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CENTER FOR CONSTITUTIONAL RIGHTS

Communique on the arbitrary detention of thousands of Afghan refugees

Submitted December 8, 2023

The Center for Constitutional Rights works with communities under threat to fight for justice and liberation through litigation, advocacy, and strategic communications. Since 1966, the Center for Constitutional Rights has taken on oppressive systems of power, including structural racism, gender oppression, economic inequity, and governmental overreach. The Center for Constitutional Rights has special consultative status with ECOSOC.

Communique to Working Group on Arbitrary Detention Ms. Priya Gopalan (Chair Rapporteur), Ms. Ganna Yudkivska, Mr. Mumba Malila, Ms. Miriam Estrada-Castillo, Mr. Matthew Gillett; Special Rapporteur on the human rights of migrants Mr. Gehad Madi; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Dr. Alice Jill Edwards; and Special Rapporteur on violence against women and girls Ms. Reem Alsalem

The Center for Constitutional Rights, an ECOSOC legal and advocacy organization based in the United States, writes to you to raise our concerns regarding the arbitrary detention of thousands of Afghan refugees at the direction, control, coordination, or knowledge of the U.S. government and potential partners, such as foreign governments and private contractors. The Afghan refugees who are the subject of this Communique were evacuated and relocated amidst the Taliban takeover of and the United States' withdrawal from Afghanistan in August 2021, and subsequently detained at U.S.-affiliated or -coordinated processing sites overseas ("third country Sites" or "Sites") while their refugee, humanitarian parole, or other pending applications for entry into the United States were, or continue to be, processed and decided.

SUMMARY

On March 31, 2023, concerned about reports of questionable, secretive detention determinations; inadequate processes to achieve release from detention facilities; and poor conditions in those facilities, including lack of access to counsel, journalists, or other visitors and inadequate medical care, the Center for Constitutional Rights sought records including policies and data relating to the continued detention of Afghan civilians, as well as the health and safety conditions of their detention under the United States' Freedom of Information Act ("FOIA"), 5 U.S.C. §§ 552 *et seq.* See Ex. 1, FOIA Request on behalf of the Center for Constitutional Rights, dated March 31, 2023 (hereinafter "the Request"). Specifically, the Request sought records relating to, among other things (i) the number and demographic information of the Afghan evacuees detained at these Sites; (ii) policies and procedures used to decide which Afghans would be diverted to these Sites; (iii) policies and procedures used to determine whether and when a detained individual can leave the Sites to enter the United States or be sent elsewhere; and (iv) several categories of records relating to the locations and operations of, and increasingly harsh conditions at, each of these Sites. *See* Ex. 1, 5-8.¹

The Center for Constitutional Rights sought these records because, over two years after the U.S. withdrawal from Afghanistan and the ensuing humanitarian and human rights crisis, the lack of information by the United States and its partners are causing further harm to Afghan refugees. Accordingly, human rights and civil society organizations and the public at large have a compelling and urgent need to information regarding U.S. executive agency practices, policies, knowledge of, or role in the continued detention of thousands of Afghan civilians, the processes employed to determine whether and how they will be resettled safely, and the possibility that some

¹ The Center for Constitutional Rights filed a lawsuit on August 30, 2023, seeking declaratory, injunctive, and other appropriate relief to compel the U.S. Department of Defense, U.S. Department of State, and U.S. Department of Homeland Security to produce agency records that have been impropriety withheld from Center for Constitutional Rights.

of these civilians are being forced to repatriate to Afghanistan. Information about one detention site has been so concealed, despite concerns about harsh conditions there, that residents have come to call it “Little Guantánamo.” Further, the human rights and civil society organizations have a time-sensitive need to obtain accurate and up-to-date information about the United States’ practices, policies, knowledge of, or role in these matters, not only to inform their involvement in advocacy around executive policies on immigration and refugee processing, but to meaningfully participate in ongoing discussions regarding the treatment of Afghan civilians by the U.S. government, well after the war in Afghanistan has ended.

The U.S. government, and in particular, the U.S. Departments of Defense, State, and Homeland Security have unjustifiably, and against U.S. statutory obligations, failed to produce information for over eight months. The Center for Constitutional Rights is now requesting an urgent investigation by the Special Procedures mandate holders about ongoing U.S. government activity, which is endangering the lives and well-being of thousands of vulnerable Afghan refugees.

BACKGROUND

The Dangerous, Uncertain, and Largely Unknown Conditions of Afghans in U.S. Detention

A. The Evacuation and Subsequent Detention of Afghan Civilians in U.S.-Affiliated Sites

1. Following the August 2021 takeover of Afghanistan by the Taliban and the end of the nearly two decades-long war and occupation by the United States, over 124,000 Afghan civilians were evacuated. Many evacuees faced the threat of being kidnapped, disappeared, or murdered by Taliban forces because of their status as women’s rights activists, journalists, protestors, or their association with the U.S. or former Afghan governments.

2. Evacuees were sent to several processing Sites around the world where they were held, medically screened, vetted for “security purposes” and processed in order to receive visas or parole into the United States. For thousands of evacuees, this process was never completed and they remain stranded in these Sites. Some have reportedly been repatriated back to Afghanistan, where they would face grave danger.

3. Other than limited reporting from humanitarian organizations and some journalists, little is known about the policies governing these Sites or the conditions therein. What has been discovered suggests that the United States and its partners have enacted arbitrary, contradictory, and dangerous procedures, resulting in thousands of evacuees languishing in Sites characterized by deteriorating conditions.

4. The United States has obfuscated efforts to learn more about its role in the operation of these Sites, including one site in Abu Dhabi called “Emirates Humanitarian City” or EHC. In a March 2023 letter to Human Rights Watch, the Department of State’s (“DOS”) Office of the Coordinator for Afghan Relocation Efforts (“CARE”) denied any U.S. government involvement in maintaining EHC in Abu Dhabi, stating that “Emirati officials solely manage, control and

operate the EHC.”² This, however, is contrary to reports that U.S. officials visit Sites, on average, twice a week,³ and the DOS’s February 2023 acknowledgement that the U.S. government is working closely with UAE partners to address concerns with EHC. The United States has a role in negotiating, initiating, coordinating, or otherwise has knowledge of these Sites and the Center for Constitutional Rights and the public have a statutory right to information about their government’s activities in them.

5. To date, the United States has failed to address the reported inhumane conditions or, to provide the Center for Constitutional Rights or more broadly, the public, including stakeholders, advocates, community members, or human and civil rights organizations with the information necessary to address what by all accounts is a humanitarian and human rights crisis. The Center for Constitutional Rights requests an investigation by the Special Procedures mandate holders to rectify this information deficit and to bring to light the U.S.’ actions resulting in the arbitrary detention of thousands of Afghan evacuees.

B. Concerns Abound for U.S. Detention Practices of Evacuees

6. In its advocacy on behalf of Afghan refugees in EHC, Human Rights Watch has called out the utter lack of transparency around the operation of these Sites and has called on the U.S. government to ensure that due process is respected and humane conditions are maintained.⁴

7. Little to no public information exists regarding the methodology of the U.S. Departments of Defense, State, and Homeland Security for identifying who they will detain or their rationale for why such detention is necessary. There is merely sparse reporting about vague “security flags” contributing to at least the continued detention of a portion of the population. Nor is there information available about what, if any, “fair and individualized processes” exist for those detained to “assess[] their legal status and protection needs.”⁵ Other reports indicate inconsistent, disparate, and misleading practices and policies.⁶

² Human Rights Watch, *UAE: Arbitrarily Detained Afghans Stuck in Limbo* (March 15, 2023), <https://www.hrw.org/news/2023/03/15/uae-arbitrarily-detained-afghans-stuck-limbo>.

³ Haley Britzky, *Thousands of Afghans escaped the Taliban with the help of private veteran groups. Today, many remain in limbo, held in a compound in the UAE*, CNN (May 7, 2023), <https://edition.cnn.com/2023/05/07/politics/afghan-evacuees-stuck-uae-private-evacuation/index.html>.

⁴ Human Rights Watch, *supra* note 2.

⁵ *Id.*

⁶ For example, in June 2023, reports found that more than 3,200 evacuated Afghan civilians remain in Albania, nearly two years after their arrival, and are subjected to inconsistent, disparate, confusing, illusive, and arbitrary processes. Civil society organizations continue to be confused and lack important information regarding the situation of these Afghan civilians. L Lazar Semini, *After escaping the Taliban, hundreds of Afghans languish in Albania in a prolonged US visa process*, Associated Press (June 18, 2023), <https://apnews.com/article/albania-afghans-us-visa-process-wait-9d10f8cd031ac8150727a2ac433d7689>. See generally U.S. Committee for Refugees and Immigrants, *Domestic and International Intermediary Sites in Operation Allies Welcome Phase I and II: National Conference Center, Save Havens, and Lily-Pads* (June 2022), available at https://refugees.org/wp-content/uploads/2022/06/Domestic-and-International-Intermediary-Sites-in-OAW-Phase-I-and-II_fnl_.pdf. Further, reports identified Rhine Ordnance Barracks and U.S.-controlled Ramstein Air Base in Germany as other Sites Afghan evacuees have been held at Ramstein Air Base, *Ramstein completes role in historic humanitarian airlift* (Nov. 2, 2021), available at <https://www.ramstein.af.mil/News/Article-Display/Article/2829699/ramstein-completes-role-in-historic-humanitarian-airlift/>.

8. The lack of information about how individuals were selected for continued detention at these Sites raises especially acute concerns about due process violations and discriminatory treatment of a predominantly Muslim population that has pervaded U.S. government policy since 9/11. The United States has long defined so-called security concerns in ways that narrowly cohere with real or perceived Muslim identity along its borders and sphere of influence. Among many other examples, this has resulted in policies like the Muslim and African Bans⁷ which continue to keep people out of the United States based on nothing more than their Muslim identity. The failure to provide any information about how these evacuees came to be at the Sites for so long raises important questions about discrimination on the basis of race, religion or national origin, which impacted Afghan refugees, along with human rights and civil society organizations, advocates, and the public have an interest in understanding.

9. The scarcity of information about U.S. practices also raises pressing questions about changing policies with significant impacts on the well-being of Afghan refugees. For example, in Abu Dhabi, “Afghans who were evacuated to the UAE before Aug[ust] 31, 2021, were effectively guaranteed permission to enter the U.S. if they passed certain medical and security checks.”⁸ It was reported that those Afghan nationals evacuated before the August 31, 2023 U.S. withdrawal deadline were predominantly those associated with the United States in some way, while, anyone who arrived in the UAE after this deadline, rather than be granted the same humanitarian relief as those who came before, were required to prove qualification for a U.S. immigration benefit.⁹ In other words, individuals diverted to Abu Dhabi’s EHC since the withdrawal, based on an unknown process, are now subjected to an exit process that predictably results in a much longer detention that has already stretched on for years with no end in sight. The reasons for such consequential policy changes demand a full account.

10. Furthermore, there are reports that evacuees are sent to Kosovo’s Camp Liya “from other transit locations in Europe and the Middle East”¹⁰ for further “security vetting,” causing concern among evacuees about being stigmatized and facing further legal uncertainty. If this is correct, the question follows whether Camp Liya functions for the U.S. government as a location for more intensive “security vetting” than is conducted at the other Sites to which evacuees are sent. If Camp Liya is governed by processes that are indeed different from the other Sites, human rights and civil society organizations, impacted Afghan evacuees themselves, and those who advocate for the rights of Afghan evacuees are entitled to understand such a critical fact, the

⁷ The Muslim and African Bans refer to a series of executive actions by the Trump Administration preventing nationals from certain countries from entering the United States. Executive Order 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017), applied to Iran, Libya, Somalia, Sudan, Syria, and Yemen. Proclamation 9645, 82 Fed. Reg. 45161 (Sept. 24, 2017), added Chad, North Korea, and Venezuela and removed Sudan. Chad was removed by Proclamation 9723 on April 10, 2018. Finally, Proclamation 9983, 85 Fed. Reg. 6699 (Jan. 31, 2020), kept the existing list intact and added Burma (Myanmar), Eritrea, Kyrgyzstan, Nigeria, Sudan (again) and Tanzania.

⁸ Camilo Montoya-Galvez, *6,500 Afghans evacuated to UAE still stuck in limbo awaiting U.S. resettlement*, CBS News (Aug. 9, 2022), <https://www.cbsnews.com/news/afghanistan-refugees-united-arab-emirates-us-resettlement/>.

⁹ *Id.*

¹⁰ Kyle Atwood & Jennifer Hansler, *US considering returning some evacuees who don’t pass vetting process to Afghanistan*, CNN (Nov. 18, 2021), <https://www.cnn.com/2021/11/18/politics/camp-bondsteel-afghans/index.html>.

different mechanisms by which individuals are diverted to and from, and the stated reasons for any such differential treatment.

11. For nearly two years, the U.S. government has failed to provide adequate information or clarity to civil society organizations, community members, and stakeholders as to the process and conditions Afghan civilians are being subjected to. What little reporting exists suggests that these processes may be rife with the arbitrary and discriminatory actions that characterize much of the United States' engagement with Muslims at its extended border.

C. Humanitarian and Human Rights Concerns with Site Conditions

12. In addition to reports about illusive and seemingly arbitrary policies governing these Sites, there have also been indications that the conditions at the Sites specified in the Request, and possibly beyond,¹¹ are deteriorating, giving rise to serious humanitarian and human rights concerns.

UAE: Emirates Humanitarian City ("EHC")

13. In March 2023, Human Rights Watch released a report after interviewing sixteen evacuated Afghan civilians who had remained at EHC for over a year. According to these accounts, thousands of Afghan civilians have remained detained for over a year.

14. More specifically, as of the date of the Center for Constitutional Rights' Request to the U.S. government, between 2,400 and 2,700 Afghan civilians have been detained at the EHC Site for more than fourteen months.

15. Since their arrival to EHC, Afghan civilians have been subjected to inadequate medical and psychological care; denial of access to United States or UAE government officials, counsel, journalists, organizations, or other visitors, including family; and restrictions on freedom of movement.

16. Afghan evacuees at EHC have said that the process has been carried out "unfairly and slowly,"¹² contributing to a widespread mental health crisis, including severe depression among adults and children alike.¹³ Additionally, there have been reports of sexual assault and rape, as well as inadequate reproductive health care resulting in "miscarriages and life-threatening pregnancy complications."¹⁴

¹¹ Afghans are being held at Sites mentioned in Center for Constitutional Rights' FOIA request as well as at additional sites elsewhere. *See supra* note 6.

¹² AMU TV, *Afghan refugees in UAE camp protest over uncertain future* (Jan. 28, 2023), <https://amu.tv/33971/>.

¹³ Human Rights Watch, *supra* note 2.

¹⁴ Global Detention Project & Migrant-rights.org, *"THIS IS A SLOW DEATH": An Urgent Appeal on the Plight of Afghan Refugees Indefinitely and Arbitrarily Detained in the UAE* (March 13, 2023), <https://www.globaldetentionproject.org/urgent-appeal-plight-of-afghan-refugees-indefinitely-and-arbitrarily-detained-in-uae>.

Kosovo: Camp Liya

17. In Kosovo, Afghan civilians are held in Camp Liya, an enclosure within the U.S. Base Camp Bondsteel controlled by U.S. Departments of State and Defense. At the end of 2022, there were at least thirty-nine Afghans in Camp Liya, with a number facing uncertainty about whether they would remain in Kosovo after being denied entry into the United States.¹⁵

18. If Afghan refugees leave Camp Liya, they are considered disqualified from seeking humanitarian parole in the United States, leaving them constructively confined within the Camp.¹⁶

19. Limited reporting indicates deteriorating conditions, with residents of the Camp calling it “Little Guantánamo” due to the lack of information about their cases and austere living conditions.¹⁷ Evacuees have even staged a protest over reported plans to “forcibly” relocate them and to highlight the suffering of the women and children being held at the Camp.¹⁸

20. According to information provided to the Center for Constitutional Rights independent from the U.S. government, Afghan refugees who “required” further screening are sent to Kosovo, and U.S. government officials deliberately provide no information or insight as to the status of their cases so as to coerce their “voluntary” return to Afghanistan.

Qatar: Camp As Sayliyah

21. Afghan civilians sent to Doha, Qatar, have been held in Camp As Sayliyah (“CAS”), a former U.S. army base. Little information has been made publicly available about the number of people detained at CAS. The facilities at the Camp were expanded in 2021, but the conditions have been heavily criticized. Reports indicate that evacuees are being “warehoused in giant rooms without air-conditioning with few restrooms and shower facilities, and without access to sufficient nourishment or water.”¹⁹

¹⁵ European Commission, *Kosovo 2022 Report*, Dec. 10, 2022, at p. 55, <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Kosovo%20Report%202022.pdf>

¹⁶ U.S. Dep’t of Defense, Inspector General, *Evaluation of DoD Security and life Support for Afghan Evacuees at Camp Bondsteel* (Oct. 25, 2022), available at <https://www.oversight.gov/sites/default/files/oig-reports/DoD/DODIG-2023-008.pdf>.

¹⁷ Jessica Donati, *U.S. in Talks with Suriname to Take Afghans Stranded in Kosovo*, Wall Street Journal (Sept. 16, 2022), <https://www.wsj.com/articles/u-s-in-talks-with-suriname-to-take-afghans-stranded-in-kosovo-11663329632>.

¹⁸ Mike Ludwig, *Stranded Afghans Who Fled the Taliban Say the U.S. Left Them Behind*, TruthOut (Sept. 28, 2021), <https://truthout.org/articles/stranded-afghans-who-fled-the-taliban-say-the-us-left-them-behind/>; Teri Schultz, *Afghans adrift on US ‘lily pad’ in Kosovo*, Deutsche Welle (Aug. 28, 2022), <https://www.dw.com/en/afghans-adrift-on-us-lily-pad-in-kosovo/a-62942555/>.

¹⁹ U.S. Committee for Refugees and Immigrants, *supra* note 6, at 3.

VIOLATIONS OF INTERNATIONAL AND HUMAN RIGHTS LAW AND STANDARDS

22. Under international human rights law, “States must ensure that border governance measures respect, inter alia, the prohibition of collective expulsions, the principle of equality and non-discrimination, the principle of non-refoulement, the right to seek asylum, the right to life, the prohibition of torture, the promotion of gender equality, and the rights and best interests of the child.”²⁰

23. The U.S. government’s use of arbitrary detention against thousands of Afghan refugees violates international law, including Article 9 of the International Covenant on Civil and Political Rights (“ICCPR”), which provides that “No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”²¹ The UNHCR Working Group on Arbitrary Detention has made clear that the “[t]he worldwide prohibition of arbitrary detention is a clear testament to its universally binding nature under customary international law making any derogations impermissible.”²²

24. However, “Any form of administrative detention or custody in the context of migration must be applied as an exceptional measure of last resort, for the shortest period and only if justified by a legitimate purpose, such as documenting entry and recording [detainee] claims or initial verification of identity if in doubt.”²³ Even in instances where the State classifies its detention as “exceptional” or “a measure of last resort,” the burden remains with the State to justify its detention as reasonable, necessary, and proportional.²⁴

- a) *Reasonable*: A detention is deemed reasonable only if it is in pursuance of a legitimate aim of the state.²⁵
- b) *Necessary*: States must exhibit the necessity of such detention, or, in other words, are required to demonstrate that no less restrictive means exist for achieving the aims of the state.²⁶ Within the context of migrants, before

²⁰ Report on the means to address the human rights impact of pushbacks of migrants on land and at sea, A/HRC/47/20, ¶ 39 (May 12, 2021), <https://www.undocs.org/A/HRC/47/30>.

²¹ International Covenant on Civil and Political Rights art. 9, Dec. 19, 1992, S. Exec. Doc. No. E, 95-2, 999 U.N.T.S. 171.

²² Report of the Working Group on Arbitrary Detention, A/HRC/48/55, ¶ 62 (Aug. 6, 2021), <https://www.undocs.org/A/HRC/48/55>.

²³ Report of the Working Group on Arbitrary Detention, A/HRC/39/45, ¶ 12-13 (July 2, 2018) <https://www.undocs.org/A/HRC/39/45>.

²⁴ The Center for Victims of Torture, *Immigration Detention is Arbitrary* (July 21, 2023), <https://www.cvt.org/what-we-do/project-archive/immigration-detention-must-end/immigration-detention-is-arbitrary/>.

²⁵ *Id.*

²⁶ *Id.*

subjecting civilians to detention, it is critical that less restrictive measures be reviewed, deliberated, and considered.²⁷

- c) *Proportionate*: Detention fails to be justified as proportional if it is automatically or mandatorily applied,²⁸ without adequate and fair individualized assessments or processes for detainees, as is reportedly the case for Afghans in EHC. “The principle of proportionality requires that alternatives to detention be considered in every circumstance.”²⁹

As outlined in detail above, Afghans have remained detained at third-country Sites for well over a year (and possibly over two years) with scarce information as to what legal bases, justifications, or any other aims deemed “legitimate” by the U.S. government. Further, the United States has failed to demonstrate in the cases of Afghans detained in EHC, Camp Liya, CAS, as well as other Sites which the public has far less information about, the reasoning or processes for determining that the detainment of thousands of Afghan civilians is necessary, maintaining a lack of transparency around what alternative avenues have been considered, if any at all. Nor has the U.S. government demonstrated that “fair and individualized processes for refugee status determination and protection needs exist,” or whether each individual case has been reviewed and deliberated for considerations alternative to detention. Indeed, of the public information that does exist, Afghan civilians evacuated to and awaiting processing in U.S.-coordinated or -facilitated Sites abroad describe being subjected to sweeping—and what appear to by all accounts mandatory—“prison-like conditions,” restrictions on freedom of movement, and 24-hour surveillance.³⁰ While an investigation of EHC has confirmed that the U.S. government is in violation of international law and norms in the case of EHC,³¹ an investigation by your mandates is critical to address disturbing, parallel reports coming out of Camp Liya and CAS and possibly other third-country Sites, and to create a public record as to such violations.

The United States has failed to demonstrate, in each case, that the detention of thousands of Afghans abroad is reasonable, necessary, and proportional. Accordingly, the U.S. government is in violation of international law and norms in the case of EHC,³² and serious concerns exist as to parallel violations in the case of Camp Liya, CAS, and additional third-country Sites with limited publicly available information and those not yet disclosed to the public.

25. Furthermore, and of particular importance, to be in compliance with international law and norms, “Non-nationals, including immigrants regardless of their status, asylum seekers, refugees and stateless persons, in any situation of deprivation of liberty, shall be guaranteed access to a court of law empowered to order immediate release or able to vary the

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Human Rights Watch, *supra* note 2. See also Gordon Lubold & Jessica Donati, *Afghans Housed at Military Base in Kosovo Risk Being Denied Entry to U.S. for Alleged Terrorist Ties*, Wall Street Journal (Jan. 21, 2022), <https://www.wsj.com/articles/afghans-housed-at-military-base-in-kosovo-risk-being-denied-entry-to-u-s-for-alleged-terrorist-ties-11642761008>.

³¹ Human Rights Watch, *supra* note 2.

³² *Id.*

conditions of release.”³³ The UNHCR Working Group on Arbitrary Detention has similarly established that “Any asylum-seeker or immigrant placed in custody must be brought promptly before a judicial or other authority.”³⁴ Not only are there reports that Afghans arbitrarily detained are denied access to counsel, but no public information exists as to the access arbitrarily detained Afghans held in third-country Sites, including EHC, Camp Liya, and CAS, have to courts—a clear violation of international law and norms further supported by detained Afghan civilians at EHC reporting that any determinations as to their cases have been carried out “unfairly and slowly.”³⁵ Reports from Camp Liya demonstrate coerced returns to Afghanistan, masked as “voluntary” by U.S. government officials, arising out of U.S. government officials’ deliberate failure to provide information or insight as to the status of detainees’ cases.

26. As for the conditions of such detainment, the ICCPR in conjunction with the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) guarantees migrants the fundamental rights to an adequate standard of living, health, personal integrity and freedom of movement of which all states are obligated to “respect, protect and fulfill...for all without discrimination.”³⁶ The aforementioned conditions of confinement in the cases of Afghans arbitrarily detained in EHC, Camp Liya, and CAS—and particularly reports of inadequate medical and psychological care and clear restrictions on freedom of movement, all of which the United States has also failed to report otherwise on—fail to meet these integral human rights standards.

CONCLUSION

27. The United States has failed to address the reported inhumane conditions, or requests for further information about such conditions. Accordingly, there is a desperate and immediate need for transparency regarding the processes that have led to the arbitrary detention of thousands of Afghan evacuees and the conditions to which they are being subjected to. Over the last two years, the United States’ withdrawal from Afghanistan, and the humanitarian and human rights crises that have followed, have received urgent and widespread attention from domestic and international press, as well as human rights and civil society organizations and the public. However, despite the public’s urgent need and request for information as to U.S. government activities, vanishingly little information has been released by the U.S. government, and in particular the U.S. Departments of Defense, State, and Homeland Security as to the conditions of these Sites. Access to detainees continues to be restricted, including at times even to counsel and humanitarian organizations. Further, there is an alarming lack of clarity about, quite simply, what will happen to the detained Afghan civilians in these U.S.-facilitated or -coordinated sites, let alone what U.S. policies exist for the processing or reviewing of their determinations. Some have been given the cruel choice between being sent to yet another third country or “repatriating to Taliban-

³³ Report of the Working Group on Arbitrary Detention, A/HRC/39/45, ¶ 15, *supra* note 23.

³⁴ Deliberations of the Working Group on Arbitrary Detention, Deliberation No. 5 on situation regarding immigrants and asylum-seeker, principle 3.

³⁵ Human Rights Watch, *supra* note 2.

³⁶ Report of the Special Rapporteur on the human rights of migrants, A/77/189, ¶ 17 (July 19, 2022), <https://www.undocs.org/A/77/189>.

ruled Afghanistan,”³⁷ and information provided to the Center for Constitutional Rights independent from the U.S. government demonstrates that the processing of refugees is deliberately prolonged so as to create unbearable conditions that result in repatriation, constructively coercing Afghan evacuees to forceful returns masked as “voluntary.”

28. Detained Afghan refugees alongside the public, advocates, and human rights and civil society organizations urgently need to be informed about the concerning treatment and legal limbo to which the U.S. government, and in particular the U.S. Departments of Defense, State, and Homeland Security, have subjected Afghan civilians to. Such information is also critical to civil society organizations, lawyers, elected representatives, impacted family members, and Afghan communities to adequately respond to and meaningfully engage in the imminent public debates exploring the U.S. government’s responsibilities, and violation of those responsibilities, to Afghan civilians.

29. For all of the aforementioned reasons, the Center for Constitutional Rights urges the Special Procedures mandate holders to use all available avenues to urgently investigate the concerns raised herein.

Dated: December 8, 2023
New York, NY

Respectfully submitted,
Center for Constitutional Rights

cc: Special Rapporteur on the situation of human rights in Afghanistan Mr. Richard Bennett
cc: UN Office of the High Commissioner for Human Rights/Americas Division

³⁷ Ali M Latif, *Afghan MMA fighter recounts life in UAE resettlement camp*, Middle East Eye (June 10, 2023), <https://www.middleeasteye.net/news/afghanistan-uae-mma-fighter-recounts-life-resettlement-camp>.

EXHIBIT 1



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March 31, 2023

FOIA Request: DOS, DOD & DHS

U.S. Department of State
Office of Information Programs & Services
2201 C Street N.W., Suite B266
Washington, D.C. 20520

U.S. Department of Defense
Defense Freedom of Information Division
1155 Defense Pentagon
Washington, D.C. 20301-1155

U.S. Department of Homeland Security
Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
245 Murray Lane, S.W.
STOP-0655
Washington, D.C. 20528-0655

Re: Freedom of Information Act Request

To Whom It May Concern:

This is a request (“Request”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, (“FOIA”), to the Department of State (“DOS”) implementing regulations, 22 C.F.R. § 171.11, Department of Defense (“DOD”) implementing regulations, 32 C.F.R. § 285, and Department of Homeland Security (“DHS”) implementing regulations 6 C.F.R. § 5.1, by the Center for Constitutional Rights (“CCR”). Please direct this request to all appropriate offices, field offices, departments, bureaus, missions, and officials within each agency, including but not limited to DOS’s Office of the Under Secretary for Political Affairs, Bureau of South and Central Asian Affairs, Office of the Under Secretary for Public Diplomacy and Public Affairs, Office of the Under Secretary for Civilian Security, Democracy, and Human Rights, Bureau of Population, Refugees, and Migration, and Office of the Coordinator for Afghan Relocation Efforts (“CARE”); DOD’s Office of the Secretary of Defense and Joint Staff (OSD/JS), Office of the Under Secretary of Defense for Policy, Mission of the Deputy Assistant Secretary of Defense for Afghanistan, Pakistan, Central Asia, Department of the Army, and U.S. Central Command¹; and

¹ Per 32 C.F.R. § 286.7(c) and (d), we expect DOD to forward our request to the appropriate offices and components within DOD.

DHS's Office of the Secretary, Operation Allies Welcome, and U.S. Citizenship & Immigration Services ("USCIS").²

A. Background

This Request seeks records pertaining to specific locations ("Sites")³, where the United States brought and subsequently held tens of thousands of Afghan evacuees as their asylum, humanitarian parole, immigration, or other pending visa applications to the United States were, or continue to be, processed, decided, approved, or rejected;⁴ the Request seeks these documents from the period starting January 1, 2021 continuing through to the time this request is reviewed.⁵ Specifically, this Request seeks information regarding or relating to Afghan evacuees held at the following Sites:

1. **Camp Liya** and **Camp Bondsteel** in Kosovo;
2. **Camp As Sayilah** and **Park View Villas** in Doha, Qatar;
3. **Emirates Humanitarian City** in Abu Dhabi, United Arab Emirates ("UAE");
4. **Rhine Ordnance Barracks** and **Ramstein Air Base** in Germany; and
5. Any other third country Sites where Afghan nationals are being held at, in U.S. bases or U.S.-operated Sites.

In general, CCR seeks records relating to how the U.S. government makes decisions regarding how, where, and under what circumstances it decided to route, direct, hold or otherwise coordinate the holding of Afghans in these Sites. More detailed descriptions of documents sought are set forth below.

Following the U.S. withdrawal from Afghanistan on August 31, 2021, Afghans who evacuated as the Taliban took over were sent to several processing Sites around the world and subsequently held there while they were medically screened, vetted for "security purposes," and processed in order to receive visas to the U.S.⁶ Afghans have been held at U.S. military bases,

² Per 6 C.F.R. § 5.3(a)(2), we expect DHS to forward our request to the appropriate offices and components within DHS.

³ In this request, "Sites" refers to any and all geographic locations and places where Afghan evacuees were held. These Sites have also been referred to by U.S. officials as "host country," "third country," or "lily pad" sites, among other terms. These Sites include, but may not be limited to, all of those Sites listed in Section A, #1-5 of this Request.

⁴ Mica Rosenberg, et. al, *'NOBODY WANTS TO COME THIS WAY'*, Reuters (Feb. 1, 2023), <https://www.reuters.com/investigates/special-report/usa-immigration-afghanistan/>; Ben Fox, *Stuck in Limbo in Kosovo Camp, Afghan evacuees await entry to the U.S.*, PBS News (June 5, 2022), <https://www.pbs.org/newshour/world/stuck-in-limbo-in-kosovo-camp-afghan-evacuees-await-entry-to-the-u-s>; Rebecca Beitsch, *Majority of Afghan evacuees left in limbo abroad*, The Hill (Sept. 3, 2021), <https://thehill.com/policy/international/570669-majority-of-afghan-evacuees-left-in-limbo-abroad/>.

⁵ Caroline Coudriet, *First evacuation flight for Afghan allies arrives in US*, Roll Call (July 30, 2021), <https://rollcall.com/2021/07/30/first-evacuation-flight-for-afghan-allies-arrives-in-us/>.

⁶ The Media Line, *Blinken Visits Afghan Refugees at US Base in Qatar*, (Nov. 11, 2022), <https://themedialine.org/mideast-daily-news/blinken-visits-afghan-refugees-at-us-base-in-qatar/>. See also Beitsch, *supra* note 4.

such as Camp As Sayliyah in Doha, Qatar,⁷ Camp Liya and Camp Bondsteel in Kosovo,⁸ Rhine Ordnance Barracks and Ramstein Air Base in Germany,⁹ and non-military sites such as the Doha Park View Villas¹⁰ and the “Humanitarian City” in Abu Dhabi, UAE.¹¹ Although nearly 88,500 Afghans have been evacuated and have arrived in the U.S. for resettlement as of the date of this request,¹² thousands of Afghans have been stranded in these third country Sites for prolonged periods surpassing fifteen months in some instances.¹³ They have limited mobility; little to no access to lawyers, the media, and health care; and no information about when—or if—they will be resettled in the U.S. or another country.¹⁴ Others have had their applications rejected, and are now awaiting resettlement to a third country Site.

1. *Camp Liya & Camp Bondsteel*

Camp Liya, an enclosure within the confines of the U.S. Base Camp Bondsteel, is controlled by DOS, as well as the DOD through the U.S. Army Europe and Africa, 21st Theater Sustainment Command’s Area Support Group (“ASG”) in the Balkans.¹⁵ In 2021, U.S. embassy officers were working with Afghan evacuees at Camp Liya, whose applications for asylum required additional processing at the time.¹⁶ At the end of 2022, there were at least 39 Afghans still present in Camp Bonsteel, with a number of Afghans facing uncertainty as to whether they will remain in Kosovo after they were denied entry by the U.S.¹⁷ If Afghan refugees leave Camp Liya, they are considered disqualified from seeking Humanitarian Parole in the U.S., leaving

⁷ Camilo Montoya-Galvez, *U.S. Setting up expedited processing hub in Qatar for some at-risk Afghans*, CBS News (Feb. 8, 2022), <https://www.cbsnews.com/news/afghanistan-us-expedited-processing-hub-qatar/>.

⁸ Inspector General (DOD), *Evaluation of DoD Security and life Support for Afghan Evacuees at Camp Bondsteel* (Oct. 25, 2022), <https://media.defense.gov/2022/Oct/27/2003103804/-1/-1/DODIG-2023-008.PDF>.

⁹ *Id.*

¹⁰ France 24, *Afghan evacuees prefer life in Qatar to Taliabn rule* (Apr. 3, 2022),

<https://www.france24.com/en/live-news/20220304-afghan-evacuees-prefer-life-in-qatar-to-taliban-rule>.

¹¹ Alexander Cornwell, *Afghan refugees, migrants protest in UAE over uncertain future*, Reuters (Aug. 14, 2022), <https://www.reuters.com/world/afghan-refugees-migrants-protest-uae-over-uncertain-future-2022-08-23/>.

¹² Aline Barros, *US Immigration Paths Available for Afghans and Ukrainians*, VOA News (Jan. 1, 2023),

<https://www.voanews.com/a/us-immigration-paths-available-for-afghans-and-ukrainians/6869026.html>. See, e.g.,

Camilo Montoya-Galvez, *Tens of thousands of Afghans in U.S. could lose deportation protections unless Congress acts*, CBS News (Feb. 16, 2023),

<https://www.cbsnews.com/news/afghan-adjustment-act-evacuees-parole-legal-status-deportation-protections/>.

¹³ Human Rights Watch (“HRW”), *UAE: Arbitrarily Detained Afghans Stuck in Limbo* (March 15, 2023),

<https://www.hrw.org/news/2023/03/15/uae-arbitrarily-detained-afghans-stuck-limbo>.

¹⁴ *Id.* See also European Commission, *Kosovo 2022 Report* at p. 55 (Dec. 10, 2022),

<https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Kosovo%20Report%202022.pdf>; Samaritan’s

Purse International Relief, *Safe but not Settled: The 10,000 Afghans Stranded in the UAE* (March 2022),

https://reliefweb.int/attachments/8c52f0cc-b72e-392c-b1ba-33a95ba25c0e/EHC%20Report_SP.pdf; Ben Fox,

Secrecy Shrouds Afghan Refugees Sent by US to Base in Kosovo, AP News (Oct. 23, 2021),

<https://apnews.com/article/europe-middle-east-migration-kabul-kosovo-1d9a9998ec36d144a168a0330637580e>;

¹⁵ Inspector General (DOD), *Evaluation of DoD Security and life Support for Afghan Evacuees at Camp Bondsteel* (Oct. 25, 2022).

¹⁶ U.S. Embassy in Kosovo, *Statement from the U.S. Embassy Pristina* (Sept. 4, 2021),

https://xk.usembassy.gov/st942021/?fbclid=IwAR23VlyfobgwGCjn8K4cMGyoh8xaxUghgdUwv9j_vpOYlntIQQmONof-Y.

¹⁷ European Commission, *Kosovo 2022 Report*, at 55 (Dec. 10, 2022).

them constructively confined and guarded within the walls of the Camp.¹⁸ There have been reports coming out of Camp Liya of deteriorating conditions, with residents of the Camp calling it “Little Guantánamo” because of the lack of information about their cases and the austere living conditions.¹⁹ Afghan evacuees have even staged a protest over reported plans to “forcibly” relocate them and to highlight the suffering of the women and children being held at the Camp.²⁰

2. *Camp As Sayliyah & Doha’s Park View Villas*

Little information has been made publicly available about the exact number of people still living at Camp As Sayliyah, a U.S. Army base outside of Doha. Similar to Camp Liya, Afghan evacuees were taken to Camp As Sayliyah to complete asylum interviews with U.S. officials, medical checks, and security screenings.²¹ The U.S. expanded these facilities in 2021, but the conditions of these facilities have been heavily criticized.²² Doha’s Park View Villas were opened following these criticisms. Similar to Camp Liya, Afghans can only leave Park View on guided day trips.²³

3. *Emirates Humanitarian City*

The U.S. has had a disparate policy for processing Afghan evacuees through Abu Dhabi. According to the State Department, “Afghans who were evacuated to the UAE before Aug. 31, 2021, were effectively guaranteed permission to enter the U.S. if they passed certain medical and security checks.”²⁴ However, those who arrive after that date are required to prove that they qualify for a U.S. immigration benefit.²⁵ Afghan evacuees, who have been living in the Humanitarian City for over a year and a half with no end in sight, have said the process has been carried out “unfairly and slowly,”²⁶ contributing to widespread mental health crises, including severe depression among adults and children alike.²⁷ In addition to cases of psychological and mental health distress, the conditions at Humanitarian City have recently sparked widespread and immediate concern amongst civil society and legal organizations, as instances of sexual assault

¹⁸ Inspector General (DOD), *Evaluation of DoD Security and Life Support for Afghan Evacuees at Camp Bondsteel* (Oct. 25, 2022),

¹⁹ Jessica Donati, *U.S. in Talks with Suriname to Take Afghans Stranded in Kosovo*, WSJ (Sept. 16, 2022), <https://www.wsj.com/articles/u-s-in-talks-with-suriname-to-take-afghans-stranded-in-kosovo-11663329632>.

²⁰ Mike Ludwig, *Stranded Afghans Who Fled the Taliban Say the U.S. Left Them Behind*, TruthOut (Sept. 28, 2021), <https://truthout.org/articles/stranded-afghans-who-fled-the-taliban-say-the-us-left-them-behind/>; Teri Schultz, *Afghans Adrift on US ‘Lily Pad’ in Kosovo*, Deutsche Welle (DW) (Aug. 28, 2022), <https://www.dw.com/en/afghans-adrift-on-us-lily-pad-in-kosovo/a-62942555/>.

²¹ Camilo Montoya-Galvez, *U.S. Setting up Expedited Processing Hub in Qatar for Some At-Risk Afghans*, CBS News (Feb. 8, 2022), <https://www.cbsnews.com/news/afghanistan-us-expedited-processing-hub-qatar/>.

²² France 24, *Afghan Evacuees Prefer Life in Qatar to Taliban Rule* (Apr. 3, 2022), <https://www.france24.com/en/live-news/20220304-afghan-evacuees-prefer-life-in-qatar-to-taliban-rule>;

Aline Barros, *US Streamlining Visa Process for At-Risk Afghans*, VOA News (Aug. 23, 2022), <https://www.voanews.com/a/us-streamlining-visa-process-for-at-risk-afghans-/6713601.html>.

²³ France 24, *Afghan Evacuees Prefer Life in Qatar to Taliban Rule* (Apr. 3, 2022),

<https://www.france24.com/en/live-news/20220304-afghan-evacuees-prefer-life-in-qatar-to-taliban-rule>.

²⁴ Camilo Montoya-Galvez, *6,500 Afghans Evacuated to UAE Still Stuck in Limbo Awaiting U.S. Resettlement*, CBS News (Aug. 9, 2022).

²⁵ *Id.*

²⁶ AMU TV, *Afghan Refugees in UAE Camp Protest Over Uncertain Future* (Jan. 28, 2023), <https://amu.tv/en/33971/>.

²⁷ HRW, *supra* note 13.

and rape, as well as inadequate medical care including inadequate reproductive health care resulting in “miscarriages and life-threatening pregnancy complications”²⁸ have been reported.

Like the evacuees at Camp Liya, Afghan evacuees in the Humanitarian City engaged in a protest in early January 2023, sealing off the main gate to the camp, with some evacuees even going on hunger strikes.²⁹ One Afghan evacuee spoke of the conditions of Humanitarian City saying: “Nearly one year, we have been here in detention and the camp is like a modern prison. No one is allowed to go out, they don't know when (we) will be settled permanently to any country.”³⁰ According to a Report released by HRW on March 15, 2023, “between 2,400 and 2,700 Afghans remain arbitrarily detained in the UAE” as of January 2023.³¹

Against this background, and absent a clear and recent statement or updates from U.S. officials on why thousands of Afghan evacuees are being held in multiple U.S.-operated or U.S.-coordinated third country Sites indefinitely, information as to why there has been limited media and legal access to the Afghan evacuees or the Sites more generally, what timeline is to be expected for resettlement, and whether Afghan evacuees will be forced to resettle in other countries, it is critical that the DOS, DOD, and DHS immediately release this information to the public, so that the media, lawyers, human rights and humanitarian organizations, and most importantly affected communities and family members have access to this crucial information as they explore different legal pathways for stranded, detained, or otherwise held Afghan evacuees.

A. Request for Information

CCR requests any and all RECORDS created from January 1, 2021 continuing through to the date at which agencies commence their searches responsive to this FOIA request that were prepared, received, transmitted, collected and/or maintained by the DOS, DOD, and DHS regardless of the identity of the correspondence party/ies, relating or referring to the following:³²

1. A list of all Sites worldwide (including the respective country, city, and location) where Afghans have been evacuated to by U.S. forces or U.S.-affiliate forces, or transferred to by or on behalf of the U.S. government, partners, contractors, or affiliates.

²⁸ Global Detention Project & Migrant-rights.org, “*THIS IS A SLOW DEATH: An Urgent Appeal on the Plight of Afghan Refugees Indefinitely and Arbitrarily Detained in the UAE* (March 13, 2023), <https://www.globaldetentionproject.org/urgent-appeal-plight-of-afghan-refugees-indefinitely-and-arbitrarily-detained-in-uae>.

²⁹ AMU TV, *Afghan Refugees in UAE camp protect over uncertain future*.

³⁰ Alexander Cornwell, *Afghan refugees, migrants protest in UAE over uncertain future*, Reuters (Aug. 14, 2022), <https://www.reuters.com/world/afghan-refugees-migrants-protest-uae-over-uncertain-future-2022-08-23/>.

³¹ HRW, *supra* note 13. Section A(7) of this Request specifically pertains to requested RECORDS relating to HRW’s Report.

³² The term “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, data, videotapes, audio tapes, voicemails, faxes, files, text messages, cables, 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, powerpoints, or any other record of any kind. Without limitation, the records requested include records at any stage of development, whether proposed, draft, pending, interim, final, or otherwise.

2. All RECORDS relating to or regarding the total number of Afghan evacuees held in each of these Sites, broken down by:
 - a. Gender;
 - b. Age;
 - c. Accompanying Family Members;
 - d. Destination Prior to Arrival at the Site;
 - e. Arrival Date to Site;
 - f. Departure Date from Site (if applicable);
 - g. Date of Asylum, Humanitarian Parole, or Other Visa Application;
 - h. Status of Asylum, Humanitarian Parole, or Other Visa Application; and
 - i. Average Length of Stay for Each Facility and/or Site

3. All RECORDS relating to or regarding any DOS, DOD, or DHS criteria for review to determine whether individuals can be transferred to the U.S., including the criteria or methodology of priority of transfer to the U.S., as well as the following statistics of the legal status of Afghan evacuees at each Site broken down by:
 - a. Number of Approvals to the U.S.;
 - b. Number of Denials to the U.S. and the Basis for the Denial;
 - c. Number of Pending Applications Requesting Transfer to the U.S.;
 - d. Total Number of Afghan Evacuees Remaining in All Sites;
 - e. Total Number of Afghan Evacuees Who Returned to Afghanistan; and
 - f. Total Number of Afghan Evacuees Transferred to Another Site.

4. All RECORDS relating to any DOS, DOD, or DHS policies, methodology, legal basis or framework for the decision to hold certain Afghans in any third country Sites. This includes:
 - a. Documents sufficient to explain the conditions Afghan evacuees are subjected to while held, confined, or otherwise arbitrarily detained;
 - b. Documents sufficient to explain whether Afghan evacuees are free to leave and return to the Sites;
 - c. Documents responding to Congressional inquiries, or created in response to Congressional inquiries, relating to questions about conditions of being held, confined, or otherwise arbitrarily detained;
 - d. Documents relating to or regarding what authorities and legal standards Afghan evacuees are being held, confined, or otherwise arbitrarily detained under including, but not limited to, whether U.S. immigration law, laws of armed conflict, and/or any international human rights law governs.

5. All RECORDS of or relating to the following DOS, DOD, or DHS policies and procedures pertaining to the operation of any third country Sites as set forth below:
 - a. A list of all U.S. government agencies, offices, branches, bureaus, departments, and/or private contractors who have personnel at any Sites and/or who traveled on behalf of, or with permission from, U.S. government officials, affiliates, or partners to these Sites.
 - b. Policies and procedures specifically relating to which U.S. government officials and/or private contractors are at third country Sites and their respective agencies,

departments, bureaus, or contractors who have access to the Afghan nationals held in any third country Sites.

- c. In regards to those individuals referenced in request (5)(a) above, please identify each of their titles and roles, including in relation to the Sites. To the degree these individuals are in leadership positions, have been publicly appointed, and/or are in public-facing roles with the agencies, please identify their names.
 - d. We also request any agreements, assessments, or reviews made by DOS, DOD, or DHS including in coordination with host country Sites and/or any private military contractors involved in operating or facilitating these sites.
6. All RECORDS relating to the August 9, 2022 CBS News Article by Camilo Montoya-Galvez, entitled, *6,500 Afghans evacuated to UAE still stuck in limbo awaiting U.S. resettlement*,³³ including but not limited to any DOS, DOD, or DHS communications, conclusions, reports, or assessments relating to the mentioned statement specified below, the “U.S. policy,” referenced in the article, or other policies and/or practices set forth in the article :

“U.S. policy is responsible for the disparate processing. Afghans who were evacuated to the UAE before Aug. 31, 2021, were effectively guaranteed permission to enter the U.S. if they passed certain medical and security checks, the State Department told CBS News. But those who arrived after Aug. 31, 2021, have been required to prove they qualify for a U.S. immigration benefit, such as a visa or refugee status.”

7. All RECORDS relating to the March 15, 2023 Report by HRW, entitled, *UAE: Arbitrarily Detained Afghans Stuck in Limbo*,³⁴ including but not limited to any DOS, DOD, or DHS communications, conclusions, reports, or assessments relating to the release of the report, including but not limited to the letter sent by the Coordinator for Afghan Relocation Efforts (“CARE”) as mentioned in the HRW Report.³⁵
8. All RECORDS relating to the March 13, 2023 Paper by Global Detention Project and Migrant-Rights.org, entitled, *“THIS IS A SLOW DEATH”: An Urgent Appeal on the Plight of Afghan Refugees Indefinitely and Arbitrarily Detained in the UAE*,³⁶ including but not limited to any DOS, DOD, or DHS communications, internal reactions, contributions, conclusions, reports, or assessments relating to the release of the Paper.

³³ Available at <https://www.cbsnews.com/news/afghanistan-refugees-united-arab-emirates-us-resettlement>.

³⁴ Available at <https://www.hrw.org/news/2023/03/15/uae-arbitrarily-detained-afghans-stuck-limbo>.

³⁵ See Report at p. 3, ““The Coordinator for Afghan Relocation Efforts (CARE) in the US Department of State responded in a letter to Human Rights Watch on March 14, 2023, stating that “the U.S. commitment to relocate and resettle all eligible Afghans is an enduring one. This includes those eligible Afghans located at the Emirates Humanitarian City (EHC) in the UAE.” The letter also states that “Emirati officials solely manage, control and operate the EHC.” (emphasis added)

³⁶ See Paper at <https://www.globaldetentionproject.org/urgent-appeal-plight-of-afghan-refugees-indefinitely-and-arbitrarily-detained-in-uae>.

9. All RECORDS related to any complaints made by or on behalf of Afghan evacuees regarding conditions of Camp Liya and Camp Bondsteel in Kosovo and Camp As Sayliyah in Qatar.
10. All RECORDS relating to any agreements regarding Afghan evacuees made between the U.S. and any third country Sites, such as Kosovo, Qatar, and the UAE, including but not limited to, agreements about how long Afghan evacuees can be held in third countries, agreements about the conditions under which they are required to be held, and why media access to Afghan evacuees has been restricted.
11. All RECORDS relating to investigations regarding or relating to complaints or concerns raised by Afghan evacuees including, but not limited to, the conditions or policies referencing or relating to third country Sites holding Afghan evacuees, and which were conducted by any division of DOS, DOD, or DHS.
12. All RECORDS created, sent, received, referenced, and/or used in fulfilling and/or responding to this Request.
13. All other RECORDs relating to the foregoing requests.

B. Format of Production

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records, *see* 5 U.S.C. § 522(a)(3)(B). We request that the records be provided in the following format:

- Saved on a CD, CD-ROM, or DVD;
- In PDF or TIF format wherever possible;
- Electronically searchable text wherever possible;
- Each paper record in a separately saved file;
- “Parent-child” relationships maintained, meaning that the requestor must be able to identify the attachments with emails;
- Emails should include BCC and any other hidden fields;
- Any data records in native format (i.e. Excel spreadsheets in Excel); and
- With any other metadata preserved.

C. The Requester

The Requester, CCR, is a non-profit, public interest legal and advocacy organization that engages in the fields of civil and international human rights. CCR’s diverse issue areas include litigation and advocacy around militarism, mass incarceration and prisoners’ rights, Palestinian solidarity, and the protection of human rights defenders and the right to dissent.

One of CCR’s primary activities is the publication of newsletters, know-your-rights handbooks, legal analysis of current human rights issues, and other similar materials for public dissemination. Records received through FOIA requests have served as the basis for some of these materials. These and other materials are available through CCR’s Development,

Communications, and Advocacy Departments. CCR operates a website, <http://ccrjustice.org>, which addresses the issues on which the Center works, as well as through its various social media channels. CCR staff members often serve as sources for journalists and media outlets, including on issues related to international human rights, war crimes, the War on Terror, detention practices, and abusive practices against refugees, asylum seekers, and immigrants, among others. In addition, CCR regularly issues press releases, has an active social media presence with tens of thousands of followers, and also issues regular email updates sent to over 50,000 supporters about developments and news pertaining to CCR's work.

D. Fees

The Requester, CCR, is entitled to a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), 32 CFR § 1700.6(b), 22 CFR § 171.16(a), and 32 CFR § 286.12(l) on the grounds that “disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The Requester meets the requirements for a fee waiver because the subject of the request concerns the operations or activities of the government, the disclosure of the information is likely to contribute to a significant public understanding of government operations or activities, the Requester's primary interest is in disclosure; and the Requester has no commercial interest in the information. *See* 22 C.F.R. § 171.16. CCR has a track-record of publicizing and explaining government records received through FOIA.³⁷

Since 2021, the media coverage and information coming out of these third country Sites where Afghan evacuees are being held at is, and continues to be, scarce because of the Sites' consistent denial of access to journalists, lawyers, and visitors who have attempted to access Afghan evacuees; for example, as HRW reported, “Those detained at Humanitarian City said they had not been able to receive visitors. ‘We are not allowed to go outside, and outsiders are not able to visit us,’ said one Afghan. Residents must receive advance permission for any visitors by first submitting a visitation request along with documents to the camp reception staff. Those interviewed who had made a request said it was denied.”³⁸ CCR is seeking these documents to gain critical information about the circumstances and conditions under which Afghan evacuees are still being held under, in order to disclose this information to our partners and directly impacted or interested communities.

Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers of noncommercial requesters’”).

In the alternative, if no fee waiver is granted and the fees exceed \$50.00, please contact the Requester's undersigned representative to obtain consent to incur additional fees. Processing fees should be limited pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“[F]ees shall be limited to

³⁷ *See* CCR, Open Records Project: FOIA for the Movement, <https://ccrjustice.org/home/what-we-do/projects/open-records-foia>.

³⁸ HRW, *supra* note 13. *See also* Cristina Mari, *Afghan Evacuees in Kosovo De Facto Detained*, Kosovo 2.0 (Sept. 16, 2021), <https://kosovotwopointzero.com/en/afghan-evacuees-in-kosovo-de-facto-detained/>.

reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by ... a representative of the news media”).

E. Expedited Processing

CCR’s requests and is entitled to expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E); 32 C.F.R. § 286.8(e)(1)(i), (e)(1)(ii)(B), and (e)(3); 22 C.F.R. § 171.11(f)(1)-(4); and 6 C.F.R. § 5.5(e)(1)(i)-(ii) on the ground that CCR has a compelling need for the information.

First, CCR’s primary professional activity and occupation is information dissemination, and CCR has an urgent need to inform the public concerning recent investigations and breaking news released by human rights and civil society organizations, and over a dozen news and media outlets,³⁹ about the treatment of Afghan evacuees held in the Sites, i.e. U.S.-military bases abroad or U.S.-affiliated detention or processing sites. 22 C.F.R. § 171.11(f)(2) and 6 C.F.R. § 5.5(e)(1)(ii). Due to the lack of access to media and lawyers, scarce to no information has been released to the public by the DOS, DOD, DHS, or other U.S. government officials. As a result, CCR urgently needs access to the requested records.

This is entirely consistent with, and central to, CCR’s core mission as a national non-profit legal and advocacy organization. CCR engages in litigation, public advocacy, and educational programming to defend constitutional and human rights law, and in particular, on issues pertaining to immigrants, asylum seekers, and civilians of countries the U.S. has waged war or violence in. Dissemination of information to the public is a crucial component of CCR’s mission and work. CCR disseminates information about government misconduct through the work of its staff, Board, and volunteer, cooperating, and co-counsel attorneys. Specifically, it publishes reports and newsletters, maintains a public website, issues press releases, and offers educational materials, and programming to the public within the U.S. and internationally. Additionally, CCR’s staff, Board, and volunteer, cooperating and co-counsel attorneys further disseminate information through press releases, interviews, reports, educational programming and other means.

Furthermore, and as explained above, the requested records, if not obtained, could reasonably be expected to pose an imminent threat to the life or physical safety of Afghan evacuees held on the Sites, 32 C.F.R. §286.8(e)(1)(i), 22 C.F.R. § 171.11(f)(1), and 6 C.F.R. § 5.5(e)(1)(i), and expected to harm substantial humanitarian interests, 32 C.F.R.

³⁹ For example, see Ahmad Mukhtar, *More than 2,000 Afghan still “arbitrarily detained” in UAE camp “exactly like a prison,” rights group says*, CBS News (March 16, 2023), <https://www.cbsnews.com/news/more-than-2000-afghans-still-arbitrarily-detained-in-uae-camp-exactly-like-a-prison-rights-group-says/>; David Gritten, *UAE arbitrarily detained 2,400 Afghan asylum seekers - report*, BBC (March 16, 2021), <https://www.bbc.com/news/world-middle-east-64963423>; Jonathan Landay, *Human Rights Watch says over 2,000 Afghan evacuees in detention in UAE*, Reuters (March 15, 2023), <https://www.reuters.com/world/more-than-2000-afghan-evacuees-detention-uae-human-rights-watch-2023-03-15/>; HRW: *UAE has detained over 2,500 Afghan asylum seekers for over 15 months*, Middle East Monitor (March 15, 2023), <https://www.middleeastmonitor.com/20230315-hrw-uae-has-detained-over-2500-afghan-asylum-seekers-for-over-15-months/>; Up to 2,700 Afghans evacuees in arbitrary detention in UAE: HRW, *La Prensa Latina* (March 15, 2023), <https://www.laprensa-latina.com/up-to-2700-afghans-evacuees-in-arbitrary-detention-in-uae-hrw/>.

§286.8(e)(1)(ii)(B) and 22 C.F.R. § 171.11(f)(3). Afghan evacuees have been arbitrarily detained, in certain instances, for over fifteen months, in inhumane and prison-like conditions, and with their legal and medical needs gone unmet,⁴⁰ including recent reports of sexual assault, rape, and inadequate reproductive health care resulting in miscarriages and “life-threatening pregnancy complications.”⁴¹

Accordingly, CCR requests an expedited processing determination within 10 days of the receipt of this FOIA request, pursuant to 32 C.F.R. § 286.8(e)(1), 22 C.F.R. § 171.11(f)(4), and 6 C.F.R. § 5.5(e)(4).

F. Response

CCR expects each agency to make a determination of this request within 20 days, as provided by statute. *See* 5 U.S.C. § 552(a)(6)(A)(i).

If CCR’s request is denied, in whole or in part, we ask that each agency justify all deletions by reference to specific exemptions to FOIA. We also expect each agency to release all segregable portions of otherwise exempt material. CCR reserves the right to appeal each agency’s decision to withhold any information.

Thank you for your prompt attention to this matter. Please furnish all applicable records to: **Ian Head, Center for Constitutional Rights, at ihead@ccrjustice.org (preferred)** or by mail at **666 Broadway, 7th Fl., New York, NY 10012; (212) 614-6470**.

I certify that the above information is true and correct to the best of my knowledge.



Ian Head, Senior Legal Worker
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⁴⁰ HRW, *supra*, note 13.

⁴¹ Global Detention Project, *supra* note 28.