

April 3, 2018

John Walsh

+1 202 663 6000 (t)
+1 202 663 6363 (f)
john.walsh@wilmerhale.com

VIA ELECTRONIC MAIL

Kimberly Epstein
Acting FOIA Officer
Administration for Children and Families
Mary E. Switzer Building
300 C St., SW
Suite 4004
Washington, DC 20201

Michael Marquis
FOIA Officer
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Room 729H
Washington, DC 20201

Harold Henderson
Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 597E, HHH Building
Washington, DC 20201

Robin Brooks
Freedom of Information Officer
Office of Inspector General (OIG)
Cohen Building, Suite 1062
U.S. Department of Health & Human Services
330 Independence Avenue, SW
Washington, DC 20201

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). We represent these organizations in this FOIA request, so please direct any

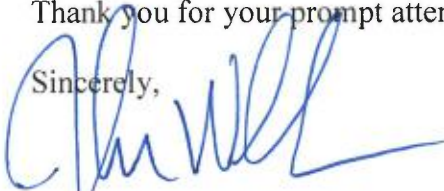
Page 2

legal questions to us. 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
Washington, DC 20005
Phone: 202-507-7520
KShepherd@immcouncil.org

Thank you for your prompt attention to this matter.

Sincerely,



John Walsh
NI QIAN
WILMER CUTLER PICKERING
HALE AND DORR LLP
1225 17th St., Suite 2600
Denver, CO 80202
Phone: 720-274-3135
Facsimile: 720-274-3133
john.walsh@wilmerhale.com
ni.qian@wilmerhale.com



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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.*¹

1. REQUEST FOR INFORMATION

Requesters seek any and all records² that were prepared, received, transmitted, collected and/or maintained by the Department of Health and Human Services (“HHS”), including all its components and specifically including the Office for Civil Rights, the Office of Inspector General, and the Office of Refugee Resettlement (“ORR”), a subdivision of the Administration for Children and Families (collectively, hereafter, “HHS”), that describe, refer, or relate to the policies, guidelines, or procedures followed or used by HHS, to address Department of Homeland Security’s (with all its component agencies, collectively “DHS”) 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 related minor child,³ 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 records that relate or touch on in any way the separation of such adult family members from related minor children while in DHS, HHS, or DOJ facilities, and HHS’s subsequent sheltering and caring for minor children who are separated from their family members.

Requesters seek the above records for the period between October 2016 and the date of your 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

¹ 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 at the U.S. Customs and Border Protection (CBP); Bradley White, the FOIA Officer for the Office for Civil Rights and Civil Liberties; Avery Roselle, the FOIA Officer for the Office of the Inspector General for the Department of Homeland Security; Sam Kaplan, the Chief FOIA Officer for the U.S. Department of Homeland Security (DHS); Amanda Jones, Chief FOIA Officer for the Criminal Division of the Department of Justice (DOJ); Deborah Waller, Government Information Specialist for the Office of the Inspector General at DOJ; the FOIA Officer for the U.S. Marshals Service; Melissa Golden, the FOIA Specialist for the Office of Legal Counsel at DOJ; Laurie Day, the Chief of Initial Request Staff for the Office of the Attorney General at DOJ; Hirsch D. Kravitz, the FOIA Officer for the Civil Division of Department of Justice (DOJ), Joseph R. Schaaf, the FOIA Officer for the Executive Office for Immigration Review (EOIR) at DOJ, Kevin Krebs, the FOIA Officer at the Executive Office for United States Attorneys at the DOJ, Kimberly Epstein, the Acting FOIA Officer for Administration for Children and Families (ACF); Mr. 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.

² The term “records” as used herein includes, but is not limited to: communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

³ 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.

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 regarding the past or planned implementation and use of any electronic system to track instances in which at least one child is in the custody of HHS after being separated from at least one adult family member while in the custody of ICE or CBP. Records should include all data fields contained in the tracking system, such as:
 - (a) Unique identifier;
 - (b) Event area of responsibility;
 - (c) Title of officer who apprehended or encountered individual;
 - (d) Title of officer who approves the separation;
 - (e) Citizenship country;
 - (f) Case status for adult/child;
 - (g) Whether family relationship is verified, and by what means;
2. All records related to any past, current, or planned policy, guidance, or recommendation regarding the separation of families who arrive at the U.S.-Mexico border and ports of entry;
3. All records related to past or planned training of HHS officers, or their agents, and case managers regarding screening of adult family members for the purposes of assessing a family member's fitness as custodian of at least one related minor child;
4. All records related to past or planned training of HHS regarding treatment of minor children in HHS custody who have been separated from adult family members while in ICE or CBP custody;
 - (1) Requested records include those which relate to treatment of minor children who may suffer from mental or physical trauma/disability and/or who may only speak rare languages and/or who encounter other communication challenges;
5. All records regarding psychological or physical harm exhibited by minor children in HHS custody who have been separated from adult family members while in ICE or CBP custody;
6. All records related to HHS practices or protocols for coordinating communication (telephonic, video, or in-person) between an adult family member, including those who remain detained in ICE, U.S. Marshals Service (USMS), and/or CBP custody, and a related minor child, following separation of the adult family member from the child while in ICE, USMS, or CBP custody, including:

- a. Records detailing policies, protocols, or guidance regarding the determination of the identity and location of the adult family member of a child who has been separated from the adult family member while in ICE or CBP custody;
 - b. Records detailing policies or guidance relating to the availability of communication services at the facilities that shelter minor children separated from related adult family members, such as access to telephone calls or video calls and including whether these communication services are free;
 - c. Records detailing policies or guidance relating to what measures are taken to ensure confidentiality of communications between adult family members and minor children in the custody of HHS; and
 - d. Records detailing policies or guidance relating to how HHS obtains necessary documents from the detained adult family member;
7. All records related to coordination among CBP, ICE, USMS, and DHS regarding the processing and handling of the separation of adult family members from related minor children;
 8. All records related to coordination among HHS, CBP, USMS, and ICE regarding the separation of adult family members from minor children, including the separate sheltering of those minor children;
 9. All records related to coordination between HHS and DOJ regarding the criminal prosecution of any such families or noncitizen parents;
 10. All records related to the need for, and/or the construction of, new facilities to shelter minor children who have been separated from their adult family members;
 11. Any policies or protocols related to efforts made by HHS to reunite family members, including minor children from related adult family members, who were previously separated while in CBP or ICE custody, including whether the reunification occurred in the United States or in the family's home country after the adult family member's removal;
 12. All records related to policies or protocols of HHS regarding the release of a minor child to a non-parent, including any records of policies or protocols regarding the process in which a parent authorizes such release to a non-parent, and HHS's verification process and assessment of the non-parent's fitness to receive the minor child;
 13. All records related to HHS's practices or protocols for verifying the family relationship of a child in HHS custody previously separated while in CBP or ICE custody, including the use of DNA testing;
 14. All records containing the following data, broken down by month where possible:

- a. The number of minor children in HHS custody after being separated from an adult family member while in ICE or CBP custody;
 - i. The number of days that each minor child was held or continues to be held in HHS custody;
- b. The number of minor children in HHS custody after being separated from a legal guardian or at least one parent while in ICE or CBP custody;
- c. The number of minor children in the custody of HHS following separation from an adult family member while in the custody of ICE or CBP who were issued a Notice to Appear (NTA) distinct from the NTA issued to an adult family member;
- d. The number of minor children in the custody of HHS who were included in an adult family member's NTA
 - i. Of those children, the number who departed the United States following criminal conviction of the adult family member arising out of an immigration violation;
- e. The number of minor children who departed the United States after being separated from an adult family member while in ICE or CBP custody, broken down by type of departure, including on an order of voluntary departure, order of expedited removal, reinstatement of removal, or administrative removal;
- f. The number of minor children released from HHS custody to at least one family member or sponsor in the United States after being separated from an adult family member while in ICE or CBP custody;
- g. The number of children HHS reunited with adult family members from whom they were previously separated while in CBP or ICE custody;
- h. The number of minor children, who were previously separated from an adult family member while in CBP or ICE custody, who have been provided legal representation through the Vera Institute of Justice network of legal service providers;
- i. The number of minor children previously separated from an adult family member who have been identified as a survivor of human trafficking, including those who have been referred by HHS for related legal, social, or medical services;
- j. The number of minor children, who were previously separated from an adult family member while in CBP or ICE custody, to whom a Child Advocate has been appointed through the Young Center's Child Advocate Program;
- k. The number of minor children, who were previously separated from an adult family member while in CBP or ICE custody, who were represented through the Vera Institute of Justice network and who have requested voluntary departure;

- l. The number of minor children, who were previously separated from an adult family member while in CBP or ICE custody, to whom a Child Advocate has been appointed through the Young Center's Child Advocate Program and who have requested voluntary departure;
 - m. The number of motions to expedite voluntary departure facilitated or coordinated by HHS on behalf of minor children who were previously separated from adult family members while in CBP or ICE custody;
 - n. The number of minor children who were previously separated from an adult family member while in CBP or ICE custody and who have been transferred between shelter locations
 - i. Of those children, the number of transfers for each child; and
15. All complaints received by HHS, either in the Office for Civil Rights or the Office of Investigator General, regarding the separation of families.

The Requesters ask that any records that exist in electronic form be provided in their native electronic format on a compact disc, digital videodisk, 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.⁴ 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, April 3, 2018).

Requesters will analyze and post the information obtained through this FOIA request on their publicly accessible websites. If the responsive information is voluminous, Requesters also will publish a summary analysis of such information and will disseminate that summary through

⁴ *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).

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.

* * *

Please provide the applicable records to:

Katie Shepherd
American Immigration Council
1331 G Street NW, Suite 200
Phone: 202-507-7511
Email: kshepherd@immcouncil.org.

Thank you for your prompt attention to this request.

Sincerely,



KATIE SHEPHERD
EMILY CREIGHTON
AMERICAN IMMIGRATION COUNCIL
1331 G Street NW, Suite 200
Washington, DC 20005
Phone: 202-507-7511
Email: kshepherd@immcouncil.org

MICHELLE BRANE
WOMEN'S REFUGEE COMMISSION
1012 14th Street NW, Suite 1100
Washington, DC 20005

MARY MEG MCCARTHY
NATIONAL IMMIGRANT JUSTICE CENTER
c/o Jenner & Block, LLP
1099 New York Avenue NW
Washington, DC 20001

JENNIFER PODKUL
KIDS IN NEED OF DEFENSE
1300 L St. NW, Suite 1100
Washington, DC 20005

LAURA ST. JOHN
FLORENCE PROJECT
Florence Project Main Office
P.O. Box 654

Florence, Arizona 85132

By and through counsel:

s/ John Walsh

JOHN WALSH

NI QIAN

WILMER CUTLER PICKERING

HALE AND DORR LLP

1225 17th St., Suite 2600

Denver, CO 80202

Phone: 720-274-3135

Facsimile: 720-274-3133

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