

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GALVESTON-HOUSTON IMMIGRANT §  
REPRESENTATION PROJECT §  
6001 Savoy Drive, Ste. 400 §  
Houston, TX 77036 §

YMCA OF GREATER HOUSTON §  
DBA YMCA INTERNATIONAL §  
SERVICES §  
6300 Westpark Drive, Ste. 600 §  
Houston, TX 77057 §

JUSTICE ACTION CENTER §  
P.O. Box 27280 §  
Los Angeles, CA 90027 §

*Plaintiffs,*

vs.

U.S. DEPARTMENT OF JUSTICE §  
950 Pennsylvania Avenue, NW §  
Washington, DC 20530-0001 §

EXECUTIVE OFFICE FOR §  
IMMIGRATION REVIEW §  
5107 Leesburg Pike, 18th Floor §  
Falls Church, VA 22041 §

U.S. DEPARTMENT OF HOMELAND §  
SECURITY §  
2707 Martin Luther King Jr. Ave SE §  
Washington, DC 20528-0525 §

U.S. IMMIGRATION AND CUSTOMS §  
ENFORCEMENT §  
500 12th Street, SW §  
Washington, DC 20536 §

U.S. ENFORCEMENT AND REMOVAL §  
OPERATIONS §  
500 12th Street, SW §  
Washington, DC 20536 §

CASE NO. \_\_\_\_\_

JUDGE \_\_\_\_\_

U.S. CUSTOMS AND BORDER	§
PROTECTION	§
1300 Pennsylvania Avenue, Suite 4.4-B	§
Washington, DC 20229	§
	§
U.S. DEPARTMENT OF HEALTH AND	§
HUMAN SERVICES	§
200 Independence Avenue, SW	§
Washington, DC 20201	§
	§
and	§
	§
U.S. OFFICE OF REFUGEE	§
RESETTLEMENT	§
330 C Street, SW, Room 5123	§
Washington, DC 20201	§
	§
	§
<i>Defendants.</i>	§

**ORIGINAL COMPLAINT**

1. Plaintiffs Galveston-Houston Immigrant Representation Project (“GHIRP”), YMCA of Greater Houston dba YMCA International Services (“YMCA”), and Justice Action Center (“JAC”) file this Original Complaint against Defendants the U.S. Department of Justice (“DOJ”), the Executive Office for Immigration Review (“EOIR”), the U.S. Department of Homeland Security (“DHS”), U.S. Immigration and Customs Enforcement (“ICE”), U.S. Enforcement and Removal Operations (“ERO”), U.S. Customs and Border Protection (“CBP”), the U.S. Department of Health and Human Services (“DHHS”), and the U.S. Office of Refugee Resettlement (“ORR”).

**I. NATURE OF ACTION**

2. Plaintiffs bring this action pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel Defendants to issue a determination regarding Plaintiffs’ FOIA Requests and FOIA Appeals and to promptly complete processing of the same.

3. Plaintiffs are seeking information from Defendants about their policies regarding their treatment and processing of unaccompanied “alien,” *i.e.*, noncitizen, children (hereinafter referred to as “unaccompanied children”) with past or pending proceedings under the Trump Administration’s Migrant Protection Protocols (“MPP,” also colloquially known as the “Remain in Mexico” policy).

4. Unaccompanied children are statutorily defined as children under the age of eighteen (18) with no lawful immigration status and no parent or legal guardian in the United States to provide care and physical custody. 6 U.S.C. § 279(g)(2). Congress extended special legal protections to unaccompanied children through the 2008 William Wilberforce Trafficking Victims Protection Reauthorization Act (“TVPRA”) because they represent a particularly vulnerable population who lack the capability and resources to navigate a byzantine immigration system and asylum process that confuses even adults. These protections include, among others, release from federal custody for placement with a parent, guardian, or sponsor in the United States; the right to seek asylum through an age-appropriate, trauma-informed, non-adversarial process with an asylum officer; placement in removal proceedings before an immigration judge before they can be removed from the United States; and access to counsel.

5. The Trump Administration adopted MPP beginning in January 2019, creating a dangerous situation for asylum-seekers in Mexico. Under MPP, individuals and families seeking asylum at the southern border received Notices to Appear (“NTAs”) in immigration court and were promptly returned to Mexico, where they were forced to remain while their cases progressed in courts specially designated to handle MPP cases. While these asylum-seekers remained in Mexico, the United States did not provide them with food, shelter, work, funds, access to legal counsel, or transportation to and from their U.S. court hearings; many spent months waiting to have their

asylum cases decided while living in squalid conditions in some of Mexico's most dangerous areas. Asylum-seekers in MPP have been subject to murder, rape, torture, kidnapping, extortion, and violent assault, as well as malnutrition, illness, and severe physical hardship.

6. Many unaccompanied children had been processed through MPP with their parents. But as a result of the life-threatening conditions they and their families faced while stuck in Mexico during MPP, hundreds of children were returned to the southern border alone. Thus, when they presented at the southern border without parents or legal guardians, they had pending MPP immigration proceedings or, in some instances, removal orders entered against them through MPP immigration proceedings.

7. Plaintiffs seek information about Defendants' policies regarding the treatment and processing of these children who were formerly processed in MPP with their families, but later presented at the border without a parent or guardian and were designated "unaccompanied." Notwithstanding the legal framework that should protect *all* unaccompanied children, Defendants have not treated these particular unaccompanied children as they treat all others. Moreover, despite Defendant DHS's public statements that unaccompanied children "will not be subject to MPP" and "are not amenable to MPP," Defendants have taken steps to enforce MPP proceedings and MPP removal orders against these children, including executing MPP removal orders to deport children back to the home countries from which they fled. Defendants' actions contradict their stated policies as well as the TVPRA, which does not distinguish between unaccompanied children with or without prior immigration proceedings, and which categorically guarantees all unaccompanied children the right to seek asylum and to be placed in removal proceedings before an immigration judge before they can be removed from the United States.

8. Defendants' treatment of unaccompanied children who were formerly in MPP has been the subject of public concern, as reflected in news reports, social media, and federal litigation. The chaos and confusion caused by Defendants' treatment of these children has threatened and violated the children's rights and safety and undermined the work of legal service providers that serve this population.

9. Disclosure of the records Plaintiffs seek through this action would facilitate the ability of legal service providers to secure and advance the rights of the most vulnerable among us: unaccompanied children. Plaintiffs GHIRP and YMCA are non-profit legal services providers whose missions include serving unaccompanied children and ensuring that they have unfettered access to the protections afforded by the TVPRA. Plaintiff JAC is a non-profit organization that partners with legal service providers in impact litigation and communications to advance immigrant rights. All three Plaintiffs have represented multiple unaccompanied children whom Defendants have summarily sought to deport on the basis of removal orders entered against them through MPP.

10. This action is necessary because Defendants are withholding records to which Plaintiffs are entitled under the FOIA. Defendants' failure to provide a determination as to the FOIA Requests in a timely manner or otherwise produce non-exempt responsive records is a violation of the FOIA and of Congress's mandate for a transparent, accountable government.

## **II. PARTIES**

11. Plaintiff GHIRP is a 501(c)(3) nonprofit corporation incorporated under the laws of Texas and headquartered in Houston, Texas. GHIRP's mission is to build a resilient, diverse community by providing comprehensive representation and holistic legal services to immigrants in need. GHIRP uses media and website resources to inform detained and released unaccompanied minors on their legal rights and obligations. Through zealous representation, GHIRP ensures that

immigrants in the community have equal access to due process in the U.S.'s complex immigration system. GHIRP combines education with legal representation to empower immigrants in the community. Through partnerships and collaboration, media advocacy, and on-the-ground community services, GHIRP disseminates information obtained through FOIA requests and other research to educate the public and provide high-quality representation to its clients.

12. Plaintiff YMCA of Greater Houston is a 501(c)(3) nonprofit corporation incorporated under the laws of Texas and headquartered in Houston, Texas. YMCA International Services is a unique center of the YMCA of Greater Houston that delivers client-centered programs to refugees, immigrants and other vulnerable populations to advance their economic independence, social integration, and civic participation. YMCA's Immigration Legal Services Department provides services ranging from basic consultations to complex appeals in the areas of asylum, permanent residency, family petitions, naturalization, relief for survivors of human trafficking and crimes, and removal/deportation relief. The Legal Services Department uses media and website resources to inform detained and released unaccompanied minors on their legal rights and obligations. The Legal Services Department also partners with advocacy groups and other legal service providers to use information obtained through FOIA requests to educate the public through media and website resources and to provide high-quality representation to its clients.

13. Plaintiff JAC is a 501(c)(3) nonprofit corporation incorporated under the laws of California and headquartered in Los Angeles, California. JAC is dedicated to advancing civil and human rights of immigrants in the United States through a combination of impact litigation, communications, and digital strategies. It provides related support to select partner nonprofit organizations that have immigrant members, and that provide direct legal services to immigrant communities. JAC employs an innovative model that advances the rights of immigrant

communities by connecting cutting-edge impact litigation and compelling narrative and communications content.

14. Defendants DOJ and its component EOIR are agencies within the meaning of 5 U.S.C. § 552(f).

15. Defendants DHS and its components ICE, ERO, and CBP are agencies within the meaning of 5 U.S.C. § 552(f).

16. Defendants DHHS and its component ORR are agencies within the meaning of 5 U.S.C. § 552(f).

### **III. JURISDICTION AND VENUE**

17. This Court has jurisdiction pursuant to the FOIA, 5 U.S.C. § 552(a)(4)(B), and pursuant to 28 U.S.C. § 1331, to review the Defendants' failure to comply with the statutory deadlines for making a determination in response to Plaintiffs' FOIA Requests and FOIA Appeals.

18. Because Defendants failed to comply with the time requirements of the FOIA, Plaintiffs have constructively exhausted their administrative remedies and are entitled to proceed with this judicial action pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

19. Venue is proper in the District of Columbia pursuant to 5 U.S.C. § 552(a)(4)(B).

### **IV. FACTUAL ALLEGATIONS**

#### **A. Plaintiffs Submitted the FOIA Requests to Defendants.**

20. On December 16, 2020, Plaintiffs submitted FOIA Requests to EOIR, ICE, ERO, CBP, and ORR seeking thirteen categories of requested records:

- 1) All policies, guidance, or correspondence related to such policies or guidance, including inter-agency and intra-agency communications, emails and attachments thereto, and messages sent through online chat applications, created or issued since November 2019, related to the agency's official position on the legality of, or the agency's obligations under, the Flores Settlement Agreement as applied to [Unaccompanied Alien Children, or "UACs"] in ORR custody who either have been or

are currently involved in [Migrant Protection Protocols, or “MPP”] proceedings, or subject to MPP Removal Orders;

- 2) All policies, guidance, or correspondence related to such policies or guidance, including inter-agency and intra-agency communications, emails and attachments thereto, and messages sent through online chat applications, created or issued since November 2019, related to the agency’s official position on the legality of, or the agency’s obligations under, the TVPRA—as applied to UACs in ORR custody who either have been or are currently involved in MPP proceedings, or subject to MPP Removal Orders, specifically:
  - a. 8 U.S.C. § 1232(a)(5)(D);
  - b. 8 U.S.C. § 1232(c)(2);
  - c. 8 U.S.C. § 1232(c)(5);
  - d. 8 U.S.C. § 1232(c)(6);
- 3) All policies, guidance, and correspondence related to such policies or guidance, including inter-agency and intra-agency communications, emails and attachments thereto, and messages sent through online chat applications, created or issued since November 2019, related to the agency’s official position on the release from ORR custody and reunification with sponsors in the United States for UACs who either have been or are currently involved in MPP proceedings, or subject to MPP Removal Orders;
- 4) All policies, guidance, and correspondence related to such policies or guidance, including inter-agency and intra-agency communications, emails and attachments thereto, and messages sent through online chat applications, created or issued since November 2019, related to the agency’s official position on the required age and availability of caretakers in the UACs’ designated country of removability for UACs in ORR custody who either have been or are currently involved in MPP proceedings, or subject to MPP Removal Orders;
- 5) All policies, guidance, or correspondence related to such policies or guidance, including inter-agency and intra-agency communications, emails and attachments thereto, and messages sent through online chat applications, created or issued since November 2019, related to the agency’s official position on initiating new removal proceedings under Section 240 of the Immigration and Nationality Act for UACs who either have been or are currently involved in MPP proceedings, or subject to MPP Removal Orders;
- 6) All policies, guidance, or correspondence related to such policies or guidance, including inter-agency and intra-agency communications, emails and attachments thereto, and messages sent through online chat applications, created or issued since November 2019, related to the agency’s official position on issuing new Notices to Appear for UACs

who either have been or are currently involved in MPP proceedings, or subject to MPP Removal Orders;

- 7) All policies, guidance, and correspondence related to such policies or guidance, including inter-agency and intra-agency communications, emails and attachments thereto, and messages sent through online chat applications, created or issued since November 2019, related to the agency's official position on the deportation (i.e., removal from the United States) of UACs who either have been or are currently involved in MPP proceedings, or subject to MPP Removal Orders, including specifically:
  - a. how the agency determines when to remove UACs in ORR custody and the manner in which the UACs are removed;
  - b. how the agency determines whether to remove UACs in ORR custody at night, or otherwise outside of regular working hours;
  - c. how the agency makes emergency legal aid available to UACs in ORR custody in the event they are scheduled to be removed without sufficient notice to obtain counsel.
- 8) All policies, guidance, or correspondence related to such policies or guidance, including inter-agency and intra-agency communications, emails and attachments thereto, and messages sent through online chat applications, created or issued since November 2019, related to the agency's official position on adjudication of or agency response to motions to reopen in Immigration Court, appeals with the Board of Immigration Appeals, or filings in federal courts, for UACs in ORR custody who either have been or are currently involved in MPP proceedings, or subject to MPP Removal Orders;
- 9) All reports and statistics, including data in any database, showing any of the following:
  - a. The number of persons that either have been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were subsequently designated as UACs upon entry and transferred to ORR custody;
  - b. The number of persons who were designated as UACs upon entry and transferred to ORR custody, who subsequently were made subject to MPP proceedings or MPP Removal Orders;
  - c. The number of persons who have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were designated as UACs upon entry, transferred to ORR custody, and who currently remain in ORR custody;
  - d. The number of persons who have either been or are currently involved in MPP proceedings, or subject to MPP Removal

Orders who were designated as UACs upon entry and reunited with sponsors in the U.S.;

- e. The number of persons who have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were designated as UACs upon entry and reunited with sponsors in the U.S., then subsequently removed from the U.S.;
- f. The number of persons who have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were designated as UACs upon entry and released from ORR custody to long-term foster care placements in the U.S.;
- g. The number of persons who have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were designated as UACs upon entry and released from ORR custody to long-term foster care placements in the U.S., then subsequently removed from the U.S.;
- h. The number of persons who have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were designated as UACs upon entry and released from ORR custody pursuant to a Release on Recognizance (ROR) request;
- i. The number of persons who have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were designated as UACs upon entry and released from ORR custody pursuant to a Release on Recognizance (ROR) request, then subsequently removed from the U.S.;
- j. The total number of persons who have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were designated as UACs upon entry and subsequently removed pursuant to the MPP Removal Orders.

10) For persons enumerated in the response to (9) above, all reports and statistics since November 2019 to the date of receipt of this Request, showing generally and anonymously the age, nationality, state of residence, location of removal proceedings or other geographic information, whether the persons were removed to a foreign country or released from ORR custody in the United States, and the status of any pending motions, appeals, or federal court filings, including the date any such motion, appeal, or petition was filed as well as the date decided; this request does not seek personal identifying information related to individual UACs;

11) To the extent such information is not already covered by Request Nos. 1 through 9, all other policies, guidance, or correspondence related to

such policies or guidance, including inter-agency and intra-agency communications, emails and attachments thereto, and messages sent through online chat applications, created or issued since November 2019, related to UACs, including UACs in ORR custody; this request does not seek personal identifying information related to individual UACs;

12) All records produced subject to any other FOIA requests by other requesters related to the removal of UACs in ORR custody that have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders since November 2019;

13) All records related to the processing of this Request. *See* 22 C.F.R. § 171.11(j).

21. In addition, Plaintiffs sought a waiver of fees associated with processing their FOIA Requests pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

22. Public reporting estimates that at least 700-800 children have presented at the border and been designated “unaccompanied” after having been placed in MPP proceedings with their families.<sup>1</sup> Despite their designation as “unaccompanied,” Defendants nonetheless have been delaying many of these unaccompanied children’s reunifications with approved sponsors and family members; allowing MPP courts to retain jurisdiction over their cases; and fast-tracking them for removal—without the process required by the TVPRA and before they can seek asylum before an asylum officer. The policies influencing Defendants’ treatment of unaccompanied children who were formerly in MPP has been troublingly opaque. This has compounded service providers’ difficulty in identifying and serving these children, which in some instances has included emergency litigation to prevent their removal before they can benefit from the TVPRA’s protections.

23. For example, attorneys from Plaintiffs GHIRP, YMCA, and JAC spent weeks conducting emergency advocacy and litigation on behalf of P.D. and H.D., 8- and 11-year-old

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<sup>1</sup> Camilo Montoya-Galvez, *700 Children Crossed the U.S. Border Alone After Being Required to Wait in Mexico with Their Families*, CBS News (Jan. 15, 2021), <https://www.cbsnews.com/news/children-who-crossed-the-u-s-border-after-theirfamilies-were-required-to-wait-in-mexico-are-being-denied-legal-safeguards-suitsays/>.

sisters from El Salvador, to prevent them from being summarily deported instead of being released to the custody of their mother and allowed to seek asylum in the United States. These young girls endured violence, sexual abuse, persecution, and death threats in El Salvador until they left with their father to seek safety in the United States. The family was placed into MPP in September 2019 and remained there for nearly five months as their case proceeded through the MPP courts and they were ordered removed. While they were waiting in Mexico to appeal the removal order, the girls' father disappeared. The girls were forced to travel to the border alone, where they were designated as unaccompanied children and placed in ORR custody in Houston, Texas.

24. Attorneys from Plaintiff YMCA entered into representation of the sisters and began working to reunify them with their mother in Houston, Texas. Although ORR approved the reunification, they later revoked this approval on ICE's instruction. ICE notified both ORR and Plaintiff YMCA that ICE intended to remove the girls imminently on the basis of the removal order they had received in MPP with their father.

25. It was only through hours upon hours of emergency advocacy and litigation that attorneys from YMCA, JAC, and later GHIRP were able to prevent the girls' immediate removal to El Salvador—where they had no parent to receive them—and secure their statutory release to their mother.

26. The example of P.D. and H.D. is representative of the confusing and unlawful process Defendants have inflicted upon unaccompanied children who were formerly enrolled in MPP. The Plaintiff legal service providers require the requested information to understand the scope of Defendants' conduct and the precise nature of their policies in order to effectively secure and advance the rights of the unaccompanied children they serve.

27. Plaintiffs' requests have taken on renewed timeliness and urgency. A federal court recently ordered the Biden Administration to take "good faith" efforts to reimplement MPP. *Texas v. Biden*, No. 2:21-cv-067-Z, 2021 WL 3603341, at \*27 (N.D. Tex. Aug. 13, 2021). Although the Biden Administration has stated it intends to issue a new memo terminating MPP, DHS confirms that: "[i]n the meantime, while the court injunction remains in effect, the Department has been working in good faith to re-start MPP in compliance with the order, and it will continue to do so."<sup>2</sup> If this humanitarian disaster is reinstated, as seems imminent, there is little doubt that families placed into MPP will be forced to separate, and unaccompanied children will soon thereafter be presenting themselves at the southern border. Plaintiffs' need to understand Defendants' policies—and the concomitant impact on the unaccompanied children they serve—is growing ever more urgent and important.

**B. EOIR Returned Only One Responsive Document.**

28. By letter dated December 29, 2020, EOIR acknowledged receiving Plaintiffs' FOIA request. The letter first assigned a tracking number to the Request: 2021-10871. The letter then stated that there were no responsive records located for paragraphs 9 and 10 and that "the remainder of the request ... would require the [EOIR] to conduct an unreasonably burdensome search." The letter prompted Plaintiffs to "contact EOIR to clarify the reminder of your request" within 30 calendar days.

29. By phone on January 19, 2021, Plaintiffs' counsel discussed EOIR's First Response to FOIA Request 2021-10871 with Shelly O'Hara, the FOIA officer at EOIR that processed Plaintiffs' request.

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<sup>2</sup> *DHS Announces Intention to Issue New Memo Terminating MPP*, U.S. Dep't Homeland Sec. (Sept. 29, 2021), <https://www.dhs.gov/news/2021/09/29/dhs-announces-intention-issue-new-memo-terminating-mpp>.

30. On February 4, 2021, Plaintiffs submitted a First Amended FOIA Request to EOIR (“EOIR Amended FOIA Request”), which narrowed the requested records to:

- 2) Policies, guidance, or correspondence related to such policies or guidance, including inter-agency and intra-agency communications, emails and attachments thereto, and messages sent through online chat applications, created or issued since November 2019, related to the agency’s official position on, or the agency’s obligations under, the TVPRA—as applied to UACs in ORR custody who either have been or are currently involved in MPP proceedings, or subject to MPP Removal Orders, specifically:
  - a. 8 U.S.C. § 1232(a)(5)(D);
  - b. 8 U.S.C. § 1232(c)(5);
  - c. 8 U.S.C. § 1232(c)(6);
- 5) Policies, guidance, or correspondence related to such policies or guidance, including inter-agency and intra-agency communications, emails and attachments thereto, and messages sent through online chat applications, created or issued since November 2019, related to the agency’s official position on initiating new removal proceedings under Section 240 of the Immigration and Nationality Act for UACs who either have been or are currently involved in MPP proceedings, or subject to MPP Removal Orders;
- 6) Policies, guidance, or correspondence related to such policies or guidance, including inter-agency and intra-agency communications, emails and attachments thereto, and messages sent through online chat applications, created or issued since November 2019, related to the agency’s official position on issuing new Notices to Appear for UACs who either have been or are currently involved in MPP proceedings, or subject to MPP Removal Orders;
- 8) Policies, guidance, or correspondence related to such policies or guidance, including inter-agency and intra-agency communications, emails and attachments thereto, and messages sent through online chat applications, created or issued since November 2019, related to the agency’s official position on adjudication of or agency response to motions to reopen in Immigration Court, appeals with the Board of Immigration Appeals, or filings in federal courts, for UACs in ORR custody who either have been or are currently involved in MPP proceedings, or subject to MPP Removal Orders;
- 11) To the extent such information is not already covered by the above Requests, all other policies, guidance, or correspondence related to such policies or guidance, including inter-agency and intra-agency communications, emails and attachments thereto, and messages sent

through online chat applications, created or issued since November 2019, related to UACs, including UACs in ORR custody; this request does not seek personal identifying information related to individual UACs;

- 12) Records produced subject to any other FOIA requests by other requesters related to the removal of UACs in ORR custody that have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders since November 2019.

Plaintiffs also reserved the right to administratively appeal the EOIR's December 29, 2020, First Response to the original FOIA Request, submitted on December 16, 2020.

31. By letter dated February 10, 2021, the EOIR acknowledged receiving the EOIR Amended FOIA Request. The letter stated that EOIR found no responsive records to paragraphs 5, 6, and 12. The letter provided a hyperlink to one responsive record for paragraphs 2 and 9. The letter did not address paragraph 8. And the letter stated that paragraph 11 "would require EOIR to conduct an unreasonably burdensome search." The letter denied Plaintiffs' application for a public interest waiver or reduction of fees pursuant to 28 C.F.R. § 16.10(k)(1)-(k)(2)(i)-(iii), but determined that Plaintiffs were "entitled to two free hours of search time and up to one hundred pages of duplication without charge" pursuant to 28 C.F.R. § 16.10(d)(4).

32. On March 26, 2021, Plaintiffs submitted an administrative appeal of EOIR's First Response to FOIA Request 2021-10871, dated December 29, 2020, and EOIR's Final Response to FOIA Request 2021-10871, dated February 10, 2021, to DOJ's Office of Information Policy.

33. By letter dated March 26, 2021, DOJ's Office of Information Policy acknowledged receipt of Plaintiffs' administrative appeal. The Office of Information Policy assigned a tracking number to the FOIA Appeal: A-2021-01382.

34. Plaintiffs have received no further communications from EOIR, DOJ, or the Office of Information Policy regarding FOIA Request 2021-10871 or FOIA Appeal A-2021-01382. At

no point has an agency representative communicated to Plaintiffs the date by which they can expect the Request to be finally determined or processed.

**C. ICE and ERO Did Not Process the FOIA Request or the Subsequent Administrative Appeal.**

35. By email dated February 8, 2021, ICE advised Plaintiffs' counsel that the PDF of the FOIA Request was corrupted. Plaintiffs' counsel submitted a new PDF that day, and ICE acknowledged that the FOIA Request was officially received on December 16, 2020. ICE assigned a tracking number to the Request: 2021-ICFO-25945.

36. On March 29, 2021, Plaintiffs submitted administrative appeals of FOIA Requests 2021-ICFO-25945 (encompassing the two separate FOIA Requests that Plaintiffs submitted to ICE and ERO) to the Office of the Principal Legal Advisor at ICE.

37. By letter dated April 9, 2021, DHS acknowledged receipt of Plaintiffs' administrative appeal. DHS assigned a tracking number to the Appeal: 2021-ICAP-00593.

38. Plaintiffs have received no further communications from ICE, ERO, DHS, or the Office of the Principal Legal Advisor regarding FOIA Request 2021-ICFO-25945 or Appeal 2021-ICAP-00593. At no point has an agency representative communicated to Plaintiffs the date by which they can expect the Request to be finally determined or processed.

**D. CBP Did Not Process the FOIA Request or the Subsequent Administrative Appeal.**

39. By email dated December 16, 2020, CBP acknowledged receiving Plaintiffs' FOIA request. The email assigned a tracking number to the Request: CBP-2021-018382.

40. On March 31, 2021, Plaintiffs submitted an administrative appeal of FOIA Request CBP-2021-018382 to the CBP's FOIA Appeals division.

41. By letter dated April 15 2021, CBP acknowledged receipt of Plaintiffs' administrative appeal. The letter stated that "there [wa]s no administrative record to review

because FOIA Division has not yet collected the responsive records and processed the request.” Consequently, CBP “remand[ed] [the FOIA Request] to CBP’s FOIA Division for processing with instructions that the request should be processed within twenty (20) days from the date of this letter.”

42. Plaintiffs have received no further communications from CBP regarding FOIA Request CBP-2021-018382 or the remanded administrative appeal. At no point has an agency representative communicated to Plaintiffs the date by which they can expect the Request to be finally determined or processed.

**E. ORR Did Not Process the FOIA Request or the Subsequent Administrative Appeal.**

43. On January 27, 2021, ORR’s online portal reflected that ORR had received Plaintiffs’ FOIA request. The portal assigned a tracking number to the Request: 21-F-0054.

44. On March 31, 2021, Plaintiffs submitted an administrative appeal of FOIA Request 21-F-0054 to the DHHS’s Administration for Children and Families Department.

45. By email dated April 1, 2021, the DHHS’s Administration for Children and Families Department acknowledged receipt of Plaintiffs’ administrative appeal through the agency’s FOIA email account.

46. By email dated April 14, 2021, Celeste Smith, the Director of the Freedom of Information Office’s Office of Communications for DHHS’s Administration for Children and Families, notified Plaintiffs’ counsel that Plaintiffs’ request had “been placed in [the agency’s] complex que[ue],” and that it “could take approximately 18-24 months before [the agency] [is] able to get to [Plaintiffs’] request.” Ms. Smith’s email stated that Plaintiffs were “entitled to submit an appeal,” which could “take just as long or longer.” Ms. Smith also suggested that “narrowing

the scope of [the] request ... may move [it] to the simple queue,” resulting in shorter process times.

47. On June 15, 2021, Plaintiffs submitted a First Amended FOIA Request to the DHHS’s Administration for Children and Families (DHHS Amended FOIA Request), which narrowed the requested records to:

- 1) Documents and correspondence, created or issued since November 1, 2019, that relate to ORR’s policies regarding UACs in ORR custody who have been involved in MPP proceedings or subject to MPP Removal Orders;
- 2) Policies, guidance, or correspondence, including inter-agency and intra-agency communications, emails and attachments thereto, and messages sent through online chat applications, created or issued since November 1, 2019, related to the agency’s official position on the legality of, or the agency’s obligations under, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008—as applied to UACs in ORR custody who either have been or are currently involved in MPP proceedings, or subject to MPP Removal Orders, specifically:
  - a. 8 U.S.C. § 1232(a)(5)(D);
  - b. 8 U.S.C. § 1232(c)(2);
  - c. 8 U.S.C. § 1232(c)(5);
  - d. 8 U.S.C. § 1232(c)(6);
- 3) Documents and correspondence, created or issued since November 1, 2019, that relate to releasing UACs who have been involved in MPP proceedings or subject to MPP Removal Orders from ORR custody and reunifying them with sponsors in the United States;
- 4) Documents and correspondence, created or issued since November 1, 2019, that relate to the required age and availability of caretakers for UACs upon removal, as it relates to UACs in ORR custody who have been involved in MPP proceedings or subject to MPP Removal Orders;
- 5) Documents and correspondence, created or issued since November 1, 2019, that relate to the initiation of new removal proceedings under Section 240 of the Immigration and Nationality Act for UACs who have been involved in MPP proceedings or subject to MPP Removal Orders;
- 7) Documents and correspondence, created or issued since November 1, 2019, that relate to the deportation of UACs who have been involved in MPP proceedings or subject to MPP Removal Orders, including:

- a. the determination of when and how UACs will be removed from ORR custody;
  - b. the determination of what time of day UACs will be removed from ORR custody;
  - c. how agencies make emergency legal aid available to UACs in ORR custody if the UACs are scheduled to be removed before they can obtain counsel.
- 9) All reports and statistics, including data in any database, showing any of the following:
- a. The number of persons since November 1, 2019, that either have been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were subsequently designated as UACs upon entry and transferred to ORR custody;
  - b. The number of persons since November 1, 2019, who were designated as UACs upon entry and transferred to ORR custody, who subsequently were made subject to MPP proceedings or MPP Removal Orders;
  - c. The number of persons since November 1, 2019, who have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were designated as UACs upon entry, transferred to ORR custody, and who currently remain in ORR custody;
  - d. The number of persons since November 1, 2019, who have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were designated as UACs upon entry and reunited with sponsors in the U.S.;
  - e. The number of persons since November 1, 2019, who have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were designated as UACs upon entry and reunited with sponsors in the U.S., then subsequently removed from the U.S.;
  - f. The number of persons since November 1, 2019, who have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were designated as UACs upon entry and released from ORR custody to long-term foster care placements in the U.S.;
  - g. The number of persons since November 1, 2019, who have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were designated as UACs upon entry and released from ORR custody to long-term foster care placements in the U.S., then subsequently removed from the U.S.;

- h. The number of persons since November 1, 2019, who have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were designated as UACs upon entry and released from ORR custody pursuant to a Release on Recognizance (ROR) request;
- i. The number of persons since November 1, 2019, who have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were designated as UACs upon entry and released from ORR custody pursuant to a Release on Recognizance (ROR) request, then subsequently removed from the U.S.;
- j. The number of persons since November 1, 2019, who have either been or are currently involved in MPP proceedings, or subject to MPP Removal Orders who were designated as UACs upon entry and subsequently removed pursuant to the MPP Removal Orders.

10) For all persons identified in question (9), all reports and statistics since November 1, 2019, showing generally and anonymously:

- a. age, nationality, and state of residence;
- b. the location of removal proceedings;
- c. whether the persons were removed to a foreign country or released from ORR custody in the United States;
- d. the status of any pending court filings and actions, including all filing and decision dates;

This request does not seek personal identifying information related to individual UACs;

11) To the extent such information is not already covered by Request Nos. 1 through 9, documents and correspondence, created or issued since November 1, 2019, that relates to UACs, including UACs in ORR custody; this request does not seek personal identifying information related to individual UACs;

12) Records produced subject to any other FOIA requests made by other requesters since November 1, 2019, that relate to the removal of UACs in ORR custody who have been involved in MPP proceedings or subject to MPP Removal Orders;

13) Records related to the processing of this Request. *See* 22 C.F.R. § 171.11(j).

48. By email dated June 25, 2021, Tasha Hunt from the DHHS's Administration for Children and Families' FOIA Office confirmed receipt of the DHHS Amended FOIA Request, but

stated that the agency “could not locate a record of it.” Plaintiffs’ counsel resent the original FOIA Request, the DHHS Amended FOIA Request, and the Notice of Administrative Appeal to Ms. Hunt by email that same day.

49. By email dated June 30, 2021, Ms. Smith stated that she could not locate the amended request. Plaintiffs’ counsel resent the DHHS Amended FOIA Request to Ms. Smith by email that same day.

50. Plaintiffs have received no further communications from ORR or DHHS regarding FOIA Request 21-F-0054 or the related FOIA Appeal.

**COUNT I**  
**Violation of FOIA, 5 U.S.C. § 552(a)(6)(A)(i)**  
**Failure to Comply with Statutory Deadlines – FOIA Requests**

51. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 50 of the Complaint as if set forth therein.

52. The FOIA requires an agency, in response to a records request, to make a determination and provide the requestor with the reasons for the determination within twenty days (not including weekends and legal holidays). 5 U.S.C. § 552(a)(6)(A)(i). In “unusual circumstances,” the agency may extend its response deadline by ten working days by written notice to the requestor; if the agency needs a longer extension, it is required to first give the requestor an opportunity to narrow its request. *Id.* § 552(a)(6)(B). If the agency fails to comply with these deadlines, a requestor is deemed by statute to have exhausted its administrative remedies and may immediately seek judicial review of the agency’s failure to act. *Id.* § 552(a)(6)(C)(i).

53. To make a “determination,” the agency “must at least (i) gather and review the documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requestor that it can appeal whatever portion of the ‘determination’ is adverse.” *Citizens for Resp. & Ethics in Wash.*

*v. Fed. Election Comm'n*, 711 F.3d 180, 188 (D.C. Cir. 2013). It is not enough that the agency express a future intention to produce non-exempt documents and claim its exemptions later. *Id.* at 185-86.

54. More than thirty days (exclusive of weekends and legal holidays) have passed since the ICE, ERO, CBP, and ORR Defendants received the FOIA Requests. Additionally, more than thirty (30) days (exclusive of weekends and legal holidays) have passed since the ORR and DHHS Defendants received the DHHS Amended FOIA Request. Plaintiffs submitted the FOIA Requests and the DHHS Amended FOIA Request in accordance with the FOIA.

55. The DHS, ICE, ERO, CBP, DHHS, and ORR Defendants have not made a final determination with respect to the FOIA Requests and DHHS Amended FOIA Request. At no point have these Defendants communicated whether they intend to claim exemptions related to the FOIA Requests and DHHS Amended FOIA Request, or what kind of exemptions might apply to relevant documents. Of these Defendants, only DHHS and ORR informed the Plaintiffs of their right to appeal. To date, Plaintiffs have not received any records from these Defendants in response to the FOIA Requests or DHHS Amended FOIA Request.

56. Plaintiffs have constructively exhausted their administrative remedies for the FOIA Requests and DHHS Amended FOIA Request.<sup>3</sup> 5 U.S.C. § 552(a)(6)(C)(i).

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<sup>3</sup> Should the Defendants demonstrate that exceptional circumstances exist and that the agency is exercising due diligence in responding to the FOIA Requests and DHHS Amended FOIA Request, Plaintiffs would ask the Court to retain jurisdiction under 5 U.S.C. § 552(a)(6)(C)(i) until such time as the Defendants have completed their review of the records and complied with their obligations under FOIA by issuing a final determination on the FOIA Requests and the DHHS Amended FOIA Request.

**COUNT II**  
**Violation of FOIA, 5 U.S.C. § 552(a)(6)(A)(ii)**  
**Failure to Comply with Statutory Deadlines – FOIA Appeals**

57. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 56 of the Complaint as if set forth therein.

58. The FOIA requires an agency, in response to an administrative appeal of a FOIA request, to make a determination with respect to the appeal within twenty days (not including weekends and legal holidays). 5 U.S.C. § 552(a)(6)(A)(ii). If the agency’s denial of the request for records is upheld in whole or in part, the agency must notify the requester “of the provisions for judicial review of that determination” under the FOIA. *Id.* In “unusual circumstances,” the agency may extend its response deadline by ten working days by written notice to the requestor; if the agency needs a longer extension, it is required to first give the requestor an opportunity to narrow its request. *Id.* § 552(a)(6)(B). If the agency fails to comply with these deadlines, a requestor is deemed by statute to have exhausted its administrative remedies and may immediately seek judicial review of the agency’s failure to act. *Id.* § 552(a)(6)(C)(i).

59. More than thirty days (exclusive of weekends and legal holidays) have passed since all Defendants received the FOIA Appeals. Plaintiffs submitted the FOIA Appeals in accordance with the FOIA.

60. Defendants have not made a determination with respect to the FOIA Appeals. CBP is the only Defendant who has taken action on Plaintiffs’ FOIA Appeals beyond acknowledging receipt, and it simply remanded the case to the FOIA Division for processing. CBP’s FOIA Division has not made a determination on the FOIA Request.

61. Plaintiffs have constructively exhausted their administrative remedies pursuant to the FOIA Appeals.<sup>4</sup> 5 U.S.C. § 552(a)(6)(C)(ii).

**COUNT III**  
**Violation of FOIA, 5 U.S.C. § 552(a)(3)(C)**  
**Failure to Conduct an Adequate Search for Responsive Records**

62. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 61 of the Complaint as if set forth therein.

63. Plaintiffs have a statutory right to access requested agency records from Defendants. 5 U.S.C. § 552(a).

64. The FOIA generally requires an agency to make reasonable efforts to search for responsive records. 5 U.S.C. § 552(a)(3)(C).

65. Upon information and belief, the DOJ and EOIR Defendants possess non-exempt records responsive to the FOIA Request and EOIR Amended FOIA Request that they have failed to produce without justification.

66. Upon information and belief, the DOJ and EOIR Defendants' failure to produce non-exempt responsive records is a result of their failure to make reasonable efforts to search for the information requested.

67. Pursuant to 5 U.S.C. § 552(a)(4)(B), when an agency "improperly withh[olds]" records, this Court may "enjoin the agency from withholding agency records" and "order the[ir] production."

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<sup>4</sup> Should the Defendants demonstrate that exceptional circumstances exist and that the agency is exercising due diligence in responding to the FOIA Appeals, Plaintiffs would ask the Court to retain jurisdiction under 5 U.S.C. § 552(a)(6)(C)(i) until such time as the Defendants have completed their review of the records and complied with their obligations under FOIA by issuing a final determination on the FOIA Appeals.

**COUNT IV**  
**Violation of FOIA, 5 U.S.C. § 552(a)(4)(A)(iii)**  
**Failure to Grant Waiver of Fees**

68. Plaintiffs hereby reallege and incorporate by reference paragraphs 1 through 67 of the Complaint as if set forth therein.

69. Plaintiffs requested a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii) on the grounds that disclosure of the requested records is “in the public interest” and “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.”

70. EOIR denied Plaintiffs’ request for fee waiver, stating that Plaintiffs “ha[d] not provided sufficient information on how disclosure of the requested information would shed light on the operations or activities of DOJ/EOIR or how disclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities.”

71. EOIR’s failure to grant Plaintiffs a waiver of fees associated with the production of responsive documents violates 5 U.S.C. § 552(a)(4)(A)(iii).

**V. RELIEF REQUESTED**

72. WHEREFORE, Justice Action Center, YMCA of Greater Houston, International Services, and Galveston-Houston Immigrant Representation Project respectfully request that judgment be entered against the U.S. Department of Justice, the Executive Office for Immigration Review, the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, U.S. Enforcement and Removal Operations, U.S. Customs and Border Protection, the U.S. Department of Health and Human Services, and the U.S. Office of Refugee Resettlement, and that this Court:

- a) Order the U.S. Department of Justice and the Executive Office for Immigration Review to conduct a search using “reasonable effort[s]” to locate all responsive records for FOIA Request No. 2021-10871 within ten (10) days (exclusive of weekends and legal

holidays) of the date of the Order, and to produce all responsive records promptly upon completing its search.

b) Order:

1. the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, and U.S. Enforcement and Removal Operations to process FOIA Request No. 2021-ICFO-25945 and to issue a final determination within ten (10) days (exclusive of weekends and legal holidays) of the date of the Order;
2. the U.S. Department of Homeland Security and U.S. Customs and Border Protection to process FOIA Request No. CBP-2021-018382 and to issue a final determination within ten (10) days (exclusive of weekends and legal holidays) of the date of the Order.
3. the U.S. Department of Health and Human Services and the U.S. Office of Refugee Resettlement to process FOIA Request No. 21-F-0054 and DHHS Amended FOIA Request No. 21-F-0054 and to issue a final determination within ten (10) days (exclusive of weekends and legal holidays) of the date of the Order;

c) Order:

1. the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, and U.S. Enforcement and Removal Operations to produce all responsive records promptly upon issuing its final determination on FOIA Request No. 2021-ICFO-25945;
2. the U.S. Department of Homeland Security and U.S. Customs and Border Protection to produce all responsive records promptly upon issuing its final determination on FOIA Request No. CBP-2021-018382.
3. the U.S. Department of Health and Human Services and U.S. Office of Refugee Resettlement to produce all responsive records promptly upon issuing its final determination on FOIA Request No. 21-F-0054;

d) Order Defendants to grant Plaintiffs a waiver of fees associated with the production of the requested records;

e) Award Plaintiffs' costs and reasonable attorney's fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

f) Grant such other relief as the Court deems appropriate.

*[Remainder of page intentionally left blank.]*

Date: October 1, 2021

Respectfully submitted,

/s/ Robert J. Wagman, Jr.

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