



July 20, 2021

Via email to ICE-FOIA@dhs.gov

FOIA Officer
U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Mail Stop 5009
Washington, DC 20536-5009

RE: Freedom of Information Act (“FOIA”) request for policies, complaints, statistics, and guidance relating to the treatment and processing of migrants injured due to falling from the US-Mexican border wall.

Dear FOIA Officers,

Al Otro Lado (“AOL”) submits this request for information under the Freedom of Information Act (“FOIA”) to U.S. Immigration and Customs Enforcement (“ICE”). AOL also seeks a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), and expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e).

In the Requester’s capacity as a binational immigrants’ rights organization, we have become aware of a rising number of migrants injured due to falling from the US-Mexican border wall at heights of up to 30 feet.

Through the Requester’s activities and communications with other organizations and advocates along the southern border, we have also learned of concerning practices regarding U.S. Customs and Border Protection (“CBP”) and/or ICE’s treatment and processing of such injured migrants. In one instance reported by the media, two men fell from the border wall and suffered serious injuries including broken ankles in both legs, torn tendons, and a fractured back and pelvis.¹ Despite the fact that these men were unable to walk and one of the men was “screaming in excruciating pain,” they were never transported to a hospital and were instead expelled to Mexico, dropped off by CBP officers at a border crossing nearly 90 miles from where they fell from the wall. Despite apparently clear indications of their injuries, CBP told reporters that “records indicate that neither individual you mention presented illness or injury during their brief encounters with our agents.” This response raises concern regarding CBP and ICE’s willingness and/or ability to respond to, treat, and process injured migrants in a manner that respects their substantive rights and human dignity, and accordingly, we respectfully submit this request.

¹ Alfred Corchado, *Injured migrants say Border Patrol sent them back to Mexico after they fell off Trump’s wall*, THE DALLAS MORNING NEWS, (Feb. 13, 2021, 6:00 PM), <https://www.dallasnews.com/news/immigration/2021-02/14/injured-migrants-say-border-patrol-sent-them-back-to-mexico-after-they-fell-off-trumps-wall/>

1. RECORDS REQUESTED

AOL requests the records² prepared, received, transmitted, collected, and/or utilized by ICE related to policies, complaints, statistics, and/or guidance regarding the treatment, transportation, release, and/or expulsion of migrants injured while crossing the US-Mexican border and/or in connection with the US-Mexican border wall.

For purposes of this request, expulsions are pursuant to 42 U.S.C. § 265, 42 C.F.R. § 71.40, and/or Amendment and Extension of Order Under Sections 362 and 365 of the Public Health Service Act, 85 Fed. Reg. 31,503 (May 26, 2020) (hereinafter 42 U.S.C. § 265) and removals are under any other provision of law. This request will remain as an ongoing FOIA request until such a time as the agency conducts a proper and adequate search. Therefore, any records that come within the possession of the agency prior to the final response to this FOIA request are within the scope of this request. Requested records include, but are not limited to:

1. All policies and/or formal or informal guidance related to the **treatment** — including but not limited to detention, parole, transportation, and access to medical services — of:
 - a. migrants injured as a result of falling or being dropped from the US-Mexican border wall/fence or crossing the border wall/fence in another manner causing serious physical or cognitive injury, including but not limited to fractured or broken bones, spinal injuries, partial or total paralysis, concussion, and other brain injury;
 - b. migrants who Border Patrol or CBP encounters and/or apprehends within one (1) mile of the border wall/fence who require on-site medical care and/or transportation to a hospital, medical clinic, or other facility for medical care;
2. All records reflecting any data or statistics concerning the total number of people who CBP and/or ICE have encountered within one (1) mile of the US-Mexican border wall who were injured due to falling from the border wall, or possibly due to falling from the border wall, and/or who required on-site emergency medical care and/or transportation to a medical facility due to injuries related to falling from the border wall or injuries of unknown origin, within the following parameters:
 - a. On a monthly basis, from January 1, 2019 through the present;
 - b. Separately, in each of the El Centro, El Paso, and San Diego border sectors; and
 - c. Totals by each sector, and overall.
3. All records, including but not limited to significant incident reports, related to any of the incidents listed in request (2).

² The term “records” as used herein includes, but is not limited to: communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations. This request encompasses communications to or from ICE agents, or contractors’ personal accounts on platforms such as WhatsApp, Signal, or Skype if they used such accounts to communicate regarding the requested topics and/or the general topic of the FOIA request.

4. All records reflecting any data or statistics concerning the aggregate demographic breakdown of the migrants within the parameters described in request (2), including:
 - a. Nationality;
 - b. Age;
 - c. Gender;
 - d. Sex;
 - e. Race;
 - f. Primary Language;
 - g. Indigenous status;
5. All records reflecting any data or statistics concerning how many of the migrants within the parameters described in request (2) were transported to a hospital or other medical facility by:
 - a. Ambulance
 - b. Medical airlift
 - c. CBP or ICE vehicle.
6. All records reflecting any data or statistics concerning how many of the migrants within the parameters described in request (2) were treated for and/or diagnosed with any of the following conditions:
 - a. Lost mobility/inability to walk and/or stand, whether temporarily or permanently;
 - b. Bleeding and/or hemorrhage;
 - c. Severe bleeding and/or hemorrhage;
 - d. Brain injury;
 - e. Cognitive deficits;
 - f. Cranial/skull fracture
 - g. Spinal cord injury
 - h. Back injury
 - i. Miscarriage and/or loss of pregnancy
 - j. Broken or fractured bones
 - k. Monoplegia (paralysis in only one arm or leg)
 - l. Hemiplegia (paralysis affecting one arm and one leg on the same side of the body)
 - m. Paraplegia (paralysis in both of the legs)
 - n. Quadriplegia or tetraplegia (paralysis in both of the arms and both of the legs);
 - o. Any other serious or traumatic condition;
7. All records reflecting any data or statistics concerning how many of the migrants within the parameters described in request ultimately died;
8. All records reflecting any data or statistics concerning how many of the migrants within the parameters described above in request (2) were expelled or deported from the United States within:
 - a. 1 day
 - b. 2 days
 - c. 3 days

- d. 1 week
 - e. 2 weeks
 - f. 3 weeks
 - g. 1 month
 - h. 2 months
 - i. 3 months;
9. All records reflecting any data or statistics concerning how many of the migrants within the parameters described above in request (2) remain detained;
10. All records reflecting any data or statistics concerning how many of the migrants within the parameters described above in request (2) were released to a shelter, community organization, sponsor, family member, nursing or medical care facility, or other non-detained setting;
11. All records reflecting any data or statistics concerning how many of the migrants within the parameters described above in request (2) stated a fear of removal from the United States or of return to any country outside the United States, were asked if they had such fear, or otherwise were processed in such a manner as to inform them of their rights to ask for asylum or other protection from removal and were in fact given a meaningful right to ask for asylum or other protection from removal;
12. If, under applicable law, any of the information requested is considered exempt, please describe in detail the nature of the information withheld, the specific exemption or privilege upon which the information is withheld, and whether the portions of withheld documents containing non-exempt or non-privileged information have been provided.

All requested records that are responsive may be provided with personally identifying details redacted. FOIA exempts information from disclosure if that disclosure would lead to an unwarranted invasion of privacy. 5 U.S.C. § 552(b)(6). Determination of this exemption requires a balancing of the public's interest in obtaining the information against any possible invasions of privacy which would result from disclosure. *See, e.g., Wood v. FBI*, 432 F.3d 78, 87-89 (2d Cir. 2005). The Supreme Court has held that this balancing act does not preclude the disclosure of military records when names and other private details are redacted. *See Dep't of the Air Force v. Rose*, 425 U.S. 352 (1976).

Requester therefore expects the timely release of all segregable portions of otherwise exempt material.

2. REQUEST FOR WAIVER OF FEES

Requester asks that your office waive all fees and costs associated with this FOIA request. Such waiver is warranted because the disclosure of 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* 6

C.F.R. § 5.11(k)(1) (stating records “shall be furnished without charge or at a reduced rate” if the information is in the public interest not primarily in the commercial interest of the requester).

A. Disclosure of the Information Is in the Public Interest

Disclosure of information is in the public interest where it “is likely to contribute significantly to public understanding of the operations or activities of the government.” *Id.* § 5.11(g)(1)(i).

Disclosure of the requested information here will contribute significantly to public understanding of the extent and severity of human injuries related to crossing the southern border wall, as well as understanding of government operations and activities related to the processing and treatment of seriously injured migrants. Such information is of great public concern: multiple national news and research publications have published articles describing significant physical and neurological damage to migrants, including children, who have fallen from the border wall.³ The injuries reported include broken bones so severe that migrants are unable to walk, spinal injuries, paralysis, brain injury, and death. In one report, a 30-week pregnant teenage girl fell backward from the wall while trying to cross the border, resulting in her death as well as the death of her unborn child.⁴ Such stories shock the public consciousness, and the requested information is critical to assist advocates and community members in developing a plan to mitigate threats to human life and safety. The public has limited ability to assess the prevalence of these incidents because many migrants cross the wall in remote areas where only CBP and ICE agents may be present and monitoring for activity, and little is known about how the US government responds to such incidents.

To the extent that the government expels seriously injured migrants pursuant to 42 U.S.C. § 265, the public also has an interest in obtaining information about this ongoing program, which conducts removals largely outside the public view. The requested information is important to assist attorneys, immigrants, and the general public in understanding how ICE is “expelling” individuals, including those who have debilitating injuries, without consideration of humanitarian concerns or the opportunity to explain why they should be entitled to remain in the United States.

Finally, this information is also in the public interest because the southern border wall is an extremely costly taxpayer-funded project, and the public has a great interest in reviewing its impact, effectiveness, and consequences. Since FY 2017, Congress has allocated \$5.8 billion for construction of the border wall, and additional funds diverted from the Defense and Treasury

³ Wyatt L. Ramey et al., *Neurotrauma From Border Wall Jumping: 6 Years at the Mexican-American Border Wall*, 85 *Neurosurgery* 502 (2019); Ana Alderstein, *The Wall Is Literally Crippling People. Does Biden Care?*, THE DAILY BEAST, (Mar. 28, 2021, 8:26 PM), <https://www.thedailybeast.com/the-wall-is-literally-crippling-people-does-biden-care>; Chantal da Silva, *Mexican Man, 33, Dies After Falling Off Border Wall in Arizona*, NEWSWEEK, (Aug. 3, 2020, 11:35 AM), <https://www.newsweek.com/mexican-man-33-dies-after-falling-off-border-wall-arizona-1522431>.

⁴ Nick Miroff, *Pregnant woman dies after falling from border wall, a sign of migrants’ desperation*, THE WASHINGTON POST, (Mar. 12, 2020), https://www.washingtonpost.com/immigration/pregnant-woman-dies-border-wall/2020/03/12/8519752a-647b-11ea-912d-d98032ec8e25_story.html.

Departments bring the total projected cost of the project to \$16.45 billion.⁵ This price tag amounts to nearly \$20 million per mile, making it the most expensive wall of its kind anywhere in the world.⁶ As of January 2021, the government has spent \$6.1 billion on this project, but the future of the remaining allocated funds is under review by the Biden Administration.⁷ Because of the border wall's immense cost to taxpayers as well as the current scrutiny of future spending, the public has an urgent interest in understanding repercussions of the wall — including patterns of human injury and death — in order to assess the best use of remaining funds.

Requesters have the capacity, intent and demonstrated ability to disseminate the requested information to a broad cross-section of the public. AOL is a bi-national non-profit organization established to advocate for indigent refugees, migrants, and deportees in the U.S. and Mexico. AOL staff regularly provide information and analysis to the media, the general public, the U.S. Congress, and international human rights monitoring bodies.⁸ AOL has, with Haitian Bridge Alliance, co-authored and disseminated an April 2021 public report entitled *Failure to Protect: Biden Administration Continues Illegal Trump Policy to Block and Expel Asylum Seekers to Danger*.⁹ Additionally, AOL staff regularly lecture at professional and academic conferences, and universities on immigration-related issues.¹⁰ Finally, AOL actively shares and disseminates

⁵ Elliot Spagat, *Biden halts border wall building after Trump's final surge*, ASSOCIATED PRESS, (Jan. 22, 2021), <https://apnews.com/article/biden-inauguration-joe-biden-donald-trump-oceans-coronavirus-pandemic-bc664278ac096e6ff878116034ec06bb>.

⁶ John Burnett, *\$11 Billion And Counting: Trump's Border Wall Would Be The World's Most Costly*, NPR, (Jan 19, 2020, 7:25 AM), <https://www.npr.org/2020/01/19/797319968/-11-billion-and-counting-trumps-border-wall-would-be-the-world-s-most-costly>.

⁷ Spagat, *supra* note 4; Mia Jankowicz, *The Biden administration missed its own deadline for working out what to do with Trump's half-finished border wall*, INSIDER, (Mar. 22, 2021, 1:24 PM), <https://www.businessinsider.com/-biden-admin-missed-60-day-deadline-plan-trumps-border-wall-2021-3>.

⁸ See e.g. *Amnesty Response to Reports of Surveillance on Journalists and Immigration Advocates on the US-Mexico Border*, Amnesty International, Mar. 17, 2019, <https://www.amnestyusa.org/press-releases/amnesty-response-to-reports-of-surveillance-on-journalists-and-immigration-advocates-on-the-us-mexico-border/>; *"Like I'm Drowning" Children and Families Sent to Harm by the US 'Remain in Mexico' Program*, Human Rights Watch, Jan. 6, 2021, <https://www.hrw.org/report/2021/01/06/im-drowning/children-and-families-sent-harm-us-remain-mexico-program>;

Hearing: Policy Recommendations on Haiti for the Biden Administration, U.S. House of Representatives Committee of Foreign Affairs, Mar. 12, 2021, <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=111312>

⁹ *The Invisible Wall: Title 42 and its Impact on Haitian Migrants*, Haitian Bridge Alliance, Undocublack Network, and Quixote Center, Mar 25, 2021, <https://www.quixote.org/wp-content/uploads/2021/03/The-Invisible-Wall.pdf?fbclid=IwAR2K5MNN2AcFm7ipI9UtcUA8qa0Oeh4VmMyR7JADdjyqIkA9BbDtjZeAKyo>; *Failure to Protect: Biden Administration Continues Illegal Trump Policy to Block and Expel Asylum Seekers to Danger*, Human Rights First, Haitian Bridge Alliance, Al Otro Lado, Apr. 2021, <https://www.humanrightsfirst.org/sites/default/files/FailuretoProtect.4.20.21.pdf>

¹⁰ 2021 Journal of the Legal Profession Virtual Symposium, University of Alabama, Mar. 26, 2021, <https://www.law.ua.edu/programs/symposiums/2021-journal-of-the-legal-profession-virtual-symposium/>; *Speaker: Nicole Ramos of the Al Otro Lado Border Rights Project*, Drexel University, Mar. 20, 2019, <https://drexel.edu/provost/news-events/academic-events/details/?eid=22930&iid=65218>; Jennifer Koh Moderates Panel at Association of American Law Schools Annual Conference; Western State College of Law; Jan. 8, 2018, <https://westernstatefacultyblog.wordpress.com/2018/01/08/jennifer-koh-moderates-panel-at-association-of-american-law-schools-annual-conference/>; *Building Unity in the Mass Incarceration Crisis: Centering Black Migrant Experiences in the Fight for Abolition*, Harvard Immigration Initiative, May 14, 2020, <https://immigrationinitiative.harvard.edu/event/building-unity-mass-incarceration-crisis-centering-black-migrant-ex>

information through their various social media accounts, which have thousands of followers, including many immigration reporters.¹¹

AOL will analyze and share the information obtained through this FOIA request via its social media accounts and other publicly accessible fora. If the responsive information is voluminous, AOL also will publish a summary analysis of such information and will disseminate that summary through their established networks. Finally, AOL has regular contact with national and international print and news media and plans to share information gleaned from FOIA disclosures with interested media.

B. Disclosure of the Information Is Not Primarily in the Commercial Interest of Requesters

Second, disclosure of the requested records is not primarily in Requester's commercial interest. Requester AOL is a 501(c)(3) not-for-profit organization. AOL seeks the requested information for the purpose of disseminating it to members of the public who have access to AOL's public websites, public social media feeds, and other free publications at no cost, for immigrants' rights advocacy, and not for the purpose of commercial gain.

Accordingly, disclosure in this case meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it is liberally construed in favor of waivers for noncommercial requesters." (internal quotation omitted)).

A. AOL is a Representative of the News Media

AOL also requests a waiver of search fees on the grounds that AOL qualifies as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Specifically, AOL meets the statutory and regulatory definitions of "representative[s] of the news media" because they "devise[] indices and finding aids," and "distributes the resulting work to the public." *See Nat'l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Courts have applied this definition broadly, finding it to include organizations with websites that "do[] not resemble a 'news medium' in any traditional sense" but instead publish information solely to generate publicity for the organizations and their clients. *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 133 F. Supp. 2d 52, 53 (D.D.C. 2000). Courts have also found that a variety of other organizations are "representatives of the news media," even though they engage in litigation and lobbying activities in addition to disseminating information and educating the public. *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Nat'l Sec. Archive*, 880 F.2d at 1387; *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *Elec. Privacy Info. Ctr. v. Dep't of Defense*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding that a non-profit public

[periences-fight](https://www.uchastings.edu/event/diversity-in-legal-thought-and-practice-speaker-series/); *Diversity in Legal Thought and Practice Speaker Series: Plight of Haitian Immigrant Women*, UC Hastings, Mar. 17, 2021, <https://www.uchastings.edu/event/diversity-in-legal-thought-and-practice-speaker-series/>.

¹¹ *See e.g.* https://twitter.com/AlOtroLado_Org; https://www.instagram.com/alotrolado_org/?hl=en; <https://www.facebook.com/AlOtroLadoOrg/>; <https://alotrolado.org/>; <https://twitter.com/haitianbridge?lang=en>; <https://www.facebook.com/haitianbridge/?fref=ts>; <https://www.instagram.com/haitianbridge/?hl=en>

interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA).

AOL meets this definition of a “representative of the news media” because AOL provides information to both the public and its broad client base, has a firm intention of expanding its dissemination activities by publishing written materials for its client base in the future, and publishing information in public reports. Disseminating information to the public is a critical component of AOL’s work. AOL gathers information about issues affecting immigrants, uses editorial skills to turn that information into a form that can be easily accessed by the public, and disseminates that information. For instance, AOL regularly makes staff available for interviews with other media outlets so as to better inform the public about urgent issues affecting immigrants.¹² In 2019, AOL’s Litigation Director also gave a TED Talk informing the public about current immigration policies.¹³ As detailed in subsection A, *supra*, AOL has authored and disseminated reports on immigration issues for public consumption. In addition, AOL has compiled and published complaints detailing rights violations in government custody.¹⁴ AOL also regularly disseminates information to over fifty-seven thousand through its social media accounts.¹⁵

In addition, AOL also distributes targeted information to its client base. For instance, AOL gathers information about legal and policy developments affecting immigrants and organizes this information into legal orientation for asylum-seekers.¹⁶ AOL currently working to expand its information-dissemination activities by creating and distributing print materials to inform asylum-seekers of their legal rights. AOL thus has a “firm intention” to expand its activities as a representative of the news media in the future, supporting a finding that it qualifies as such a representative. *See Ctr. For Pub. Integrity v. U.S. Dep’t of Health & Human Servs.*, No. CIV.A.06 1818 JDB, 2007 WL 2248071, at *6 (D.D.C. Aug. 3, 2007) (discussing how a “firm intention” of future publications can cure an otherwise inadequate showing that an entity is a representative of the news media). Finally, as detailed in subsection A above, AOL collaborates with other organizations to provide information for public immigration reports. To do this, AOL must gather raw material, edit it into a form that is useful to the publishing

¹² Erika Pinheiro on situation at US-Mexico border, BBC World News America; Mar. 5, 2021, <https://www.bbc.co.uk/programmes/p098w8t2?fbclid=IwAR1QsMo8wQ4zaNHkdgn2mmXnyMd1U1SYFWm90GdaXEU8QsjXSzDkCdZ0T6Y>; Camilo Montoya-Galvez and Nicole Sganga, *Biden says he wants to ramp up expulsions of migrant families, but most are being allowed to stay*, CBS News, Mar. 26, 2021, <https://www.cbsnews.com/news/immigration-migrant-families-at-border-allowed-to-stay-under-biden/>; *U.S. Extends Temporary Protected Status For Thousands Of Haitian Migrants*, NPR, May 24, 2021, <https://www.nprillinois.org/post/us-extends-temporary-protected-status-thousands-haitian-migrants#stream/0>.

¹³ *What’s really happening at the US-Mexico border — and how we can do better*, TED, Sep. 2019, https://www.ted.com/talks/erika_pinheiro_what_s_really_happening_at_the_us_mexico_border_and_how_we_can_do_better.

¹⁴ *Black, Pregnant, and Detained*, Mar. 4, 2021, RAICES, <https://www.raicetexas.org/2021/03/04/pregnant-and-detained/>; *Hundreds of Mississippi Immigrants Endangered in Adams County Detention Center COVID Outbreak*, Mississippi Center for Justice, May 19, 2021, <https://mscenterforjustice.org/hundreds-of-mississippi-immigrants-endangered-in-adams-county-detention-center-covid-outbreak/>.

¹⁵ *See e.g.* https://twitter.com/AlOtroLado_Org; https://www.instagram.com/alotrolado_org/?hl=en; <https://www.facebook.com/AlOtroLadoOrg/>; <https://alotrolado.org/>;

¹⁶ Ed Vulliamy, *‘Work that never ends’: the lawyers fighting for migrants stuck at the border*, The Guardian, Feb. 12, 2019, <https://www.theguardian.com/world/2019/feb/12/al-otro-lado-asylum-seekers-lawyers-mexico-us>; <https://www.facebook.com/haitianbridge/photos/a.235687976831650/1342355276164909/?type=3>

organization, and distribute that edited information to organizations that can incorporate it into published materials.

As a representative of the news media, AOL plans to analyze, publish, and disseminate the information gathered through this request to the public. The records requested are not sought for commercial use and AOL plans to publicly disseminate the information at no cost.

3. REQUEST FOR EXPEDITED PROCESSING

Finally, Requester asks that this request be processed on an expedited basis. *See* 5 U.S.C. § 552(a)(6)(E) (mandating that agencies establish expedited processing regulations); 6 C.F.R. § 5.5(e) (DHS' expedited processing regulations). This request qualifies for such expedited processing under three of the four scenarios laid out in 6 C.F.R. § 5.5(e)(1)(i)-(iv).

First, any delay in disclosing the requested information “could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” 6 C.F.R. § 5.5(e)(1)(i); *see also* 5 U.S.C. § 552(a)(6)(E)(v)(I). There are multiple reported instances — as recent as April 8, 2021 — of migrants who have died after falling from the border wall.¹⁷ Many other reports document severe injuries, including neurological damage, paralysis, and broken bones that may impact these individuals' mobility for the rest of their lives.¹⁸ Despite these serious injuries, some migrants describe concerning treatment by CBP officers, such as officers commanding them to walk on broken bones or crawl into CBP vehicles, and expelling them to Mexico instead of bringing them to a hospital for medical treatment.¹⁹ To the extent that injured migrants' health outcomes are impacted by US government policies regarding the treatment of those individuals — including transportation, detention, and access to medical care — these policies could potentially pose an imminent contributing threat to the lives and physical safety of injured migrants. Moreover, public understanding of the scope and nature of wall-related injuries is critical for community members and advocates, including the Requester, to engage in potentially lifesaving crisis response and preventive advocacy.

Second, delay in disclosing the requested information could lead to “[t]he loss of substantial due process rights.” 6 C.F.R. § 5.5(e)(1)(iii). U.S. immigration law clearly states that “any alien who is physically present in the United States . . . irrespective of such alien's status, may apply for asylum in accordance with this section.” 8 U.S.C. § 1158(a)(1). However, reports indicate that the US government expels migrants to Mexico despite their claims of asylum and regardless of serious ongoing physical injuries related to falling from the border wall. For example, Pedro Gomez, a Guatemalan asylum-seeker, broke both ankles when he fell from the border wall and

¹⁷ *da Silva, supra* note 2; *Miroff, supra* note 3; René Kladzyk, *A woman was found dying at the base of the border wall. No one appears to be investigating her death.*, EL PASO MATTERS, (Jul. 15, 2020), <https://elpasomatters.org/-2020/07/15/a-woman-was-found-dying-at-the-base-of-the-border-wall-no-one-appears-to-be-investigating-her-death/>; EL TELÉGRAFO, *Migrante ecuatoriano falleció por caer del muro fronterizo entre Estados Unidos y México*, (Apr. 8, 2021, 10:53 PM), <https://www.eltelegrafo.com.ec/noticias/actualidad/44/migrante-ecuatoriano-muerte-muro-frontera>

¹⁸ *Ramey et al., supra* note 2; *Alderstein, supra* note 2.

¹⁹ *Corchado, supra* note 1.

the CBP agents who found him expelled him to Mexico without any opportunity to be heard regarding his claims of asylum or any access to medical treatment.²⁰ Such treatment not only offends human dignity and humanitarian concerns, but also violates migrants' substantive due process rights to seek asylum. These practices also violate migrants' substantive rights to access necessary medical care. The government is required to affirmatively provide individuals in its custody with medical care, reasonable safety, and protection from harm, and a failure to do so is a deprivation of migrants' due process rights. *See DeShaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189, 200 (1989). If the government's failure to provide adequate medical safeguards for immigrants deprives them of their due process rights, it is critical to release such records immediately so that Requester can seek to protect injured migrants' rights through public education, advocacy, and other means.

Finally, this request seeks records on "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 6 C.F.R. § 5.5(e)(1)(iv). As noted above, the public and media have shown a "widespread and exceptional . . . interest in" the U.S. government's treatment of migrants injured or killed by falling from the border wall, as evidenced by multiple national-level publications on this matter. Reports that CBP and/or ICE officers expel migrants with severe injuries (including "excruciating pain" and the inability to walk²¹), without providing access to medical care and in violation of migrants' substantive due process rights, casts doubt on the government's integrity in responding to humanitarian crises and warrants heightened public scrutiny.

4. Certification

Requester certifies that the foregoing is true and correct to the best of our knowledge and belief. *See* 6 C.F.R. § 5.5(e)(3).

We appreciate your prompt attention to this request. In accordance with DHS regulations, we expect to receive a decision on our request for expedited processing within 10 calendar days. *See* 6 C.F.R. § 5.5(e)(4). We also expect a written response to our FOIA request within 20 business days. 5 U.S.C. § 552(a)(6)(A)(i). We reserve the right to appeal a decision to deny a waiver of fees, withhold any records, or deny expedition of this request. If this request is denied in whole or in part, we ask that any deletions or omissions be justified by reference to specific exemptions of the FOIA. We expect the release of all segregable portions of otherwise exempt material. If you have any questions, do not hesitate to contact the undersigned by telephone or email.

Sincerely,



Jeremy Jong
Al Otro Lado
jeremy@alotrolado.org
(504) 475-6728

²⁰ *Id.*

²¹ *Id.*