

EXHIBIT D

LEGAL DEPARTMENT
IMMIGRANTS'
RIGHTS PROJECT



September 10, 2015

VIA ELECTRONIC MAIL

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

ICE-FOIA@dhs.gov

Re: Freedom of Information Act (FOIA) Request
Juvenile Referral Program

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
IMMIGRANTS'
RIGHTS PROJECT

PLEASE RESPOND TO:
CALIFORNIA OFFICE
39 DRUMM STREET
SAN FRANCISCO, CA 94111-4805
T/415.343.0770
F/415.395.0950

125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2660
F/212.549.2654
WWW.ACLU.ORG

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

Dear FOIA Officer,

The American Civil Liberties Union Foundation (“ACLU”) and the Women’s Refugee Commission (“WRC”) (“Requestors”) submit this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq. We ask that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E), and that we be granted a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

Request for Information

The Requestors request disclosure of the following records¹ that were prepared, received, transmitted, collected and/or maintained by the U.S. Immigration Customs Enforcement (“ICE”), including but not limited to records prepared, received, transmitted, collected and/or maintained at ICE Headquarters:

All records relating to the Juvenile Referral Program (“JRP”).

¹ The term “records” as used herein includes all records or communications preserved in electronic or written form, including but not limited to training manuals, correspondence, regulations, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training materials or studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

By “Juvenile Referral Program” we mean:

- Any program or policy referred to by the Office of Refugee Resettlement (“ORR”) or the U.S. Customs and Border Protection (“CBP”) or any of its components as the “Juvenile Referral Program,” the “Juvenile Referral Process,” or the “Mexican Juvenile Referral Program”;
- Any program or policy first implemented in 2014 relating to children² suspected of being “foot guides,” “river guides,” “smuggling guides,” or “circuit children” or otherwise suspected of being involved in assisting others to cross the U.S.-Mexico border; and
- Any program or policy involving the referral or potential referral of children for prosecution by federal, state, or local authorities.

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This request includes, but is not limited to:

- All policies, regulations, practices, procedures, recommendations and guidelines implementing or referring to the JRP;
- All communications discussing the JRP as a whole or in part or individual cases or incidents within the JRP; and
- All case files, forms (including Forms 93, Forms I-213, and Forms I-770), or other records in ICE’s possession that relate to children that are included within the JRP or have been considered for inclusion within the JRP. Our understanding is that this category of records will include case files relating to most or all of the A-numbers listed in Exhibit A, as well as additional case files. (We do not seek these children’s names or other personally identifying information, and you may redact such information from the records provided to us.)

Request for Expedited Processing

An expedited processing request “may be made at the time of the initial request for records or at any later time.” 6 C.F.R. § 5.5(d)(2). A “requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person’s knowledge and belief, explaining in detail the basis for requesting expedited processing.” 6 C.F.R. § 5.5(d)(3). In compliance with these procedural requirements, the Requestors submit this expedited processing request at the time of our initial records request and certify that the information in this request is true to the best of our knowledge and belief. *See supra* p. 5.

² The term “children” as used herein includes all individuals under 18 years old.

Expedited processing is warranted because there is “an urgency to inform the public about an actual or alleged federal government activity” and the request is made by entities “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(d)(ii). The request relates not to “government activity generally,” *cf.* 6 C.F.R. § 5.5(d)(3), but to a possible large scale violation of children’s due process rights.

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First-hand reports from children, their attorneys, along with statements of federal officials, suggest that under the JRP, the federal government is systematically subjecting hundreds of children to confinement for months at a time to punish them for suspected criminal activity, without trial. Reports further suggest that the government interrogates these children about suspected criminal activity without providing them with counsel and without protective measures commensurate with their vulnerable status. There is an “urgency to inform the public about [this] actual or alleged governmental activity” because (1) exposure of this practice to public scrutiny could cause it to stop, sparing children from additional confinement and interrogation; and (2) the government should not be able to shield an ongoing violation of children’s fundamental due process rights from public view.

Furthermore, there is intense public interest in issues relating to unaccompanied children and trafficking. A search for articles published in the last year that referred to unaccompanied children and the border in Westlaw’s news database resulted in over 5,000 hits. A search for articles published in the last year that referred to unaccompanied children and trafficking or smuggling resulted in over 3,700 hits.

Despite this widespread interest, little or no information about the JRP is available in the public domain. Searches of CBP’s website have revealed only a one-sentence reference to the JRP in CBP’s Performance and Accountability Report Fiscal Year 2014.³ A broader internet search yields only short media articles,⁴ one blog,⁵ and one organization report⁶ referencing JRP. This

3 U.S. Customs and Border Protection, Performance and Accountability Report Fiscal Year 2014, 42, http://www.cbp.gov/sites/default/files/documents/CBP_DHS_2014%20PAR_508C.PDF.

4 Joshua Partlow, Mexican kids held for months as punishment for border-crossing, *The Washington Post* (Mar. 11, 2015), http://www.washingtonpost.com/world/the_americas/mexican-kids-held-for-months-as-punishment-for-border-crossing/2015/03/10/311d319a-b2f2-11e4-bf39-5560f3918d4b_story.html; Angel Villarino, Busca EU disuadir a niños 'coyotes', *Reforma* (Sept. 24, 2014), <http://www.reforma.com/aplicaciones/articulo/default.aspx?id=348413>.

5 Natasha Pizzey, et al., Forgotten on 'La Frontera': Mexican Children

informational void on a topic of intense public interest further demonstrates the urgency of this request.

The Requestors are “primarily engaged in disseminating information” and thus warrant expedited processing. 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(d)(3). Further, the Department of Homeland Security’s (“DHS”) regulations specifically provide that “information dissemination . . . need not be [a requestor’s] sole occupation,” and it is our view that the Requestors meet the standard for expedited processing. 6 C.F.R. § 5.5(d)(3). The WRC is an expert resource and advocacy organization that monitors the care and protection of refugee women and children. It disseminates information about these issues to governments, policy makers, and the general public. The WRC’s Migrant Rights and Justice Program conducts extensive research and regularly publishes reports on detained immigrant children in U.S. federal custody, including the seminal publications *Halfway Home* and *Forced from Home*. The WRC publishes a newsletter distributed via email, maintains a blog, releases information via social media platforms, and regularly shares its findings through print and televised media platforms, as well as its website, www.womensrefugeecommission.org. The WRC often conducts original research and places facts in a legal and policy context like media organizations, which the regulations regard as automatically meeting the “information dissemination” requirement. *See* 6 C.F.R. § 5.5(d)(3) (“a full-time member of the news media” need not “establish that he or she is a person whose main professional activity or occupation is information dissemination.”).

For its part, the ACLU publishes newsletters, provides news briefings, and publishes and disseminates reports on civil liberties issues, right-to-know documents, and other materials to the public through its communications department, its 53 state-based affiliates, and its public website, www.aclu.org. Among other civil liberties and civil rights issues, the ACLU’s website addresses immigrants’ rights issues in depth (at www.aclu.org/immigrants), provides features on immigrants’ rights issues in the news, and contains hundreds of primary source documents created or obtained by ACLU staff. The website, which received over 13.9 million visits in 2013, specifically features information obtained through FOIA requests. The ACLU also publishes an electronic newsletter distributed via email; airs regular podcasts; maintains a blog, releases information via social media platforms; and has produced a television series on civil liberties issues.⁷

Fleeing Violence Are Rarely Heard, Washington Office on Latin America (Jan. 22, 2015), http://www.wola.org/commentary/forgotten_at_the_border.

⁶ Center for Gender & Refugee Studies, Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges, 8 (Feb. 2015), http://cgrs.uchastings.edu/sites/default/files/14_WRC_Border_English.pdf.

⁷ The ACLU and WRC are also “representative[s] 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

Upon receipt of the records requested, the Requestors will review them carefully and will disseminate newsworthy information through the channels available to them.

Request for Waiver of Fees

The requestors ask that all fees associated with this FOIA request be waived. We are entitled to a waiver of all costs because disclosure of the information is “...likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, the Requestors have the ability to widely disseminate the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003).

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities. The records requested relate directly to governmental operations or activities; all are directly traceable to a specific federal government program, the JRP. Release of these records will contribute significantly to public understanding of the JRP, and more broadly to the processing of unaccompanied children at the border and governmental treatment of children suspected of being involved in smuggling activity. As noted above, although these are areas of intense public concern, there is virtually no information about the JRP available to the public. Thus, the requested information would significantly enhance the public’s understanding of the JRP and the broader topics it relates to.

Disclosure is not within the commercial interest of the Requestors. The ACLU and WRC are not-for-profit organizations that do not seek to disseminate the information for the purpose of commercial gain. Moreover, “a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.” 6 C.F.R. § 5.11(b)(6). As explained above, this request falls within § 5.11(b)(6) because it supports both Requestors’ dissemination of information relating to a topic of current interest to the public. In this respect, the request strongly resembles the many previous instances in which the government waived all fees associated with responding to FOIA requests by the ACLU.⁸

⁸ “uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience”); *see also Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1397 (D.C. Cir. 1989) (same); 6 C.F.R. § 5.11(b)(6) (defining representative of the news media as “any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public”).

⁸ The following are recent examples of requests in which agencies did not charge the

In any event, the Requestors are “representative[s] of the news media” and do not seek the records requested for commercial use. Accordingly, even if any fees could be charged relating to the processing of the request, they would be “limited to reasonable standard charges for document duplication” alone. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

* * *

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We certify that the information in this request is true to the best of our knowledge and belief.

If this request is denied in whole or in part, the ACLU asks that the government justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect the government to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

We look forward to your response to our request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Notwithstanding our request for expedited processing, we alternatively look forward to your reply to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

Please direct any correspondence and provide any records to Omar C. Jadwat, either by email to ojadwat@aclu.org or at the address below. Thank you for your prompt attention to this request.

Sincerely,

/s/ Omar C. Jadwat
ACLU Immigrants’ Rights Project
125 Broad Street, 18th Floor
New York, NY 10004

ACLU fees associated with responding to its FOIA requests: (1) a FOIA request submitted to the Department of State in April 2005; (2) a FOIA request submitted to the National Institute of Standards and Technology in April 2005; (3) a FOIA request submitted to the Office of Science and Technology in the Executive Office of the President in August 2003; (4) a FOIA request submitted to the Federal Bureau of Investigation in August 2002; (5) a FOIA request submitted to the Office of Intelligence Policy and Review in August 2002; (6) a FOIA request submitted to the Office of Information and Privacy in the Department of Justice in August 2002.

/s/ Jennifer Podkul
Migrant Rights and Justice Program
Women's Refugee Commission
1012 14th St. NW, Suite 1100
Washington, D.C. 20005

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EXHIBIT A
List of A-Numbers

A 202-000-415
A 202-001-394
A 202-030-878
A 202-030-948
A 205-517-292
A 205-517-378
A 205-517-463
A 205-641-950
A 205-642-071
A 205-645-799
A 205-726-738
A 205-732-315
A 205-841-497
A 205-841-567
A 205-841-676
A 206-159-844
A 206-316-246
A 206-360-464
A 206-693-644
A 206-726-950
A 206-727-574
A 206-756-278
A 206-756-450
A 206-756-451
A 206-769-689
A 206-769-691
A 206-769-974
A 206-770-122
A 206-770-123
A 206-770-294
A 206-770-294
A 206-770-296
A 206-771-905
A 206-772-155
A 206-772-617
A 206-772-617
A 206-775-149
A 206-779-155
A 206-779-401
A 206-779-995
A 206-780-173
A 206-794-795

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A 206-795-501
A 206-795-502
A 206-796-342
A 206-796-454
A 206-797-056
A 206-797-057
A 206-798-972
A 206-799-663
A 206-799-990
A 206-800-296
A 206-800-448
A 206-800-630
A 206-802-293
A 206-802-293
A 206-802-407
A 206-802-509
A 206-802-815
A 206-803-003
A 206-804-727
A 206-805-186
A 206-805-197
A 206-805-198
A 206-805-200
A 206-807-259
A 206-807-529
A 206-807-546
A 206-807-554
A 206-807-622
A 206-807-687
A 206-807-744
A 206-807-771
A 206-807-773
A 206-843-157
A 206-843-682
A 206-843-682
A 206-846-866
A 206-870-519

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EXHIBIT E

Lindsay Nash

Subject: FW: ICE FOIA Request 2015-ICFO-97426
Attachments: ICE Ack Letter (Transfer to CBP).docx; ATT00001.htm; ICE Ack Letter (Transfer to USCIS).docx; ATT00002.htm

From: ice-foia@dhs.gov
Date: September 16, 2015 at 11:48:48 AM EDT
To: ojadwat@aclu.org
Subject: ICE FOIA Request 2015-ICFO-97426

September 16, 2015

Omar Jadwat
ACLU Immigrants' Rights Project
125 Broad St, 18th Floor
New York, NY 10004

RE: ICE FOIA Case Number 2015-ICFO-97426

Dear Mr. Jadwat:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated September 10, 2015, and to your request for expedited treatment and a waiver of all assessable FOIA fees. Your request was received in this office on September 16, 2015. Specifically, you requested records maintained by ICE related to the Juvenile Referral Program ("JRP"), including all policies, regulations, practices, procedures, recommendations and guidelines; communications discussing the JRP as a whole or in part or individual cases or incidents within the JRP; case files or other records in ICE's possession that relate to children what are included within the JRP or have been considered for inclusion within the JRP.

Your request for expedited treatment is hereby denied.

Under the DHS FOIA regulations, expedited processing of a FOIA request is warranted if the request involves "circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," 6 C.F.R. § 5.5(d)(1)(i), or "an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information," 6 C.F.R. § 5.5(d)(1)(ii). Requesters seeking expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct. 6 C.F.R. § 5.5(d)(3).

Your request for expedited processing is denied because you do not qualify for either category under 6 C.F.R. § 5.5(d)(1). You have not established that lack of expedited treatment in this case will pose an imminent threat to the life or physical safety of an individual. The information sought in your request is retrospective and you have not established that the information would have a bearing on immediate or resultant future situations. In addition, you are not primarily engaged in the dissemination of information to the public. You have not shown that you have the ability to educate the public beyond your limited constituency, nor have you established with the requisite specificity why you feel there is an urgency to inform your limited audience about past ICE actions. Qualifying urgency would need to exceed the public's right to know about government activity generally. Finally, you did not offer any supporting evidence of public interest that is any greater than the public's general interest in the JRP.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10- day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care 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.

As it pertains to your request for a fee waiver, after thoroughly reviewing your letter, ICE has determined that you have not presented a convincing argument that **ACLU Immigrants' Rights Project** is entitled to a blanket waiver of applicable fees.

The DHS FOIA Regulations at 6 CFR § 5.11(k)(2) set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met. We will consider these factors in our evaluation of your request for a fee waiver:

- (1) Whether the subject of the requested records concerns “the operations or activities of the government”;
- (2) Whether the disclosure is “likely to contribute” to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant";
- (5) Whether the requestor has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

As a requester, you bear the burden under FOIA of showing that the fee waiver requirements have been met. Based on my review of your September 10, 2015 letter and for the reasons stated herein, I have determined that your fee waiver request is deficient because your request has failed to satisfy factors 4, 5, and 6. Since your request for a fee waiver has failed to satisfy each of the required factors, I am denying your fee waiver request.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester, you will be charged 10 cents per page for duplication; the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

You have the right to appeal the determination to deny your request for expedited treatment and a fee waiver. Should you wish to do so, please send your appeal following the procedures outlined in the DHS regulations at 6 Code of Federal Regulations § 5.9 and a copy of this letter to:

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

Your appeal must be received within 60 days of the date of this letter. Your envelope and letter should be marked “FOIA Appeal.” Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

ICE has queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2015-ICFO-97426**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must enter the 2014-ICFO-XXXXX or 2015-ICFO-XXXXX tracking number. You may contact this office at (866) 633-1182. Our mailing address is 500 12th Street, S.W., Stop 5009, Washington, D.C. 20536-5009.

Regards,

ICE FOIA Office
Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
Telephone: 1-866-633-1182
Visit our FOIA website at www.ice.gov/foia

EXHIBIT F

LEGAL DEPARTMENT
IMMIGRANTS'
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October 27, 2015

VIA OVERNIGHT DELIVERY

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

Re: FOIA APPEAL: Appeal of Denial of Expedited Processing and Denial of Fee Waiver, ICE FOIA Case Number 2015-ICFO-97426

AMERICAN CIVIL LIBERTIES
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PLEASE RESPOND TO:
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OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

Dear Sir/Madam:

The Immigrants' Rights Project of the American Civil Liberties Union ("ACLU") and the Women's Refugee Commission ("WRC") write to appeal the denial of expedited processing and a fee waiver in relation to our September 16, 2015 request ("Request") under the Freedom of Information Act ("FOIA"), No. 2015-ICFO-97426, which seeks all Immigration and Customs Enforcement ("ICE") records relating to the Juvenile Referral Program ("JRP"). The letter in which ICE denied expedited processing and a fee waiver is attached as Exhibit A, and the FOIA request, which includes the request for expedited processing and a fee waiver, is attached as Exhibit B.

I. The Requesters are Entitled to Expedited Processing.

Under the FOIA, as well as ICE regulations, Requesters are entitled to expedited processing of their FOIA request. The FOIA provides requesters a right to have their request processed expeditiously when the request is "made by a person 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); *see also* 6 C.F.R. § 5.5(d)(1)(ii) (same). As the Request made clear, Requesters satisfied both criteria.

In its letter denying expedited processing, ICE stated that the Requesters did not qualify for expedited processing under 6 C.F.R. § 5.5(d)(1)(ii) because

The information sought in your request is retrospective and you have not established that the information would have a bearing on immediate or resultant future situations. In addition, you are not primarily engaged in the dissemination of information

to the public. You have not shown that you have the ability to educate the public beyond your limited constituency, nor have you established with the requisite specificity why you feel there is an urgency to inform your limited audience about past ICE actions. Qualifying urgency would need to exceed the public's right to know about government activity generally. Finally, you did not offer any supporting evidence of public interest that is any greater than the public's general interest in the JRP.

Ex. A at 1.

These conclusions are incorrect. We explained at pages 2 to 5 of our request why we are entitled to expedited processing, with specific references to both the statute and the regulations. We incorporate the entirety of our request letter by reference in this appeal, and refer you to that letter for a detailed explanation of our position. For the sake of clarity, the Requesters briefly address the errors in ICE's denial letter.

First, the information requested—which relates to policies and procedures used in the JRP—has immediate and resultant bearing on future situations. Over 200 Mexican children are being held in detention centers pursuant to the JRP and hundreds have been detained and subsequently deported through that program: information about the enforcement program used against them has an immediate effect on their ability to understand and challenge their detention and deportation orders. As we noted in our request, this program appears to be “subjecting hundreds of children to confinement for months at a time to punish them for suspected criminal activity, without trial,” and exposure of this practice to public scrutiny could cause it to stop, sparing children from additional confinement and interrogation” and that “the government should not be able to shield an ongoing violation of children's fundamental due process rights from public view.” Ex. B at 3. ICE's conclusory denial letter did not refute or even address these facts. In addition, a high-level Department of Homeland Security officer recently stated that the agency is currently evaluating the JRP and may incorporate elements of JRP into the general screening process (which is currently being revised) for unaccompanied children entering the United States. Understanding that process is critical for policymakers, advocates, and the general public, to have input on the revisions to the screening process that are currently underway.

Second, as the Request makes abundantly clear, Requesters are organizations primarily engaged in disseminating information. *See* Ex. B at 4; *see also* 6 C.F.R. § 5.5(d)(3). The ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are widely disseminated to the

public. These materials are made available to everyone—including tax-exempt organizations, non-profit groups, and law students and law faculty—at no cost or for a nominal fee. The ACLU also disseminates information through its high-traffic website, <http://www.aclu.org>, which provides in-depth information on a range of civil liberties issues; addresses civil liberties issues that are currently in the news; and contains hundreds of documents relating to the ACLU’s work. The website specifically features information obtained through FOIA. The ACLU also publishes an electronic newsletter, which is distributed to subscribers via email; airs regular podcasts; maintains several blogs at <https://www.aclu.org/blog>; publishes information via social media platforms such as Facebook and Twitter; and works with influential creative artists in film, television, music, and comedy to educate the public.

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Similarly, the Requesters explained that the WRC is an expert resource and advocacy organization that monitors the care and protection of refugee women and children. *See* Ex. B at 4. WRC disseminates information about these issues to governments, policy makers, and the general public. The WRC’s Migrant Rights and Justice Program conducts extensive research and regularly publishes reports on detained immigrant children in U.S. federal custody, including the seminal publications *Halfway Home* and *Forced from Home*. The WRC publishes a newsletter distributed via email, maintains a blog, releases information via social media platforms, and regularly shares its findings through print and televised media platforms, as well as its website, www.womensrefugeecommission.org. The WRC often conducts original research and places facts in a legal and policy context like media organizations, which the regulations regard as automatically meeting the “information dissemination” requirement. *See* 6 C.F.R. § 5.5(d)(3) (“a full-time member of the news media” need not “establish that he or she is a person whose main professional activity or occupation is information dissemination.”). And, as stated in the Request, the Requesters would disseminate newsworthy information received through this Request. Ex. B at 5.

These characteristics clearly make the Requesters “representative[s] of the news media organization” for purpose of FOIA. *See Nat’l Security Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (noting a requester is a representative of the news media where it “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”) (construing 5 U.S.C. § 552(a)(4)(A)(iii)); *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 10 (D.D.C. 2003) (“any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a ‘representative of the news media.’”). Courts have recognized that organizations that meet the “representative of the news media” standard necessarily meet the “primarily engaged in disseminating

information” standard. *See ACLU v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29, n.5 (D.D.C. 2004). Indeed, courts have specifically recognized that advocacy organizations like the ACLU, which disseminate information and conduct public education on civil rights issues, are entitled to expedited processing. *See Leadership Conf. on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (holding that an organization that “disseminates information regarding civil rights . . . to educate the public, promote effective civil rights laws and ensure their enforcement by the Department of Justice” was entitled to expedited processing).

To the extent that there is any doubt, we note that the regulations specifically provide that “information dissemination . . . need not be [a requester’s] sole occupation.” 6 C.F.R. 5.5(d)(3). It is our view that both requesters meet the standard for expedited processing but, for the purposes of this appeal, we underline that requester WRC is a “resource and advocacy organization.” Ex. B at 4. The way that such an organization accomplishes its goals is primarily, if not entirely, by “disseminat[ing] information about . . . issues to governments, policy makers, and the general public.” *Id.* Of course, in doing so, the WRC often conducts original research and places facts in a legal and policy context; but so do media organizations, which the regulations regard as automatically meeting the “information dissemination” requirement. *See* 6 C.F.R. § 5.5(d)(3) (“a full-time member of the news media” need not “establish that he or she is a person whose main professional activity or occupation is information dissemination.”)

Relatedly, ICE faults the Requesters for failing to “show[] that [they have] the ability to educate the public beyond [their] limited constituency.” Ex. B at 1. But neither the statute nor the regulations require that a requester make such a showing; instead, they require only that the requester be “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(d)(3). *Cause of Action v. FTC*, 779 F.3d 1108, 1123-1124 (D.C. Cir. 2015) (rejecting similar requirement for purposes of public interest fee waiver). As explained above, the Requesters have clearly made that showing here. But even assuming this were a requirement, the Requesters have clearly demonstrated their ability to educate the public at large. *See supra* at 3.¹

Third, ICE concluded that the Requesters failed to establish that they have a

¹ The reach of the ACLU information dissemination is wide: the ACLU has more than 500,000 members, and 1,428,571 online activists who participate in its online actions. In mid-August 2015 alone, the combined number of followers for our active social media accounts (ACLU Nationwide Facebook, @ACLU and @ACLUlive Twitter accounts, and Instagram) was 885,248. The ACLU website receives more than 38,000 unique visits and nearly 70,000 page views a day. Over the last two years, the ACLU’s blogs have averaged 12,000 visits per day, with some receiving more than 100,000 visits over that time span. WRC’s reports and trainings have reached thousands of individuals and it has almost 3,000 Twitter followers.

compelling need for the JRP-related information because they did not provide the “requisite specificity why [they] feel there is an urgency to inform [their] limited audience about past ICE actions.” Ex. A at 1. But, as explained above and in the Request, the information relates to an ongoing enforcement program that may violate children’s due process rights en masse; without information about the program, advocates cannot adequately represent these children, nor can the public participate in a discussion about whether and how the government should implement such an enforcement program. *See* Ex. B at 3. As we emphasized, informing the public about the JRP “could cause it to stop, sparing children from additional confinement and interrogation.” *Id.* The urgency is all the more pressing now because the government is actively considering incorporating elements of the JRP into the screening process for all minors, potentially affecting tens of thousands of children who go through that process annually. *See supra* at 2–3.

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Contrary to ICE’s suggestion, the Request relates not to “government activity generally,” *cf.* 6 C.F.R. § 5.5(d)(3), but to a secretive program that results in hundreds of children being held in “confinement for months at a time to punish them for suspected criminal activity, without trial.” Ex. B. If the practice of detaining and deporting individuals for the purpose of punishment is intrinsic to all ICE enforcement, that is all the more reason that the public needs to know about it. Assuming that it is not, however, the need to know about this program, help the children affected, and participate meaningfully in the ongoing revision of DHS’s screening process for unaccompanied children is undeniably greater than “the public’s right to know about government activity generally.” Ex. A at 1.

Relatedly, ICE erred in denying expedited processing on the ground that Requesters did not “offer any supporting evidence of public interest that is any greater than the public’s general interest in the JRP.” Ex. A at 1. Neither the FOIA nor ICE regulations require a showing of this degree of specificity, and it is preposterous for the agency to require that Requesters show some more narrowly focused interest beyond the JRP as a whole when the agency has provided almost *no* information about the program. In any event, the Request notes that the “intense public interest,” as shown by news reporting, in information about the key issues to which the JRP relates: (1) unaccompanied minor children and the border and (2) unaccompanied children and trafficking or smuggling, Ex. B at 5, and explained that there is “little or no information about [the subject of the request] in the public domain.” *Id.*

In sum, as the Request made clear, there is no basis for denying our request for expedited processing.

II. The Request for a Fee Waiver Should Be Granted.

Both Requesters are entitled to a fee waiver for the instant request. As an initial matter, the letter denying a fee waiver to the ACLU does not address WRC's request for a fee waiver. *See* Ex. A at 2 (“ICE has determined that you have not presented a convincing argument that ACLU Immigrants’ Rights Project is entitled to a blanket waiver of applicable fees.”). That alone violates the FOIA, as well as ICE’s own regulations, *see* 8 U.S.C. § 552(a)(6)(A)(i); 6 C.F.R. § 5.11; *see also* 6 C.F.R. § 5.11(k)(3)–(5) (requiring agencies to consider all relevant factors in fee waiver application), and requires that ICE grant WRC a fee waiver. *See* § 552(a)(4)(A)(viii), *Bensman v. Nat’l Park Serv.*, 806 F. Supp. 2d 31, 33 (D.D.C. 2011).

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A. The Requesters Should Be Granted a Fee Waiver Because the Information Requested Is in the Public Interest And the Requesters Have No Commercial Interest in the Information.

An agency may charge reasonable fees for “document search, duplication, and review, when records are requested for commercial use.” 5 U.S.C. § 552(a)(4)(A)(ii)(I). However, an agency must furnish records without any charge or at a reduced charge “if disclosure of the 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.” § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution).

ICE’s FOIA regulations set forth six factors to “consider” in determining whether the applicable legal standard for a fee waiver has been met:

- (1) Whether the subject of the requested records concerns “the operations or activities of the government”;
- (2) Whether the disclosure is “likely to contribute” to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large;
- (4) Whether the contribution to public understanding of government operations or activities will be “significant”;
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in

the commercial interest of the requester.

6 CFR § 5.11(k)(2)-(3).

There is no serious dispute that disclosure of the records requested 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). In denying the fee waiver, ICE found that the Request failed to satisfy the following elements:

(4) Whether the contribution to public understanding of government operations or activities will be “significant”;

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Ex. A at 2.

All of these factors justifying granting a fee waiver here. “In determining whether disclosure of records will contribute significantly to the public’s understanding of the operation or activities of the government, it is relevant to consider the subject matter of the requests and the ability of the requester to disseminate the information.” *Carney v. Dep’t of Justice*, 19 F.3d 807, 814 (2d Cir. 1994). The “FOIA does not require that a requester be able to reach a ‘wide audience.’” *Cause of Action*, 779 F.3d at 1124. Rather, “the relevant inquiry . . . is whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject.” *Carney*, 19 F.3d at 815.

It cannot be disputed that disclosure of the requested records would contribute significantly to the public’s knowledge of the policies and practices that comprise the JRP. To the Requesters’ knowledge, there is currently *no* publicly available information that provides a detailed description of ICE’s involvement in a border enforcement program that has resulted in the prosecution and detention of hundreds of unaccompanied Mexican children since its inception in May 2014. *See* Ex. A at 3–4. By definition then, disclosure of the records requested will significantly enhance the public’s understanding of these issues. Moreover, as set forth *supra*, the Requesters are clearly capable of disseminating the information disclosed in response to their Request.

ICE's denial of a fee waiver based on an alleged commercial interest is also clearly wrong. Requesters obviously do *not* have a commercial interest in disclosure. *See* 6 C.F.R. § 5.11(b)(1) (defining a “[c]ommercial use request” as “a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation”), and the Request made this clear. *See* B at 5.² Indeed, ICE appears to recognize this lack of a commercial interest in treating the ACLU as a non-commercial requester for billing purposes, *see* Ex. B at 1, and recently acknowledged that the ACLU did not have a commercial interest when it granted a fee waiver to the ACLU in relation to a similar request, *see* Ex. C.

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The ACLU reminds ICE that it is nationwide, nonprofit, nonpartisan organization dedicated to protecting civil rights in the United States. It is the largest civil liberties organization in the country, with offices in 50 states and over 500,000 members. *See* Ex. A at 4. As described above, the Requesters issue publications and uses various kinds of channels—including newsletters, web pages, blogs, and news briefings—to disseminate information to the public *at no cost* and intend to do so the same with any newsworthy information here. *See supra*. Facts like these warrant a fee waiver under the Congress's 1987 amendments to the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” (citation omitted)); *Citizens for Responsibility and Ethics in Wash. v. U.S. Dept. of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) (“[FOIA’s] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.” (internal quotation marks and citation omitted)). And, because the Requesters have *no* commercial interest in disclosure, any public interest in disclosure is sufficiently large in comparison with that nonexistent interest.

In any event, the fee waiver determination requires “consider[ing]” the enumerated factors, but does not require that requesters satisfy each factor. Thus, even if ICE were to conclude that the Requesters have not fulfilled certain of the above factors, it should recognize that the Request establishes disclosure of the information “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester,” under the fee waiver criteria as a whole. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k).

² *See also* Office of Mgmt. & Budget, Uniform FOIA Fee Schedule & Guidelines, 52 Fed. Reg. 10,012, 10,017-18 (Mar. 27, 1987) (interpreting “commercial use” in 5 U.S.C. § 552(a)(4)(A)(ii) as a use that “furthers the commercial, trade or profit interests of the requester”).

Ultimately, ICE's decision cannot be squared with the numerous cases in which courts found that nonprofits engaged in public interest advocacy, litigation, and public education, like the ACLU and WRC, do not have "commercial interests" implicated by their FOIA requests and were granted fee waivers.³ As explained in the Request, the ACLU alone has been granted FOIA fee waivers on many occasions. Ex. B at 5–6.⁴ The same should be done here. Indeed, this request strongly resembles prior instances in which ICE has reversed the denial of a fee waiver to the ACLU on appeal.⁵

B. In the Alternative, the Requesters Should Be Granted a Fee Waiver as

³ See, e.g., *FedCURE v. Lappin*, 602 F. Supp. 2d 197, 201 (D.D.C. 2009) (public interest waiver ordered for nonprofit organization that advocates for federal inmate population and their families); *Ctr. For Medicare Advocacy, Inc. v. HHS*, 577 F. Supp. 2d 221, 238–42 (D.D.C. 2008) (public interest waiver ordered for nonprofit that educates and advocates for Medicare beneficiaries).

⁴ In addition, agencies did not charge the ACLU fees in the following cases, among others: (1) In September 2015, ICE granted a fee waiver to the ACLU for a FOIA request seeking records about number of persons subject to mandatory and non-mandatory immigration detention over the past year ; (2) In March 2012, the Department of Justice (DOJ) Criminal Division granted a fee waiver to the ACLU for a FOIA request seeking records about the government's access to the contents of individuals' private electronic communications; (3) In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act; (4) In November 2010, the Federal Emergency Management Agency (FEMA) granted a fee waiver to the ACLU for a FOIA request seeking documents concerning the FEMA-funded rebuilding of Orleans Parish Prison following Hurricane Katrina. (5) In October 2010, the Department of the Navy granted a fee waiver to the ACLU with respect to a request for documents regarding the deaths of detainees in U.S. custody; (6) In January 2010, ICE granted a fee waiver to the ACLU for a FOIA request seeking documents concerning the deaths of detainees in ICE custody; (7) In January 2009, the CIA granted a fee waiver with respect to the same request; (8) In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request submitted in December 2008. DOJ granted a fee waiver to the ACLU with regard to the same FOIA request. (9) In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request submitted in that same month.

⁵ See, e.g., Letter from Debbie Seguin, ICE Office of the Principal Legal Advisor, re. 2015-ICFO-99765 (Oct. 5, 2015), at 2 (reversing denial of fee waiver based on factors 4, 5, and 6); Letter from Debbie Seguin, ICE Office of the Principal Legal Advisor, re. 2015-ICAP-00436, 2015-ICFO-7415 (July 6, 2015), at 2 (reversing denial of fee waiver based on factors 4, 5, and 6); Letter from Debbie Seguin, ICE Office of the Principal Legal Advisor, re. 2015-ICAP-00536, 2015-ICFO-80352, at 2 (Aug. 5, 2015) (reversing denial of fee waiver based on, *inter alia*, factor 3); Letter from Catrina M. Pavlik-Keenan, FOIA Officer, ICE, re. 2011FOIA4894, at 1 (Mar. 28, 2012) (reversing fee waiver denial based on ACLU of Southern California's ability to disseminate information to the public and its putative commercial interest in the records requested). Notably, ICE reversed its fee waiver denial in 2011FOIA4894 only after the ACLU of Southern California filed suit to challenge its decision. See Complaint, *ACLU of Southern California v. U.S. Immigration and Customs Enforcement*, CV11-10148 (C.D. Cal. filed Dec. 7, 2011).

EXHIBIT G

LEGAL DEPARTMENT
IMMIGRANTS'
RIGHTS PROJECT



September 10, 2015

VIA ELECTRONIC MAIL

Kimberly N. Epstein
FOIA Officer
Administration for Children and Families
7th Floor East
Aerospace Building
370 L'Enfant Promenade, S.W.
Washington, DC 20447

FOIA@acf.hhs.gov

Re: Freedom of Information Act (FOIA) Request
Juvenile Referral Program

Dear Ms. Epstein:

The American Civil Liberties Union Foundation (“ACLU”) and the Women’s Refugee Commission (“WRC”) (“Requestors”) submit this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq. We ask that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E), and that we be granted a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

Request for Information

The Requestors request disclosure of the following records¹ that were prepared, received, transmitted, collected and/or maintained by the Office of Refugee Resettlement (“ORR”), including but not limited to records prepared, received,

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

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PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

transmitted, collected and/or maintained at ORR Headquarters and ORR shelters operated by the Division of Children's Services:

1. All records relating to the Juvenile Referral Program (“JRP”).

By “Juvenile Referral Program” we mean:

- Any program or policy referred to by the Office of Refugee Resettlement (“ORR”) or the Department of Homeland Security (“DHS”) or any of its components as the “Juvenile Referral Program,” the “Juvenile Referral Process,” or the “Mexican Juvenile Referral Program”;
- Any program or policy first implemented in 2014 relating to children² suspected of being “foot guides,” “river guides,” “smuggling guides,” or “circuit children” or otherwise suspected of being involved in assisting others to cross the U.S.-Mexico border; and
- Any program or policy involving the referral or potential referral of children for prosecution by federal, state, or local authorities.

This request includes, but is not limited to:

- All policies, regulations, practices, procedures, recommendations and guidelines implementing or referring to the JRP;

All communications discussing the JRP as a whole or in part or individual cases or incidents within the JRP;

- All communications with the DHS or any of its subcomponents regarding JRP as a whole or in part or individual cases or incidents within the JRP; and
- All case files, forms (including Forms 93, Forms I-213, Forms I-770, computer-generated placement recommendations, notices of custody determinations, and statements of reasons for custody determinations), or other records in ORR’s possession that relate to children that are included within the JRP or have been considered for inclusion within the JRP. Our understanding is that this category of records will include case files relating to most or all of the A-numbers listed in Exhibit

² The term “children” as used herein includes all individuals under 18 years old.

A, as well as additional case files. (We do not seek these children's names or other personally identifying information, and you may redact such information from the records provided to us.)

2. All policies, regulations, practices, procedures, recommendations and guidelines regarding communications with or input by DHS or any of its subcomponents in making custody determinations and placement decisions; and
3. All policies, regulations, practices, procedures, recommendations and guidelines regarding the exchange of confidential information with DHS or any of its subcomponents.

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Request for Expedited Processing

Expedited processing is warranted because there is “an urgency to inform the public about an actual or alleged federal government activity” and the request is made by entities “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

First-hand reports from children, their attorneys, along with statements of federal officials, suggest that under the JRP, the federal government is systematically subjecting hundreds of children to confinement for months at a time to punish them for suspected criminal activity, without trial. Reports further suggest that the government interrogates these children about suspected criminal activity without providing them with counsel and without protective measures commensurate with their vulnerable status. There is an “urgency to inform the public about [this] actual or alleged governmental activity” because (1) exposure of this practice to public scrutiny could cause it to stop, sparing children from additional confinement and interrogation; and (2) the government should not be able to shield an ongoing violation of children's fundamental due process rights from public view.

Furthermore, there is intense public interest in issues relating to unaccompanied children and trafficking. A search for articles published in the last year that referred to unaccompanied children and the border in Westlaw's news database resulted in over 5,000 hits. A search for articles published in the last year that referred to unaccompanied children and trafficking or smuggling resulted in over 3,700 hits.

Despite this widespread interest, little or no information about the JRP is available in the public domain. Searches of CBP's website have revealed only a one-sentence reference to the JRP in CBP's Performance and Accountability Report Fiscal Year 2014, which specifically states that the JRP was developed in

conjunction with ORR.³ A broader internet search yields only short media articles,⁴ one blog,⁵ and one organization report⁶ referencing the JRP. This informational void on a topic of intense public interest further demonstrates the urgency of this request.

The Requestors are “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II). The WRC is an expert resource and advocacy organization that monitors the care and protection of refugee women and children. It disseminates information about these issues to governments, policy makers, and the general public. The WRC’s Migrant Rights and Justice Program conducts extensive research and regularly publishes reports on detained immigrant children in U.S. federal custody, including the seminal publications *Halfway Home* and *Forced from Home*. The WRC publishes a newsletter distributed via email, maintains a blog, releases information via social media platforms, and regularly shares its findings through print and televised media platforms, as well as its website, www.womensrefugeecommission.org.

For its part, the ACLU publishes newsletters, provides news briefings, and publishes and disseminates reports on civil liberties issues, right-to-know documents, and other materials to the public through its communications department, its 53 state-based affiliates, and its public website, www.aclu.org. Among other civil liberties and civil rights issues, the ACLU’s website addresses immigrants’ rights issues in depth (at www.aclu.org/immigrants), provides features on immigrants’ rights issues in the news, and contains hundreds of primary source documents created or obtained by ACLU staff. The website, which received over 13.9 million visits in 2013, specifically features information obtained through FOIA requests. The ACLU also publishes an electronic newsletter distributed via email; airs regular podcasts; maintains a blog, releases

3 U.S. Customs and Border Protection, Performance and Accountability Report Fiscal Year 2014, 42, http://www.cbp.gov/sites/default/files/documents/CBP_DHS_2014%20PAR_508C.PDF.

4 Joshua Partlow, Mexican kids held for months as punishment for border-crossing, *The Washington Post* (Mar. 11, 2015), http://www.washingtonpost.com/world/the_americas/mexican-kids-held-for-months-as-punishment-for-border-crossing/2015/03/10/311d319a-b2f2-11e4-bf39-5560f3918d4b_story.html; Angel Villarino, Busca EU disuadir a niños 'coyotes', *Reforma* (Sept. 24, 2014), <http://www.reforma.com/aplicaciones/articulo/default.aspx?id=348413>.

5 Natasha Pizzey, et al., Forgotten on 'La Frontera': Mexican Children Fleeing Violence Are Rarely Heard, *Washington Office on Latin America* (Jan. 22, 2015), http://www.wola.org/commentary/forgotten_at_the_border.

6 Center for Gender & Refugee Studies, Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges, 8 (Feb. 2015), http://cgcs.uchastings.edu/sites/default/files/14_WRC_Border_English.pdf.

information via social media platforms; and has produced a television series on civil liberties issues.⁷

Upon receipt of the records requested, the Requestors will review them carefully and will disseminate newsworthy information through the channels available to them.

Request for Waiver of Fees

The requestors ask that all fees associated with this FOIA request be waived. We are entitled to a waiver of all costs because disclosure of the information is “...likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 45 C.F.R. § 5.45(a) (records furnished without charge or at a reduced rate if the 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 disclosure is not in commercial interest of requestor). In addition, the Requestors have the ability to widely disseminate the requested information. *See Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003).

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities. The records requested relate directly to governmental operations or activities; all are directly traceable to a specific federal government program, the JRP. Release of these records will contribute significantly to public understanding of the JRP, and more broadly to the processing of unaccompanied children at the border and governmental treatment of children suspected of being involved in smuggling activity. As noted above, although these are areas of intense public concern, there is virtually no information about the JRP available to the public. Thus, the requested information would significantly enhance the public’s understanding of the JRP and the broader topics it relates to.

Disclosure is not within the commercial interest of the Requestors. The ACLU and WRC are not-for-profit organizations that do not seek to disseminate the information for the purpose of commercial gain. Moreover, “interest of a representative of the news media in using the information for news dissemination purposes will not be considered a commercial interest.” 45 C.F.R. § 5.45(c)(1).

⁷ The ACLU and WRC are also “representative[s] 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 Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1397 (D.C. Cir. 1989) (same); 45 C.F.R. § 5.5 (defining representative of the news media as “a person actively gathering information for an entity organized and operated to publish or broadcast news to the public”).

As explained above, this request falls within § 5.45(c)(1) because it supports both Requestors' dissemination of information relating to a topic of current interest to the public. In this respect, the request strongly resembles the many previous instances in which the government waived all fees associated with responding to FOIA requests by the ACLU.⁸

In any event, the Requestors are "representative[s] of the news media" and do not seek the records requested for commercial use. Accordingly, even if any fees could be charged relating to the processing of the request, they would be "limited to reasonable standard charges for document duplication" alone. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

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* * *

We certify that the information in this request is true to the best of our knowledge and belief.

If this request is denied in whole or in part, the ACLU asks that the government justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect the government to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny expedited processing or a waiver of fees.

We look forward to your response to our request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Notwithstanding our request for expedited processing, we alternatively look forward to your reply to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

Please direct any correspondence and provide any records to Omar C. Jadwat, either by email to ojadwat@aclu.org, 212-549-2500, or at the address below. Thank you for your prompt attention to this request.

⁸ The following are recent examples of requests in which agencies did not charge the ACLU fees associated with responding to its FOIA requests: (1) a FOIA request submitted to the Department of State in April 2005; (2) a FOIA request submitted to the National Institute of Standards and Technology in April 2005; (3) a FOIA request submitted to the Office of Science and Technology in the Executive Office of the President in August 2003; (4) a FOIA request submitted to the Federal Bureau of Investigation in August 2002; (5) a FOIA request submitted to the Office of Intelligence Policy and Review in August 2002; (6) a FOIA request submitted to the Office of Information and Privacy in the Department of Justice in August 2002.

Sincerely,

/s/ Omar C. Jadwat
ACLU Immigrants' Rights Project
125 Broad Street, 18th Floor
New York, NY 10004

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

/s/ Jennifer Podkul
Migrant Rights and Justice Program
1012 14th St. NW, Suite 1100
Washington, D.C. 20005

EXHIBIT A
List of A-Numbers

A 202-000-415
A 202-001-394
A 202-030-878
A 202-030-948
A 205-517-292
A 205-517-378
A 205-517-463
A 205-641-950
A 205-642-071
A 205-645-799
A 205-726-738
A 205-732-315
A 205-841-497
A 205-841-567
A 205-841-676
A 206-159-844
A 206-316-246
A 206-360-464
A 206-693-644
A 206-726-950
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A 206-756-278
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A 206-771-905
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A 206-772-617
A 206-772-617
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A 206-779-155
A 206-779-401
A 206-779-995
A 206-780-173
A 206-794-795

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A 206-795-501
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A 206-797-057
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A 206-799-663
A 206-799-990
A 206-800-296
A 206-800-448
A 206-800-630
A 206-802-293
A 206-802-293
A 206-802-407
A 206-802-509
A 206-802-815
A 206-803-003
A 206-804-727
A 206-805-186
A 206-805-197
A 206-805-198
A 206-805-200
A 206-807-259
A 206-807-529
A 206-807-546
A 206-807-554
A 206-807-622
A 206-807-687
A 206-807-744
A 206-807-771
A 206-807-773
A 206-843-157
A 206-843-682
A 206-843-682
A 206-846-866
A 206-870-519

AMERICAN CIVIL LIBERTIES
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EXHIBIT H

LEGAL DEPARTMENT
IMMIGRANTS'
RIGHTS PROJECT



September 10, 2015

VIA ELECTRONIC MAIL

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
150 Space Center Loop, Suite 300
Lee's Summit, MO 64064-2139

uscis.foia@uscis.dhs.gov

Re: Freedom of Information Act (FOIA) Request
Juvenile Referral Program

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
IMMIGRANTS'
RIGHTS PROJECT

PLEASE RESPOND TO:
CALIFORNIA OFFICE
39 DRUMM STREET
SAN FRANCISCO, CA 94111-4805
T/415.343.0770
F/415.395.0950

125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2660
F/212.549.2654
WWW.ACLU.ORG

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

Dear FOIA Officer,

The American Civil Liberties Union Foundation (“ACLU”) and the Women’s Refugee Commission (“WRC”) (“Requestors”) submit this letter as a request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq. We ask that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E), and that we be granted a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

Request for Information

The Requestors request disclosure of the following records that were prepared, received, transmitted, collected and/or maintained by the U.S. Citizenship and Immigration Services (“CIS”), including but not limited to records prepared, received, transmitted, collected and/or maintained at CIS Headquarters:

All records relating to the Juvenile Referral Program (“JRP”).

By “Juvenile Referral Program” we mean:

- Any program or policy referred to by the Office of Refugee Resettlement (“ORR”) or the U.S. Customs and Border Protection (“CBP”) or any of its components as the “Juvenile Referral Program,” the “Juvenile Referral Process,” or the “Mexican Juvenile Referral Program”;
- Any program or policy first implemented in 2014 relating to children suspected of being “foot guides,” “river guides,” “smuggling guides,” or “circuit children” or otherwise suspected of being involved in assisting others to cross the U.S.-Mexico border; and
- Any program or policy involving the referral or potential referral of

children for prosecution by federal, state, or local authorities.

This request includes, but is not limited to:

- All policies, regulations, practices, procedures, recommendations and guidelines implementing or referring to the JRP;
- All communications discussing the JRP as a whole or in part or individual cases or incidents within the JRP; and
- All case files, forms (including Forms 93, Forms I-213, and Forms I-770), or other records in CIS's possession that relate to children that are included within the JRP or have been considered for inclusion within the JRP. Our understanding is that this category of records will include case files relating to most or all of the A-numbers listed in Exhibit A, as well as additional case files. (We do not seek these children's names or other personally identifying information, and you may redact such information from the records provided to us.)

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Request for Expedited Processing

An expedited processing request "may be made at the time of the initial request for records or at any later time." 6 C.F.R. § 5.5(d)(2). A "requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing." 6 C.F.R. § 5.5(d)(3). In compliance with these procedural requirements, the Requestors submit this expedited processing request at the time of our initial records request and certify that the information in this request is true to the best of our knowledge and belief. See *supra* p. 5.

Expedited processing is warranted because there is "an urgency to inform the public about an actual or alleged federal government activity" and the request is made by entities "primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II); see also 6 C.F.R. § 5.5(d)(ii). The request relates not to "government activity generally," cf. 6 C.F.R. § 5.5(d)(3), but to a possible large scale violation of children's due process rights.

First-hand reports from children, their attorneys, along with statements of federal officials, suggest that under the JRP, the federal government is systematically subjecting hundreds of children to confinement for months at a time to punish them for suspected criminal activity, without trial. Reports further suggest that the government interrogates these children about suspected criminal activity without providing them with counsel and without

protective measures commensurate with their vulnerable status. There is an “urgency to inform the public about [this] actual or alleged governmental activity” because (1) exposure of this practice to public scrutiny could cause it to stop, sparing children from additional confinement and interrogation; and (2) the government should not be able to shield an ongoing violation of children’s fundamental due process rights from public view.

Furthermore, there is intense public interest in issues relating to unaccompanied children and trafficking. A search for articles published in the last year that referred to unaccompanied children and the border in Westlaw’s news database resulted in over 5,000 hits. A search for articles published in the last year that referred to unaccompanied children and trafficking or smuggling resulted in over 3,700 hits.

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Despite this widespread interest, little or no information about the JRP is available in the public domain. Searches of CBP’s website have revealed only a one-sentence reference to the JRP in CBP’s Performance and Accountability Report Fiscal Year 2014. A broader internet search yields only short media articles, one blog, and one organization report referencing the JRP. This informational void on a topic of intense public interest further demonstrates the urgency of this request.

The Requestors are “primarily engaged in disseminating information” and thus warrant expedited processing. 5 U.S.C. § 552(a)(6)(E)(v)(II); see also 6 C.F.R. § 5.5(d)(3). Further, the Department of Homeland Security’s (“DHS”) regulations specifically provide that “information dissemination . . . need not be [a requestor’s] sole occupation,” and it is our view that the Requestors meet the standard for expedited processing. 6 C.F.R. § 5.5(d)(3). The WRC is an expert resource and advocacy organization that monitors the care and protection of refugee women and children. It disseminates information about these issues to governments, policy makers, and the general public. The WRC’s Migrant Rights and Justice Program conducts extensive research and regularly publishes reports on detained immigrant children in U.S. federal custody, including the seminal publications *Halfway Home* and *Forced from Home*. The WRC publishes a newsletter distributed via email, maintains a blog, releases information via social media platforms, and regularly shares its findings through print and televised media platforms, as well as its website, www.womensrefugeecommission.org. The WRC often conducts original research and places facts in a legal and policy context like media organizations, which the regulations regard as automatically meeting the “information dissemination” requirement. See 6 C.F.R. § 5.5(d)(3) (“a full-time member of the news media” need not “establish that he or she is a person whose main professional activity or occupation is information dissemination.”).

For its part, the ACLU publishes newsletters, provides news briefings, and publishes and disseminates reports on civil liberties issues, right-to-know documents, and other materials to the public through its communications department, its 53 state-based affiliates, and its public website, www.aclu.org. Among other civil liberties and civil rights issues, the ACLU's website addresses immigrants' rights issues in depth (at www.aclu.org/immigrants), provides features on immigrants' rights issues in the news, and contains hundreds of primary source documents created or obtained by ACLU staff. The website, which received over 13.9 million visits in 2013, specifically features information obtained through FOIA requests. The ACLU also publishes an electronic newsletter distributed via email; airs regular podcasts; maintains a blog, releases information via social media platforms; and has produced a television series on civil liberties issues.

Upon receipt of the records requested, the Requestors will review them carefully and will disseminate newsworthy information through the channels available to them.

Request for Waiver of Fees

The requestors ask that all fees associated with this FOIA request be waived. We are entitled to a waiver of all costs because disclosure of the information is "...likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). See also 6 C.F.R. § 5.11(k) (records furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in commercial interest of institution). In addition, the Requestors have the ability to widely disseminate the requested information. See *Judicial Watch v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003).

Disclosure of the requested information will contribute significantly to public understanding of government operations and activities. The records requested relate directly to governmental operations or activities; all are directly traceable to a specific federal government program, the JRP. Release of these records will contribute significantly to public understanding of the JRP, and more broadly to the processing of unaccompanied children at the border and governmental treatment of children suspected of being involved in smuggling activity. As noted above, although these are areas of intense public concern, there is virtually no information about the JRP available to the public. Thus, the requested information would significantly enhance the public's understanding of the JRP and the broader topics it relates to.

Disclosure is not within the commercial interest of the Requestors. The ACLU and WRC are not-for-profit organizations that do not seek to disseminate the information for the purpose of commercial gain. Moreover, “a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.” 6 C.F.R. § 5.11(b)(6). As explained above, this request falls within § 5.11(b)(6) because it supports both Requestors’ dissemination of information relating to a topic of current interest to the public. In this respect, the request strongly resembles the many previous instances in which the government waived all fees associated with responding to FOIA requests by the ACLU.

In any event, the Requestors are “representative[s] of the news media” and do not seek the records requested for commercial use. Accordingly, even if any fees could be charged relating to the processing of the request, they would be “limited to reasonable standard charges for document duplication” alone. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

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* * *

We certify that the information in this request is true to the best of our knowledge and belief.

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Please direct any correspondence and provide any records to Omar C. Jadwat, either by email to ojadwat@aclu.org or at the address below. Thank you for your prompt attention to this request.

Sincerely,

/s/ Omar C. Jadwat
ACLU Immigrants’ Rights Project

125 Broad Street, 18th Floor
New York, NY 10004

/s/ Jennifer Podkul
Migrant Rights and Justice Program
Women's Refugee Commission
1012 14th St. NW, Suite 1100
Washington, D.C. 20005

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