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foia@hq.dhs.gov

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

Via U.S. Mail & Electronic Mail -
ICE-FOIA@dhs.gov

U.S. Immigration and Customs Enforcement
 Freedom of Information Act Office
 500 12th Street, S.W., Stop 5009
 Washington, D.C. 20536-5009

**Via U.S. Mail, Via Electronic Mail-
FOIARequest@hhs.gov
 & Via Online Submission**

U.S. Department of Health and Human
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 Freedom of Information Officer
 Hubert H. Humphrey Building, Room 729H
 200 Independence Avenue, SW
 Washington, D.C. 20201

Via U.S. Mail & Via Online Submission

U.S. Customs and Border Protection
 1300 Pennsylvania Ave., NY
 Washington, D.C. 20229

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Via U.S. Mail & Via Electronic Mail -

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U.S. Office of Refugee Resettlement
Administration for Children and Families
FOIA Office
330 C Street, SW, 4th Floor
Washington, D.C. 20201

Via U.S. Mail & Via Online Submission

U.S. Centers for Disease Control and
Prevention
FOIA Office
1600 Clifton Road, NE, Mailstop D54
Atlanta, Georgia 30333

Re: **FREEDOM OF INFORMATION ACT REQUEST**

Dear Sir or Madam:

Justice Action Center (“JAC”) and Immigrant Defenders Law Center (“ImmDef”) (together, “Requesters”), whom this firm represents, pursuant to the provisions of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended, and the applicable agency regulations, request copies of the records identified in the numbered paragraphs below from the United States Department of Homeland Security (including from U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, the Office of the Secretary, the Office of the Deputy Secretary, and any other components likely to have responsive documents), and from the United States Department of Health and Human Services (including from the Office of Refugee Resettlement, the Centers for Disease Control and Prevention, the Office of the Secretary, the Office of the Deputy Secretary, and any other components likely to have responsive documents).

BACKGROUND

President Biden has continued former President Trump’s policy of “Title 42” expulsions¹—a policy of immediately turning away asylum seekers and expelling them back to Mexico or to their home countries.² President Biden’s treatment of families with minor children under Title 42—particularly children apprehended with a non-parental family member, such as an aunt or uncle, grandparent, or adult cousin or sibling—has raised concern among immigration and child welfare advocates.

¹ See AIC, *A Guide to Title 42 Expulsions at the Border* (Mar. 29, 2021),

<https://www.americanimmigrationcouncil.org/research/guide-title-42-expulsions-border>.

² Section 265 of Title 42 is a little-known provision of U.S. health law that ostensibly permits the Surgeon General to suspend the entry of individuals to the United States when necessary to prevent the spread of a communicable disease. Former President Trump used the ongoing COVID-19 pandemic as an excuse for closing the border to asylum seekers and authorizing their categorical and summary expulsion under Title 42.

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Because children apprehended with a non-parental family member are legally classified as “unaccompanied children,”³ they have historically been separated from their non-parental family member(s) upon apprehension and taken into the custody of the Office of Refugee Resettlement (“ORR”). Before the adoption of Title 42 (as well as the Trump Administration’s Migrant Protection Protocols (“MPP”)⁴), the non-parental family member was usually taken into the custody of Immigration and Customs Enforcement (“ICE”) and placed in immigration proceedings, which include the opportunity to seek asylum and the possibility of being released or paroled into the United States to await their immigration court hearing. Children who were separated from their non-parental family members had the opportunity to be released from ORR custody to the care of a vetted U.S. sponsor, which could involve reuniting with the family member from whom they were separated.

Under former President Trump’s Title 42 expulsion policy, all asylum seekers, including unaccompanied children and children in the company of adults, were categorically returned to Mexico or their home countries. President Biden has continued this expulsion policy, but exempted unaccompanied children in January 2021. As a result, children apprehended with a non-parental family member continue to be classified as “unaccompanied children” and are involuntarily separated from their family members, but their family members are being expelled back to Mexico or to their home countries.⁵ Not only is this separation traumatic for these children and their family members, it can also mean that if such a child is eligible for release from ORR custody to a sponsor in the United States, the child may not be released to the most suitable sponsor because the family member who brought the child has been expelled from the country, with no ability to enter the U.S. and care for the child. It can also mean that some children have no available sponsor at all and can be placed in long-term foster care or deported

³ An “unaccompanied alien child” (herein, an “unaccompanied child”) is defined as a minor under 18 who has no legal immigration status in the United States and no accompanying parent or legal guardian. 6 U.S.C. § 279(g)(2); *see also* NIJC, *Unaccompanied Immigrant Children*, <https://immigrantjustice.org/issues/unaccompanied-immigrant-children>.

⁴ *See* AIC, *The “Migrant Protection Protocols”* (Jan. 22, 2021), <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols>.

⁵ *See* M. Sacchetti, *More migrant families make it into the United States, but thousands are still being expelled* (Mar. 17, 2021), https://www.washingtonpost.com/immigration/migrant-families-border/2021/03/17/8c7816da-8669-11eb-8a8b-5cf82c3dffe4_story.html; A. Flores, *A Man And His Nephew Are Still Grappling With The Trauma Of Being Separated At The Border Under The Biden Administration* (May 15, 2021), <https://www.buzzfeednews.com/article/adolfoflores/uncle-nephew-immigrants-painful-border-separation>; K. Cooke, et al., *Where is my aunt? Kids separated from relatives at the border strain U.S. shelters* (Mar. 30, 2021), <https://www.reuters.com/www.reuters.com/article/us-usa-immigration-separations/where-is-my-aunt-kids-separated-from-relatives-at-the-border-strain-u-s-shelters-idUSKBN2BM149>; C. Long et al., *‘And now we are alone’: Extended family separated at border* (July 2, 2019), <https://apnews.com/article/08d9f07b1bc54c5b982825bc1381b8d5>.

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back to their home country, both of which exacerbate and prolong the child's trauma and family separation.

The Requesters seek information on the federal government's policies regarding the treatment of children who are apprehended at the border in the company of adults, particularly when either the child or adult state that they are related to each other. The disclosure of the information sought below would contribute to the "public understanding of the operations or activities of the government," 5 U.S.C. § 552(a)(4)(A)(iii), and would be "in the public interest." 28 C.F.R. § 16.10(k); *see also* 6 C.F.R. § 5.11(k)(1).

DEFINITIONS

The records request below incorporates the following definitions:

"Title 42" refers to the March 20, 2020 order, issued by Robert R. Redfield, Director of the Centers for Disease Control and Prevention, as well as any extension, amendment, and replacement of the March 20, 2020 order, including the extension on April 20, 2020, amendment on May 19, 2020, and replacement on October 13, 2020, suspending the "introduction" of certain individuals who have been in "Coronavirus Impacted Areas," thereby authorizing the United States Border Patrol to expel individuals arriving at the U.S.-Mexico border and return those individuals to Mexico or to their home country without giving them an opportunity to seek asylum.

"TVPPRA" refers to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, codified at 8 U.S.C. § 1232, which guarantees certain protections and safeguards for unaccompanied children and victims of human trafficking.

"*Flores* Settlement Agreement" refers to a stipulated settlement agreement entered into by the U.S. government in 1997, arising out of a 1987 class action lawsuit in the U.S. District Court for the Central District of California, *Flores v. Reno*, Cause No. 2:85-cv-04544, and including subsequent litigation, which outlines standards for the detention and release of unaccompanied children in DHS or ORR custody.

"Family member" refers to someone who is not a biological or adoptive parent or legal guardian, but who has any other familial relationship, including by blood, marriage, adoption, or otherwise by operation of law, to a child or children apprehended at the U.S.-Mexico border.

"Long Term Foster Care" refers to a long-term care setting, including but not limited to community-based foster care or extended-care group homes, into which unaccompanied children may be placed by ORR.

"Agency" refers to the United States Department of Homeland Security, including U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, the Office of the

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Secretary, the Office of the Deputy Secretary, and any other subagencies, offices, departments, or components, as well as the United States Department of Health and Human Services, including the Office of Refugee Resettlement, the Centers for Disease Control and Prevention, the Office of the Secretary, the Office of the Deputy Secretary, and any other subagencies, offices, departments, or components.

In addition, in interpreting the Requests, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa. In requesting “policies” and “guidance,” the Requesters seek both national policies and guidance, as well as policies and guidance specific to any Border Patrol Sectors, Border Patrol Stations, or Ports of Entry, in any format, including memoranda.

REQUESTS

1. All policies, guidance, or correspondence (including e-mails and attachments thereto), whether formal or informal, created since January 20, 2017, including all revisions of such policies or guidance and related correspondence, related to:
 - a. The Agency’s treatment and processing of minor children apprehended at the U.S.-Mexico border in the company of an adult or adults, who either the child or the adult asserts is the biological parent or legal guardian of the minor child.
 - b. The Agency’s treatment and processing of minor children apprehended at the U.S.-Mexico border in the company of an adult or adults, who either the child or the adult asserts is a family member of the minor child.
 - c. The Agency’s treatment and processing of minor children apprehended at the U.S.-Mexico border in the company of an adult or adults.

2. All policies, guidance, or correspondence (including e-mails and attachments thereto), whether formal or informal, created since January 20, 2017, including all revisions of such policies or guidance and related correspondence, related to:
 - a. The Agency’s efforts to verify any asserted familial relationships between adults and minor children who are apprehended together at the U.S.-Mexico border.
 - b. The Agency’s efforts to assess the health and welfare of minor children apprehended in the company of an adult, including any adult family member, at the U.S.-Mexico border.

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3. All policies, guidance, or correspondence (including e-mails and attachments thereto), whether formal or informal, created since January 20, 2021, related to the Agency's efforts to assess the health and welfare of minor children who are apprehended in the company of an adult, including any biological parent, legal guardian, or adult family member, at the U.S.-Mexico border within 3 weeks of the minor child's apprehension.
4. All policies, guidance, or correspondence (including e-mails and attachments thereto), whether formal or informal, created since March 20, 2020, related to the Agency's efforts to perform mental health assessments on, and/or provide any mental health services to, any minor child apprehended in the company of an adult, including any biological parent, legal guardian, or adult family member, at the U.S.-Mexico border who was subsequently separated from that adult at any time.
5. All policies, guidance, or correspondence (including e-mails and attachments thereto), whether formal or informal, created since January 20, 2017, including all revisions of such policies or guidance and related correspondence, related to:
 - a. Any recordkeeping or tracking undertaken or contemplated by the Agency with respect to the alleged familial or care relationship, the contact information, location, immigration status, and/or immigration history of adults who were apprehended with a minor child at the U.S.-Mexico border, who either the child or adult asserted is a family member of the child, and who has subsequently been returned to Mexico or the adult's home country.
 - b. Any recordkeeping or tracking undertaken or contemplated by the Agency with respect to the alleged familial or caretaker relationship, the contact information, location, immigration status, and/or immigration history of adults who were apprehended with a minor child at the U.S.-Mexico border, who either the child or adult asserted is a family member of the child, who were subsequently detained by CBP or ICE and/or paroled into the United States.
 - c. Any attempt to assess or determine, or otherwise reassess or redetermine, the age of any individual who was apprehended with a child at the U.S.-Mexico border, who either the individual or the child asserted is an older sibling of the child.
 - d. The Agency's treatment and processing of an individual who was apprehended with a child at the U.S.-Mexico border, who either the individual or the child asserted is an older sibling of the child, who the Agency determined after apprehension is an adult over the age of eighteen and not a minor child.

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6. All reports, including data in any database, showing any of the following for any and all time periods for which records exist, including but not limited to monthly data:
 - a. The number of minor children who, since March 20, 2020, have been placed in the custody of ORR, who were originally apprehended at the U.S.-Mexico border in the company of an adult, who either the minor child or adult asserted was a family member of the minor child.
 - b. The number of minor children who, since March 20, 2020, were initially placed in the custody of ORR and have since been released to the custody of an adult sponsor pursuant to the TVPRA and the *Flores* Settlement Agreement, who were originally apprehended at the U.S.-Mexico border in the company of an adult, who either the minor child or adult asserted was a family member of the minor child.
 - c. The number of minor children who, since March 20, 2020, were initially placed in the custody of ORR and have since been placed into Long Term Foster Care, who were originally apprehended at the U.S.-Mexico border in the company of an adult, who either the minor child or adult asserted was a family member of the minor child.
 - d. The number of minor children who, since March 20, 2020, were initially placed in the custody of ORR and have since been removed or repatriated to their home country or to another country, who were originally apprehended at the U.S.-Mexico border in the company of an adult, who either the minor child or adult asserted was a family member of the minor child.

7. All reports, including data in any database, showing any of the following for any and all time periods for which records exist, including but not limited to monthly data:
 - a. The number of minor children who, since March 20, 2020, have been placed in the custody of ORR, who were originally apprehended at the U.S.-Mexico border in the company of an adult, who either the minor child or adult asserted was a biological parent or legal guardian of the minor child.
 - b. The number of minor children who, since March 20, 2020, were initially placed in the custody of ORR and have since been released to the custody of an adult sponsor pursuant to the TVPRA and the *Flores* Settlement Agreement, who were originally apprehended at the U.S.-Mexico border in the company of an adult, who either the minor child or adult asserted was a biological parent or legal guardian of the minor child.

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- c. The number of minor children who, since March 20, 2020, were initially placed in the custody of the ORR and have since been placed into Long Term Foster Care, who were originally apprehended at the U.S.-Mexico border in the company of an adult, who either the minor child or adult asserted was a biological parent or legal guardian of the minor child.
 - d. The number of minor children who, since March 20, 2020, were initially placed in the custody of ORR and have since been removed or repatriated to their home country or to another country, who were originally apprehended at the U.S.-Mexico border in the company of an adult, who either the minor child or adult asserted was a biological parent or legal guardian of the minor child.
8. All reports, including data in any database, showing any of the following, in aggregate and/or by Port of Entry or by Border Patrol Sector, and for any and all time periods for which records exist, including but not limited to monthly data:
 - a. The number of familial units consisting of a minor child or children with one or both parents, who have been returned to Mexico or to their home country pursuant to Title 42 since March 20, 2020.
 - b. The number of familial units consisting of a minor child or children with one or both parents, who have been taken into ICE or CBP custody and remain detained in ICE or CBP custody since March 20, 2020.
 - c. The number of familial units consisting of a minor child or children with one or both parents, who have been paroled into the United States or otherwise released from ICE or CBP custody into the interior of the country since March 20, 2020.
9. All reports, including data in any database, showing any of the following, in aggregate and/or by Port of Entry or by Border Patrol Sector, and for any and all time periods for which records exist, including but not limited to monthly data:
 - a. The number of familial units consisting of a minor child or children with a non-parental family member, who have been returned to Mexico or to their home country pursuant to Title 42 since March 20, 2020.
 - b. The number of familial units consisting of a minor child or children with a non-parental family member, who have been taken into ICE or CBP custody and remain detained in ICE or CBP custody since March 20, 2020.
 - c. The number of familial units consisting of a minor child or children with a non-parental family member, who have been paroled into the United States or

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otherwise released from ICE or CBP custody into the interior of the country since March 20, 2020.

10. All reports, including data in any database, showing any of the following, in aggregate and/or by Port of Entry or by Border Patrol Sector, and for any and all time periods for which records exist, including but not limited to monthly data:
 - a. The number of individuals who were originally apprehended at the U.S.-Mexico border in the company of a minor child, who either the individual or the child asserted is an older sibling of the child, and who the Agency determined after apprehension is an adult over the age of eighteen and not a minor child.
 - b. The number of individuals who were originally apprehended at the U.S.-Mexico border in the company of a minor child, who either the individual or the child asserted is an older sibling of the child, who the Agency determined after apprehension is an adult over the age of eighteen and not a minor child, and who have been returned to Mexico or to their home country pursuant to Title 42, since March 20, 2020.
 - c. The number of individuals who were originally apprehended at the U.S.-Mexico border in the company of a minor child, who either the individual or the child asserted is an older sibling of the child, who the Agency determined after apprehension is an adult over the age of eighteen and not a minor child, and who have been taken into ICE or CBP custody and remain detained in ICE or CBP custody since March 20, 2020.
 - d. The number of individuals who were originally apprehended at the U.S.-Mexico border in the company of a minor child, who either the individual or the child asserted is an older sibling of the child, who the Agency determined after apprehension is an adult over the age of eighteen and not a minor child, and who have been paroled into the United States or otherwise released from ICE or CBP custody into the interior of the country since March 20, 2020.

FORMAT AND PRODUCTION REQUESTS

The Requesters request that responsive links are produced *in their entirety*, including all attachments, enclosures, hyperlinks and internal links, and exhibits. If it is determined that a document contains material or information that falls within a statutory exemption to mandatory disclosure, the Requesters ask that such material or information be reviewed for possible

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discretionary disclosure, consistent with the presumption of openness codified in the Freedom of Information Act Improvement Act of 2016, Pub. L. 114-185, 130 Stat. 538.

The burden is on the government to provide a determination within 20 working days. In the event your office is unable to meet the deadline, the Requesters are willing to discuss an appropriate schedule for rolling productions. To the extent you have any questions after reviewing our request, please do not hesitate to contact the undersigned.

FEE WAIVER REQUEST

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), the Requesters request a fee waiver.

Justice Action Center. JAC is a non-profit organization with federal 501(c)(3) status, dedicated to advancing the civil and human rights of immigrants in the United States through a combination of impact litigation, communications, and digital strategies. JAC provides related support to select partner non-profit organizations that have immigrant members or that provide direct legal services to immigrant communities. JAC employs an innovative model that advances the rights of immigrant communities by connecting cutting-edge impact litigation and compelling narrative and communications content.

JAC has developed a multi-pronged approach to use information obtained through FOIA requests to educate the public and further the aforementioned goals. First, JAC uses the expertise and experience of its own staff to target members of the public most affected by the information. For example, JAC advises organizations providing legal services to children and families apprehended at the border and has also represented such children in litigation to advocate for their statutory and constitutional rights. JAC will use its own social media and website resources to publish the information received through this request. Second, JAC partners with well-established immigration advocacy groups to ensure dissemination to key communities, such as Families Belong Together and FWD.us. Finally, JAC works with newspaper and broadcast media to report on the released information. Using this multi-pronged approach, JAC will educate the public with the information it obtains through this FOIA request.

Immigrant Defenders Law Center. ImmDef is a non-profit organization with federal 501(c)(3) status whose mission is to achieve universal representation for immigrants in removal proceedings. ImmDef is the largest legal services provider in Southern California and serves Southern California's most marginalized immigrant and refugee communities through legal education, community empowerment, strategic litigation, and direct representation before USCIS, the immigration courts, and the Ninth Circuit. ImmDef provides full-scale legal representation, case management support, and other legal services to more than 900 unaccompanied children annually.

The Children's Representation Project ("CRP") is ImmDef's largest direct representation program and ImmDef uses information obtained through the FOIA process to assist in the

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representation of, and advocacy for, our clients and impacted communities. This information is also used for purposes of education, advocacy, and public outreach.

According to the applicable agency regulations, fees shall be waived or reduced when it is determined, based upon the submission of the requester, that the information is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k)(1) (permitting fee waiver when “[d]isclosure of the requested information is in the public interest” and “[d]isclosure of the information is not primarily in the commercial interest of the requester”); 28 C.F.R. § 16.10(k) (“[r]equester[] may seek a waiver of fees by . . . demonstrating how disclosure of the requested information is in the public interest because it 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”).

The Requesters will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. The issue of family separation and how children and families are treated at the border are of significant public interest in general, and the issue of how the federal government treats unaccompanied children who may have been separated from adult family members is of significant interest in particular. The Requesters have undertaken this work in the public interest and not for any private commercial interest. The primary purpose of this FOIA request is to obtain information to further the public’s understanding of federal immigration policies and practices. Access to this information is necessary for the public to meaningfully evaluate the costs and consequences of federal immigration policies. Thus, the agencies must waive or reduce any fees because the Requesters do not have a commercial interest in the requested information and, instead, request this information to educate the public at large regarding the Department of Homeland Security’s and the Department of Health and Human Service’s operations and activities. *See* 5 U.S.C. § 552(a)(4)(A)(iii).

The Requesters have engaged this firm as pro bono counsel, who will be responsible for the reasonable cost of locating and reproducing the requested documents to the extent required by your regulations and not otherwise waived. If such cost will exceed \$150, please contact us before incurring it.