

January 21, 2022

SENT VIA EMAIL TO: foia@americanoversight.org

Austin Evers
Executive Director
American Oversight
1030 15th Street, NW
Suite B255
Washington, DC 20005

Re: **2020-HQFO-01680**

Dear Mr. Evers:

This is the final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated August 20, 2020, and received by this office on August 20, 2020. You are seeking records reflecting any analyses—including, but not limited to, memoranda, reports, emails, or other informal communications—supporting or underlying the suspension of certain categories of visas announced in the Presidential Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak, published at Presidential Proclamation No. 10052, 85 Fed. Reg. 38263 (June 22, 2020), and the date range for the records search is from March 15, 2020 to August 24, 2020.

You also submitted this same request to the U.S. Citizenship and Immigration Services (USCIS) FOIA Office. That component will be conducting their own search for responsive records and will respond to you directly.

A search of DHS Office of the Chief Information Officer, Office of General Counsel and the Office of the Executive Secretary for records responsive to your request produced 57 which have been determined to be responsive to your request. After review of those documents, I have determined that portions of 11 pages will be partially releasable pursuant to Exemptions (b)(5) and (b)(6) of the FOIA as described below, and 46 pages been withheld in their entirety pursuant to Exemptions (b)(5) of the FOIA as described below.

FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I determined that the responsive documents qualify for protection under:

- **Deliberative Process Privilege**

The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

- **Attorney-Client Privilege**

The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information. The attorney-client privilege is not limited to the context of litigation.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the balancing test.

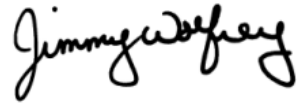
You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to: Privacy Office, Attn: FOIA Appeals, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0655, Washington, D.C. 20528-0655, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS FOIA regulations are available at www.dhs.gov/foia.

If you need any further assistance or would like to discuss any aspect of your request, you may send an e-mail to foia@hq.dhs.gov, call 202-343-1743 or toll free 1-866-431-0486, or you may contact our FOIA Public Liaison in the same manner and refer to **2020-HQFO-01680**.

Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at

ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in black ink, appearing to read "Jimmy Wolfrey". The signature is fluid and cursive, with the first name "Jimmy" and last name "Wolfrey" clearly distinguishable.

Jimmy Wolfrey
Senior Director, FOIA Operations and Management
(Acting)

Enclosure(s): Responsive Documents 11 pages



Homeland
Security

Attorney-Client Privileged Communication

MEMORANDUM FOR THE ACTING SECRETARY

THROUGH: Kenneth T. Cuccinelli II
SENIOR OFFICIAL PERFORMING
THE DUTIES OF THE DEPUTY SECRETARY
GEORGE M FISHMAN
Digitally signed by
GEORGE M FISHMAN
Date: 2020.05.01
14:49:27 -04'00'

FROM: George Fishman FISHMAN
DEPUTY GENERAL COUNSEL
(b)(6)
(b)(6)
ASSOCIATE GENERAL COUNSEL FOR
REGULATORY AFFAIRS

SUBJECT: (b)(5)

(b)(5)



Homeland
Security

Privileged and Confidential
Attorney-Client Communication

MEMORANDUM FOR THE ACTING SECRETARY

THROUGH: Kenneth T. Cuccinelli II
SENIOR OFFICIAL PERFORMING
THE DUTIES OF THE DEPUTY SECRETARY

FROM: George Fishman
DEPUTY GENERAL COUNSEL

GEORGE M
FISHMAN

Digitally signed by
GEORGE M FISHMAN
Date: 2020.05.28
16:10:39 -04'00'

(b)(6)

(b)(6)

ASSOCIATE GENERAL COUNSEL FOR
REGULATORY AFFAIRS

SUBJECT: (b)(5)

(b)(5)

Decision Document

USCIS Final Rule: Asylum Application, Interview, and Employment Authorization for Applicants

(b)(6)

Approve submission to the Office of Management and Budget.

Disapprove submission to the Office of Management and Budget.

Modify per further instructions.

Needs discussion.

MAY 29 2020

Date.

Department of Homeland Security

DHS Delegation Number: # 07120

Revision Number: 00

Issue Date: April 23, 2020

**DELEGATION TO THE CHIEF OPERATING
OFFICER AND DEPUTY COMMISSIONER OF U.S.
CUSTOMS AND BORDER PROTECTION FOR THE
EXERCISE OF AUTHORITY UNDER §§ 2(b)(vi), (ix)
and 3(a) OF THE PRESIDENT'S PROCLAMATION
ENTITLED "SUSPENDING ENTRY OF IMMIGRANTS
WHO PRESENT RISK TO THE U.S. LABOR
MARKET DURING THE ECONOMIC RECOVERY
FOLLOWING THE COVID-19 OUTBREAK"**

I. Purpose

This delegation vests authority in the Chief Operating Officer and the Deputy Commissioner of U.S. Customs and Border Protection to exercise the authority granted to the Secretary under §§ 2(b)(vi), (ix) and 3(a) of the President's Proclamation entitled "Suspending Entry of Immigrants who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak" (April 22, 2020) ("Proclamation").

II. Delegation

A. Subject to my oversight, direction, and guidance, I hereby delegate to the Chief Operating Officer and the Deputy Commissioner of U.S. Customs and Border Protection, the authority, on a case-by-case basis, to make the determinations found in § 2(b)(vi) and (ix) of the Proclamation to authorize the entry into the United States of the following categories of aliens:

- (1) any alien whose entry would further important United States law enforcement objectives, based on a recommendation of the Attorney General or his designee; or
- (2) any alien whose entry would be in the national interest.

B. Subject to my oversight, direction, and guidance, I further hereby delegate to the Chief Operating Officer and the Deputy Commissioner, U.S. Customs and Border Protection the authority to establish standards and procedures to ensure the application and implementation of the Proclamation as it applies to the entry of aliens pursuant to § 3(a) of the Proclamation.

III. Re-delegation

Unless re-delegation is otherwise prohibited by law, the authorities delegated herein may be re-delegated in writing to appropriate subordinate officials of U.S. Customs and Border Protection, but in no event may this authority be delegated to an official serving in a position less senior than the Senior Executive Service or its equivalent.

IV. Authorities

- A. Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), as amended (6 U.S.C. § 112).
- B. Title 8, U.S.C. Section 1103, "Powers and duties of the Secretary, the Under Secretary, and the Attorney General" [Immigration and Nationality Act, § 103].
- C. Title 8, U.S.C. Section 1182, "Inadmissible aliens" [Immigration and Nationality Act, § 212].
- D. Title 8, U.S.C. Section 1357, "Powers of immigration officers and employees" [Immigration and Nationality Act, § 287].
- E. The President's Proclamation entitled "Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market during the Economic Recovery Following the COVID-19 Outbreak" (April 22, 2020).
<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/>

V. Office of Primary Interest

The Office of the Commissioner of U.S. Customs and Border Protection is the office of primary interest in this delegation.

(b)(6)

Chad F. Wolf
Acting Secretary

APR 24 2020
Date



**Homeland
Security**

***Attorney-Client Communication
Deliberative and Predecisional***

MEMORANDUM FOR THE ACTING SECRETARY

FROM: Chad Mizelle CRM
Senior Official Performing the Duties of the
General Counsel

(b)(5)

(b)(5)

**DELEGATION TO THE U.S. CUSTOMS AND
BORDER PROTECTION TO EXERCISE §§ 2(a)(xi-
xii) and 3(c) AUTHORITY OF THE PRESIDENT'S
MAY 24, 2020 PROCLAMATION SUSPENDING
ENTRY OF PERSONS WHO POSE A RISK OF
TRANSMITTING 2019 NOVEL CORONAVIRUS**

I. Purpose

This delegation vests authority in the Commissioner, Chief Operating Officer, and the Deputy Commissioner of U.S. Customs and Border Protection to exercise the authority granted to the Secretary under §§ 2(a)(xi-xii) and 3(c) of the President's Proclamation entitled "Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus" (May 24, 2020, as amended on May 25, 2020) ("Proclamation").

II. Delegation

A. Subject to my oversight, direction, and guidance, I hereby delegate to the Commissioner, Chief Operating Officer, and the Deputy Commissioner of U.S. Customs and Border Protection, the authority, on a case-by-case basis, to make the determinations found in § 2(a)(xi-xii) of the Proclamation to authorize the entry into the United States of the following categories of aliens:

- (1) any alien whose entry would further important United States law enforcement objectives, based on a recommendation of the Attorney General or his designee;
- or
- (2) any alien whose entry would be in the national interest.

B. Subject to my oversight, direction, and guidance, I further hereby delegate to the Commissioner, Chief Operating Officer and the Deputy Commissioner, U.S. Customs and Border Protection the authority to establish standards and procedures to ensure the application and implementation of the Proclamation as it applies to the entry of aliens pursuant to § 3(c) of the Proclamation.

III. Re-delegation

Unless re-delegation is otherwise prohibited by law, the authorities delegated herein may be re-delegated in writing to appropriate subordinate officials of U.S. Customs and

Border Protection, but in no event may this authority be delegated to an official serving in a position less senior than the Senior Executive Service or its equivalent.

IV. Authorities

- A. Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), as amended (6 U.S.C. § 112).
- B. Title 8, U.S.C. Section 1103, "Powers and duties of the Secretary, the Under Secretary, and the Attorney General" [Immigration and Nationality Act, § 103].
- C. Title 8, U.S.C. Section 1182, "Inadmissible aliens" [Immigration and Nationality Act, § 212].
- D. Title 8, U.S.C. Section 1357, "Powers of immigration officers and employees" [Immigration and Nationality Act, § 287].
- E. The President's Proclamation entitled "Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus" (May 24, 2020).
<https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-certain-additional-persons-pose-risk-transmitting-novel-coronavirus/>, as amended on May 25, 2020:
<https://www.whitehouse.gov/presidential-actions/president-amendment-proclamation-president-may-24-2020/> .

V. Office of Primary Interest

The Office of the Commissioner of U.S. Customs and Border Protection is the office of primary interest in this delegation.

(b)(6) (b)(6) Chad F. Wolf Acting Secretary	5/29/20 Date
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**Homeland
Security**

***Attorney-Client Communication
Deliberative and Predecisional***

MEMORANDUM FOR THE ACTING SECRETARY

FROM: Chad Mizelle
Senior Official Performing the Duties of the
General Counsel

(b)(5)



**Homeland
Security**

March 16, 2020

**AMENDED NATIONAL INTEREST EXEMPTION
FROM MARCH 11 AND 14 PRESIDENTIAL PROCLAMATIONS SUSPENDING
ENTRY OF IMMIGRANTS AND NONIMMIGRANTS OF CERTAIN ADDITIONAL
PERSONS WHO POSE A RISK OF TRANSMITTING 2019 NOVEL CORONAVIRUS**

On March 13, 2020, I determined that the entry of aliens already then aboard cruise ships destined for the United States and subject to the entry suspension of Proclamation 9993, issued March 11, 2020—which includes/involves aliens who had been physically present in the Schengen Area within the 14-day period preceding their entry or attempted entry into the United States—were exempt from the application of the Proclamation as it was in the national interest to exempt these individuals.

On March 14, 2020, the President issued a Proclamation suspending the entry of aliens who were physically present within the United Kingdom or the Republic of Ireland during the 14-day period preceding their entry or attempted entry into the United States.

Because the March 14, 2020 Proclamation contains the same “national interest” exception as Proclamation 9993, and because the factors underlying my national interest determination of March 13, 2020, apply with equal force to cruise ship passengers who had been physically present within the United Kingdom or the Republic of Ireland during the 14-day period preceding their entry or attempted entry into the United States, I have determined to apply this national interest exception to these aliens as well. The factors underlying this determination include the safety of the cruise ship passengers otherwise subject to the entry suspension, the potential impacts to Department operations, and the health and safety of the Department’s frontline personnel. Further, individuals from the UK and Ireland are passengers aboard the same cruise ships as those from the Schengen Area, and providing all such passengers the same opportunity to return safely and efficiently to their home countries is in the national interest of the United States.

Accordingly, I hereby amend my March 13, 2020, national interest exemption to apply to all aliens now onboard cruise ships returning to the United States and who would otherwise be subject to Proclamation 9993 or the President’s March 14, 2020 Proclamation. As stated in my March 13, 2020, determination, this exemption will permit affected aliens to enter the United States for the purpose of returning to their home countries and may not be utilized to extend their stay in the United States.

Accordingly, unless otherwise specifically authorized, Department officials will permit these aliens to enter the United States so that they may arrange for their prompt return to their home countries. Department officials will also work closely with Centers for Disease Control and Prevention officials to ensure that these aliens are provided appropriate guidance for taking the appropriate health measures until boarding an aircraft home. This amended exemption shall remain in effect through March 28, 2020.

(b)(6)

Chad F. Wolf (b)(6)
Acting Secretary