

July 12, 2018

The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW  
Washington, D.C. 20528

**Re: Freedom of Information Act Request – Records on Zero-Tolerance Policy and Family Reunification**

To Whom It May Concern:

Open the Government (OTG) and the Project On Government Oversight (POGO) submit this letter to the Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”) and U.S. Customs and Border Protection (“CBP”) as a request 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. We also ask that you refer the requests contained in this letter to any other component agency of DHS as appropriate.

**I. Background**

The administration’s “zero-tolerance” immigration enforcement policy that began in April 2018, as well as enforcement actions carried out by DHS prior to this date, has led to the separation of an estimated 2,500 children from their parents, 100 under the age of five.<sup>1</sup> This policy has caused a serious humanitarian crisis, and the administration has already failed to meet a court ordered deadline to reunify children with their parents. While the administration claims to know the location of all children in its custody, recent reports indicate that border agents are improperly destroying records on the separated families,<sup>2</sup> heightening concern that these children might never see their parents again

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<sup>1</sup> The zero-tolerance policy builds upon Operation Streamline, under which migrants who crossed into the United States in certain border sectors automatically faced prosecution. Streamline was created in 2005 and continued under the Obama administration. Under the current administration, a new variant of Streamline is spreading along the entire U.S.-Mexico border.

<sup>2</sup> *CREW Called on NARA to Investigate the Destruction of Immigrant Family Records*, Citizens for Responsibility and Ethics in Washington, July 6, 2018: <https://bit.ly/2unl5JS>.

There are also concerns that the White House Executive Order, issued on June 20, 2018, has led to more secrecy and confusion over the handling of children at the border, and is increasing the indefinite detention of an unknown number of children with their families. Importantly, the Executive Order neither addressed how the separated children in custody will be immediately united with their parents who have been detained by ICE or who have already been deported, nor detailed the time frame of any reunification process.<sup>3</sup> Without clear guidance, the public has no assurance that the government is not disappearing children, dropping them over the border or handing them off to non-relatives without notice.

The administration claims to have a process established to ensure that family members know the location of their children and have regular communication after separation to ensure that those families are reunited. According to a fact sheet released in June, the U.S. Customs and Border Protection (CBP), HHS Office of Refugee Resettlement (ORR) and Immigration and Customs Enforcement (ICE), are all playing a role in the reunification efforts. That fact sheet indicates that ORR has publicly available guidance to carry out its role in the family reunification process. However, the same document fails to cite any similar guidance that CBP or ICE is using to carry out their role in family reunification.<sup>4</sup>

## II. Request for Information

- All policy guidance on the handling of “Unaccompanied Alien Children,” produced by DHS and used by CBP officials at the border and ICE agents in detention facilities.
- All policy guidance used by immigration officials at the border on records management practices, and on the tracking of children after being separated from their parents.
- All guidance, briefing papers, meeting minutes, background reports, or other records produced in response to the administration’s zero-tolerance policy that began in April 2018.
- All guidance, briefing papers, meeting minutes, background reports, or other records produced in response to the June 20<sup>th</sup> Executive Order on family separation.
- All records of communications from DHS's Office of Civil Rights and Civil Liberties regarding the zero-tolerance policy and family separation.

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<sup>3</sup> Executive Order, *Affording Congress an Opportunity to Address Family Separation*, June 20, 2018: <https://bit.ly/2ypU7Xy>.

<sup>4</sup> U.S. Department of Homeland Security, *Fact Sheet: Zero-Tolerance Prosecution and Family Reunification*, June 23, 2018: <https://bit.ly/2K6QRpm>.

- All records related to the administration's reunification plan for the separated children and their families.

### III. Application for Expedited Processing

I certify to be true and correct to the best of my knowledge and belief, that there is widespread and exceptional media interest and there exist possible questions about the government's integrity, which affect public confidence. OpenTheGovernment (OTG) and the Project On Government Oversight (POGO), on whose behalf I am filing this request, are primarily engaged in disseminating information to the public and, in this case, there is an urgent need to inform the public about the specific government activity that is the subject of this request. Specifically, the policies that are the subject of this request have led to the separation of thousands of children from their asylum seeking parents. The practice of taking away children has taken place under a cloak of secrecy, and followed a series of opaque policy changes that removed important protections for migrant children seeking asylum at the border. Additionally, media [reports](#) indicate that records linking children to their parents have disappeared, and in some cases have been destroyed by government officials, leaving the authorities struggling to identify connections between family members.

Given such public concern over the treatment of children and their asylum seeking parents at the border, it is imperative that DHS immediately make all records that are in the public interest related to this humanitarian crisis publicly available. Family members, public advocates, and lawyers are in desperate need of more information disclosures to help ensure these children see their parents again. Continued secrecy surrounding such policies drastically hinders the ability of the public and members of Congress to support reunification efforts as the lives of thousands of families hang in the balance.

OpenTheGovernment has been engaged with our public-interest coalition partners in efforts to increase transparency and accountability related to the administration's immigration enforcement and detention policies. For examples of past OTG publications and opinion pieces on matters associated with the zero-tolerance policy and family separation, see: [Demanding accountability from private companies detaining children](#); [Congress must end systemic abuse, waste, and entrenched secrecy: stop funding for new Immigration detention camps](#), [Family Separation Crisis Highlights Urgent Need for Transparency in Immigration System](#); and [Coalition calls on ICE to meet congressionally mandated transparency requirements](#).

POGO has a long history of educating the public on issues of oversight relating to immigration enforcement and detention policies and practices. For examples of past POGO publications and letters

on matters associated with the zero-tolerance policy and family separation, see: [ICE Detention Center Inspections Repeatedly Fall Short](#); [The Outsourced System Making Big Bucks off of “Zero Tolerance”](#); [13 CBP Employees Arrested for Corruption this Administration](#); and [POGO Urges ICE and Border Patrol to Not Outsource Hiring Functions](#).

Accordingly, this request satisfies the criteria for expedited processing.

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

I request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 5 C.F.R. 1303.70. OTG and POGO are non-profit, public-interest news/media organizations with no commercial interest in obtaining the requested information. OTG and POGO intend to use the requested information to educate the public about the implementation of U.S. immigration enforcement policies, the conduct of immigration officials, and the impact that the zero-tolerance policy and family separation has had on public safety and security.

Disclosure of the requested records will further the "public interest because it will contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest" of the requester. Specifically, the requested records and relate to the ability of the government to properly oversee, investigate, and take disciplinary action against those who could be in violation of court orders, federal laws, rules, or regulations. The requested records are not currently posted online, and will contribute significantly to the public's understanding of the implementation of immigration enforcement policies.

The public will unquestionably be the primary beneficiary of this requested information.

OpenTheGovernment has spent years educating the public and policymakers on important matters relating to government activities, while promoting laws and policies that enhance government transparency and accountability. OTG routinely receives fee waivers under FOIA, as a result of OTG's capacity to disseminate the information we obtain through FOIA to large segments of the public by means of publications and reports, our website ([www.openthegovernment.org](http://www.openthegovernment.org)), and media initiatives. OTG intends to use these means to educate the public concerning the information contained in the records requested in this FOIA request, and to disseminate the information at our own expense. OTG has no commercial interest in the requested disclosure, and the information would be used to educate the public about activities of the government, in satisfaction of 5 U.S.C. § 552 (a)(4)(A)(iii).

POGO investigates, exposes, and seeks to remedy systemic abuses of power and mismanagement in the federal government. Founded in 1981, POGO is a politically independent, nonprofit watchdog that



promotes a government that is accountable to the citizenry. POGO disseminates information about its activities to the public, policymakers, and the media via email, direct mail, and its websites which receives nearly 70,000 unique views per month. POGO has no financial interest in the requested information and the records provided by your agency will be used for the following activities, which are publicly available: publication by email and on POGO websites; publication in reports and newsletters issued by POGO; publication in the newsletters of affiliated nonprofit organizations; efforts to educate Congress, the Executive Branch, and other policymakers; or in conjunction with other members of the news media.

### **Record Delivery**

As provided in FOIA, I anticipate a reply within twenty working days, 5 U.S.C. § 552, (a)(6)(A)(i); 5 C.F.R. § 1303.10(c). We prefer that you provide as many of the requested records as possible in an electronic format compatible with readily available computer software. Please produce the requested records on a rolling basis if applicable. Please email copies of all requested records as soon as possible to: [jfranzblau@openthegovernment.org](mailto:jfranzblau@openthegovernment.org). For records not available in electronic format, please mail to the address provided below.

Thank you for your consideration.

Sincerely,

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