

EXHIBIT B

Via Electronic Mail - foia@hq.dhs.gov
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U.S. Department of Homeland Security
Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655

Via Online Submission

U.S. Customs and Border Protection
1300 Pennsylvania Ave., NY
Washington, D.C. 20229

February 25, 2022

RE: FREEDOM OF INFORMATION ACT REQUEST

To whom it may concern:

Haitian Bridge Alliance, UndocuBlack Network, and African Communities Together (together, “Requesters”), represented by Justice Action Center, Haitian Bridge Alliance, Innovation Law Lab, Robert F. Kennedy Human Rights, and Texas Civil Rights Project, pursuant to the provisions of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended, and applicable agency regulations, request copies of the records identified in the numbered paragraphs below from:

- the United States Department of Homeland Security, including from U.S. Immigration and Customs Enforcement, the Office of Enforcement and Removal Operations, U.S. Customs and Border Protection, the Office of Professional Responsibility, the Office of Inspector General, the Office of Public Affairs, the Office of Civil Rights and Civil Liberties, the Office of the Secretary, the Office of the Deputy Secretary, the Federal Emergency Management Agency, and any other subagencies, offices, departments, or components likely to have responsive documents;

BACKGROUND

The purpose of this request is to obtain information for the Requestors and the public on the government’s internal investigation of Department of Homeland Security (DHS) policy, practices, and decision-making related to egregious violations of Black migrants’ civil and human rights occurring in September 2021, including denial of access to available food, water, medical care, and legal assistance and counsel due to DHS blockading of an encampment in Del Rio, Texas and the mass expulsion of 15,000 asylum-seeking individuals from that encampment.¹ This information will enable the public to engage in ongoing policy debate surrounding DHS treatment

¹ A more detailed description of this treatment is available in a complaint to the DHS Office for Civil Rights and Civil Liberties, filed by the Requestors and others on September 24, 2011 and available at <https://www.theadvocatesforhumanrights.org/Res/CRCL%20Complaint%20on%20Del%20Rio%2009-24-21.pdf>.

of Black migrants, to gauge the effectiveness of DHS internal oversight offices, and to ensure that government officials engaging in misconduct are held accountable for their actions.

On November 16, 2021, DHS issued a press release concerning an ongoing internal investigation into its policies and practices related to treatment of Black migrants at the Del Rio encampment, which culminated in a mass expulsion enforcement action.² Media accounts, videos, and photographs of the September mass expulsion document Customs and Border Patrol (CBP) officers grabbing and pushing at Black asylum seekers from charging horses and wielding reins like whips.³ After widespread public outcry and an admission from President Biden that the images in question were “horrible and horrific,” DHS Secretary Mayorkas suspended the use of horseback patrol in Del Rio.⁴ The Secretary further promised the House Homeland Security Committee that an investigation into DHS treatment of Black asylum seekers at Del Rio would be “completed in days—not weeks.”⁵

Yet months later, that investigation remains incomplete. And weeks after the Secretary’s public commitment before Congress to swift results, the November 16 press release announced that the DHS Office of Inspector General (OIG) had declined any investigation of the agency actions at Del Rio. Instead, OIG had referred the matter to CBP’s Office of Professional Responsibility (OPR), “the office charged with investigating alleged misconduct of CBP employees.”⁶ Nearly simultaneous to OIG’s referral of the investigation to OPR, the House Committee on Oversight and Reform issued an October 2021 report finding that CBP internal oversight bodies charged with identifying and eliminating employee misconduct have “failed to take adequate steps to prevent this conduct or impose consistent discipline on agents who engaged in it, creating a serious risk that this conduct could continue.”⁷

² *DHS Update Regarding the Investigation of Horse Patrol Activity in Del Rio, Texas on September 19, 2021*, <https://www.dhs.gov/news/2021/11/16/dhs-update-regarding-investigation-horse-patrol-activity-del-rio-texas-september-19>.

³ Eileen Sullivan and Zolan Kanno-Youngs, *Images of Border Patrol’s Treatment of Haitian Migrants Prompt Outrage*, N.Y. Times, Sept. 21, 2021, <https://www.nytimes.com/2021/09/21/us/politics/haitians-border-patrol-photos.html>.

⁴ *U.S. Border Patrol will no longer use horses in Del Rio, Texas, after outrage over treatment of Haitian migrants*, Sept. 23, 2021, <https://www.cnbc.com/2021/09/23/border-patrol-wont-use-horses-in-del-rio-after-outrage-over-treatment-of-haitians.html>.

⁵ Kevin Johnson, *DHS Vows to Have Findings Within ‘Days’ in Investigation of Border Patrol’s Treatment of Haitian Migrants*, USA Today, Sept. 22, 2021, <https://www.usatoday.com/story/news/politics/2021/09/22/photos-border-patrol-using-horse-reins-whips-prompts-dhs-probe/5812845001/>.

⁶ *Supra*, n.2.

⁷ U.S. House Committee on Oversight and Reform, *Border Patrol Agents in Secret Facebook Group Faced Few Consequences for Misconduct* at 3, Oct. 2021, <https://oversight.house.gov/cbp-report>.

By referring investigation of its actions at Del Rio to OPR, DHS leadership has presumably decided that the matter is not appropriate for the system-wide “inspection”⁸ or “evaluation”⁹ that OIG undertakes. But such OIG measures are necessary in order to “provide meaningful and persuasive information and recommendations”¹⁰ that might prevent recurrence of events like the mass denial of civil and human rights that occurred at Del Rio. This request under the Freedom of Information Act seeks information that explains the basis for the decision by DHS leadership to decline system-wide investigation by OIG for DHS actions at Del Rio and to instead refer the matter to OPR, CBP’s troubled and ineffective internal oversight body.

DEFINITIONS

“Agency” refers to the United States Department of Homeland Security, including U.S. Immigration and Customs Enforcement, the Office of Enforcement and Removal Operations, U.S. Customs and Border Protection, the Office of Professional Responsibility, the Office of Inspector General, the Office of Public Affairs, the Office of Civil Rights and Civil Liberties, the Office of the Secretary, the Office of the Deputy Secretary, the Federal Emergency Management Agency, and any other subagencies, offices, departments, or components;

“Agreement(s)” refers to any agreement, written or otherwise; communications; contracts and/or supplements, modifications or addendums to contracts or agreements.

“Communication” means the transmittal of information (in the forms of facts, ideas, inquiries or otherwise).

“Del Rio Port of Entry” refers to the U.S. Customs and Border Protection Del Rio Port of Entry, located at 3140 Spur 239, International Bridge, Del Rio, Texas 78840.

“Del Rio Sector” refers to the U.S. Customs and Border Protection Del Rio Sector Texas, including all constituent border stations: San Angelo Station, Del Rio Station, Brackettville Station, Comstock Station, Abilene Station, Eagle Pass Station, Eagle Pass South Station, Rocksprings Station, Carrizo Springs Station, and Uvalde Station.

“Del Rio Station” refers to the U.S. Customs and Border Protection Del Rio Border Patrol Station, located at 2300 Highway 90 East, Del Rio, Texas 78840.

“Expel” or “Expulsion” refers to the act of any Agency, whether by Agency personnel or a third party at the direction of any Agency or Agency personnel, removing an individual from the United States pursuant to the authority of the United States government.

“Record(s)” includes, but is not limited to, all Records or communications preserved in electronic (including metadata) or written form, such as correspondences, emails, documents,

⁸ “An inspection is an independent review and assessment of DHS programs, results, and/or resource management. Inspections . . . can look at overall system controls.” Department of Homeland Security Office of Inspector General, Frequently Asked Questions, <https://www.oig.dhs.gov/about/faqs>.

⁹ “Evaluations take a broader, multi-disciplinary approach to reviewing and assessing DHS programs, results, resource management and policies.” *Id.*

¹⁰ *Id.*

data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, talking points, technical manuals, technical specifications, training manuals, studies, or any other Record of any kind.

REQUESTS

1. All Records related to or reflecting:
 - a. The Agency's receipt and/or acknowledgment of requests, from either the general public or from government officials, to investigate decision-making or conduct by government officials concerning, both leading up to and during, the expulsion of asylum-seeking individuals from the Del Rio Sector on September 17, 2021.
 - b. The Agency's decision to decline to refer, assign, and/or authorize investigation by the Office of Inspector General of DHS policies, decision-making, or personnel related to the treatment of asylum-seeking individuals from the Del Rio Sector in September 2021.
 - c. The Agency's decision to refer investigation to the Office of Professional Responsibility within Customs and Border Protection of DHS policies, decision-making, or personnel related to the treatment of asylum-seeking individuals from the Del Rio Sector in September 2021.
 - d. The standards applicable to decisions as to when a matter will be investigated by OIG or referred to OPR, respectively, including the officials responsible for making those decisions.
 - e. The status of ongoing investigation into DHS and CBP policies, decision-making, and conduct of personnel related to treatment asylum-seeking individuals from the Del Rio encampment in September 2021, including, but not limited to, workplans and deadlines for conclusion of the investigation.

FORMAT AND PRODUCTION REQUESTS

The Requesters request that responsive documents and materials be produced *in their entirety*, including all attachments, enclosures, hyperlinks and internal links, and exhibits. If it is determined that a document contains material or information that falls within a statutory exemption to mandatory disclosure under FOIA, the Requesters ask that such material or information be reviewed for possible discretionary disclosure, consistent with the presumption of openness codified in the Freedom of Information Act Improvement Act of 2016, Pub. L. 114-185, 130 Stat. 538.

The burden is on the Government to provide a determination within 20 working days. In the event the Government is unable to meet that deadline, the Requesters are willing to discuss an appropriate schedule for rolling productions. To the extent the Government has any questions after reviewing these Requests, please do not hesitate to contact the undersigned.

FEE WAIVER REQUEST

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), the Requesters request a fee waiver.

Haitian Bridge Alliance. Haitian Bridge Alliance is a grassroots and community-based non-profit organization with federal 501(c)(3) status that advocates for fair and humane immigration policies and provides migrants and immigrants with humanitarian, legal, and social services, with a particular focus on Black migrants, the Haitian community, women and girls, LGBTQIA+ individuals, and survivors of torture and other human rights abuses. HBA works to elevate the issues unique to Black migrants and build solidarity and collective movement toward policy change. Many of the individuals served by HBA present at the U.S.-Mexico border. HBA staff and volunteers regularly travel to the border to provide assistance and counsel to immigrants, many of whom have been subject to and impacted by the Title 42 Order. HBA and its partners were present in Del Rio, Texas, and assisted migrants impacted by the unlawful expulsions and civil rights abuses that are the subject of this Request. HBA will use the information obtained through these Requests to serve those clients and community members most directly affected by the information, including the thousands of migrants impacted by the Government's conduct in Del Rio, and to ensure accountability for the Government's unlawful conduct. HBA will also work with other non-profit and advocacy organizations to ensure that the information obtained through these Requests is distributed to affected populations and the public at large.

UndocuBlack Network. The UndocuBlack Network is a fiscally sponsored project of [the Praxis Project](#), a 501(c)(3) nonprofit organization. The UndocuBlack Network (UBN) serves as a multigenerational network of currently and formerly undocumented Black people that aims to foster community, facilitate access to resources, and transform the realities of undocumented Black people, so that we are thriving and living our fullest lives. UBN believes that directly impacted people should be at the center of the decisions impacting their lives, and takes strategic direction and advice from its membership. As such, UBN develops leadership among its members by developing tools, training, and programming. UBN builds power with and for communities through advocacy, local organizing, and strategic alliances to achieve policy goals. UBN centers the humanity, dignity, and wellbeing of our members and community in all aspects of our work. UBN has chapters in Los Angeles, New York, and the DC/MD/VA area, and multiple new chapters are in formation. For more information, please visit www.undocublack.org.

African Communities Together. African Communities Together (ACT) is an organization of immigrants from Africa and their families. Its mission is to empower African immigrants to integrate socially, get ahead economically, and engage civically. ACT supports African immigrants nationwide by providing direct services, including pro bono immigration legal services to indigent and underserved African immigrant clients; through leadership development programs, organizing, and civic education; and by advocating for policy reforms that would benefit its members, clients, and constituent communities. ACT is informed by legal and community partners on the ground and media reports that while the migrants expelled from Del Rio were overwhelmingly Haitian asylum seekers, they included in their number refugees from Ethiopia, The Congo, and other African countries who have joined with their fellow Black asylum seekers.

As one of the largest organizations of and for African immigrants in the U.S., ACT frequently receives requests for assistance from African migrants and Afro-Caribbean migrants who have recently entered the U.S. and are seeking asylum, who are in immigrant detention, and who are in removal proceedings, as well as requests for support from the lawyers and community organizations who represent them. ACT attempts to respond to these requests for assistance to the best of its ability and within its available resources.

Applicable agency regulations require fees to be waived when it is determined, based upon the submission of the requester, that the information is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 5 C.F.R. § 5.11(k)(1) (permitting fee waiver when “[d]isclosure of the requested information is in the public interest” and “is not primarily in the commercial interest of the requester”); 28 C.F.R. § 16.10(k) (“[r]equester[] may seek a waiver of fees by . . . demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester”).

The Requesters will make any information that they receive from these Requests available to the public, including the press, at no cost. The issue of the Government’s treatment of migrants in Del Rio, Texas in September 2021, including the unlawful expulsion of thousands of Haitians, is of significant public interest. The Requesters have undertaken this work in the public interest and not for any private commercial interest. Access to this information is necessary for the public to meaningfully evaluate the consequences of federal immigration policies and the need for accountability for the Government relating to its actions in Del Rio. The Government must waive or reduce any fees because the Requesters do not have a commercial interest in the requested information and, instead, request this information to educate the public regarding the Government’s operations and activities. *See* 5 U.S.C. § 552(a)(4)(A)(iii).

The Requesters have engaged pro bono counsel who will be responsible for the reasonable cost of locating and reproducing the requested documents to the extent required by applicable regulations and not otherwise waived. If such costs will exceed \$150, please contact the Requesters and their counsel before incurring them.

Please direct all correspondence related to these Requests to:

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New York, NY 10005
(917)-941-9141
enriquez@rfkhumanrights.org

Thank you in advance for your assistance with this matter.

Respectfully submitted,

/s/ Anthony Enriquez

RFK Human Rights