

April 3, 2018

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VIA ELECTRONIC MAIL

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Dear FOIA Officers:

Please find attached a request for information under the Freedom of Information Act (FOIA) from the American Immigration Council, National Immigrant Justice Center, Women's Refugee Commission, Kids in Need of Defense, and the Florence Immigrant and Refugee Rights Project (Requesters). I represent these organizations in this FOIA request, so please direct any legal questions to me. The applicable documents, however, should be produced to Katie Shepherd of the American Immigration Council. Her address is:

Katie Shepherd  
American Immigration Council  
1331 G Street NW, Suite 200

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Washington, DC 20005  
Phone: 202-507-7520  
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Thank you for your prompt attention to this matter.

Sincerely,



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Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officers:

The American Immigration Council, National Immigrant Justice Center, Women's Refugee Commission, Kids in Need of Defense, and the Florence Immigrant and Refugee Rights Project (the "Requesters") submit this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.*<sup>1</sup>

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<sup>1</sup> Corresponding FOIA requests were sent to the following FOIA Officers at the respective agencies: Catrina Pavlik-Keena, the FOIA Officer for U.S. Immigration & Customs Enforcement (ICE); Sabrina Burroughs, the FOIA Officer for U.S. Customs and Border Protection (CBP); Avery Roselle, the FOIA Officer for the Office of the Inspector General for the Department of Homeland Security; Bradley White, the FOIA Officer for the Office for Civil Rights and Civil Liberties (CRCL); Sam Kaplan, the Chief FOIA Officer for the U.S. Department of Homeland Security (DHS); Kimberly Epstein, the Acting FOIA Officer for Administration for Children and Families (ACF); Michael Marquis, the FOIA Officer for U.S. Department of Health and Human Services (HHS); Harold Henderson, the FOIA Officer for the Office for Civil Rights at HHS; and Robin Brooks, the FOIA Officer for the Office of Inspector General at HHS.

## 1. REQUEST FOR INFORMATION

Requesters seek any and all records<sup>2</sup> that were prepared, received, transmitted, collected and/or maintained by the Department of Justice, including all its components and specifically including the Criminal Division, the Office of the Inspector General, the U.S. Marshals Service, the Office of Legal Counsel, the Office of the Attorney General, the United States Attorney's Offices, the Executive Office for United States Attorneys, the Executive Office for Immigration Review (EOIR) and the Office of Immigration Litigation (OIL) (collectively, hereafter, DOJ), that describe, refer, or relate to the policies, guidelines, recommendations or procedures followed or used by the Department of Justice, to address the Department of Homeland Security's (with all its component agencies, collectively DHS) and the Department of Health and Human Services' (with all its component agencies, collectively, HHS) processing and treatment of families, including any group of two or more persons holding themselves out as such, containing at least one adult family member and one minor child<sup>3</sup> who arrive or are found inadmissible at the border, particularly the U.S.-Mexico border, including ports of entry. Requesters are particularly interested in any such records that relate or touch on the separation of adult family members from minor children in different DHS, HHS, or DOJ facilities and the criminal prosecution of adult family members.

Requesters seek the above records for the period between October 2016 and the date of the final response to this request. Please construe this as an ongoing FOIA request, so that until a proper and adequate search is conducted, any records that come within the possession of the agency prior to the final response to this FOIA request be considered within the scope of the request.

The requested records include, but are not limited to:

1. All records detailing or describing any policy or guidance regarding the separation of families who arrive at the border, particularly the U.S.-Mexico border, including ports of entry;
2. All records related to the coordination among DOJ and DHS and its component agencies, including but not limited to HHS, ICE, and CBP, regarding the processing of such families, including criminal prosecution of family members;

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<sup>2</sup> 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.

<sup>3</sup> For the purposes of this Request, "child" refers to individuals under the age of 18. The term "families" as used in this Request includes any adult traveling with a child who claims to be the mother, father, or primary caregiver of that child, including cases where evidence of the family relationship is not yet proven or where the agency alleges or suspects the relationship is not bona fide.

3. All records related to past or planned training of judges and court personnel regarding criminal prosecution of adult non-citizens for immigration violations;
4. All records related to past or planned training of judges and court personnel regarding the rights and protections provided under law to non-citizens seeking humanitarian relief in the U.S.;
5. All records related to the policies or protocols regarding transfer of non-citizens to the custody of United States Marshals Service (USMS) following a criminal conviction;
6. All records related to the policies or protocols regarding instructions to U.S. Attorneys' offices relating to the criminal prosecution of non-citizen adults;
7. Any records containing the following data, broken down by month where possible:
  - (a) The number of criminal convictions for "smuggling" under 8 U.S.C. Sec. 1324, "illegal entry" under 8 U.S.C. Sec. 1325, "illegal reentry" under 8 U.S.C. Sec. 1326, or other federal charges, for adult family members previously separated from at least one minor child while in the custody of CBP or ICE, broken down by statute of conviction;
    - i. The number of criminal convictions for "smuggling" under 8 U.S.C. Sec. 1324, "illegal entry" under 8 U.S.C. Sec. 1325, "illegal reentry" under 8 U.S.C. Sec. 1326, or other federal charges, for legal guardians or parents previously separated from at least one minor child while in the custody of CBP or ICE, broken down by statute of conviction;
  - (b) The number of adult family members, previously separated from at least one minor child while in CBP or ICE custody, who were criminally convicted for "smuggling," "illegal entry," or "illegal reentry" after asserting a desire to request asylum or a fear of returning to their country of origin;
  - (c) The number of adult family members, previously separated from at least one minor child while in CBP or ICE custody, who are convicted for a migration-related violation and who serve a reduced sentence as a result of a plea bargain;
  - (d) The number of adult family members, previously separated from at least one minor child while in CBP or ICE custody, who are convicted for a migration-related violation and who are ultimately removed from the United States (as broken down by statute of conviction);
  - (e) The number of minor children who departed the United after being separated from an adult family member while in ICE custody, broken down by the type of order resulting in their removal (including order of voluntary departure, order of removal, order of expedited removal, or reinstatement of removal order); and

- (f) The number of adult family members who departed the United States after being separated from a related minor child while in ICE custody, broken down by the type of order resulting in their removal (including order of voluntary departure, order of removal, order of expedited removal, or reinstatement of removal order).

The Requesters ask that any records that exist in electronic form be provided in their native electronic format on a compact disc, digital video disk, or equivalent electronic medium. Requesters ask that any documents stored in Portable Document Format (“PDFs”) be provided as individual files in a searchable PDF format. Finally, Requesters ask that reasonable metadata be transmitted along with files, including but not limited to maintaining parent-child relationships between emails and their attachments, author information, as well as date and time stamp information. If any of the requested records or information are not kept in a succinct format, we request the opportunity to view the documents in your offices.

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). Requesters expect the release of all segregable portions of otherwise exempt material.

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.

## **2. REQUEST FOR WAIVER OF FEES**

We ask that the agency waive all fees associated with this FOIA request. Such a waiver is warranted because 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) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, the Requesters have the ability to widely disseminate the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (finding a fee waiver appropriate when the requester explained, in detailed and non-conclusory terms, how and to whom it would disseminate the information it received).

### *a) Disclosure of the Information Is in the Public Interest*

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities related to the processing and treatment of adult noncitizens seeking asylum and/or expressing fear of return to their countries of origin who arrive at ports of entry with their minor children. Such information is of great public interest given

the news coverage and public discussion raising serious criticism and concerns related to the practice of family separation.<sup>4</sup> A better understanding of the family separation practices currently in place are critically important to assist attorneys, non-citizens, and the general public in understanding how the U.S. government treats families who seek safe haven in our country.

As discussed below, Requesters have the capacity, intent and demonstrated ability to disseminate the requested information to a broad cross-section of the public.

Requesters are all non-profit organizations established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. Each Requester researches issues related to immigration, and regularly provides information to leaders on Capitol Hill, the media, and the general public. Each Requester work with other immigrants' rights organizations and immigration attorneys across the United States to advance the fair administration of our immigration laws. Furthermore, some Requesters have synthesized and disseminated information from prior FOIA requests to facilitate the sharing of this information with a broad public audience. *See, e.g., Behind Closed Doors: An Overview of DHS Restrictions on Access to Counsel*, a report summarizing certain key documents released by DHS agencies in response to FOIA requests regarding noncitizens' access to counsel, *available at* <https://www.americanimmigrationcouncil.org/research/behind-closed-doors-overview-dhs-restrictions-access-counsel> (last visited, Dec. 23, 2016).

Requesters will analyze and post the information obtained through this FOIA request on its publicly accessible website. If the responsive information is voluminous, Requesters also will publish a summary analysis of such information and will disseminate that summary through their established networks. Finally, Requesters have regular contact with national 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*

Requesters are not-for-profit organizations. We seek the requested information for the purpose of disseminating it to members of the public who have access to our public website and other free publications, and not for the purpose of commercial gain.

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Please provide the applicable records to:

Katie Shepherd

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<sup>4</sup> *See, e.g.,* Caitlin Dickerson & Ron Nixon, *White House Weighs Separating Families to Deter Migrants*, N.Y. Times, Dec. 22, 2017 (<https://www.nytimes.com/2017/12/21/us/trump-immigrant-families-separate.html>); Dora Galacatos, Alan Shapiro & Brett Stark, *The Cruel Ploy of Taking Immigrant Kids From Their Parents*, N.Y. Times, Feb. 28, 2018 (<https://www.nytimes.com/2018/02/28/opinion/immigrant-children-deportation-parents.html>); Michael E. Miller & Jon Gerberg, "Where's Mommy?": A Family Fled Death Threats, Only to Face Separation at the Border, Washington Post, Mar. 18, 2018 ([https://www.washingtonpost.com/local/wheres-mommy-a-family-fled-death-threats-only-to-face-separation-at-the-border/2018/03/18/94e227ea-2675-11e8-874b-d517e912f125\\_story.html](https://www.washingtonpost.com/local/wheres-mommy-a-family-fled-death-threats-only-to-face-separation-at-the-border/2018/03/18/94e227ea-2675-11e8-874b-d517e912f125_story.html)).

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*By and through counsel:*

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