5(c); *see also* INA § 212(d)(5); 8 C.F.R. § 212.5(a).

14. While the Attorney General, and by extension, his delegated agents, have broad discretion to make determinations about humanitarian parole, these decisions are not immune from judicial review. A court will find an abuse of discretion if there is no “facially legitimate

³ www.lawyersforcivilrights.org.

and bona fide reason” for the denial. *See Jean v. Nelson*, 727 F.2d 957, 977 (11th Cir. 1984), *aff’d*, 472 U.S. 846 (1985).

15. FIRRP is a non-profit organization that provides free legal and social services to the thousands of adults and children detained in immigration custody in Arizona on any given day. Since 2017, FIRRP has been providing legal services to asylum seekers in Nogales, Sonora, just across the border from the Nogales Port of Entry into Nogales, Arizona. For their most vulnerable clients, FIRRP submits humanitarian parole applications, but the overwhelming majority of these clients have received boilerplate denials or no response at all. Those cases that were successful involved multiple humanitarian parole requests, significant and continued advocacy by FIRRP attorneys and congressional representative offices, as well as media scrutiny—a level of advocacy that is unsustainable and unavailable to the vast majority of humanitarian parole applicants – particularly *pro se* applicants. Although humanitarian parole requests must be responded to and adjudicated in a timely and meaningful manner, CBP has routinely flouted this obligation.

16. Because of the pattern of denials, FIRRP has focused its efforts on only cases involving extremely vulnerable individuals, including those with severe medical problems, high-risk pregnancy, and LGBTQ+ individuals with significant safety concerns.

17. For example, M.M.Z.L., a young woman from Mexico, and her 2-year-old daughter fled to the border seeking protection after gunmen closely connected to the Mexican authorities had brutally murdered members of their family. With FIRRP’s assistance, they requested humanitarian parole. CBP denied their parole request with a boilerplate denial. Similarly – without any written explanation – CBP has denied many of FIRRP’s parole requests or never even responded.

18. Moreover, although each denial must include articulated reasons in writing sufficient to allow a reviewing court to determine whether the reasons for the denial were facially legitimate and bona fide, CBP has failed to provide such reasons in these denials.

19. CBP has also failed to articulate the criteria that it considers in evaluating these humanitarian parole requests. Without a written policy explaining the criteria employed in adjudicating humanitarian parole applications, it is impossible to determine whether the decisions rendered are consistent with the law.

20. The need for this information is particularly acute because CBP has refused calls by FIRR to issue and publicize written criteria for humanitarian parole processing. *See* December 9, 2021 Letter attached as **Exhibit 3**. In the absence of such guidance, the need for records that show how humanitarian parole applications are actually adjudicated is critical.

21. For many of the thousands of individuals stranded at the border and at high risk of harm, humanitarian parole under § 212(d)(5) is effectively the only mechanism to request expedited and emergency processing into the U.S. As a result, these people are barred from entry into the United States without any other timely or functional recourse when there are exigent, life-threatening circumstances. In this precarious state, migrants are particularly susceptible to extortion, kidnapping, and violence in Mexico.

22. The impact of CBP's inaction and perfunctory denials has been the subject of news coverage documenting the harm suffered by these individuals. *See* Adolfo Flores, *Immigrants Desperate for Medical Aid Aren't Being Let in on Humanitarian Grounds*, BuzzFeed News (Jan. 21, 2022), <https://www.buzzfeednews.com/article/adolfoflores/immigrants-humanitarian-parole>; *see also* *U.S. Customs and Border Protection's Failure to Adjudicate Urgent Humanitarian Parole Applications*, November 10, 2021, [6](https://www.aclu-</p></div><div data-bbox=)

sdic.org/sites/default/files/field_documents/2021_11_10_hp_oig_cmplt_final_redacted.pdf

(administrative complaint to the DHS Office of Inspector General regarding CBP San Diego Office of Field Operations' failure to timely adjudicate applications for humanitarian parole).

PLAINTIFFS' FOIA REQUEST & DEFENDANTS' FAILURE TO RESPOND

23. On December 14, 2021, FIRRP and LCR submitted the Original Humanitarian Parole Request (**Exhibit 1**) to CBP pursuant to 5 U.S.C. § 552, in order to learn more about how parole applications were being processed, approval and denial rates, and processing times.

24. Specifically, the Original Humanitarian Parole Request sought:

- Guidance, policies, and procedures regarding applications for, and adjudication of, humanitarian parole;
- E-mail communications of CBP officials, staff, and agents related to humanitarian parole;
- Records reflecting the total number of humanitarian parole applications pending at the time of the request, and approved or denied since January 1, 2016, for applications filed nationwide and in the State of Arizona;
- Records reflecting the average processing time for humanitarian parole applications from filing to adjudication, both for the nation as a whole and for applications filed in the State of Arizona;
- Data on humanitarian parole applications granted, denied, and pending from 2016 to the date of the request, disaggregated by various categories (e.g., applicant country of citizenship); and
- Records reflecting which CBP offices within Arizona receive and process humanitarian parole applications.

25. On January 18, 2022, in response to a request by the CBP FOIA office, FIRRP and LCR revised one item of their FOIA request (Current Humanitarian Parole Request, **Exhibit 2**). Specifically, Plaintiffs tailored the language around the search for all CBP officials' email communications by limiting it to specific Arizona CBP officials, listed by name and official title.

26. From January 2022 to July 2022, LCR and FIRRP communicated with the CBP FOIA Public Liaison on multiple occasions in an attempt to obtain the requested documents.

27. On July 27, 2022, Plaintiffs communicated to the CBP FOIA Public Liaison that they did not believe it was necessary to narrow their request further and requested an expected timeframe for the production of records.

28. On July 29, 2022, CBP responded, "It is difficult to predict an exact time frame As your request seeks a voluminous amount of separate and distinct records, CBP will invoke a 10-day extension for your request pursuant to 6 C.F.R. Part 5 § 5.5(c). We will make every effort to comply with your request in a timely manner."

29. On November 15, 2022, Plaintiffs emailed the CBP FOIA Public Liaison asking for an update on the timeline for production.

30. That same day, CBP's FOIA Division responded that "This case has been closed."

31. On November 22, 2022, LCR and FIRRP filed an administrative appeal to CBP's FOIA Appeals department challenging CBP's failure to release the requested records within the statutory period. The November 22, 2022 appeal is attached as **Exhibit 4**.

32. On January 5, 2023, the FOIA Appeals and Policy Branch issued a letter in response to the appeal. The January 5, 2023 letter is attached as **Exhibit 5**. In that letter, the FOIA Appeals and Policy Branch acknowledged that the request should not have been closed and remanded the case back to the CBP FOIA Division "for immediate processing...."

33. The January 5, 2023 letter from the FOIA Appeals and Policy Branch further stated, in relevant part:

- a. “[We] apologize for the misinformation that your initial request was closed and *concur with your assessment that the case was not responded to in a timely fashion.*” (emphasis added).
- b. “Your appeal is based on the fact that the agency has failed to provide a timely response within the statutorily provided guidelines. *We concur.*” (emphasis added).
- c. “As CBP’s FOIA Division has not responded to your FOIA request within this statutory timeframe, *we agree that the agency is delinquent in responding to your request.*” (emphasis added).
- d. “[You] may *immediately challenge* FOIA Division’s failure to respond to your request in district court.” (emphasis added).

34. To date, CBP has never provided any documents in response to Plaintiffs’ Requests, nor has it denied the request in any respect.

35. LCR and FIRRP now bring this action to compel a response from CBP as to the Current Humanitarian Parole Request.

CAUSES OF ACTION

First Cause of Action

Violation of Freedom of Information Act for Failure to Respond within the Time Required

36. The foregoing allegations are re-alleged and incorporated herein.

37. Within 20 days after receiving the Original Humanitarian Parole Request and the Current Humanitarian Parole Request (excluding Saturdays, Sundays, and legal public holidays), CBP was required under 5 U.S.C. § 552(a)(6)(A)(i) to determine whether to comply with the request and to notify the Plaintiffs of its determination and the reasons therefor and of its rights to appeal any adverse determination.

38. None of the communications that Plaintiffs received from CBP to date contained the notification required by 5 U.S.C. § 552(a)(6)(A)(i).

39. CBP has not subsequently provided the requisite notification to Plaintiffs as required by 5 U.S.C. § 552(a)(6)(A)(i).

40. Defendants' failure to respond within the statutory time limit violated 5 U.S.C. § 552(a)(6)(A)(i), as well as the regulations promulgated thereunder.

Second Cause of Action

Violation of Freedom of Information Act for Failure to Conduct a Reasonable Search and to Disclose Responsive Records

41. The foregoing allegations are re-alleged and incorporated herein.

42. Defendants were obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for records responsive to Plaintiffs' requests, and to promptly produce them to Plaintiffs, including in the format requested by Plaintiffs if they are readily reproducible in that format.

43. Upon information and belief, CBP has not conducted a reasonable search for records responsive to the Current Humanitarian Parole Request.

44. CBP has not produced any records responsive to the Current Humanitarian Parole Request.

45. CBP has not produced any responsive records in the format requested by Plaintiffs.

46. Nor has CBP asserted that any FOIA exemption applies that would prevent disclosure of any or all records requested.

47. Plaintiffs have a legal right to obtain the records requested, and no legal basis exists for Defendants' failure to search for and disclose them.

48. Defendants' failure to conduct a reasonable search for and to produce records responsive to Plaintiffs' requests violates 5 U.S.C. §§ 552(a)(3), as well as the regulations promulgated thereunder.

PRAYER FOR RELIEF

Wherefore, Plaintiffs ask this Court to GRANT the following relief:

- (a) Declare that Defendants' failure to respond to the Current Humanitarian Parole Request within the statutory time limit, their failure to search for records responsive to Plaintiffs' request, and their failure to disclose such responsive records violate FOIA;
- (b) Order that Defendants shall produce the requested records forthwith, or alternatively on an expedited schedule established by the Court;
- (c) Enjoin Defendants from charging Plaintiffs search, review, processing, and/or duplication fees in connection with responding to the Current Humanitarian Parole Request;
- (d) Award Plaintiffs costs and reasonable attorney fees in the action; and
- (e) Grant such other relief as the Court may deem just and proper.

Date: March 2, 2023

Respectfully Submitted,

/s/ Rebecca MacDowell Lecaroz

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Exhibit 1



December 10, 2021

Delivered by U.S. Mail and Email (FOIA@hq.dhs.gov)

FOIA Officer
U.S. Customs and Border Protection
90 K Street, NE
FOIA Division
Washington, DC 20229

To Whom it May Concern:

Lawyers for Civil Rights (LCR) and the Florence Immigration & Refugee Rights Project (Florence Project) submit this request pursuant to the Freedom of Information Act, 5 U.S.C § 552, for public records in the custody of the U.S. Customs and Border Protection (CBP). We seek information about the adjudication of applications for humanitarian parole under section 212(d)(5) of the Immigration and Nationality Act for persons seeking entry into the United States. We seek records that were prepared, received, transmitted, collected, and/or maintained by CBP and its subsidiary components, U.S. Border Patrol (Border Patrol), Office of Field Operations (OFO), and all ports of entry in the state of Arizona.

I. Request for Information

As used in this request, “public records” is defined as in the Freedom of Information Act (FOIA), including but not limited to, all communications, correspondence, directives, documents, data, emails, files, guidance, standards, instructions, analyses, memoranda, orders, policies, procedures, protocols, spreadsheets, and reports. As used in this request, “humanitarian parole” pertains only to those applications made by persons seeking entry into the United States, not those persons in Immigration and Customs Enforcement (ICE) custody seeking humanitarian parole to be released from custody. Unless otherwise stated, the period for which records are requested is January 1, 2016, to the present.

II. Statement Regarding Personally Identifiable Information

Please note that Requesters do not seek the names of individuals or other personally identifiable information (PII). CBP should provide unique identifiers for individuals, if available. Otherwise, Requesters understand that the agency will redact any PII, including “A” numbers and names. If CBP withholds records based on its assessment that statutory exemptions apply to any of the records requested, please describe in detail the nature of the records withheld and

the specific exemption or privilege upon which the record is withheld. If any portion(s) of the requested records are determined to be exempt, please provide the non-exempt portions. U.S.C. §552(a)(8)(A)(ii)(II). Because this request is for information without PII, a third-party authorization is not required.

III. Records Requested

1. All guidance, policies, and procedures regarding applications for humanitarian parole, including but not limited to:
 - Application requirements and process;
 - Application submission;
 - Procedure for prioritizing applications, or otherwise determining the order in which applications should be adjudicated;
 - Tracking of application status; and
 - Application adjudication and response;
 - Application adjudication processes, guidance, policies, directives, and formal memoranda
2. All documents containing the information requested in Request #1 that are used at ports of entry in the State of Arizona.
3. All written communications, directives, and guidance pertaining to adjudication of humanitarian parole applications, including but not limited to:
 - All communications to federal staff who adjudicate humanitarian parole applications.
 - All communications to Arizona port-of-entry staff who adjudicate humanitarian parole applications.
 - All communications between Arizona CBP agents and DHS pertaining to the adjudication of humanitarian parole applications.
4. All e-mail communications of CBP officials, staff, and agents resulting from a keyword search using the terms: “humanitarian parole,” “humanitarian parole approval,” “humanitarian reasons,” “humanitarian parole denial,” “humanitarian parole adjudications,” and “212(d)(5).”
5. All records indicating or reflecting the total number of humanitarian parole applications nationwide:
 - Pending at the time of this request;
 - Approved from January 1, 2016, to present; and
 - Denied from January 1, 2016, to present

6. All records indicating or reflecting the number of humanitarian parole applications filed in the State of Arizona that are:
 - Pending at the time of this request;
 - Approved from January 1, 2016, to present; and
 - Denied from January 1, 2016, to present;
7. All records indicating or reflecting the average processing time for humanitarian parole applications from filing to adjudication, both for the nation as a whole and for applications filed in the State of Arizona. If this information is not compiled at the state level, please respond specifically stating that this information is not tracked.
8. All records indicating or reflecting disaggregated data of humanitarian parole applications from 2016 to present, including but not limited to:
 - Applicant country of citizenship;
 - Sex;
 - Application approvals;
 - Application denials;
 - Year application was submitted; and
 - Year final determination was made.
9. All records indicating or reflecting which CBP offices within Arizona receive and process humanitarian parole applications. If this information is not compiled at the federal level, please respond specifically stating so.

If any requested information or data is not compiled, please respond specifically stating that this information is not tracked.

The following requests pertain to individual humanitarian parole applications. As noted above, all PII should be redacted to preserve the privacy of the applicants.

1. All applications to CBP for humanitarian parole, disclosing specifically:
 - Country of origin
 - Sex
 - Port of entry
 - Final determination of the application
2. All applications for humanitarian parole to CBP filed within the state of Arizona, disclosing specifically:
 - Country of origin
 - Sex
 - Port of entry
 - Application of final determination

IV. The Information Requested is Not in the Commercial Interest of the Requesters

Requesters seek a fee waiver because the information sought in the request 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 [requesters]...” 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k). As required by the Act, if the waiver is denied and you expect the fee to exceed \$25.00, please provide a detailed fee estimate. The purpose of this request is to gather information pertaining to humanitarian parole application adjudications, policy guidance of humanitarian parole application outcomes, and gather humanitarian parole application aggregated data, including but not limited to, sex, country of origin, demographic data, port of entry, and final determinations to further understand the humanitarian parole application and adjudication process. The requesters, LCR and the Florence Project, are non-profit organizations and have no commercial interest in the request. The Florence Project regularly represents and works with individuals at the border seeking humanitarian parole and is one of the only free legal services providers in the area providing that service. LCR works with communities of color and immigrants to fight discrimination and foster equity through pro bono services, legal advocacy, education, and economic empowerment.

V. The Information Requested Must Be Provided in a Timely Manner within a Workable Format

The Freedom of Information Act requires timely compliance with this request following receipt. Electronic versions in the native format of the requested documents are preferred. For documents which are not available in this format, please provide records electronically in a text-searchable, static-image format (PDF). Please also provide any data in a workable format such as Microsoft Excel. If terms or codes are not in the form template and/or publicly defined, please provide a glossary or other descriptive records containing definitions of acronyms, numerical codes, or terms contained in data responsive to this request. If your response to any request, or any portion thereof, is to deny it, please set forth in writing specific reasons for such denial, including which specific exemption you believe applies.

If you have any questions about this request, please contact us by phone at (781) 627-5119 (LCR) or (520) 269-7153 (Florence Project), or by email at swilson@lawyersforcivilrights.org or lbelous@firrp.org. Thank you for your time and prompt attention to this request.

Sincerely,

Sara L. Wilson, Esq.
Lawyers for Civil Rights

Laura Belous, Esq.
Florence Immigration & Refugee Rights Project

CC:

Director of Field Operations Guadalupe Ramirez
Office of Field Operations
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Executive Director Tim Quinn
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Sigrid Gonzalez
Humanitarian Response Advocate
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Exhibit 2



December 14, 2021

Delivered by U.S. Mail and Email (FOIA@hq.dhs.gov)

FOIA Officer
U.S. Customs and Border Protection
90 K Street, NE
FOIA Division
Washington, DC 20229

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I. Request for Information

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4. All e-mail communications resulting from a keyword search using the terms: “humanitarian parole,” “humanitarian parole approval,” “humanitarian reasons,” “humanitarian parole denial,” “humanitarian parole adjudications,” and “212(d)(5) for CBP officials including, but limited to, all CBP Directors of Arizona Ports of Entry, all Arizona CBP Director of Field Operations, Bonnie Arellano, Kelly Ursu, Tucson CBP Field Office Director, Tucson CBP Assistant Field Office Director, and Sigrid Gonzalez.
5. All records indicating or reflecting the total number of humanitarian parole applications nationwide:
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V. The Information Requested Must Be Provided in a Timely Manner within a Workable Format

The Freedom of Information Act requires timely compliance with this request following receipt. Electronic versions in the native format of the requested documents are preferred. For documents which are not available in this format, please provide records electronically in a text-searchable, static-image format (PDF). Please also provide any data in a workable format such as Microsoft Excel. If terms or codes are not in the form template and/or publicly defined, please provide a glossary or other descriptive records containing definitions of acronyms, numerical codes, or terms contained in data responsive to this request. If your response to any request, or any portion thereof, is to deny it, please set forth in writing specific reasons for such denial, including which specific exemption you believe applies.

If you have any questions about this request, please contact us by phone at (781) 627-5119 (LCR) or (520) 269-7153 (Florence Project), or by email at swilson@lawyersforcivilrights.org or lbelous@firrp.org. Thank you for your time and prompt attention to this request.

Sincerely,

Sara L. Wilson, Esq.
Lawyers for Civil Rights

Laura Belous, Esq.
Florence Immigration & Refugee Rights Project

CC:

Director of Field Operations Guadalupe Ramirez
Office of Field Operations
U.S. Customs and Border Protection
4760 N. Oracle Rd. #316
Tucson, AZ 85705

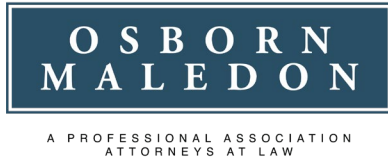
Chief Border Patrol Agent John R. Modlin
Tucson Sector Arizona
U.S. Border Patrol
2430 S. Swan Road
Tucson, AZ 85711

Executive Director Tim Quinn
Intergovernmental Public Liaison
timothy.quinn@cbp.dhs.gov

Bonnie Arellano
Supervisory Program Manager
bonnie.j.arellano@cbp.dhs.gov

Sigrid Gonzalez
Humanitarian Response Advocate
sigrid.gonzalez@cbp.dhs.gov

Exhibit 3



2929 North Central Avenue
21st Floor
Phoenix, Arizona 85012

Telephone 602.640.9000
Facsimile 602.640.9050
omlaw.com

December 9, 2021

VIA EMAIL & U.S. MAIL

Commissioner Chris Magnus
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229
Via U.S. Mail Only

Director of Field Operations Guadalupe Ramirez
Office of Field Operations
U.S. Customs and Border Protection
4760 N. Oracle Rd. #316
Tucson, AZ 85705
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Chief Border Patrol Agent John R. Modlin
Tucson Sector Arizona
U.S. Border Patrol
2430 S. Swan Road
Tucson, AZ 85711
John.r.modlin@cbp.dhs.gov

**Re: Border Patrol's Failure to Timely and Meaningfully Adjudicate
Humanitarian Parole Requests**

Dear Commissioner Magnus, Director Ramirez, and Chief Agent Modlin:

The Florence Immigrant & Refugee Project ("The Florence Project") and Arizona Justice for our Neighbors ("AZJFON") call upon the U.S. Customs and Border Protection ("CBP") and the Border Patrol (collectively the "Agencies") to address the persistent and systemic neglect of humanitarian parole requests at the Nogales Port-of-Entry and Tucson Sector. We urge the Agencies to (1) individually respond to and adjudicate humanitarian parole requests that have been systemically ignored; and (2) publish criteria used for adjudicating humanitarian parole requests.

The Florence Project is a non-profit organization that provides free legal and social services to the thousands of adults and children detained in immigration custody in Arizona on any given day. The Florence Project was founded in 1989 to provide free

Director of Field Operations Guadalupe Ramirez
Chief Border Patrol Agent John R. Modlin
December 9, 2021
Page 2

legal services in a remote immigration detention center in Florence, Arizona where detainees had no meaningful access to counsel. It has since expanded to provide free legal and social services to detained adults and unaccompanied children throughout Arizona. In addition, in 2017, the Florence Project partnered with the Kino Border Initiative, a binational organization, to provide legal services to asylum seekers at the U.S.-Mexico border. Through that partnership, the Florence Project's Border Action Team ("BAT") now provides regular group and individual legal orientations and representation to asylum seekers in Nogales, Sonora, just across the border from the Nogales Port of Entry into Nogales, Arizona. In 2020, the Florence Project provided legal services to 3,672 adults.

Arizona Justice for Our Neighbors is a comprehensive legal services provider that offers immigration legal assistance to the most vulnerable of the low-income migrant population in Southern Arizona. AZJFON began offering legal services in January of 2018, with a family-based immigration program aimed at maintaining family unity. In 2020 AZJFON began a comprehensive asylum legal services program in Nogales, Sonora, Mexico offering asylum workshops, declaration and translation assistance, individualized assessments of asylum claims, and I-589 asylum application completion.

These organizations are on the frontlines of the humanitarian crisis that has been unfolding at the Arizona-Mexico border for nearly the past two years. During this time, the asylum process has been unavailable to the clients they serve, and humanitarian parole is the only mechanism currently in place to protect those most vulnerable. However, the CBP has routinely neglected its statutory duties to timely and meaningfully adjudicate humanitarian parole requests. As outlined below, this failure is in violation of federal law and immediate action is required to resolve it and restore a functional humanitarian parole process.

I. CBP has an ongoing duty to timely adjudicate humanitarian parole requests, and DHS must articulate and follow its procedures to deny parole only when there is a facially legitimate and bona fide reason.

The duty to adjudicate humanitarian parole requests has existed since Congress enacted the Immigration and Nationality Act ("INA") § 212(d)(5). The INA grants the Attorney General the authority to parole aliens into the United States temporarily for "humanitarian reasons or significant public benefit." The law further designates authority to grant parole under § 212(d)(5)(A) at port-of-entry to various officials, including "port directors." 8 C.F.R. § 212.5(c); *see also* INA § 212(d)(5); 8 C.F.R. § 212.5(a) ("The authority of the Secretary to continue an [applicant] in custody or grant parole under section 212(d)(5)(A) of the Act shall be exercised by [the Secretary's designees]...subject to the parole and detention authority of the Secretary or [their]

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designees.”). The 2008 Memorandum of Understanding (“MOA”) between USCIS, ICE and CBP confirms that CBP has authority to make parole decisions at ports-of-entry.¹

While the Attorney General, and by extension, his delegated agents, have exceptionally broad discretion to make determinations about humanitarian parole, these decisions are not immune from judicial review.² A court will find an abuse of discretion if there is no “facially legitimate and bona fide reason” for the denial.³ In determining whether an agency determination meets the above-stated standard, courts look to “(1) whether local immigration officials *in fact exercised* their discretion under [the statute] to make individualized determinations” and (2) whether the criteria employed in making those determinations were consistent with relevant statutes, regulations and policies.⁴

In addition, agencies must follow their own procedures and not act arbitrarily and capriciously.⁵ This not only safeguards the rights of immigrants but ensures that the government explains its actions so that “members of the public know how their elected officials have used their enforcement powers, and they can hold those officials accountable by speaking out, by petitioning their representatives, or ultimately at the ballot box.”⁶

II. In the last 5 years, policies like metering, the Migrant Protection Protocols, and Title 42 have exacerbated an already existing bottleneck of humanitarian parole adjudications.

The Migrant Protection Protocols (“MMP”) or “Remain in Mexico” program, first instituted in January 2019, dramatically changed the process of applying for asylum at the southern border and made it much more difficult for asylum seekers to receive a fair review of their claims, in part because their access to representation was severely limited. During MPP, the Florence Project was unable to represent asylum seekers in MPP courts because appearances were generally scheduled in distant locations, such as Tijuana or Ciudad Juarez. For their most vulnerable clients, the Florence Project and AZJFON submitted humanitarian parole applications, but most received boilerplate denials. The

¹ <https://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf>

² *Jean v. Nelson*, 727 F.2d 957, 966 (11th Cir. 1984), *aff’d*, 472 U.S. 846 (1985) (“Despite these broad grants of authority, executive officials function as agents of Congress in enforcing the law.... If such officers depart from the zone of authority charted in the statute they act illegally and their actions can be corrected in the courts.” (quotations omitted)).

³ *Id.* at 977.

⁴ *Id.* at 978-79 (emphasis added).

⁵ 5 U.S.C. §§ 701–706; *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954) (holding that even discretionary decisions must be made according to an agency’s validly prescribed regulations).

⁶ *S.A. v. Trump*, 636 F.Supp.3d 1048, 1090 (N.D. Cal. 2018) (quoting *NAACP v. Trump*, 298 F.Supp.3d 209, 249 (D.D.C. 2018)).

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 Chief Border Patrol Agent John R. Modlin
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cases that were successful involved multiple humanitarian parole requests, significant and continued advocacy by Florence Project and AZJFON attorneys and congressional representative offices, as well as media scrutiny—a level of advocacy that is unsustainable and unavailable to the vast majority of humanitarian parole applicants.

On March 20, 2020, the Trump Administration used a public health measure under Title 42 to close the border to nearly all asylum seekers, purportedly as part of an effort to slow the spread of COVID-19.⁷ That Administration later lifted almost all other restrictions, but Title 42 remains in effect. While MPP and Title 42 were in effect, humanitarian parole (under INA § 212(d)(5)(A)) was the only mechanism for individuals and families in urgent need of safety or medical treatment to enter the U.S.

Earlier this year, there were two possible Title 42 exemption processes that created pathways for migrants to present at the port-of-entry and be processed into the U.S.: 1) exemptions through the ACLU's litigation in *Huisha Huisha*,⁸ and 2) exemptions for vulnerable populations through the consortium process,⁹ in which NGOs were charged with screening and beginning the asylum process for applicants still in Mexico. Both processes have been discontinued, leaving hundreds who would have otherwise qualified for an exemption stranded at the border and at high risk of harm. Since the discontinuation of these exemption processes, the Florence Project and AZJFON have once again turned to humanitarian parole requests under § 212(d)(5) as the only mechanism to request processing into the U.S. for the most at-risk people. Nearly all the requests filed by the Florence Project and AZJFON with CBP's Nogales Port of Entry and the Border Patrol's Tucson Sector have been ignored or denied with little to no written explanation, even in the most vulnerable cases.

III. Meanwhile, as policies shift and politicians disagree, the most vulnerable are still suffering.

The stakes could not be higher for the thousands of individuals who are still at-risk. AZJFON filed three requests for humanitarian parole toward the end of March 2021, prior to the Nogales Port of Entry's compliance with Title 42 exemptions in connection with the *Huisha Huisha* litigation. These requests were made on behalf of single mothers

⁷ HHS-CDC, Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists" (Oct. 2020) <https://www.cdc.gov/coronavirus/downloads/10.13.2020-CDC-Order-Prohibiting-Introduction-of-Persons-FINAL-ALL-CLEAR-encrypted.pdf>.

⁸ <https://www.aclu.org/cases/huisha-huisha-v-mayorkas>.

⁹ Elliot Spagat & Julie Watson, *Biden Taps Groups to Help Pick Asylum-seekers to Come to US*, AP (June 4, 2021) <https://apnews.com/article/only-on-ap-united-nations-donald-trump-immigration-health-98d4da6cb6f2999787c3fcd3579de695>.

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at very advanced stages of pregnancy, and these mothers were traveling alone with their other young children. The only response to each of these requests was: "Your request has been denied." AZJFON filed an additional request for an especially vulnerable pregnant woman who was traveling alone three weeks from her due date. AZJFON did not receive a response until a week and a half later, merely stating that the request "was not approved."

The Florence Project has filed twenty requests for humanitarian parole since August 2021 alone. Because of the pattern of denials, the organization has focused its efforts on only cases with clearly demonstrated need, including severe medical problems, high-risk pregnancy, and LGBTQ+ individuals with significant safety concerns. Nineteen of the twenty requests remain pending.

The one response the Florence Project has received was vague as to whether the request was being denied or was still in process, as it said only: "Thank you for your patience while we processed your request. Our office has reviewed all information provided and at this time this request is not approved." Requests for more information about why the petition was not approved were fruitless, yielding only a brief email explaining that decisions were made on a case-by-case basis, no guidance was available to aid practitioners, and "current policy" is a factor in making parole determinations. Regarding current policy, the email simply explained that CBP was "awaiting further guidance from DHS regarding the reimplementation of MPP." (Exhibit A).

Below are a few examples of the cases that remain pending and ignored¹⁰:

- On September 23, 2021, the Florence Project filed a request for humanitarian parole for Elena and her family based on her medically vulnerable child. Elena is a single parent who was forced to flee alone with three young children. Elena's son, Matt, is very ill and suffering from chronic kidney failure. He requires ongoing care and is vulnerable to infections. Since arriving in Nogales, Sonora, Elena has had to take Matt to the hospital several times. Elena has generally struggled to care for Matt and his complex medical condition. The family's request for humanitarian parole has been completely ignored without a single response by CBP to date.
- On October 10, 2021, the Florence Project filed a request for humanitarian parole for Rosalinda and her family. Rosalinda is a seven-year-old who suffers from a life-threatening skin condition that, if left untreated, can cause systemic harm. It has already affected her pancreas and places other organs at risk. She

¹⁰ All names and personal information have been changed to protect confidentiality.

Director of Field Operations Guadalupe Ramirez
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is in constant pain and has been unable to access medical treatment while their family waits at the U.S.-Mexico border to present their asylum case before U.S. authorities. The border is not their home; Rosalinda and her family traveled hundreds of miles to escape certain death after several of their family members were brutally murdered by current and former government officials. This request for humanitarian parole was ignored for over a month without a single response. Through diligent effort, the Florence Project finally learned in early December that the request was sent to headquarters for review. To date, the Florence Project has not received any written response.

- On October 20, 2021, the Florence Project filed a request for humanitarian parole on behalf of Ruben and his partner, Cesar. Ruben and Cesar, a gay couple from Honduras, are seeking protection in the United States because of death threats made against them in Honduras. Ruben and Cesar have suffered discrimination, extortion, and threats while displaced at the U.S-Mexico border. They are afraid for their lives and are functionally homeless in Nogales, in part because they have faced housing discrimination on account of their sexual orientation. Their request for humanitarian parole has been completely ignored without a single response by CBP to date.

IV. The Florence Project and Arizona Justice for Our Neighbors demand that the Agencies give appropriate attention to humanitarian parole applications.

Humanitarian parole requests must be responded to and adjudicated in a timely and meaningful manner. Further, each denial must include articulated reasons in writing sufficient to allow a reviewing court to determine whether the reasons for the denial were “facially legitimate and bona fide.”¹¹ A complete lack of response clearly does not meet even this low standard. Further, cursory responses such as those stating a request is not approved “at this time” or that a decision was made “on a case-by-case basis” fail to show that Border Patrol “in fact exercised” its discretion.¹²

Without written policy explaining the criteria employed in adjudicating humanitarian parole applications, it is impossible to determine whether the decisions are consistent with the law.¹³ We therefore demand that CBP issue and publicize written criteria to be used when Border Patrol considers a request for humanitarian parole.

¹¹ *Jean*, 727 F.2d at 977.

¹² *Id.* at 978-79.

¹³ *Kwock v. White*, 253 U.S. 454, 464 (1920) (“It is the province of the courts . . . to prevent abuse of this extraordinary power, and this is possible only when a full record is preserved of the essentials on which the executive officers proceed to judgment.”).

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Chief Border Patrol Agent John R. Modlin
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Accordingly, we call upon the Agencies to take the following specific actions:

1. **Issue clear, written guidance** describing the criteria being used to consider humanitarian parole requests.
2. **Publicize local procedures** so that both *pro se* and represented applicants may navigate the process. Such guidance should include (1) the identity of the individual within the local agency responsible for adjudication, and (2) a procedure through which unrepresented individuals may present their requests in person through the Nogales port-of-entry and Tucson Sector. All policies and procedures should be updated at least quarterly.
3. **Timely adjudicate** pending requests for humanitarian parole. Specifically,
 - a. immediately adjudicate all currently pending humanitarian parole requests that have been pending for more than 48 hours;
 - b. make and communicate decisions on future humanitarian parole requests marked “urgent” or “emergency” within no more than 48 hours after filing;
 - c. for all other humanitarian parole requests, provide a written acknowledgement of receipt within 48 hours after submission and provide a substantive decision within five days (120 hours); and
 - d. communicate with the applicant and/or their representative regarding any processing delays.
4. **Meaningfully adjudicate** all humanitarian parole requests based on the criteria for eligibility outlined in the statute and governing regulations. When a request is denied, clearly articulate in writing the reasons for the denial to the representative or to the individual in a language that the applicant can understand. Where additional information is required on a given request, contact the applicant within 48 hours clearly noting the information required.
5. **Track and report**, at least quarterly, the number of humanitarian parole applications received and adjudicated at the Nogales Port-of-Entry and Tucson Sector, noting *pro se* and represented applicants.

V. Conclusion

Immigration officials have tremendous power over the lives of those lawfully applying for humanitarian parole. As the Supreme Court has said, the power of these officials “is a power to be administered, not arbitrarily and secretly, but fairly and openly, under the restraints of the tradition and principles of free government applicable where the fundamental rights of men are involved, regardless of their origin or race.”¹⁴ The minimum processes outlined above must be implemented immediately because the

¹⁴ *Kwock*, 253 U.S. at 464.

Director of Field Operations Guadalupe Ramirez
Chief Border Patrol Agent John R. Modlin
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asylum process has been unavailable to people arriving at the southern border for nearly two years, and humanitarian parole is the only mechanism currently in place to protect the most vulnerable.

Thank you for your attention to this very important matter. We await your response detailing the measures the Agencies plan to take to ensure a lawful, reasonable, and humane humanitarian parole process. As we have been over the past many months, the Florence Project and AZJFON stand anxious to cooperate on implementing practical solutions to this crisis.

Respectfully,

Heather Robles



Attorney

hrobles@omlaw.com

Josh Bendor



Attorney

jbendor@omlaw.com

Shannon Mataele



Attorney

smataele@omlaw.com

cc:

Executive Director Tim Quinn, Intergovernmental Public Liaison,

timothy.quinn@cbp.dhs.gov

Supervisory Program Manager Bonnie Arellano, bonnie.j.arellano@cbp.dhs.gov

Humanitarian Response Advocate Sigrid Gonzalez, sigrid.gonzalez@cbp.dhs.gov

EXHIBIT A

From: [URSU, KELLY](#)
To: [Chelsea Sachau](#)
Cc: [Noah Schramm](#); [ARELLANO, BONNIE J](#)
Subject: RE: Request for Humanitarian Parole - [REDACTED] & Family - 8 months pregnant
Date: Friday, September 10, 2021 2:41:40 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

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Good afternoon Ms. Sachua,

I am not an approver of humanitarian paroles and do not always know the details of how or why a request was approved or not. I do know every request we receive is reviewed on an individual basis and current policy is a factor when considering any waiver or parole. At this time there has been additional review of new requests outside the agreed upon processes (Huisha-Huisha and Title 42 Consortium) as we are awaiting further guidance from DHS regarding the reimplementation of MPP. We hope to have more information on that in the near future.

As for a criteria for humanitarian parole requests, no such guidance exists because it is case-by-case. I would recommend, although not required, the more documentation provided the better. That gives a better understanding of the situation.

Hope this helps.

Have a great weekend!

Thank you,

Kelly Ursu
Program Manager
Tucson Field Office
U.S. Customs and Border Protection
520-407-2369 office

From: Chelsea Sachau <csachau@firrp.org>
Sent: Friday, September 10, 2021 10:55 AM
To: URSU, KELLY [REDACTED] <[\[REDACTED\]@cbp.dhs.gov](mailto:[REDACTED]@cbp.dhs.gov)>
Cc: Noah Schramm <noschramm@firrp.org>; ARELLANO, BONNIE J [REDACTED] <[\[REDACTED\]@CBP.DHS.gov](mailto:[REDACTED]@CBP.DHS.gov)>
Subject: RE: Request for Humanitarian Parole - [REDACTED] & Family - 8 months pregnant

Dear Ms. Ursu,

Thank you for your email response. I can appreciate the incredible stress you must be under while managing both your own and Bonnie's responsibilities at this time, so I appreciate your email following up on this matter.

Could you please provide information on why this request was not approved? It would be helpful for myself and other attorneys to understand CBP's criteria for evaluating these requests for exemption from Title 42.

Sincerely,
Chelsea

Chelsea Sachau, Esq.

Equal Justice Works Fellow, sponsored by State Farm

Adult Program - Border Action Team

Washington State Bar Number: 57401

Pronouns: she/her/ella

csachau@firrp.org

Phone: 520-595-8566

Fax: 520-829-4154

P.O. Box 86299

Tucson, AZ 85754

Florence Immigrant & Refugee Rights Project

www.firrp.org



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From: URSU, KELLY <[REDACTED]@cbp.dhs.gov>

Sent: Wednesday, September 8, 2021 2:28 PM

To: Chelsea Sachau <csachau@firrp.org>

Cc: Noah Schramm <noschramm@firrp.org>

Subject: RE: Request for Humanitarian Parole - [REDACTED] & Family - 8 months pregnant

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good afternoon Ms. Sachau,

Thank you for your patience while we processed your request. Our office has reviewed all

information provided and at this time this request is not approved.

Thank you,

Kelly Ursu
Program Manager
Tucson Field Office
U.S. Customs and Border Protection
520-407-2369 office

From: Chelsea Sachau <csachau@firrp.org>
Sent: Thursday, September 2, 2021 11:50 AM
To: URSU, KELLY [REDACTED] <[\[REDACTED\]@cbp.dhs.gov](mailto:[REDACTED]@cbp.dhs.gov)>
Cc: Noah Schramm <noschramm@firrp.org>; ARELLANO, BONNIE J <[\[REDACTED\]@CBP.DHS.gov](mailto:[REDACTED]@CBP.DHS.gov)>
Subject: Request for Humanitarian Parole - [REDACTED] & Family - 8 months pregnant

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. If you feel this is a suspicious-looking email, please report by using the Report Phish button option.

Dear Program Manager Ursu,

Good afternoon. I write to ask for my clients, [REDACTED] and her family, to be considered for an exemption from the CDC Order under Title 42. My clients would have been amenable to receive an exemption from Title 42 under the *Huisha Huisha* abeyance or the Consortium processes had those processes continued. However, now that those processes are no longer accepting new referrals, we'd like to facilitate the processing of my clients now. Specifically, I request that my clients, named below, be granted an exemption under Title 42, placed in Title 8 proceedings, processed into the United States, and be allowed to pursue their case for asylum due to urgent humanitarian considerations.

- [REDACTED], DOB [REDACTED])
 - **Particular vulnerabilities:** late-stage pregnancy; ongoing threats of violence
 - **Additional family members:** [REDACTED] (civil union spouse, age 23), [REDACTED] (daughter, age 3), [REDACTED] (daughter, age 3), [REDACTED] (nephew, [REDACTED]'s son, age 3)
 - **Narrative:** Ms. [REDACTED] and her family are seeking protection in the United States due to threats and persecution from organized crime in Mexico. There are two very young children in the family and Ms. [REDACTED] is into her third trimester of pregnancy (about 8 months pregnant), and without proper medical care. The family has been displaced and continues to be under threat of harm as they have continued to receive threats of violence while waiting at the U.S.-Mexico border.. The indefinite denial of access to asylum puts the entire family in severe vulnerability. As with other similarly situated migrants at the U.S.-Mexico border, this family faces an extraordinarily high risk of kidnapping, extortion, sexual abuse, torture, and death at the hands of organized crime, particularly in Sonora, Mexico,

where humanitarian and legal service providers have encountered and documented innumerable acts of violence. The family plans to live with Mr. [REDACTED]'s cousin, [REDACTED], who resides in [REDACTED], Louisiana and is ready and able to receive them.

Additionally, upon entry into the United States, my clients should not be detained for several reasons, including, among others: lack of negative immigration and/or criminal history for Ms. [REDACTED], Mr. [REDACTED], and Ms. [REDACTED]; Ms. [REDACTED]'s late term pregnancy and need for access to medical care; their status as parents of very young children; and the high rates of COVID-19 in detention that would place them at great health risk if detained. Additionally, a recent [ICE policy directive](#) even advises against the detention of pregnant women, nursing mothers, or postpartum women. For these reasons, we respectfully request that CBP use its discretion to not refer Ms. [REDACTED] and her family to ICE-ERO for detention consideration and instead, release my clients directly from the Port of Entry, like many others through the former Title 42 exemption processes, so that humanitarian service providers can provide shelter, transportation, and other support services.

Based on the aforementioned urgent humanitarian circumstances, Ms. [REDACTED] and her family should be granted an exemption under Title 42, placed in Title 8 proceedings, processed into the United States, and be allowed to pursue their case for asylum. Additionally, upon entry into the United States, my clients should not be considered a priority for detention for the reasons stated above.

Thank you for your consideration of this request, and for your time and attention to this matter.

Sincerely,
Chelsea

Chelsea Sachau, Esq.

Equal Justice Works Fellow, sponsored by State Farm

Adult Program - Border Action Team

Washington State Bar Number: 57401

Pronouns: she/her/ella

csachau@firrp.org

Phone: 520-595-8566

Fax: 520-829-4154

P.O. Box 86299

Tucson, AZ 85754

Florence Immigrant & Refugee Rights Project

www.firrp.org



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Exhibit 4



November 22, 2022

Delivered by U.S. Mail and Email (FOIA@hq.dhs.gov)

U.S. Customs and Border Protection
FOIA Appeals, Policy and Litigation Branch
90 K Street,
NE, Washington, DC 20229

Re: Freedom of Information Act Appeal, CBP-OFO 2022-023877

To Whom it May Concern:

This is an appeal in CBP FOIA Case No. 2022-023877 due to the U.S. Customs and Border Protection's ("CBP") failure to release the requested records within the statutory period. On December 14, 2021, Lawyers for Civil Rights ("LCR") and the Florence Immigrant & Refugee Rights Project ("FIRRP") (collectively, the "Petitioners") sent CBP a public records request regarding the adjudication of humanitarian parole requests made at the border, particularly at ports of entry in Arizona. Ex. A. On January 18, 2022, Petitioners submitted an amended version narrowing the scope of the request. Ex. B.

From January to July 2022, Petitioners and CBP engaged in several conversations in efforts to narrow the scope of the request. On July 29, 2022, CBP responded, "[a]s your request seeks a voluminous amount of separate and distinct records, CBP will invoke a 10-day extension for your request pursuant to 6 C.F.R. Part 5 § 5.5(c). We will make every effort to comply with your request in a timely manner." Ex. C. Despite Petitioners' cooperation and assent to numerous modifications, CBP has produced zero records to date.

On November 15, 2022, Petitioners requested an update on the production timeline. That same day, CBP responded that the case had been closed. Moreover, CBP has failed to comply with the applicable time limit provisions. 5 U.S.C. § 552(a)(6)(A)(i). Petitioners have cooperated with CBP's requests to narrow the scope of the request for several months now, yet to no avail.

Thank you for your consideration of this appeal. If you have any questions about this FOIA appeal, please contact us by phone at (617) 500- 3438 (LCR) or (520) 269-7153 (FIRRP), or by email at malbert@lawyersforcivilrights.org or lbelous@firrp.org. Thank you for your time and prompt attention to this appeal.

Sincerely,

Mirian Albert, Esq.
Lawyers for Civil Rights

Laura Belous, Esq.
Florence Immigration & Refugee Rights Project

EXHIBIT A



December 14, 2021

Delivered by U.S. Mail and Email (FOIA@hq.dhs.gov)

FOIA Officer
U.S. Customs and Border Protection
90 K Street, NE
FOIA Division
Washington, DC 20229

To Whom it May Concern:

Lawyers for Civil Rights (LCR) and the Florence Immigration & Refugee Rights Project (Florence Project) submit this request pursuant to the Freedom of Information Act, 5 U.S.C § 552, for public records in the custody of the U.S. Customs and Border Protection (CBP). We seek information about the adjudication of applications for humanitarian parole under section 212(d)(5) of the Immigration and Nationality Act for persons seeking entry into the United States. We seek records that were prepared, received, transmitted, collected, and/or maintained by CBP and its subsidiary components, U.S. Border Patrol (Border Patrol), Office of Field Operations (OFO), and all ports of entry in the state of Arizona.

I. Request for Information

As used in this request, “public records” is defined as in the Freedom of Information Act (FOIA), including but not limited to, all communications, correspondence, directives, documents, data, emails, files, guidance, standards, instructions, analyses, memoranda, orders, policies, procedures, protocols, spreadsheets, and reports. As used in this request, “humanitarian parole” pertains only to those applications made by persons seeking entry into the United States, not those persons in Immigration and Customs Enforcement (ICE) custody seeking humanitarian parole to be released from custody. Unless otherwise stated, the period for which records are requested is January 1, 2016, to the present.

II. Statement Regarding Personally Identifiable Information

Please note that Requesters do not seek the names of individuals or other personally identifiable information (PII). CBP should provide unique identifiers for individuals, if available. Otherwise, Requesters understand that the agency will redact any PII, including “A” numbers and names. If CBP withholds records based on its assessment that statutory exemptions apply to any of the records requested, please describe in detail the nature of the records withheld and

the specific exemption or privilege upon which the record is withheld. If any portion(s) of the requested records are determined to be exempt, please provide the non-exempt portions. U.S.C. §552(a)(8)(A)(ii)(II). Because this request is for information without PII, a third-party authorization is not required.

III. Records Requested

1. All guidance, policies, and procedures regarding applications for humanitarian parole, including but not limited to:
 - Application requirements and process;
 - Application submission;
 - Procedure for prioritizing applications, or otherwise determining the order in which applications should be adjudicated;
 - Tracking of application status; and
 - Application adjudication and response;
 - Application adjudication processes, guidance, policies, directives, and formal memoranda
2. All documents containing the information requested in Request #1 that are used at ports of entry in the State of Arizona.
3. All written communications, directives, and guidance pertaining to adjudication of humanitarian parole applications, including but not limited to:
 - All communications to federal staff who adjudicate humanitarian parole applications.
 - All communications to Arizona port-of-entry staff who adjudicate humanitarian parole applications.
 - All communications between Arizona CBP agents and DHS pertaining to the adjudication of humanitarian parole applications.
4. All e-mail communications of CBP officials, staff, and agents resulting from a keyword search using the terms: “humanitarian parole,” “humanitarian parole approval,” “humanitarian reasons,” “humanitarian parole denial,” “humanitarian parole adjudications,” and “212(d)(5).”
5. All records indicating or reflecting the total number of humanitarian parole applications nationwide:
 - Pending at the time of this request;
 - Approved from January 1, 2016, to present; and
 - Denied from January 1, 2016, to present

6. All records indicating or reflecting the number of humanitarian parole applications filed in the State of Arizona that are:
 - Pending at the time of this request;
 - Approved from January 1, 2016, to present; and
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7. All records indicating or reflecting the average processing time for humanitarian parole applications from filing to adjudication, both for the nation as a whole and for applications filed in the State of Arizona. If this information is not compiled at the state level, please respond specifically stating that this information is not tracked.
8. All records indicating or reflecting disaggregated data of humanitarian parole applications from 2016 to present, including but not limited to:
 - Applicant country of citizenship;
 - Sex;
 - Application approvals;
 - Application denials;
 - Year application was submitted; and
 - Year final determination was made.
9. All records indicating or reflecting which CBP offices within Arizona receive and process humanitarian parole applications. If this information is not compiled at the federal level, please respond specifically stating so.

If any requested information or data is not compiled, please respond specifically stating that this information is not tracked.

The following requests pertain to individual humanitarian parole applications. As noted above, all PII should be redacted to preserve the privacy of the applicants.

1. All applications to CBP for humanitarian parole, disclosing specifically:
 - Country of origin
 - Sex
 - Port of entry
 - Final determination of the application
2. All applications for humanitarian parole to CBP filed within the state of Arizona, disclosing specifically:
 - Country of origin
 - Sex
 - Port of entry
 - Application of final determination

IV. The Information Requested is Not in the Commercial Interest of the Requesters

Requesters seek a fee waiver because the information sought in the request 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 [requesters]...” 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k). As required by the Act, if the waiver is denied and you expect the fee to exceed \$25.00, please provide a detailed fee estimate. The purpose of this request is to gather information pertaining to humanitarian parole application adjudications, policy guidance of humanitarian parole application outcomes, and gather humanitarian parole application aggregated data, including but not limited to, sex, country of origin, demographic data, port of entry, and final determinations to further understand the humanitarian parole application and adjudication process. The requesters, LCR and the Florence Project, are non-profit organizations and have no commercial interest in the request. The Florence Project regularly represents and works with individuals at the border seeking humanitarian parole and is one of the only free legal services providers in the area providing that service. LCR works with communities of color and immigrants to fight discrimination and foster equity through pro bono services, legal advocacy, education, and economic empowerment.

V. The Information Requested Must Be Provided in a Timely Manner within a Workable Format

The Freedom of Information Act requires timely compliance with this request following receipt. Electronic versions in the native format of the requested documents are preferred. For documents which are not available in this format, please provide records electronically in a text-searchable, static-image format (PDF). Please also provide any data in a workable format such as Microsoft Excel. If terms or codes are not in the form template and/or publicly defined, please provide a glossary or other descriptive records containing definitions of acronyms, numerical codes, or terms contained in data responsive to this request. If your response to any request, or any portion thereof, is to deny it, please set forth in writing specific reasons for such denial, including which specific exemption you believe applies.

If you have any questions about this request, please contact us by phone at (781) 627-5119 (LCR) or (520) 269-7153 (Florence Project), or by email at swilson@lawyersforcivilrights.org or lbelous@firrp.org. Thank you for your time and prompt attention to this request.

Sincerely,

Sara L. Wilson, Esq.
Lawyers for Civil Rights

Laura Belous, Esq.
Florence Immigration & Refugee Rights Project

CC:

Director of Field Operations Guadalupe Ramirez
Office of Field Operations
U.S. Customs and Border Protection
4760 N. Oracle Rd. #316
Tucson, AZ 85705

Chief Border Patrol Agent John R. Modlin
Tucson Sector Arizona
U.S. Border Patrol
2430 S. Swan Road
Tucson, AZ 85711

Executive Director Tim Quinn
Intergovernmental Public Liaison
timothy.quinn@cbp.dhs.gov

Bonnie Arellano
Supervisory Program Manager
bonnie.j.arellano@cbp.dhs.gov

Sigrid Gonzalez
Humanitarian Response Advocate
sigrid.gonzalez@cbp.dhs.gov

EXHIBIT B



December 14, 2021

Delivered by U.S. Mail and Email (FOIA@hq.dhs.gov)

FOIA Officer
U.S. Customs and Border Protection
90 K Street, NE
FOIA Division
Washington, DC 20229

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Sincerely,

Sara L. Wilson, Esq.
Lawyers for Civil Rights

Laura Belous, Esq.
Florence Immigration & Refugee Rights Project

CC:

Director of Field Operations Guadalupe Ramirez
Office of Field Operations
U.S. Customs and Border Protection
4760 N. Oracle Rd. #316
Tucson, AZ 85705

Chief Border Patrol Agent John R. Modlin
Tucson Sector Arizona
U.S. Border Patrol
2430 S. Swan Road
Tucson, AZ 85711

Executive Director Tim Quinn
Intergovernmental Public Liaison
timothy.quinn@cbp.dhs.gov

Bonnie Arellano
Supervisory Program Manager
bonnie.j.arellano@cbp.dhs.gov

Sigrid Gonzalez
Humanitarian Response Advocate
sigrid.gonzalez@cbp.dhs.gov

EXHIBIT C



From: CBP FOIA PUBLIC LIAISON cbpfoiapublicliaison@cbp.dhs.gov
Subject: RE: CBP FOIA Request 2022-023877
Date: July 29, 2022 at 6:49 AM
To: malbert@lawyersforcivilrights.org

Good morning,

It is difficult to predict an exact time frame. Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. Part 5 § 5.5(a) of the DHS FOIA regulations, CBP processes FOIA requests according to their order of receipt. As your request seeks a voluminous amount of separate and distinct records, CBP will invoke a 10-day extension for your request pursuant to 6 C.F.R. Part 5 § 5.5(c). We will make every effort to comply with your request in a timely manner. CBP's FOIA Division is working hard to reduce the amount of time necessary to respond to FOIA requests.

We truly appreciate your continued patience.

Thank you,
CBP FOIA Public Liaison

From: Mirian Albert <malbert@lawyersforcivilrights.org>
Sent: Wednesday, July 27, 2022 4:48 PM
To: CBP FOIA PUBLIC LIAISON <cbpfoiapublicliaison@cbp.dhs.gov>
Cc: Laura Belous <lblous@firrp.org>
Subject: Re: CBP FOIA Request 2022-023877

Good afternoon,

Thank you for the clarification. We do not believe it is necessary to narrow our search further. Please provide the data in spreadsheet form containing all the information you indicated in the previous email. Lastly, please provide an expected timeframe for these and all other records requested.

Best,
Mirian

--

Mirian Albert, Esq. (she/ella)
Staff Attorney

LCR | **LAWYERS FOR
CIVIL RIGHTS**
BOSTON

Advancing Equality and Justice

Lawyers for Civil Rights
[61 Battery March Street, 5th Floor](https://www.lcrboston.org/)
[Boston, MA 02110](https://www.lcrboston.org/)
Tel 617 500-3438

Exhibit 5



U.S. Customs and
Border Protection

OT:RR:RDL:FAB
CBP-AP-2023-000379 JHS

January 5, 2023

Mirian Albert
Lawyers for Civil Rights
Malbert@lawyersforcivilrights.org
61 Batterymarch Street
Boston, MA 02110

**Re: Freedom of Information Act Request CBP-2022-023877/CBP-AP-2023-000379:
Humanitarian Parole at Arizona Points of Entry**

Dear Mirian Albert:

This letter responds to the administrative appeal you filed with this office challenging U.S. Customs and Border Protection's ("CBP") incorrect claim that your Freedom of Information Act ("FOIA") request was closed and the failure to respond to the FOIA request you submitted to the agency on December 14, 2021. By this letter, we apologize for the misinformation that your initial request was closed and concur with your assessment that the case was not responded to in a timely fashion. Based on the search and review conducted by the CBP FOIA Division, we are remanding your case file back to the CBP FOIA Division for immediate processing of your request.

In your initial request, you sought "guidance and directives on humanitarian parole applications and adjudication as described in the attached request." The information relates to humanitarian parole in all ports of entry in Arizona. As of December 13, 2022, FOIA Division, the office responsible for responding to initial FOIA requests, has not yet responded to your request.

Your appeal is based on the fact that the agency has failed to provide a timely response within the statutorily provided guidelines. We concur. The FOIA itself requires that each agency, absent unusual or exceptional circumstances, "determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request." 5 U.S.C. § 552 (a)(6)(A)(i). As CBP's FOIA Division has not responded to your FOIA request within this statutory timeframe, we agree that the agency is delinquent in responding to your request.

However, we find that an administrative appeal is an inappropriate cure in this instance. Indeed, a requester "shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph." 5 U.S.C. § 552(a)(6)(C)(i). Instead, a constructive denial allows a requester to proceed directly to

district court if an agency fails to respond to an initial request within the prescribed time period. This determination is consistent with the language of the FOIA itself and the DHS regulations governing FOIA requests.

Under the FOIA's administrative appeal provision, a requester has the right to administratively appeal any adverse determination that an agency makes on his or her FOIA request. See 5 U.S.C. § 552 (a)(6)(A). Under DHS regulations, adverse determinations include denials of records in full or in part, "no records" responses, denials of requests for fee waivers and denials of requests for expedited processing. See 6 CFR 5.6(c)¹. We note that the definition does not explicitly include a failure to respond.

The administrative appeal process is important to agencies and requesters because the appeal process provides an agency with an opportunity to review its initial action taken in response to a request to determine whether corrective steps are necessary. The appeals process allows CBP to correct mistakes made at lower levels and thereby obviates unnecessary judicial review. In this case, there is no administrative record to review because FOIA Division has not yet concluded processing the request. Accordingly, we are remanding your request to FOIA Division for processing.

As mentioned above, you may immediately challenge FOIA Division's failure to respond to your request in district court. Pursuant to 5 U.S.C. §552(a)(4)(B), you may do so in the U.S. District Court in the district in which you reside or have a principle place of business, or in which the agency records are situated, or in the U.S. District Court for the District of Columbia.

Alternatively, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Sincerely,

Mary Beth McLoughlin

For Shari Suzuki
FOIA Appeals and Policy Branch
Regulations and Rulings Directorate
Office of Trade
Customs and Border Protection

¹ 6 CFR 5.6(c) states: Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited processing.