

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

TEXAS CIVIL RIGHTS PROJECT
1405 Montopolis Dr
Austin, TX 78741

INSTITUTE FOR CONSTITUTIONAL
ADVOCACY AND PROTECTION
600 New Jersey Ave NW
Washington, DC 20001,
Plaintiffs

v.

Case No.: 1:20-cv-2389

COMPLAINT

UNITED STATES CUSTOMS AND
BORDER PROTECTION
1300 Pennsylvania Ave NW, Suite 4.4-B
Washington, D.C. 20229,

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY
2707 Martin Luther King Jr Ave SE
Washington, D.C. 20528,

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT
500 12th Street SW
Washington, D.C. 20536,

Defendants.

1. Since at least the start of the COVID-19 pandemic, Defendant Department of Homeland Security (DHS), through Defendants Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), has expelled thousands of unaccompanied and

undocumented children without providing them with any legal process.¹ DHS has carried out these expulsions largely in secret. But what is known is troubling. Most children crossing the border alone are not transferred to the Office of Refugee Resettlement.² Instead, DHS has contracted out the care of young children to private contractors with uncertain credentials.³ These contractors detain children in secret locations, including hotels across Texas, while shelters built specifically for the purpose of temporarily housing such children sit empty.⁴ Many of these children do not get an opportunity to consult with attorneys or reunite with family members prior to expulsion.⁵ Instead, DHS rushes to expel the thousands of unaccompanied and undocumented children who have arrived since the start of the pandemic to countries where many fear persecution.⁶

2. In public statements, Defendants have asserted that expulsion—rather than the normal deportation (or “removal”) process—is necessary because immigrant children pose a public health risk as potential spreaders of COVID.⁷ DHS terms these “Title 42 Expulsions” after 42 U.S.C. § 265, the public health law that supposedly grants Defendants the authority to deprive children of their right to due process.⁸ But DHS is not merely expelling undocumented children who

¹ See Lomi Kriel, *Federal agents are expelling asylum seekers as young as 8 months from the border, citing COVID-19 risks*, Texas Tribune and ProPublica, August 4, 2020, texastribune.org/2020/08/04/border-migrant-children-hotels/.

² See Caitlin Dickerson, *10 Years Old, Tearful and Confused After a Sudden Deportation*, New York Times, May 21, 2020, <https://www.nytimes.com/2020/05/20/us/coronavirus-migrant-children-unaccompanied-minors.html?searchResultPosition=1>.

³ Nomaan Merchant, *Migrant Kids Held in US Hotels, Then Expelled*, AP, July 22, 2020, <https://apnews.com/c9b671b206060f2e9654f0a4eae6388>.

⁴ *Id.*

⁵ Lomi Kriel, *The Trump Administration is Rushing Deportation of Migrant Children During Coronavirus*, ProPublica, May 18, 2020, <https://www.propublica.org/article/the-trump-administration-is-rushing-deportations-of-migrant-children-during-coronavirus>.

⁶ *Id.*

⁷ See Dickerson, *supra* note 2.

⁸ U.S. Customs and Border Protection, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>.

test positive for COVID on arrival; it is also expelling children who do not have COVID.⁹ Indeed, according to recent reporting, DHS is *only* expelling children who have tested negative—i.e., children who do not pose a public health risk.¹⁰

3. Plaintiffs Texas Civil Rights Project (TCRP) and the Institute for Constitutional Advocacy and Protection (ICAP) have submitted three Freedom of Information Act requests to Defendant agencies to obtain more information about the treatment of unaccompanied children who have crossed the border in recent months. They have sought records that encompass, among other things, the standards used to determine whether unaccompanied and undocumented children are immediately expelled or are allowed to apply for humanitarian relief; statistics on how many children have been expelled and to where; the as-of-now secret locations where DHS detains children prior to Title 42 expulsion; and the identity of companies that Defendants have contracted with to transport and detain children.

4. Plaintiffs' requests for the transparency afforded by federal law have been met with silence. None of the agencies has produced any record within the applicable statutory time limit imposed by 5 U.S.C. § 552.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

6. Venue is proper in this District under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

⁹ Caitlin Dickerson and Kirk Semple, *U.S. Deported Thousands Amid COVID-19 Outbreak. Some Proved to Be Sick.*, New York Times, Apr. 18, 2020, <https://www.nytimes.com/2020/04/18/us/deportations-coronavirus-guatemala.html>.

¹⁰ Dara Lind & Lomi Kriel, *ICE IS Making Sure Migrant Kids Don't Have COVID-19—Then Expelling Them to “Prevent the Spread” of COVID-19*, ProPublica, August 10, 2020, <https://www.propublica.org/article/ice-is-making-sure-migrant-kids-dont-have-covid-19-then-expelling-them-to-prevent-the-spread-of-covid-19>.

PARTIES

7. Plaintiffs TCRP and ICAP are the requestors of the records that Defendants DHS, ICE, and CBP are withholding. TCRP is a non-profit and nonpartisan 501(c)(3) organization committed to ensuring civil rights and the protection of law within Texas. TCRP publishes press releases, opinion pieces, reports, and policy papers. It disseminates information through its website, txcivilrights.org. ICAP is a non-profit legal institute based at Georgetown University Law Center whose mission is to use the power of the courts to defend American constitutional rights and values. ICAP publishes press releases, opinion articles, and reports. TCRP's and ICAP's requests were made to inform the public's understanding of the government's operations and activities and not for any commercial use.

8. Defendants DHS, ICE, and CBP are federal agencies within the meaning of 5 U.S.C. § 552(f)(1) and are headquartered in Washington, D.C.

FACTS

I. Background

9. In March 2020, the Centers for Disease Control (CDC) promulgated an order directing that all undocumented immigrants, including unaccompanied children, apprehended at the border be removed from the country immediately.¹¹ The CDC's stated basis for the order has been that undocumented immigrants could increase the spread of COVID in the United States.¹² When the order went into effect in March, the United States already had more than 17,000 COVID cases.¹³ Central American countries in the "Northern Triangle" countries of El Salvador, Guatemala, and

¹¹ Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17061 (Mar. 26, 2020).

¹² *Id.*

¹³ Zolan Kanno-Youngs and Kirk Semple, *Trump Cites Coronavirus as He Announces a Border Crackdown*, New York Times, Mar. 27, 2020, <https://www.nytimes.com/2020/03/20/us/politics/trump-border-coronavirus.html>.

Honduras, where most foot-traffic at the border originates, had fewer than 300 confirmed cases.¹⁴ Even within those countries, the order did not exclude all immigrants—only undocumented ones.¹⁵ Immigrants with valid visas coming by foot or air travel could still enter.¹⁶ The CDC did not explain why undocumented immigrants posed more of a public health risk than documented ones. But its order did purport to allow DHS to start expelling undocumented children, whether or not they tested positive for COVID upon arrival.¹⁷

10. To implement this order, DHS, through CBP, implemented “Operation CAPIO.” Under Operation CAPIO, CBP has, among other things, expelled unaccompanied and undocumented children without any legal process. In effect, Operation CAPIO denies most unaccompanied and undocumented children the opportunity for humanitarian relief such as asylum, withholding of removal, or Convention Against Torture relief.

11. Defendants carry out these expulsions, sometimes in the middle of the night, without contacting children’s family members. The effect of removal is to force children to return to countries where many may be persecuted or tortured.¹⁸

12. Prior to the records request ICAP made in May, CBP expelled at least 915 unaccompanied and undocumented children shortly after they entered the U.S. At that time, CBP had allowed only 166 unaccompanied and undocumented children to remain in the U.S. and apply for humanitarian relief.¹⁹ Now, the number of children expelled without process has climbed to at least 2,000.²⁰

¹⁴ *Id.*

¹⁵ Notice of Order, *supra* note 11.

¹⁶ *Id.*

¹⁷ *See* Kriel, *supra* note 5.

¹⁸ *See* Dickerson, *supra* note 2.

¹⁹ *Id.*

²⁰ Merchant, *supra* note 3.

13. In a New York Times article published on May 20, 2020, a CBP public affairs agent, Matthew Dyman, asserted that CBP has standards to differentiate between which unaccompanied children are allowed to apply for relief and which are immediately removed from the country.²¹

14. He refused to disclose those standards that have now determined the fates of thousands of children.

15. DHS is not allowing children to consult with an attorney prior to expulsion. It is not even keeping children in the shelters built for that purpose. Instead, DHS has contracted private agents to keep children locked in hotels across the Southern border.²² DHS refused to say if these contractors have security clearance or are licensed to work with vulnerable children,²³ but public reporting reveals that one contractor does not.²⁴ One of the most frequently used hotels was the Hampton Inn in McAllen, Texas—contractors have used the hotel at least 123 times.²⁵ When TCRP discovered that possibly hundreds of children were at the Hampton Inn, a TCRP attorney attempted to provide children held there with legal assistance but was aggressively turned away by contractors who refused to identify themselves or whom they were working for.²⁶

II. TCRP's and ICAP's Requests

16. On June 24, 2020, TCRP submitted FOIA requests to ICE and DHS seeking records relating to, among other things, Title 42 and Operation CAPIO; the treatment of unaccompanied children; formal agreements between the U.S. and foreign countries to accept individuals expelled

²¹ See Dickerson, *supra* note 2.

²² *Id.*

²³ Dickerson, *supra* note 2.

²⁴ Caitlin Dickerson, *A Private Security Company Is Detaining Migrant Children at Hotels*, New York Times, Aug. 16, 2020, *available at* www.nytimes.com/2020/08/16/us/migrant-children-hotels-coronavirus.html?referringSource=articleShare.

²⁵ *Id.*

²⁶ Texas Civil Rights Project (TXCivilRights), “BREAKING: Our Attorney was aggressively rejected from trying to offer help to immigrant children illegally detained at a Hampton Inn in McAllen, TX. He and another of our staffer were violently shoved into the hotel elevator and were told they could not offer help. #FreeThemALL!” July 23, 2020, *available at* twitter.com/TXCivilRights/status/1286445319056654336?s=20.

pursuant to Title 42; statistics on how many people have been expelled and to where they were expelled; the identity of private contractors who detain children under CAPIO; and all locations where children processed under CAPIO are kept. In both requests, TCRP requested a fee waiver and expedited processing. The requests were delivered on June 29, 2020. They are attached here as Exhibits A and B.

17. ICE has acknowledged receipt of TCRP's FOIA and assigned it case numbers 2020-HQFO-01577 and 2020-ICFO-78204. DHS has not yet acknowledged receipt of the FOIA request TCRP sent it.

18. On May 21, 2020, ICAP submitted a FOIA request to CBP seeking records of the standard(s), guideline(s), and rule(s) that govern what legal process unaccompanied minors are afforded. ICAP requested a fee waiver. The request is attached here as Exhibit C. CBP received ICAP's FOIA request and assigned it case number CBP-OC-2020-055431.

19. The Freedom of Information Act requires an agency that has received a records request to determine, within 20 business days of receipt of the request, "whether to comply with [the] request" and to "immediately notify the person making [the] request of . . . [the] determination and the reasons therefor." 5 U.S.C. § 552(a)(6)(i).

20. To date, DHS, ICE, and CBP have all failed to communicate whether they will comply with TCRP and ICAP's requests.²⁷ All three agencies have therefore violated the applicable time limits.²⁸

²⁷ ICE's acknowledgement granted TCRP's request for a fee waiver, but did not determine whether ICE would produce records.

²⁸ An initial acknowledgement of receipt ICAP's request stated, "Although CBP's goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances pursuant to 6 C.F.R. Part 5 § 5.5(c). [As your request seeks documents that will require a thorough and wide-ranging search, CBP will invoke a 10-day extension for your request pursuant to 6 C.F.R. Part 5 § 5.5(c). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.] OR [As your request seeks a voluminous amount of separate and distinct records, CBP will invoke a 10-day extension for your request pursuant to 6 C.F.R. Part 5 § 5.5(c).]" It is unclear if

21. DHS, ICE, and CBP's failure to respond constitutes constructive denial of the request. This denial is without legal justification.

CAUSES OF ACTION

COUNT I

Violation of FOIA

Plaintiff TCRP against DHS

22. Plaintiffs re-allege and incorporate the foregoing allegations.
23. Defendant DHS has failed to respond to TCRP's request within the statutory deadline.
24. Defendant DHS has wrongfully withheld records responsive to TCRP's request.
25. Because of Defendant DHS' failure to timely respond to TCRP's request, TCRP's obligation to exhaust administrative remedies is satisfied. 5 U.S.C. § 552(a)(6)(C)(i).

COUNT II

Violation of FOIA

Plaintiff TCRP against ICE

26. Plaintiffs re-allege and incorporate the foregoing allegations.
27. Defendant ICE has failed to respond to TCRP's request, assigned case number 2020-HQFO-01577, within the statutory deadline.
28. Defendant ICE has wrongfully withheld records responsive to TCRP's request.
29. Because of Defendant ICE's failure to timely respond to TCRP's request, TCRP's obligation to exhaust administrative remedies is satisfied. 5 U.S.C. § 552(a)(6)(C)(i).

CBP intended to invoke a 10-day extension through the use of this boilerplate language. Even if it did, the extended deadline has now passed.

COUNT III
Violation of FOIA
Plaintiff ICAP against CBP

30. Plaintiffs re-allege and incorporate the foregoing allegations.

31. Defendant CBP has failed to respond to ICAP's request, assigned case number CBP-OC-2020-055431, within the statutory deadline.

32. Defendant CBP has wrongfully withheld record(s) responsive to ICAP's requests. Specifically, CBP has withheld record(s) that contain the standard(s), rule(s), or guideline(s) that CBP applies to determine whether unaccompanied minors are expelled or given legal process and that CBP public affairs specialist Matthew Dyman referenced in the New York Times article *10 Years Old, Tearful and Confused After a Sudden Deportation* by Caitlin Dickerson. *See supra* note 2. This Count does not seek additional records requested in other components of ICAP's FOIA request.

33. Because of Defendant CBP's failure to timely respond to ICAP's requests, ICAP's obligation to exhaust administrative remedies is satisfied. 5 U.S.C. § 552(a)(6)(C)(i).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

- A. Order Defendants DHS, ICE, and CBP to promptly process Plaintiffs' requests and disclose responsive agency records;
- B. Award Plaintiffs costs and reasonable attorneys' fees;
- C. Order Defendants to grant Plaintiffs' requests for fee waivers; and
- D. Grant such other relief as the Court may deem just and proper.

Dated: August 27, 2020

Respectfully submitted,

/s/ Robert D. Friedman
Robert D. Friedman
D.C. Bar No. 1046738

Institute for Constitutional
Advocacy and Protection
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EXHIBIT A



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June 24, 2020

7017 2620 0000 8151 7085

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

7017 2620 0000 8151 7092

Department of Homeland Security
Chief Privacy Officer
Privacy Office, Mail Stop 0655
2707 Martin Luther King Jr. Ave. SE
Washington, DC 20528-065

RE: FOIA Request for Records Held by U.C. Immigration & Customs Enforcement (ICE)

Dear Freedom of Information Act Officer:

This letter is a request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, by Texas Civil Rights Project (TCRP). TCRP seeks records pertaining to four of the Trump Administration's new programs for processing asylum seekers. TCRP seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d). The justification for the fee waiver and expedited processing are set out in detail following the request.

BACKGROUND

Beginning on May 31, 2019, the United States signed Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador.¹ Pursuant to those agreements, the Department of Homeland Security (DHS) and its components Immigration and Customs Enforcement (ICE), and Customs and Border Patrol (CBP) sends asylum seekers to one of those three countries, thus denying them the opportunity to seek asylum in the United States.

In October 2019, DHS and the Department of Justice (DOJ) began implementing the Humanitarian Asylum Review Process (HARP) and Prompt Asylum Review program (PACR) programs. Those programs are essentially identical, except that HARP applies exclusively to Mexican nationals, while PACR applies to individuals from other countries. Both programs entail detaining asylum seekers in CBP facilities, quickly conducting credible fear screenings, and then removing them—thus denying immigrants the opportunity to apply for asylum in the United States.

¹ U.S. Department of Homeland Security, *Fat Sheet: DHS Agreements with Guatemala, Honduras, and El Salvador*, https://www.dhs.gov/sites/default/files/publications/19_1028_opa_factsheet-northern-central-america-agreements_v2.pdf.



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On March 20, 2020, the Trump Administration issued an executive order prohibiting entry into the United States of undocumented individuals apprehended near the U.S. border,² allegedly due to concerns that these individuals pose a risk of spreading COVID-19 infection.³ That Order was extended on April 20, 2020, and, on May 19, 2020, it was extended indefinitely.⁴ This Order created what are called Title 42 Expulsions, wherein CBP and its partners immediately expel immigrants to their last country of last transit, or, when expulsion to that country is not possible, to their home country. CBP's enforcement of Title 42 expulsions is known as "Operation CAPIO," or "COVID-19 CAPIO."⁵ The effect of this program is to completely deny most immigrants entering the United States the possibility of applying for asylum in the United States.

To comply with United States and international law, these four programs—ACA, HARP, PACR, and Title 42 Expulsions—must contain protections that protect individuals from being sent to countries wherein they face a credible threat of persecution or torture. Remarkably little information is known about these protections. The little information that exists suggests that the processes currently in place do not sufficiently protect immigrants from the danger of being sent to country wherein their lives are threatened.

The purpose of this FOIA is to acquire more information about these four programs generally, and, specifically, the processes within those programs to protect individuals from the danger of torture or persecution after they are removed, expelled, or deported from the United States.

DEFINITIONS

For purposes of this request, "communications" means any transmittal of information from one person or entity to another by any means, including letters, correspondence, notes, memoranda, records, reports, papers, facsimiles, electronic mail (whether to, from, copied or blind copied), electronic mail generated from a hand held personal device including a Blackberry or iPhone, instant messaging, electronic mail generated from business or personal email accounts, internet relay chat, news group, group or collaboration servers, electronic bulletin boards, electronic discussion boards, dictation tapes, video recordings, audio recordings, digital recordings,

² Robert R. Redfield, U.S. Department of Health and Human Services, *Order Under Sections 362 & 365 of the Public Health Service Act (42 U.S.C. §§ 265, 268): Amendment and Extension of Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists* (May 19, 2020), https://www.cdc.gov/quarantine/pdf/CDC-265-Order-Renewal_5-19-20-p.pdf.

³ U.S. Customs and Border Protection, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>.

⁴ Robert R. Redfield, U.S. Department of Health and Human Services, *Order Under Sections 362 & 365 of the Public Health Service Act (42 U.S.C. §§ 265, 268): Amendment and Extension of Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists* (May 19, 2020), https://www.cdc.gov/quarantine/pdf/CDC-265-Order-Renewal_5-19-20-p.pdf.

⁵ Dara Lind, *Leaked Border Patrol Memo Tells Agents to Send Migrants Back Immediately--- Ignoring Asylum Law*, PROPUBLICA, Apr. 2, 2020, <https://www.propublica.org/article/leaked-border-patrol-memo-tells-agents-to-send-migrants-back-immediately-ignoring-asylum-law>.



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memoranda, telegrams, telecopies and telexes, teleconference, collaboration servers (including share point servers), web-based or software virtual meetings including Web-X and any other meeting software and share point servers, and oral contact such as face-to-face discussions or meetings, telephone conversations, and voicemail messages.

For purposes of this request, the term “documents” has the same scope used in Rule 34(a)(1) of the Federal Rules of Civil Procedure and shall encompass every writing or record of every type and description and every tangible thing that is or has been in the possession, custody, or control of the federal agency or agencies that are the subject of this request and their employees, to which they have access, or of which they have knowledge, including, but not limited to, newspaper articles, magazine articles, news articles, correspondence, letters, contracts, files, electronic mail, memoranda, stenographic notes, handwritten notes, drafts, studies, publications, books, pamphlets, catalogs, purchase orders, receipts, advertisements, direct mail solicitations, point-of-sale and point-of-purchase materials, notebooks, diaries, models, devices, pictures, photographs, films, audiotapes, videotapes, computer records, voice recordings, maps, reports, surveys, minutes, data compilations, and statistical compilations, regardless of whether a particular DOCUMENT is privileged or confidential, and regardless of the form of storage (including, but not limited to, paper, microfiche, magnetic tape, magnetic disk (hard disk or floppy disk), CD-ROM, DVD, optical disk, or electronic storage device).

For purposes of this request, “records” include both “documents” and “communications,” as defined above.

For purposes of this request, “fear-screening interview” means any questioning or evaluation by a U.S. government employee to determine if an individual faces a threat of persecution or torture if sent to a foreign country. It therefore includes “credible fear interviews,” and “non-refoulement interviews.”

“Title 42,” “Title 42 Expulsion program,” “Title 42 expulsions” refer to the program of expelling individuals from the United States pursuant to any *Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists*.⁶

“ACA” refers to any of the “Asylum Cooperation Agreements” that the United States has entered into with a foreign country.

RECORDS REQUESTED

⁶ Robert R. Redfield, U.S. Department of Health and Human Services, *Order Under Sections 362 & 365 of the Public Health Service Act (42 U.S.C. §§ 265, 268): Amendment and Extension of Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists* (May 19, 2020), https://www.cdc.gov/quarantine/pdf/CDC-265-Order-Renewal_5-19-20-p.pdf.



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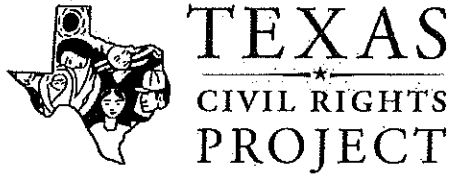
1. Any records describing ICE's role in the ACA program, the HARP program, the PACR program, or the Title 42 expulsion program.
2. Any records reflecting the number and nationalities of individuals who have been removed, deported, or expelled from the United States through the ACA program, the HARP program, the PACR program, or the Title 42 expulsion program.
3. Copies of any contracts between ICE and private transportation providers that assist in transporting individuals subjected to the ACA program, the HARP program, the PACR program, or the Title 42 expulsion program.
4. Any records reflecting ICE's transportation practices for individuals subjected to the HARP program, the PACR program, or the Title 42 expulsion program.
5. All communications and documents containing the terms "Operation CAPIO" or "COVID-19 CAPIO".
6. Any records or communications establishing procedures for deciding whether individuals will be processed through the ACA, HARP, PACR, or Title 42 programs.
7. Interagency agreements between ICE and CBP, EOIR, or CBP regarding the ACA, HARP, PACR, or Title 42 expulsion programs.

THE REQUESTOR

The Texas Civil Rights Project (TCRP) is a non-profit, 501(c)(3) and nonpartisan organization committed to ensuring civil rights and the protection of law within Texas. Since its founding in 1990, TCRP has fought for the rights of Texans with disabilities, immigrants, workers, and more. TCRP publishes press releases, opinion pieces, reports, and policy papers. TCRP experts are often quoted in national publications.⁷ TCRP disseminates information through its website, txcivilrights.org.

Accordingly, TCRP is a "representative of the news media" within the meaning of the statute and applicable regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii) (defining a representative of the news media as an entity that "gathers information of potential interest to a segment of the public" and "uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience"); *see also National Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1397 (D.C. Cir.

⁷ *See, e.g.,* NPR, *Looking at Lasting Effects of Trump's Family Separation Policy at the Southern Border*, Jan. 1, 2020, <https://www.npr.org/2020/01/01/792916538/looking-at-lasting-effects-of-trumps-family-separation-policy-at-the-southern-bo>.



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1989) (same); *Electronic Privacy Information Center v. Dep't of Def.*, 241 F. Supp. 2d 5 (D.D.C. 2003) (nonprofit organizations that gather information and publish it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees). Courts have reaffirmed that nonprofit requestors who are not traditional news media outlets can qualify as representatives of the news media for the purposes of the FOIA, including after the 2007 amendments to FOIA. See *ACLU of Washington v. Dep't of Justice*, No. C09-0642RSL, 2011 WL887731, at *10 (D. Wash. Mar. 10, 2011) (finding that the ACLU qualifies as a "representative of the news media").

EXPEDITED PROCESSING

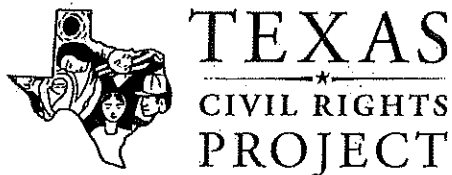
TCRP requests Track 1 expedited treatment for this FOIA request, pursuant to 5 U.S.C. § 552(a)(6)(E), because TCRP has a "compelling need" for the requested information.

First, TCRP has a "compelling need" for the requested records because TCRP is "primarily engaged in disseminating information," and there is an "urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II). The relevant Federal Government activity is the government's practice of deporting, expelling, or removing individuals to countries that threaten those individuals' lives. It is crucial for the public to understand how these programs function, to determine if the U.S. government is placing asylum-seeking individuals in danger. As detailed above, TCRP has the ability and intention to widely disseminate the requested information through a variety of sources, including reports, newsletters, news briefings, and other materials, to the public at no cost. See *ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" to be "primarily engaged in disseminating information").

Second, denial of expedited processing of this request could "reasonably be expected to pose an imminent threat to the life or physical safety of an individual." 5 U.S.C. § 552(a)(6)(E)(v)(I); 6 C.F.R. § 5.5(d)(1)(i). Since the COVID pandemic has begun, the government has expelled tens of thousands of individuals, while giving those individuals little to no opportunity to express their credible fears of returning to those countries. The requested records are essential to fully understand the government's complicity in sending asylum seekers to peril. Disclosure of the requested information will allow TCRP and other organizations to take actions to assist these asylum seekers.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi) and 6 C.F.R. § 5.5(d)(3).

FEE WAIVER REQUEST



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TCRP requests that any fees associated with responding to this FOIA request be waived. Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), fees should be waived or reduced if disclosure is (1) in the public interest because it is "likely to contribute significantly to public understanding of the operations or activities of the government" and (2) "not primarily in the commercial interest of the requester." TCRP also requests a waiver or reduction of fees because TCRP is a "representative[] of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. § 5.11(d)(1).

First, disclosure pursuant to this Request is in the public interest for the reasons described above in the Expedited Processing Request. Namely, the records requested will shed light on new immigration procedures that place immigrants at grave threat of harm, and eliminate their right to seek asylum in the United States. Given the Trump Administration's vocal attacks on immigrants and asylum seekers, the public has a significant interest in learning whether the Administration's programs are effective in their intended aims and whether they are violating the domestic and international rights of tens of thousands of asylum seekers. In sum, the information requested is "likely to contribute significantly to public understanding of the operations of the government." 5 U.S.C. §§ 552(a)(4)(A)(iii).

Second, disclosure is not primarily in the commercial interest of TCRP. TCRP is a 501(c)(3) nonprofit organization with no commercial interest. TCRP obtains information about governmental activity and uses such information to create, publish, and distribute unique newsletters and reports discussing the implications of new policies and aggregate data on behalf of the interest of the public.

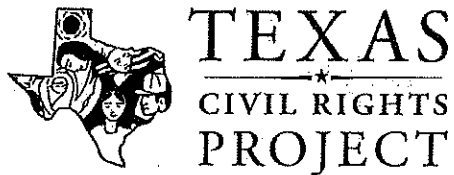
Third and last, for the reasons described above in "The Requester" section of this request, TCRP qualifies as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

In the event that TCRP is denied for a waiver of search and/or duplication fees please contact us before any such costs are incurred, in order to prioritize search and duplication efforts.

FORMAT OF PRODUCTION

We request that all documents be produced electronically, preferably in searchable pdf format or workable format such as Microsoft Excel. In the event that such production would cause delay, we request to be contacted to help facilitate record production within the statutory time limit. *Please also provide a glossary or other descriptive records containing definitions of acronyms, numerical codes or terms contained in data responsive to this request, if those terms are not in the form template or publicly defined.*

* * *



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Thank you for your consideration of this request. If this request is denied in whole or in part, we ask that the government justify all redactions by reference to specific FOIA exemptions. We look forward to your response to our request for expedited processing within 10 business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Please furnish all responsive records and responses to:

Erin Thorn Vela
Texas Civil Rights Project
P.O. Box 219
Alamo, TX 78516
Tel: 956 787 8171, ext. 127
erin@texascivilrightsproject.org

If you have any questions about this request, please contact Erin Thorn Vela immediately.

Respectfully,

Andrew Udelsman
Texas Civil Rights Project
P.O. Box 219
Alamo, TX 78516
Tel: 786.390.2698
andy@texascivilrightsproject.org

P.O. BOX 219
Alamo, TX 78516



U.S. Immigration and
Customs Enforcement
Freedom of Information Act Office
500 12th Street SW, Stop 5009
Washington, DC 20536

SENDER: COMPLETE THIS SECTION

- ☐ Complete items 1, 2, and 3.
- ☐ Print your name and address on the reverse so that we can return the card to you.
- ☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

US Immig. & Customs Enforc
Freedom of Info Act Office
500 12th St. SW, Stop 5009
Washington, DC 20536



9590 9402 3764 8032 6402 63

2. Article Number (Transfer from service label)

7017 2620 0000 8151 7085

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY**A. Signature**☒ Agent☐ Addressee**B. Received by (Printed Name)****C. Date of Delivery****D. Is delivery address different from item 1?**☐ Yes☐ No

If YES, enter delivery address below:

- 3. Service Type**
- ☐ Adult Signature
 - ☐ Adult Signature Restricted Delivery
 - ☐ Certified Mail®
 - ☐ Certified Mail Restricted Delivery
 - ☐ Collect on Delivery
 - ☐ Collect on Delivery Restricted Delivery
 - ☐ Insured Mail
 - ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
- ☐ Signature Confirmation™
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U.S. Postal Service™
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OFFICIAL USE

Certified Mail Fee	\$3.55	
Extra Services & Fees (check box, add fee as appropriate)	\$7.95	0516
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00	09
<input type="checkbox"/> Return Receipt (electronic)	\$0.00	
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00	Postmark Here
<input type="checkbox"/> Adult Signature Required	\$0.00	
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00	
Postage	\$1.20	
Total Postage and Fees	\$7.60	06/24/2020
Sent To	US Immig & Customs Enforcement	
Street and Apt. No., or PO Box No.		
City, State, ZIP+4®		

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

PO BOX 219
Alamo, TX 78516

CERTIFIED MAIL®



7017 2620 0000 8151 7092

Department of Homeland Security
Chief Privacy Officer
Privacy Office, Mail Stop 0655
2707 Martin Luther King, Jr. Ave SE
Washington, DC 20528

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dept. of Homeland Security
Chief Privacy Officer
Privacy Office, mail stop 0655
2707 Martin Luther King Jr. Ave SE
Washington, DC 20528



9590 9402 3764 8032 6402 56

2. Article Number (Transfer from service label)

70172620 0600 8151 7092

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?
If YES, enter delivery address below:
☐ Yes
☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☒ Return Receipt for Merchandise
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Domestic Return Receipt

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OFFICIAL USE

Certified Mail Fee	\$3.55	0516 09 Postmark Here 06/24/2020
Extra Services & Fees (check box, add fee as appropriate)	\$2.85	
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00	
<input type="checkbox"/> Return Receipt (electronic)	\$0.00	
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00	
<input type="checkbox"/> Adult Signature Required	\$0.00	
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00	
Postage	\$1.20	
Total Postage and Fees	\$7.60	
Sent To	Dept. of Homeland Security	
Street and Apt. No., or PO Box No.		
City, State, ZIP+4 [®]		

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

EXHIBIT B



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June 24, 2020

Chief Privacy Officer
Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. Ave. SE
Washington, DC 20528-065

7017 2620 0000 8151 7115

RE: FOIA Request for Records Held by Department of Homeland Security (DHS)

Dear Freedom of Information Act Officer:

This letter is a request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, by Texas Civil Rights Project (TCRP). TCRP seeks records pertaining to four of the Trump Administration's new programs for processing asylum seekers. TCRP seeks a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A) and 6 C.F.R. § 5.11(k), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(d). The justification for the fee waiver and expedited processing are set out in detail following the request.

BACKGROUND

Beginning on May 31, 2019, the United States signed Asylum Cooperative Agreements with Guatemala, Honduras, and El Salvador.¹ Pursuant to those agreements, the Department of Homeland Security (DHS) and its components Immigration and Customs Enforcement (ICE), and Customs and Border Patrol (CBP) sends asylum seekers to one of those three countries, thus denying them the opportunity to seek asylum in the United States.

In October 2019, DHS and the Department of Justice (DOJ) began implementing the Humanitarian Asylum Review Process (HARP) and Prompt Asylum Review program (PACR) programs. Those programs are essentially identical, except that HARP applies exclusively to Mexican nationals, while PACR applies to individuals from other countries. Both programs entail detaining asylum seekers in CBP facilities, quickly conducting credible fear screenings, and then removing them—thus denying immigrants the opportunity to apply for asylum in the United States.

On March 20, 2020, the Trump Administration issued an executive order prohibiting entry into the United States of undocumented individuals apprehended near the U.S. border,² allegedly due

¹ U.S. Department of Homeland Security, *Fat Sheet: DHS Agreements with Guatemala, Honduras, and El Salvador*, https://www.dhs.gov/sites/default/files/publications/19_1028_opa_factsheet-northern-central-america-agreements_v2.pdf.

² Robert R. Redfield, U.S. Department of Health and Human Services, *Order Under Sections 362 & 365 of the Public Health Service Act (42 U.S.C. §§ 265, 268): Amendment and Extension of Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists* (May 19, 2020),



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to concerns that these individuals pose a risk of spreading COVID-19 infection.³ That Order was extended on April 20, 2020, and, on May 19, 2020, it was extended indefinitely.⁴ This Order created what are called Title 42 Expulsions, wherein CBP and its partners immediately expel immigrants to their last country of last transit, or, when expulsion to that country is not possible, to their home country. CBP's enforcement of Title 42 expulsions is known as "Operation CAPIO," or "COVID-19 CAPIO."⁵ The effect of this program is to completely deny most immigrants entering the United States the possibility of applying for asylum in the United States.

To comply with United States and international law, these four programs—ACA, HARP, PACR, and Title 42 Expulsions—must contain protections that protect individuals from being sent to countries wherein they face a credible threat of persecution or torture. Remarkably little information is known about these protections. The little information that exists suggests that the processes currently in place do not sufficiently protect immigrants from the danger of being sent to a country wherein their lives are threatened.

The purpose of this FOIA is to acquire more information about these four programs generally, and, specifically, the processes within those programs to protect individuals from the danger of torture or persecution after they are removed, expelled, or deported from the United States.

DEFINITIONS

For purposes of this request, "communications" means any transmittal of information from one person or entity to another by any means, including letters, correspondence, notes, memoranda, records, reports, papers, facsimiles, electronic mail (whether to, from, copied or blind copied), electronic mail generated from a hand held personal device including a Blackberry or iPhone, instant messaging, electronic mail generated from business or personal email accounts, internet relay chat, news group, group or collaboration servers, electronic bulletin boards, electronic discussion boards, dictation tapes, video recordings, audio recordings, digital recordings, memoranda, telegrams, telecopies and telexes, teleconference, collaboration servers (including share point servers), web-based or software virtual meetings including Web-X and any other meeting software and share point servers, and oral contact such as face-to-face discussions or meetings, telephone conversations, and voicemail messages.

https://www.cdc.gov/quarantine/pdf/CDC-265-Order-Renewal_5-19-20-p.pdf.

³ U.S. Customs and Border Protection, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>.

⁴ Robert R. Redfield, U.S. Department of Health and Human Services, *Order Under Sections 362 & 365 of the Public Health Service Act (42 U.S.C. §§ 265, 268): Amendment and Extension of Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists* (May 19, 2020), https://www.cdc.gov/quarantine/pdf/CDC-265-Order-Renewal_5-19-20-p.pdf.

⁵ Dara Lind, *Leaked Border Patrol Memo Tells Agents to Send Migrants Back Immediately--- Ignoring Asylum Law*, PROPUBLICA, Apr. 2, 2020, <https://www.propublica.org/article/leaked-border-patrol-memo-tells-agents-to-send-migrants-back-immediately-ignoring-asylum-law>.



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For purposes of this request, the term “documents” has the same scope used in Rule 34(a)(1) of the Federal Rules of Civil Procedure and shall encompass every writing or record of every type and description and every tangible thing that is or has been in the possession, custody, or control of the federal agency or agencies that are the subject of this request and their employees, to which they have access, or of which they have knowledge, including, but not limited to, newspaper articles, magazine articles, news articles, correspondence, letters, contracts, files, electronic mail, memoranda, stenographic notes, handwritten notes, drafts, studies, publications, books, pamphlets, catalogs, purchase orders, receipts, advertisements, direct mail solicitations, point-of-sale and point-of-purchase materials, notebooks, diaries, models, devices, pictures, photographs, films, audiotapes, videotapes, computer records, voice recordings, maps, reports, surveys, minutes, data compilations, and statistical compilations, regardless of whether a particular DOCUMENT is privileged or confidential, and regardless of the form of storage (including, but not limited to, paper, microfiche, magnetic tape, magnetic disk (hard disk or floppy disk), CD-ROM, DVD, optical disk, or electronic storage device).

For purposes of this request, “records” include both “documents” and “communications,” as defined above.

For purposes of this request, “fear-screening interview” means any questioning or evaluation by a U.S. government employee to determine if an individual faces a threat of persecution or torture if sent to a foreign country. It therefore includes “credible fear interviews,” and “non-refoulement interviews.”

“Title 42,” “Title 42 Expulsion program,” “Title 42 expulsions” refer to the program of expelling individuals from the United States pursuant to any *Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists*.⁶

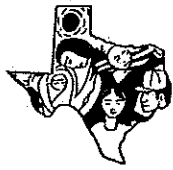
“ACA” refers to any of the “Asylum Cooperation Agreements” that the United States has entered into with a foreign country.

RECORDS REQUESTED

I. Records related to Asylum Cooperation Agreements (ACA)

1. Records sufficient to show the following statistics:

⁶ Robert R. Redfield, U.S. Department of Health and Human Services, *Order Under Sections 362 & 365 of the Public Health Service Act (42 U.S.C. §§ 265, 268): Amendment and Extension of Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists* (May 19, 2020), https://www.cdc.gov/quarantine/pdf/CDC-265-Order-Renewal_5-19-20-p.pdf.



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- a. The total number of individuals deemed subjected to ACA processing (disaggregated by ACA country—i.e., Guatemala, Honduras, El Salvador, Canada, etc.);
- b. The total number of individuals processed as part of an ACA, by week, by port of entry at which the individual was returned to an ACA country;
- c. The total number of individuals who were subjected to ACA processing and affirmatively expressed fear of removal to that ACA country (disaggregated by ACA country);
- d. The number of positive ACA fear screening determinations (disaggregated by ACA country);
- e. The number of negative ACA fear screening determinations (disaggregated by ACA country);
- f. Outcomes of individuals who were removed from the ACA program because they established fear of removal. I.e., records sufficient to show how many of those individuals were detained in the United States, released on bond or parole, placed into MPP or PACR programs, or other.
- g. The total number of individuals who were removed to Guatemala, Honduras, and El Salvador, or another country pursuant to an ACA (disaggregated by ACA country).

2. The following records:

- a. **Annexes** to the “Agreement between the Government of the United States and the Government of the Republic of Guatemala on Cooperation in the Examination of Protection Claims” (signed July 26, 2019).
- b. “**Agreement** between the Government of the United States of America and the Republic of El Salvador for Cooperation in the Examination of Protection Claims” (signed Sept. 20, 2019), including all annexes.
- c. “**Memorandum of Cooperation** between the Department of Homeland Security of the United States of America and the Ministry of Government of the Republic of **Guatemala** on Security Activities that Make it Possible to Address Irregular Immigration (signed May 31, 2019).
- d. “**Memorandum of Cooperation** between the Department of Homeland Security of the United States of America and the Ministry of Government of the Republic of **Honduras** on Security Activities that Make it Possible to Address Irregular Immigration” (signed Sept. 27, 2019).
- e. “**Memorandum of Cooperation** between the Department of Homeland Security of the United States of America and the Ministry of Justice and Security of the



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Republic of **El Salvador** on Security Activities that Make it Possible to Address Irregular Immigration” (signed Oct. 28, 2019).

- f. “US-Guatemala Asylum Cooperation Agreement (ACA) **Threshold Screening—Guidance** for Asylum Officers and Asylum Office Staff” (11/19/2019).
- g. Any other final agreements, protocols, or other binding documents between the U.S. government and a foreign government relating to the ACA program.

II. Records related to Humanitarian Asylum Review Process (HARP)

- 1. Any final agreements, protocols, or other binding documents between the U.S. government and the Mexican government regarding the HARP program.
- 2. Records sufficient to show the following statistics:
 - a. The total number of individuals subjected to HARP processing, by week, by port of entry;
 - b. The total number of individuals who were subjected to HARP processing and affirmatively expressed fear of removal to Mexico;
 - c. The number of positive HARP fear screening determinations;
 - d. The number of negative HARP fear screening determinations;
 - e. Outcomes of individuals who were removed from the HARP program because they established fear of removal. I.e., records sufficient to show how many of those individuals were detained in the United States, released on bond or parole, placed into MPP or ACA programs, or other;
 - f. The total number of individuals who were removed to Mexico pursuant to HARP.

III. Records related to Prompt Asylum Claim Review (PACR)

- 1. Any final agreements, protocols, or other binding documents between the U.S. government and a foreign government regarding the PACR program.
- 2. Records sufficient to show the following statistics:
 - a. The total number of individuals processed as part of PACR, by week, by port of entry or border patrol station;
 - b. The total number of individuals subjected to PACR processing;



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- c. The total number of individuals who were subjected to PACR processing and affirmatively expressed fear of removal to that country (disaggregated by country);
- d. The number of positive PACR fear screening determinations (disaggregated by country);
- e. The number of negative PACR fear screening determinations (disaggregated by country);
- f. Outcomes of individuals who were removed from the PACR program because they established fear of removal. I.e., records sufficient to show how many of those individuals were detained in the United States, released on bond or parole, placed into MPP or ACA programs, or other;
- g. The total number of individuals sent to a country under the HARP program, disaggregated by country to which they were sent.

IV. Records related to Title 42 Expulsions (Operation CAPIO)

- 1. Any agreements with Mexico or other countries in which the foreign country agrees to accept individuals expelled pursuant to Title 42.
- 2. All communications and documents containing the terms "Operation CAPIO" or "COVID-19 CAPIO".
- 3. Records sufficient to show the following statistics:
 - a. The total number of individuals processed under Title 42, by week;
 - b. The total number of individuals deemed amenable for Title 42 expulsion;
 - c. The total number of individuals who were processed pursuant to Title 42 expulsion procedures who affirmatively expressed a fear of returning to their country of last transit;
 - d. The number of positive fear screening determinations made by a CBP officer (disaggregated by country to which the immigrant fears return);
 - e. The number of negative fear screening determinations made by a CBP officer (disaggregated by country to which the immigrant fears return);
 - f. The number of times that a case was presented to a chief patrol agent to determine if an individual should be exempt from Title 42 expulsion;
 - g. The number of times that a chief patrol agent approved a request to exempt an individual for Title 42 expulsion, and the number of times that a chief patrol agent denied such a request;
 - h. Outcomes of individuals who were removed from Title 42 expulsion because they established fear of removal. I.e., records sufficient to show how many of those individuals were detained in the United States, released on bond or parole, placed into MPP or ACA programs, or other.



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- i. The total number of individuals expelled pursuant to the Title 42 Order, disaggregated by country to which they were sent.

V. Other Records

1. Any records or communications establishing procedures for deciding whether individuals will be processed through the ACA, HARP, PACR, or Title 42 expulsion programs.
2. All communications from DHS to CBP, EOIR, or ICE regarding the ACA, HARP, PACR, or Title 42 expulsion programs.

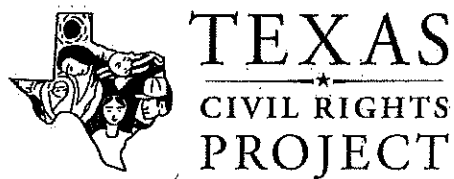
THE REQUESTOR

The Texas Civil Rights Project (TCRP) is a non-profit, 501(c)(3) and nonpartisan organization committed to ensuring civil rights and the protection of law within Texas. Since its founding in 1990, TCRP has fought for the rights of Texans with disabilities, immigrants, workers, and more. TCRP publishes press releases, opinion pieces, reports, and policy papers. TCRP experts are often quoted in national publications.⁷ TCRP disseminates information through its website, txcivilrights.org.

Accordingly, TCRP is a “representative of the news media” within the meaning of the statute and applicable regulations. See 5 U.S.C. § 552(a)(4)(A)(iii) (defining a representative of the news media as an entity that “gathers information of potential interest to a segment of the public” and “uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience”); see also *National Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1397 (D.C. Cir. 1989) (same); *Electronic Privacy Information Center v. Dep’t of Def.*, 241 F. Supp. 2d 5 (D.D.C. 2003) (nonprofit organizations that gather information and publish it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees). Courts have reaffirmed that nonprofit requestors who are not traditional news media outlets can qualify as representatives of the news media for the purposes of the FOIA, including after the 2007 amendments to FOIA. See *ACLU of Washington v. Dep’t of Justice*, No. C09-0642RSL, 2011 WI887731, at *10 (D. Wash. Mar. 10, 2011) (finding that the ACLU qualifies as a “representative of the news media”).

EXPEDITED PROCESSING

⁷ See, e.g., NPR, *Looking at Lasting Effects of Trump’s Family Separation Policy at the Southern Border*, Jan. 1, 2020, <https://www.npr.org/2020/01/01/792916538/looking-at-lasting-effects-of-trumps-family-separation-policy-at-the-southern-bo>.



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TCRP requests Track 1 expedited treatment for this FOIA request, pursuant to 5 U.S.C. § 552(a)(6)(E), because TCRP has a “compelling need” for the requested information.

First, TCRP has a “compelling need” for the requested records because TCRP is “primarily engaged in disseminating information,” and there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II). The relevant Federal Government activity is the government’s practice of deporting, expelling, or removing individuals to countries that threaten those individuals’ lives. It is crucial for the public to understand how these programs function, to determine if the U.S. government is placing asylum-seeking individuals in danger. As detailed above, TCRP has the ability and intention to widely disseminate the requested information through a variety of sources, including reports, newsletters, news briefings, and other materials, to the public at no cost. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).

Second, denial of expedited processing of this request could “reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” 5 U.S.C. § 552(a)(6)(E)(v)(I); 6 C.F.R. § 5.5(d)(1)(i). Since the COVID pandemic has begun, the government has expelled tens of thousands of individuals, while giving those individuals little to no opportunity to express their credible fears of returning to those countries. The requested records are essential to fully understand the government’s complicity in sending asylum seekers to peril. Disclosure of the requested information will allow TCRP and other organizations to take actions to assist these asylum seekers.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi) and 6 C.F.R. § 5.5(d)(3).

FEE WAIVER REQUEST

TCRP requests that any fees associated with responding to this FOIA request be waived. Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), fees should be waived or reduced if disclosure is (1) in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” TCRP also requests a waiver or reduction of fees because TCRP is a “representative[] of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. § 5.11(d)(1).

First, disclosure pursuant to this Request is in the public interest for the reasons described above in the Expedited Processing Request. Namely, the records requested will shed light on new



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immigration procedures that place immigrants at grave threat of harm, and eliminate their right to seek asylum in the United States. Given the Trump Administration's vocal attacks on immigrants and asylum seekers, the public has a significant interest in learning whether the Administration's programs are effective in their intended aims and whether they are violating the domestic and international rights of tens of thousands of asylum seekers. In sum, the information requested is "likely to contribute significantly to public understanding of the operations of the government." 5 U.S.C. §§ 552(a)(4)(A)(iii).

Second, disclosure is not primarily in the commercial interest of TCRP. TCRP is a 501(c)(3) nonprofit organization with no commercial interest. TCRP obtains information about governmental activity and uses such information to create, publish, and distribute unique newsletters and reports discussing the implications of new policies and aggregate data on behalf of the interest of the public.

Third and last, for the reasons described above in "The Requester" section of this request, TCRP qualifies as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

In the event that TCRP is denied for a waiver of search and/or duplication fees please contact us before any such costs are incurred, in order to prioritize search and duplication efforts.

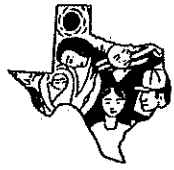
FORMAT OF PRODUCTION

We request that all documents be produced electronically, preferably in searchable pdf format or workable format such as Microsoft Excel. In the event that such production would cause delay, we request to be contacted to help facilitate record production within the statutory time limit. *Please also provide a glossary or other descriptive records containing definitions of acronyms, numerical codes or terms contained in data responsive to this request, if those terms are not in the form template or publicly defined.*

* * *

Thank you for your consideration of this request. If this request is denied in whole or in part, we ask that the government justify all redactions by reference to specific FOIA exemptions. We look forward to your response to our request for expedited processing within 10 business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Please furnish all responsive records and responses to:

Erin Thorn Vela
Texas Civil Rights Project
P.O. Box 219
Alamo, TX 78516
Tel: 956 787 8171, ext. 127



TEXAS
★
CIVIL RIGHTS
PROJECT

P.O. Box 219
Alamo, TX 78516
956.787.8171, ext. 121(p)
956.787.6348(f)
texascivilrightsproject.org

erin@texascivilrightsproject.org

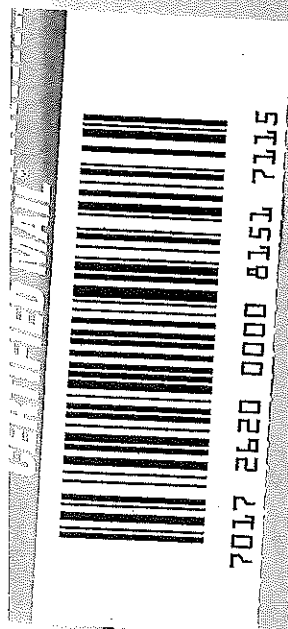
If you have any questions about this request, please contact Erin Thorn Vela immediately.

Respectfully,

Andrew Udelsman
w/ pen.

Andrew Udelsman
Texas Civil Rights Project
P.O. Box 219
Alamo, TX 78516
Tel: 786.390.2698
andy@texascivilrightsproject.org

PO Box 219
Alamo, TX 78516



Chief Privacy Officer
Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King, Jr. Ave.
Washington, DC 20528 SE

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- ☐ Print your name and address on the reverse so that we can return the card to you.
- ☐ Attach this card to the back of the mailpiece, or on the front if space permits.

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Chief Privacy Officer
Privacy Office, Mail Stop 0055
Dept. of Homeland Security
2707 Martin Luther King Jr.
Washington, DC 20528



9590 9402 3764 8032 6402 32

2. Article Number (transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

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EXHIBIT C



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

May 21, 2020

Via E-Request

Department of Homeland Security
U.S. Customs and Border Protection
CBP FOIA Division
1300 Pennsylvania Ave., NW
Washington, D.C. 20229

**Freedom of Information Act Request
Fee Waiver/Limitation Requested**

Dear U.S. Customs and Border Protection FOIA Division,

Under the Freedom of Information Act, I am requesting records on behalf of the Institute for Constitutional Advocacy and Protection (ICAP), a non-profit institute based at Georgetown University Law Center.

A May 20, 2020 New York Times article, “10 Years Old, Tearful and Confused After a Sudden Deportation,”¹ reported that your agency has afforded arriving migrant children varying degrees of legal process—including, for example, denying some an opportunity to apply for asylum prior to their deportation while affording that opportunity to others—and access to other rights—including, for example, the opportunity to meet with a social worker. The article further reported that Matthew Dyman, a public affairs specialist with your agency, acknowledged that your agency has a process for determining “which legal standards to apply to which [migrant] children” but that your agency declined to reveal that process.

Please provide all records related to all processes, standards, policies, or other documents used by your agency to determine what rights and legal processes are afforded to migrant children arriving at the Southern Border since the start of the COVID-19 pandemic, February 2020. This includes, but is not limited to, the record(s) that Mr. Dyman declined to provide to the authors of the above-referenced article because of concern that “smugglers would exploit the information.” We request that the agency provide these records in electronic form.

If you determine that the requested materials contain information that falls within the statutory exemptions to mandatory disclosures, we request that you review such information for discretionary disclosure. We request that you produce reasonably segregable portions of any exempt material. If

¹ The article is attached here as Exhibit A and can be found at the following link: <https://perma.cc/4AVB-AQ2K>.

the request is denied in whole or in part, we expect to receive a description of the withheld information, the reasons for denial, and any exemptions to FOIA relied upon.

If there are any fees, we request a fee waiver because the disclosure of the requested records is in the public interest. The records are not in ICAP's commercial interest and any information will be made available to the public at no cost.

Thank you for your prompt attention to our request. If you have any questions, please feel free to reach me at rdf34@georgetown.edu. The records should be sent to Robert Friedman at rdf34@georgetown.edu.

Sincerely,

Robert Friedman
Senior Counsel
Institute for Constitutional Advocacy and Protection
600 New Jersey Ave NW
Washington, D.C. 20001

EXHIBIT A

10 Years Old, Tearful and Confused After a Sudden Deportation

Since the coronavirus broke out, the Trump administration has deported hundreds of migrant children alone — in some cases, without notifying their families.



By Caitlin Dickerson

Published May 20, 2020 Updated May 21, 2020, 9:03 a.m. ET

The last time Sandra Rodríguez saw her son Gerson, she bent down to look him in the eye. “Be good,” she said, instructing him to behave when he encountered Border Patrol agents on the other side of the river in the United States, and when he was reunited with his uncle in Houston.

The 10-year-old nodded, giving his mother one last squinty smile. Tears caught in his dimples, she recalled, as he climbed into a raft and pushed out across the Rio Grande toward Texas from Mexico, guided by a stranger who was also trying to reach the United States.

Ms. Rodríguez expected that Gerson would be held by the Border Patrol for a few days and then transferred to a government shelter for migrant children, from which her brother in Houston would eventually be able to claim him. But Gerson seemed to disappear on the other side of the river. For six frantic days, she heard nothing about her son — no word that he had been taken into custody, no contact with the uncle in Houston.

Finally, she received a panicked phone call from a cousin in Honduras who said that Gerson was with her. The little boy was crying and disoriented, his relatives said; he seemed confused about how he had ended up back in the dangerous place he had fled.

Hundreds of migrant children and teenagers have been swiftly deported by American authorities amid the coronavirus pandemic without the opportunity to speak to a social worker or plea for asylum from the violence in their home countries — a reversal of years of established practice for dealing with young foreigners who arrive in the United States.

The deportations represent an extraordinary shift in policy that has been unfolding in recent weeks on the southwestern border, under which safeguards that have for decades been granted to migrant children by both Democratic and Republican administrations appear to have been abandoned.

Historically, young migrants who showed up at the border without adult guardians were provided with shelter, education, medical care and a lengthy administrative process that allowed them to make a case for staying in the United States. Those who were eventually deported were sent home only after arrangements had been made to assure they had a safe place to return to.

That process appears to have been abruptly thrown out under President Trump’s latest border decrees. Some young migrants have been deported within hours of setting foot on American soil. Others have been roused from their beds in the middle of the night in U.S. government shelters and put on planes out of the country without any notification to their families.

The Trump administration is justifying the new practices under a 1944 law that grants the president broad power to block foreigners from entering the country in order to prevent the “serious threat” of a dangerous disease. But immigration officials in recent weeks have also been abruptly expelling migrant children and teenagers who were already in the United States when the pandemic-related order came down in late March.

Since the decree was put in effect, hundreds of young migrants have been deported, including some who had asylum appeals pending in the court system.

Some of the young people have been flown back to Central America, while others have been pushed back into Mexico, where thousands of migrants are living in filthy tent camps and overrun shelters.

In March and April, the most recent period for which data was available, 915 young migrants were expelled shortly after reaching the American border, and 60 were shipped home from the interior of the country.

During the same period, at least 166 young migrants were allowed into the United States and afforded the safeguards that were once customary. But in another unusual departure, Customs and Border Protection has refused to disclose how the government was determining which legal standards to apply to which children.

“We just can’t put it out there,” said Matthew Dyman, a public affairs specialist with the agency, citing concerns that human smugglers would exploit the information to traffic more people into the country if they knew how the laws were being applied.

On Tuesday, the Trump administration extended the stepped-up border security that allows for young migrants to be expelled at the border, saying the policy would remain in place indefinitely and be reviewed every 30 days.

Latest Updates: Coronavirus Outbreak in the U.S.

- As states reopen, efforts to ramp up testing have been hampered by the fragmented U.S. health system.
- Trump visited Michigan a day after threatening to withhold federal funds from the state.
- The U.S. says it will provide up to \$1.2 billion to a drug company to develop a vaccine.

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Chad F. Wolf, the acting secretary of the Department of Homeland Security, said the policy had been “one of the most critical tools the department has used to prevent the further spread of the virus and to protect the American people, D.H.S. front-line officers and those in their care and custody from Covid-19.”

An agency spokesman said its policies for deporting children from within the interior of the country had not changed.

Amid Mr. Trump’s efforts to block migrants from seeking refuge in the United States, the administration has been scrutinized especially for its treatment of the most vulnerable among them — children.

Beginning in 2017, the government traumatized thousands of children by separating them from their parents at the border. Administration officials have also left young migrants to languish in filthy Border Patrol holding cells with no adult supervision and argued in court that the children were not legally entitled to toothbrushes or soap.

Democratic members of Congress argue that the swift deportations taking place now violate the Trafficking Victims Protection Act, a 20-year-old federal law that lays out standards for the treatment of foreign children who arrive at the American border without an adult guardian.

In a letter last month to Mr. Wolf, Democratic members of the Senate Judiciary Committee said the moves had “no known precedent or clear legal rationale.”

Immigrant advocates say their pleas for help ensuring that the children have somewhere safe to go when they land have been ignored. Since the coronavirus was first discovered in the United States in January, 239 unaccompanied minors have been returned to Guatemala, and 183 have been returned to Honduras, according to government figures.

“The fact that nobody knows who these kids are and there are hundreds of them is really terrifying,” said Jennifer Nagda, policy director of the Young Center for Immigrant Children’s Rights. “There’s no telling if they’ve been returned to smugglers or into harm’s way.”

[The Coronavirus Outbreak](#) >

Frequently Asked Questions and Advice

Updated May 20, 2020

- **How many people have lost their jobs due to coronavirus in the U.S.?**
Over 38 million people have filed for unemployment since March. One in five who were working in February reported losing a job or being furloughed in March or the beginning of April, data from a Federal Reserve survey released on May 14 showed, and that pain was highly concentrated among low earners. Fully 39 percent of former workers living in a household earning \$40,000 or less lost work, compared with 13 percent in those making more than \$100,000, a Fed official said.

- **What are the symptoms of coronavirus?**
Common symptoms include fever, dry cough, fatigue and difficulty breathing.

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Some minors have been deported overnight despite an Immigration and Customs Enforcement policy that says they should be repatriated only during daylight hours.

Before daybreak one morning late last month, Pedro Buezo Romero, 16, was taken from his bed in a shelter in New York and told to pack a suitcase so he could be taken to a court appearance in Florida.

Instead, the teenager ended up on four flights over two days. He was able to sleep for a few hours in a hotel room in Miami shared by three adult employees of a private security company hired to transport him and two other migrant teenagers.

Only before boarding his final flight to Honduras from Texas did the adults reveal to Pedro that he was being deported. When he arrived in Honduras, he had to borrow the cellphone of an immigration official to ask his cousin for a place to stay.

Pedro's mother has not been seen since the shelter in Mexico where they had been staying together was ransacked by gang members. He and his mother were separated during the ordeal, after which Pedro decided to cross the border alone.

While Pedro was in transit, his lawyers had worked frantically to try to locate him but did not receive any response from the federal government. "There were two or three days we had no idea where he was," said Katty Vera de Fisher, a supervising migration counselor for Catholic Charities of New York.



Pedro Buezo Romero with his mother. Pedro said he was even more vulnerable now than he was when he decided to leave for the United States. via Pedro Buezo Romero

Some of the children who have been expelled from the United States were previously ordered deported. But historically, even children with prior deportation orders have been given new opportunities to request asylum if they entered the United States again. Now, that appears to have changed.

Lawyers representing children threatened with deportation say they are having to engage in 11th-hour legal maneuvers to try to prevent deportations from happening.

Last week, Hannah Flamm, an immigration lawyer in New York, had only hours to try to stop the repatriation of a 14-year-old client after learning the girl had been booked by ICE on a 3 a.m. flight to Honduras.

The girl's family had not been notified of her imminent arrival. Ms. Flamm managed to secure an emergency stay of the deportation at 11:47 p.m., at which point the girl was allowed to go back to sleep in the shelter where she was staying.

Ricardo Rodríguez Galo, the uncle of the 10-year-old boy who was deported this month, said he was shocked to learn that Gerson had been sent back to Honduras alone.

Mr. Rodríguez said he worried about the boy's safety in Honduras, where his sister's former partner had beaten the boy and his mother and withheld food from them. Mr. Rodríguez also wondered about the judgment of American authorities who chose to put a child on a plane without notifying any of his family members, including those who had been waiting in the United States to take the boy into their home.

"I'm not going to tell you that we were going to shower him with riches," Mr. Rodríguez said. "We're poor, but we were going to fight to support him. We were going to welcome him like he deserved."

Kirk Semple contributed reporting.

Caitlin Dickerson is a Peabody Award-winning reporter based in New York who covers immigration. She has broken stories on asylum, detention and deportation policy, as well as the treatment of immigrant children in government custody. @itscaitlinhd

A version of this article appears in print on May 21, 2020, Section A, Page 6 of the New York edition with the headline: 10 Years Old, Tearful and Confused After an Immediate Deportation