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United States Coast Guard  
U.S. Dept. of Homeland Security  
Commandant (CG-6P)  
2701 Martin Luther King Jr. Ave., SE, Stop 7710  
Washington, DC 20593-7710

Re: Freedom of Information Act Request on Migrant Interdictions

Dear FOIA Officer:

The American Immigration Council (the “Council”) submits this request for records under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, regarding the United States Coast Guard’s (“USCG”) practice of interdicting migrants encountered at sea. Requestor seeks a fee waiver of any fee imposed by the agency because the records sought will contribute to the public’s understanding of USCG’s operations, and release of the information is not in Requestor’s commercial interest.

**I. REQUEST FOR INFORMATION**

Requestor seeks the following records prepared, received, transmitted, collected or maintained by USCG as described below:

1. Records relating to USCG’s guidance, procedures, and training materials for interdicting vessels with migrants at sea, including but not limited to intra-agency agreements, business rules, or policy letters.
2. Records relating to USCG’s guidance, procedures, and training materials for determining whether an interdicted migrant is a minor and the treatment of interdicted migrant minors, including but not limited to intra-agency agreements, business rules, or policy letters.

3. Records relating to USCG's guidance, procedures, and training materials for determining whether an interdicted minor migrant is *unaccompanied*, including but not limited to intra-agency agreements, business rules, or policy letters.
4. Records relating to USCG's guidance, procedures, and training materials for determining whether an interdicted minor may be a victim of trafficking, including but not limited to intra-agency agreements, business rules, policy letters, and the current and prior versions of forms used by USCG for this purpose.
5. Records relating to USCG's guidance, procedures, and training materials for determining whether an interdicted migrant manifests a fear of return, including but not limited to intra-agency agreements, business rules, policy letters, and the current and prior versions of forms used by USCG for this purpose.
6. Records relating to USCG's guidance, procedures, and training materials for returning interdicted migrants to their home countries or third countries, including records that apply to the return of unaccompanied minors. Records may include but are not limited to intra-agency agreements, business rules, or policy letters.
7. USCG's guidance, procedures, and training materials relating to language access for migrants interdicted by USCG at sea who have limited English proficiency.
8. USCG procedures and training materials for transferring interdicted migrants to the custody of another agency, including but not limited to the following:
  - a. Transferring interdicted migrants manifesting a fear of return or expressing a credible fear of return to the custody of Immigration & Customs Enforcement (ICE) at the Guantanamo Bay Migrant Operations Center;
  - b. Transferring unaccompanied children to the custody of Customs & Border Protection (CBP) or the Office of Refugee Resettlement (ORR); and
  - c. Transferring migrants requiring medical treatment.
9. USCG procedures and training materials for caring for interdicted migrants on USCG vessels at sea prior to their return to their home countries or third countries or transfer to the custody of another agency.
10. All manifestation of fear and trafficking screening forms completed for interdicted migrants since the start of Fiscal Year 2021.
11. The following individualized data collected and maintained by USCG relating to migrants interdicted by USCG:

- a. Date of interdiction (Event date);
- b. Event type;
- c. Migrant's nationality;
- d. Migrant's date of birth or age;
- e. Migrant's native or primary language;
- f. Determination whether individual is an unaccompanied noncitizen child;
- g. Determination whether individual may be a human trafficking victim;
- h. Whether the migrant is part of a family unit;
- i. Location;
- j. Disposition (DISPO);
- k. Manifestation of fear;
- l. Credible fear;
- m. Well-founded fear;
- n. Reception agency;
- o. Date repatriated;
- p. Use of force;
- q. Level of force used (LVL OF FORCE USED);
- r. Non-compliant;
- s. Injury;
- t. Self-harm;
- u. Days aboard Coast Guard asset;

Potential custodians of the requested data may include USCG's Office of Maritime Law Enforcement. Potential sources of the requested data may include the USCG's Marine Information for Safety and Law Enforcement (MISLE) database's activities labeled "Enforcement," "Law Enforcement," and "Resource Sortie," as well as spreadsheets maintained by the USCG's Office of Law Enforcement Policy independent of the MISLE database.

## II. FORMAT OF PRODUCTION

Requestor seeks responsive electronic records in a machine-readable, native file format, with all metadata and load files. We request that any data be provided in a workable format, such as Microsoft Excel or comma-separated values (CSV) files. 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. We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. For non-data files, Requestor asks that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

### III. FEE WAIVER REQUEST

Requestor seeks a waiver of the fees that may apply to this request on the grounds that disclosure of the requested records is in the public interest 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. § 552(a)(4)(A)(iii).

#### 1. *Disclosure of the Information Is in the Public Interest*

Disclosure of the requested records is in the public interest because the request meets all the applicable regulatory criteria. The public interest criteria is satisfied when (1) the request concerns operations or activities of the government; (2) disclosure is likely to contribute to an understanding of government operations or activities; (3) disclosure contributes to an understanding of the subject by the public at large; and (4) disclosure is likely to contribute significantly to such understanding.<sup>1</sup>

As shown in the organizational chart for the U.S. Department of Homeland Security (“DHS”), the USCG is a component of DHS.<sup>2</sup> The USCG’s website describes the agency as the “principal Federal agency responsible for maritime safety, security, and environmental stewardship in U.S. ports and inland waterways, along more than 95,000 miles of U.S. coastline, throughout the 4.5 million square miles of U.S. Exclusive Economic Zone (EEZ), and on the high seas.”<sup>3</sup> Furthermore, Congress mandated the USCG to carry out the mission of interdicting migrants at sea traveling to the United States, which is carried out by Maritime Law Enforcement.<sup>4</sup> This request seeks records of how USCG personnel carries out this congressionally mandated mission and as such, the request concerns the operations of the government.

Second, disclosure of the requested procedures and data will contribute to the understanding of how the USCG performs this mission, and whether the agency protects the rights of migrants interdicted at sea. Maritime interdictions date back to 1981, when the U.S. government adopted a then-unprecedented policy of interdicting migrants found at sea in an attempt to curb unauthorized migration of Haitian nationals.<sup>5</sup> A law review article published in 2006 noted that the USCG had little explicit guidelines on interdiction procedures leading to pervasive confusion

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<sup>1</sup> 6 C.F.R. § 5.11(k)(2) (2017) (DHS regulations outlining criteria for responses to requests for fee waivers under FOIA); see also *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004) (citing 28 C.F.R. § 16.11(k)(2)).

<sup>2</sup> U.S. Dep’t of Homeland Security, DHS Public Org Char 2023.11.09, [https://www.dhs.gov/sites/default/files/2023-11/23\\_1109\\_mgmt\\_dhs-public-org-chart-508.pdf](https://www.dhs.gov/sites/default/files/2023-11/23_1109_mgmt_dhs-public-org-chart-508.pdf).

<sup>3</sup> U.S. Coast Guard, U.S. Dep’t of Homeland Security, About USCG, <https://www.uscg.mil/About/> (last visited June 27, 2024).

<sup>4</sup> U.S. Coast Guard, U.S. Dep’t of Homeland Security, About USCG, Mission, <https://www.uscg.mil/About/Missions/> (last visited June 27, 2024).

<sup>5</sup> A.G. Mariam, *International Law and the Preemptive Use of State Interdiction Authority on the High Seas: the Case of Suspected Illegal Haitian Immigrants Seeking Entry Into the U.S.*, 12 MD. J. INT’L L. 211, 212 (1988), <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1309&context=mjil>.

between the USCG's mission to rescue migrants at sea and its interdiction of vessels to curb migration flows.<sup>6</sup> A ProPublica investigation noted this continued confusion finding that the USCG frames its operations in the sea as "lifesaving work," but also operates as a maritime border patrol with its ships as floating holding facilities.<sup>7</sup> The ProPublica article concluded that unlike at the U.S.-Mexico border, which is closely monitored by advocates, the courts and the press, immigration enforcement at sea takes place out of public view limiting the public's understanding of USCG's interdiction policies.<sup>8</sup> The U.S. Department of Homeland Security, for example, refused to answer questions about the standards the agency uses to determine whether those interdicted at sea have a legal basis or credible fear that warrants U.S. entry.<sup>9</sup>

Disclosure of the requested records will contribute to an understanding of the subject by the public at large. The Council has an extensive track record of publishing and synthesizing information on governmental operations produced in responses to FOIA requests. The Council intends to provide information received in response to this FOIA request on its publicly accessible website. In 2022, the Council received more than 2.6 million page views from more than 1.6 million visitors. The Council also regularly shares information with national print and news media. Requestor plans to distribute information obtained from these FOIA disclosures to interested media. Dissemination of the requested records through the Council's website and via interested media will reach the public and will contribute to the public's understanding of the procedures followed by USCG to interdict migrants at sea, procedures that have been unknown to the public in the past.

Finally, disclosure is likely to contribute significantly to public's understanding of this issue. In light of the dearth of publicly available information, the records requested will inform the public about how USCG personnel treat and process migrants interdicted on vessels. Advocates have raised serious concerns about the fate of individuals, particularly children, who are repatriated to nations facing civil instability, such as Haiti.<sup>10</sup> The requested records will provide advocates a deeper understanding of the applicable rules to assist those interdicted at sea, especially children who have been repatriated. Production of these records is necessary, as the number of individuals interdicted at sea and held in USCG assets climbs.<sup>11</sup>

Thus, the request for information meets the public interest element for the fee waiver request rule.

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<sup>6</sup> Barbara Miltner, *Irregular Maritime Migration: Refugee Protection Issues in Rescue and Interception*, 30 FORDHAM INT'L L.J. 75, 113, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2035&context=ilj>.

<sup>7</sup> John Konrad, *The Harsh Reality of US Coast Guard Migrant Policy*, GCAPTAIN, Dec. 10, 2023, <https://gcaptain.com/harsh-reality-us-coast-guard-uscg-migrant-policy/>.

<sup>8</sup> *Id.*

<sup>9</sup> Ryan Morgan, *DHS Says Haitians Attempting Boat Crossing to US Face 'Immediate Repatriation,'* NTD NEWS, March 16, 2024, [https://www.ntd.com/dhs-says-haitians-attempting-boat-crossing-to-us-face-immediate-repatriation\\_979702.html](https://www.ntd.com/dhs-says-haitians-attempting-boat-crossing-to-us-face-immediate-repatriation_979702.html).

<sup>10</sup> Kids in Need of Defense, *Maritime Interdictions of Unaccompanied Children*, Apr. 2024, [https://supportkind.org/wp-content/uploads/2024/04/24\\_Maritime-Interdictions-of-Unaccompanied-Children.pdf](https://supportkind.org/wp-content/uploads/2024/04/24_Maritime-Interdictions-of-Unaccompanied-Children.pdf).

<sup>11</sup> Seth Freed Wessler, *When the Coast Guard Intercepts Unaccompanied Kids*, PROPUBLICA, Dec. 7, 2023, <https://www.propublica.org/article/when-the-coast-guard-intercepts-unaccompanied-kids>.

2. *Disclosure of the Information is not in Requester's Commercial Interest.*

Requestor has no commercial interest in the records requested, and this request aims at furthering public understanding of government conduct: specifically, as described above, the urgent need for the public to understand how USCG personnel treat and process migrants interdicted at sea. The Council, as a not-for-profit organization, has no commercial interest in the present request. This request furthers the Council's work to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. As with all other reports and information available on the Council's website, as well as information frequently disseminated to the public via electronic newsletters, the information that the Council receives in response to this FOIA request will be available to immigration attorneys, noncitizens, policymakers, and other interested members of the public free of charge.

As FOIA's fee-waiver requirements must be liberally construed in favor of waivers for noncommercial requestors, a waiver of all fees is justified and warranted in this case.

Thank you for your attention to this request. If you have any questions regarding this request, please do not hesitate to contact me.

Very truly yours,

/s/ Raul A. Pinto

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on behalf of Requestor