

# Exhibit B

August 12, 2019

**Via email to foia@acf.hhs.gov**

Kimberly Epstein  
Freedom of Information Officer  
Administration for Children and Families  
Mary E. Switzer Building  
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Washington, D.C. 20201

**Re: Freedom of Information Act Request**



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To Whom It May Concern:

The New York Civil Liberties Union (“NYCLU”), the New York affiliate of the American Civil Liberties Union, submits this Freedom of Information Act (“FOIA”) request pursuant to 5 U.S.C. § 552 *et seq.*, and the relevant implementing regulations, 45 C.F.R. § 5.1 *et seq.* The NYCLU seeks records pertaining to the Office of Refugee Resettlement’s (“ORR”) involvement in a grant program administered by the Office of Juvenile Justice and Delinquency Prevention (“OJJDP”) entitled OJJDP FY 2018 Gang Suppression: A Law Enforcement and Prosecutorial Approach to Address Gang Recruitment of Unaccompanied Alien Children, OJJDP-2018-13845 (the “Grant”).

## **I. Background**

In 2018, OJJDP announced a grant program through which state and local law enforcement agencies can receive money to develop gang suppression strategies and reduce gang violence in their communities.<sup>1</sup>

The Grant requires applicants to “identify their key point of contact in ORR to be able to obtain information regarding UAC” who are considered gang affiliated; “create protocols to establish the best method to securely transmit [gang intelligence] information to ORR’s Post Release Service”; and “establish[] a plan to securely transmit and receive information from ORR related to UAC and their gang affiliation(s).”<sup>2</sup> Among the Grant’s five “specific objectives” is the “[c]reat[ion of] information exchange protocols between local jurisdictions and other agencies, specifically ORR, to share information regarding UAC and their gang affiliations.”<sup>3</sup>

Four local entities were awarded money pursuant to the Grant: the Nevada Office of the Attorney General; the Dallas County, TX District Attorney’s Office; the Suffolk County, NY Sheriff’s Office; and the Bernalillo County, NM Sheriff’s

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<sup>1</sup> See “OJJDP FY 2018 Gang Suppression: A Law Enforcement and Prosecutorial Approach to Address Gang Recruitment of Unaccompanied Alien Children,” OJJDP-2018-13845.

<sup>2</sup> *Id.* at 8–10.

<sup>3</sup> *Id.* at 9.

Department (collectively, the “Grantees”).<sup>4</sup> Each of the Grantees intends to partner with other organizations in executing initiatives pursuant to the Grant.<sup>5</sup>

This Grant comes at a time when ORR is receiving scrutiny for its role in law- and immigration-enforcement activities that extend beyond its stated mission of “incorporating child welfare values” into the care and placement of unaccompanied minors.<sup>6</sup> For example, a lawsuit challenging ORR’s practice of sharing the fingerprints of unaccompanied minors’ sponsors with Immigration and Customs Enforcement (“ICE”) noted that “[r]ather than ensuring child safety . . . [this] policy . . . serve[d] primarily to facilitate immigration enforcement.”<sup>7</sup> Further, the detention of unaccompanied minors by ICE has raised questions regarding how ICE has received information regarding these minors, with speculation that ORR is the missing link between ICE and the school districts and other entities compiling information.<sup>8</sup>

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<sup>4</sup> See “Awards Made for ‘OJJDP FY 18 Gang Suppression: A Law Enforcement and Prosecutorial Approach to Address Gang Recruitment of Unaccompanied Alien Children,’” OJJDP, <https://external.ojp.usdoj.gov/selector/title?solicitationTitle=OJJDP%20FY%2018%20Gang%20Suppression:%20A%20Law%20Enforcement%20and%20Prosecutorial%20Approach%20to%20Address%20Gang%20Recruitment%20of%20Unaccompanied%20Alien%20Children&po=OJJDP>.

<sup>5</sup> “Detailed Information for Award 2019-MU-FX-K001,” OJJDP, <https://external.ojp.usdoj.gov/selector/awardDetail?awardNumber=2019-MU-FX-K001&fiscalYear=2018&applicationNumber=2019-50006-NV-JV&programOffice=OJJDP&po=OJJDP> (describing partnership between the Nevada Office of the Attorney General and the U.S. Attorney’s Office, Las Vegas Metropolitan Police Department, Clark County School District School Police Department, Southwest Gang Information Center, Latin Chamber of Commerce of Nevada, University Of Nevada—Las Vegas, Nevada Department of Health and Human Services, Nevada Division of Child and Family Services, Nevada Division of Public and Behavioral Health, Nevada Victims of Crime Program, State of Nevada Advisory Council for Prosecuting Attorneys, and Nevada District Attorneys Association); “Detailed Information for Award 2019-MU-FX-K004,” OJJDP, <https://external.ojp.usdoj.gov/selector/awardDetail?awardNumber=2019-MU-FX-K004&fiscalYear=2018&applicationNumber=2019-50029-TX-JV&programOffice=OJJDP&po=OJJDP> (describing partnership between Dallas County District Attorney’s Office and Project Safe Neighborhoods, Dallas Independent School District, and the U.S. Attorney’s Office); “Detailed Information for Award 2019-MU-FX-K003,” OJJDP, <https://external.ojp.usdoj.gov/selector/awardDetail?awardNumber=2019-MU-FX-K003&fiscalYear=2018&applicationNumber=2019-50028-NY-JV&programOffice=OJJDP&po=OJJDP> (describing partnership between Suffolk County Sheriff’s Office and U.S. Attorney’s Office); “Detailed Information for Award 2019-MU-FX-K005,” OJJDP, <https://external.ojp.usdoj.gov/selector/awardDetail?awardNumber=2019-MU-FX-K005&fiscalYear=2018&applicationNumber=2019-50009-NM-JV&programOffice=OJJDP&po=OJJDP> (describing partnership between Bernalillo County Sheriff’s Department and New Mexico Gang Task Force).

<sup>6</sup> “Unaccompanied Alien Children,” Office of Refugee Resettlement, <https://www.acf.hhs.gov/orr/programs/ucs>.

<sup>7</sup> Class Complaint and Petition for Habeas Corpus, *Duchitanga v. Lloyd*, 18-cv-10332 ¶ 44 (S.D.N.Y. Nov. 6, 2018), ECF No. 1; see also Seconded Amended Class Complaint, *JECM v. Lloyd*, 18-cv-00903 ¶ 81 (E.D. Va. Aug. 16, 2018), ECF No. 21 (alleging DHS was not providing ORR with information in response to the fingerprints ORR shared but was instead only using fingerprints for enforcement).

<sup>8</sup> See, e.g., Immigrant Legal Resource Center, *Deportation by Any Means Necessary: How Immigration Officials Are Labeling Immigrant Youth as Gang Members*, 10 (2018),

Though the Grant discusses ORR's role in gang suppression in general terms, the policies governing this participation have not been made public, leaving civil rights and immigration organizations, like the NYCLU, unsure of how to inform the public and advise potentially impacted individuals. ORR's involvement in "a law enforcement approach" to "gang suppression" also raises significant concerns around whether ORR is exceeding its statutory mandate to care for and place unaccompanied minors<sup>9</sup> by participating in enforcement activities.

## II. Requested Records

1. Any and all records concerning the Grant;
2. Any and all records submitted to ORR by Grantees, and any entity with which a Grantee is or was collaborating pursuant to the Grant, regarding information sharing between ORR and Grantees;
3. Any and all records exchanged between ORR and any other federal agency or department regarding information sharing with ORR pursuant to the Grant;
4. Any and all inquiries and communications, not including gang intelligence, received by ORR regarding the Grant, and any responses to such inquiries and communications provided by ORR;
5. Any and all policies, procedures, protocols, or other rules governing the exchange of information between ORR and Grantees, including but not limited to policies, procedures, protocols, or other rules governing ORR's use of such information and ORR's transmission of such information to other federal agencies and departments.

For purposes of this request, the term "records" includes but is not limited to any and all objects, writings, drawings, graphs, charts, tables, electronic or computerized data compilations, budgets, accountings, balance sheets or other financial statements, invoices, receipts, minutes, emails, electronic or computerized documents, photographs, audiotapes, videotapes, transcripts, drafts, correspondence, notes, notes of oral communications, and non-identical copies, including but not limited to copies with notations.

For purposes of this request, the term "ORR" means any individual or group of individuals working for ORR and any sub-department, office, board, program, group, agency, bureau, administration, and/or other subdivision within ORR.

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[https://www.ilrc.org/sites/default/files/resources/deport\\_by\\_any\\_means\\_nec-20180521.pdf](https://www.ilrc.org/sites/default/files/resources/deport_by_any_means_nec-20180521.pdf) (describing school-to-deportation pipeline and noting that "ORR records" are one of "the most commonly used types of evidence" used to support allegations of gang affiliation).

<sup>9</sup> See 6 U.S.C. § 279(b) (describing ORR's responsibilities as "coordinating and implementing the care and placement of unaccompanied alien children"; "ensuring that the interests of [such children] are considered"; "making" and "implementing . . . placement determinations" for such children; "implementing policies with respect to the care and placement of" such children; "overseeing," "investigat[ing]," and "inspect[ing]" facilities where such children reside; and "maintaining statistical information" about children in ORR's care).

With respect to the form of production, see 5 U.S.C. § 552(a)(3)(B), the NYCLU requests that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, the NYCLU requests that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

### III. Application for Expedited Processing

The NYCLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 45 C.F.R. § 5.27. There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgent[ly]” needed by an organization primarily engaged in disseminating information to “inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

The NYCLU is “primarily engaged in disseminating information” within the meaning of the statute. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating it to the press and public are critical and substantial components of the NYCLU's work and are among its primary activities. See *Protect Democracy Project, Inc. v. U.S. Dep't of Def.*, 263 F. Supp. 3d 293, 298 (D.D.C. 2017) (internal quotation marks omitted) (ordering expedited processing where information dissemination is an “activity of the requestor” even if not its “sole occupation”); *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (ordering expedited processing for an organization that “disseminates information regarding civil rights and voting rights to educate the public, promote effective civil rights laws, and ensure their enforcement by the Department of Justice”).

The NYCLU's website, social media, and email listservs reach hundreds of thousands of people a month, and its biannual newsletter is distributed in hard copy to approximately 135,000 people. In addition to these regular channels of sharing information, the NYCLU frequently publishes and disseminates reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA and state-law Freedom of Information Law (FOIL) requests.<sup>10</sup> This

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<sup>10</sup> See, e.g., NYCLU, *Stop-and-Frisk in the De Blasio Era* (Mar. 14, 2019), <https://www.nyclu.org/en/publications/stop-and-frisk-de-blasio-era-2019> (“[T]he New York Civil Liberties Union used New York's Freedom of Information Law to obtain and regularly report to the public information about NYPD stops.”); NYCLU, *Presumed Innocent for a Price: The Impact of Cash Bail Across Eight New York Counties*, Mar. 13, 2018, <https://www.nyclu.org/en/node/5258> (“[I]n 2015 the New York Civil Liberties Union sent Freedom of Information Law requests to a sample of eight small, medium and large counties across the state asking for five years of data.”); NYCLU, *Taking Cover: How New York Police Departments Resist Transparency* (Sept. 18, 2017), <https://www.nyclu.org/en/publications/taking-cover-how-new-york-police-departments-resist-transparency-2017> (detailing 23 New York police departments' responses to FOIL requests); NYCLU, *NYPD Has Used Stingrays More than 1,000 Times Since 2008* (Feb. 11, 2016), <https://www.nyclu.org/en/press-releases/nypd-has-used-stingrays-more-1000-times-2008> (posting documents obtained through FOIL); NYCLU, *Automatic License Plate Readers*, <https://www.nyclu.org/en/e-zpass-readers> (posting documents obtained through FOIL requests sent to the New York City Department of Transportation, New York State Department of Transportation, New York State Thruway Authority, and NYPD); NYCLU, *Report: Boxed In: The True Cost of Extreme Isolation in New York's Prisons* (Oct. 12, 2012), <https://www.nyclu.org/en/publications/report-boxed-true-cost-extreme-isolation-new-yorks-prisons-2012> (“This report . . . is the product of thousands of pages of Department of Corrections and Community

material is broadly circulated to the public and widely available for no cost. NYCLU attorneys are also frequently interviewed for news stories, including about documents released through NYCLU FOIA and FOIL requests.<sup>11</sup>

The NYCLU also publishes information for use by impacted individuals, attorneys, and the public including “know your rights” materials, fact sheets, and educational brochures and pamphlets about civil liberties issues and government policies that implicate civil rights and liberties.<sup>12</sup> Finally, the NYCLU offers “know your rights” presentations to community groups and nonprofit organizations upon request.<sup>13</sup>

The NYCLU plans to analyze, publish, and disseminate to the public the information gathered through this request. The records requested are not sought for commercial use, and the requesters plan to disseminate the information disclosed through this request to the public at no cost.

These records are urgently needed to inform the public about actual or alleged government activity. See 5 U.S.C. § 552(a)(6)(E)(v)(II). Specifically, release of these records would inform the public about the government’s continuing effort to classify unaccompanied minors as gang members and about ORR’s role in this effort.<sup>14</sup>

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Supervision (DOCCS) records obtained through the state’s open records laws.”); NYCLU, *Report: Justice Derailed: What Raids on Trains and Buses Reveal About Border Patrol’s Interior Enforcement Practices* (Nov. 9, 2011), <https://www.nyclu.org/en/publications/report-justice-derailed-what-raids-trains-and-buses-reveal-about-border-patrols> (reporting and analyzing the results of a FOIA request for transportation arrests by Customs and Border Patrol).

<sup>11</sup> See, e.g., *NYCLU Reviews Transparency in Police Forces*, Spectrum News (Sept. 21, 2017), <https://spectrumlocalnews.com/nys/capital-region/capital-tonight-interviews/2017/09/22/donna-lieberman-092117> (interview with NYCLU’s executive director on the responses of 23 police departments across New York State to FOIL requests); Joseph Goldstein, *New York Police Are Using Covert Cellphone Trackers*, *Civil Liberties Group Says*, N.Y. Times (Feb. 11, 2016) (quoting a NYCLU attorney who received documents through FOIL); Kim Zetter, *NY Cops Used ‘Stingray’ Spy Tool 46 Times Without Warrant*, *Wired* (Apr. 7, 2015), <https://www.wired.com/2015/04/ny-cops-used-stingray-spy-tool-46-times-without-warrant> (quoting NYCLU’s Western Region chapter director regarding records obtained through FOIL).

<sup>12</sup> Know Your Rights, NYCLU, <https://www.nyclu.org/en/know-your-rights> (linking to “know your rights” materials on a wide array of topics including immigration); NYCLU & Immigrant Defense Project, *New York Practice Advisory: When Does Fingerprinting Put Your Client at Risk with ICE?* (July 27, 2017), <https://www.immigrantdefenseproject.org/wp-content/uploads/DCJS-advisory-7-27-17-6-PM-updated1.pdf> (providing answers to common questions about “when a submission of fingerprints to the New York State Division of Criminal Justice Services (DCJS) can put . . . noncitizens clients at increased risk of arrest and deportation by U.S. Immigration and Customs Enforcement”).

<sup>13</sup> Know Your Rights, NYCLU, <https://www.nyclu.org/en/know-your-rights> (permitting the public to request a workshop).

<sup>14</sup> The NYCLU has previously engaged in the dissemination of information to the public on these matters. See, e.g., NYCLU, *Under Pressure, the Trump Administration Reverses key Aspect of Policy Delaying Release of Migrant Children* (Dec. 18, 2018), <https://www.nyclu.org/en/press-releases/under-pressure-trump-administration-reverses-key-aspect-policy-delaying-release>.



Whether a requestor demonstrates urgent need to inform the public turns in part on “(1) whether the request concerns a matter of current exigency to the public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity.” *Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001). Here, ORR’s information-sharing practices pursuant to the Grant and resulting participation in law-enforcement functions affect hundreds of unaccompanied minors. ORR’s involvement in the grant program constitutes part of a continuing government effort to classify unaccompanied minors as gang members, which is the subject of intense public interest and debate.<sup>15</sup>

This request warrants expedited processing in light of this significant interest and importance to the public. See *id.* at 308 (“The ultimate conclusion [of whether urgency to inform the public exists] will often rest . . . on whether an issue is the subject of current news coverage.”); *Protect Democracy Project, Inc.*, 263 F. Supp. at 299 (“[O]ne need look no further than the widespread media attention” to find “strong evidence of an ‘urgency to inform’ the public.”); *Wadleton v. Dep’t of State*, 941 F. Supp. 2d 120, 123 (D.D.C. 2013) (noting that courts have found an urgent need “when the subject matter of the request was central to a pressing issue of the day”).

#### IV. Application for Waiver or Limitation of Fees

The NYCLU requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure 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). Disclosure of the records sought herein is in the public interest. The records will further public understanding of government conduct. The records are not requested for commercial use.

The NYCLU also requests a waiver of search fees on the grounds that the NYCLU 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). The NYCLU meets the statutory definition of a “representative of the news

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<sup>15</sup> See, e.g., Stefanie Coyle & Irma Solis, *Suffolk County Police Won’t Disclose How It’s Helping ICE Lock Up Innocent Students*, ACLU (Apr. 12, 2018), <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/suffolk-county-police-wont-disclose-how-its>; Anjali Tsui, *In Crackdown on MS-13, a New Detention Policy Raises Alarms*, Frontline (Feb. 18, 2018), <https://www.pbs.org/wgbh/frontline/article/in-crackdown-on-ms-13-a-new-detention-policy-raises-alarms>; Alice Speri, *From School Suspension to Immigration Detention: For Immigrant Students on Long Island, Trump’s War on Gangs Means the Wrong T-Shirt Could Get You Deported*, Intercept (Feb. 11, 2018), <https://theintercept.com/2018/02/11/ice-schools-immigrant-students-ms-13-long-island>; Sarah Gonzalez, *Teens Arrested on Gang Suspicion Are Released Due to Lack of Evidence*, NPR (Dec. 5, 2017), <https://www.npr.org/2017/12/05/568351544/teens-arrested-on-gang-suspicion-are-released-due-to-lack-of-evidence>; Anita Chabria & Nashelly Chavez, *Court Rules Feds Can’t Hold Group of Immigrant Minors on Gang Allegations Without Access to a Judge*, Sacramento Bee (Nov. 22, 2017), <https://www.sacbee.com/news/local/crime/article186155288.html>; Liz Robbins, *Teenagers’ Arrests Are Unconstitutional*, A.C.L.U. Lawsuit Says, N.Y. Times (Aug. 11, 2017), <https://www.nytimes.com/2017/08/11/nyregion/aclu-lawsuit-ms-13-teenager-arrests.html>; Julianne Gage, *Social Workers and Lawyers Say Deportation Raids Targeting Teen Gang Members Are Misguided*, PRI (July 25, 2017), <https://www.pri.org/stories/2017-07-25/social-workers-and-lawyers-say-deportation-raids-targeting-teen-gang-members-are>.

media” because it is an “entity 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.” *Id.*; see also *Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1119 (D.C. Cir. 2015) (noting that “representative of the news media” should be construed “broadly”); *Lieberman v. U.S. Dep’t of Transp.*, 227 F. Supp. 3d 1, 10-12 (D.D.C. 2016) (considering an organization’s “past, present, and future work” to conclude that organization is a “representative of the news media” and noting that the organization’s “audience . . . need not be demonstrably large” and that “merely assembling and organizing entire sets of documents” may suffice); *EPIC v. Dep’t of Def.*, 241 F. Supp. 2d 5, 12 (D.D.C. 2003) (“Labels and title alone, therefore, do not govern; the organization’s substantive activities control.”).

The NYCLU publishes newsletters, know-your-rights materials, blog posts, and other educational and informational materials that are broadly circulated to the public.<sup>16</sup> Such material is available to everyone, including not-for-profit groups and impacted individuals, at no cost. The NYCLU also makes information available without charge through its website. See *id.* at 14 (disseminating a newsletter via email suffices to show that an organization is a “publisher of a periodical, and therefore falls within [the] definition of a representative of the news media”); *Lieberman*, 227 F. Supp. 3d at 12 (internal citations and alterations omitted) (“[I]t is now well-established that online means of distribution . . . can satisfy the statutory requirement that a requester ‘distribute its work to an audience.’”).

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Pursuant to applicable statutes and regulations, the NYCLU expects a determination regarding expedited processing within 10 days. See 5 U.S.C. § 552(a)(6)(E)(ii); 45 C.F.R. § 5.27(c). We further expect your reply to this request itself within 20 business days, as required under 5 U.S.C. § 552(a)(6)(A)(i).

If this FOIA request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to the FOIA. We also ask that you release all segregable portions of otherwise exempt material.

Please furnish all responsive records to:

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Yours sincerely,



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<sup>16</sup> See, e.g., *supra* at nn.10–12.