

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ROBERT F. KENNEDY HUMAN RIGHTS;
NATIONAL IMMIGRATION PROJECT;
and AMERICAN CIVIL LIBERTIES
UNION OF LOUISIANA;

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; UNITED
STATES CUSTOMS AND BORDER
PROTECTION; UNITED STATES
IMMIGRATION AND CUSTOMS
ENFORCEMENT; UNITED STATES
DEPARTMENT OF HOMELAND
SECURITY OFFICE FOR CIVIL RIGHTS
AND CIVIL LIBERTIES, and OFFICE OF
THE INSPECTOR GENERAL, U.S.
DEPARTMENT OF HOMELAND
SECURITY;

Defendants.

Case No. 25-cv-4349

COMPLAINT

1. Plaintiffs—not-for-profit organizations that advocate on behalf of immigrants, including unaccompanied children—bring this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive, declaratory, and other appropriate relief regarding agency records related to practices and procedures used by the Department of Homeland Security (DHS) and its component agencies to determine whether individuals held in its custody are minors, statutorily entitled to specific protections and conditions of confinement because they are children.

2. Plaintiffs Robert F. Kennedy Human Rights (“RFKHR”), National Immigration Project (“NIP”) and American Civil Liberties Union of Louisiana (“ACLU-LA”) (together, “Plaintiffs”), are immigrants’ rights organizations that work closely with people detained by DHS, including unaccompanied minor children.

3. Unaccompanied immigrants who are younger than 18 years old enjoy certain legal protections by virtue of the fact that they are children. By statute, unaccompanied immigrant children are the responsibility of the Department of Health and Human Services (HHS) (not DHS) and must be placed in the least restrictive setting that is in the best interest of the child. Trafficking Victims Protection Reauthorization Act (TVPRA), 8 U.S.C. §§ 1232(b), (c)(2)(A). These children may not be held in a secure facility absent a determination that they pose a danger to themselves or others, or a charge of criminal conduct. *Id.* HHS, through its sub-agency, the Office of Refugee Resettlement (ORR), ensures that unaccompanied immigrant children under its custody or care receive “classroom education, mental health and medical health services, case management, and socialization and recreation.”¹

4. The TVPRA provides added procedural protections for unaccompanied children. It exempts them from expedited removal, a summary administrative process whereby an immigration enforcement officer can order removal without a hearing. 8 U.S.C. § 1225(b)(1)(A)(i). Instead, DHS must place unaccompanied children in full removal proceedings before an immigration judge where they can present any and all claims for relief from removal and ensure that they have legal counsel to the greatest extent practicable. 8 U.S.C. §§ 1232(a)(5)(D), (c)(5).

¹ Congressional Research Service, *Unaccompanied Alien Children: An Overview*, at 11, available at <https://crsreports.congress.gov/product/pdf/R/R43599>.

5. The TVPRA also requires DHS to develop procedures for determining whether an individual in its custody is a minor, which “[a]t a minimum . . . shall take into account multiple forms of evidence, including the non-exclusive use of radiographs” to determine the age of any non-citizen in its custody where there is a claim or suspicion that the person is under the age of 18. *Id.* § 1232(b)(4).

6. Plaintiffs have represented, witnessed, and are aware of immigrant children subject to adult detention by U.S. Immigration and Customs Enforcement (ICE) based on age determinations that violate these mandated procedures, including through improper reliance on radiographs, destruction of critical documents, and coercion of false statements by DHS employees.

7. Additionally, the Office for Civil Rights and Civil Liberties (CRCL)—the entity statutorily charged, among other responsibilities, with receiving and investigating complaints of abuse by DHS employees and providing detailed reports concerning such complaints and investigations to Congress and the public—has investigated and reported to Congress its concerns with ICE age determination procedures,² and has received more than 100 complaints that U.S. Customs and Border Patrol (CBP) officers violated the rights of unaccompanied children when determining their ages.³

8. On January 27, 2025, Plaintiffs submitted a FOIA request (the “Request”) to DHS, ICE, CRCL, CBP and the Office of the Inspector General for the U.S. Department of

² CRCL, Fiscal Year 2022 Annual Report to Congress 58 (Nov. 17, 2023), available at https://www.dhs.gov/sites/default/files/2023-12/23_1117_crcl_fy22-annual-report-508.pdf

³ Memorandum from Cameron P. Quinn, Officer, Office for Civil Rights and Civil Liberties, to Mark A. Morgan, Acting Commissioner, U.S. Customs and Border Patrol, et. al. (May 11, 2020) (“Retention Memo”), formerly available at <https://www.dhs.gov/sites/default/files/publications/retention-memo-cbp-age-determination-birthcertificateverification-05-11-20.pdf>. (Exh. 1).

Homeland Security (OIG) seeking records related to the current age determination procedures used by DHS and its component agencies, and the federal government's related policies, directives, actions, reports and recommendations, among other topics. (Exh. 2).

9. Plaintiffs submitted the Request to facilitate their representation of, and public advocacy for, individuals in detention at ICE facilities, specifically minors wrongly detained in ICE custody (rather than placed under the care of HHS), because they were subjected to improper age determination procedures. *Id.*

10. Plaintiffs requested expedited processing of the Request under 5 U.S.C. § 552(a)(6)(E) and applicable agency regulations, citing an imminent threat to the life or physical safety of minors wrongly detained in adult immigration facilities and an urgent need to inform the public of the federal government's activity in this regard. *Id.*

11. By email dated January 28, 2025, CBP indicated that it had “determined that the records [sought in the Request] are not under the purview” of the CBP, and recommended that the Request be redirected to CRCL. (Exh. 4). In a pair of emails, both dated February 5, 2025, ICE acknowledged receipt, denied expedited processing, and conveyed that it had referred the Request to CRCL for processing. (Exh. 5; Exh. 6). Neither CRCL, nor the other Defendants (DHS and OIG) have acknowledged receipt or responded to the Request.

12. Indeed, far from meeting its statutory obligation to provide important information in response to Plaintiffs' FOIA request, in or around February 2025, DHS removed most of the CRCL investigative records previously posted on a transparency library maintained by CRCL,⁴ pulling back previously available information relevant to that Request. Additionally, on or

⁴ Nick Schwellenbach, *DHS Removed 100+ Civil Rights and Civil Liberties Records*, Project on Gov't Accountability (Apr. 21, 2025), <https://perma.cc/NWP7-SBD3>.

around March 21, 2025, DHS disbanded CRCL, placing almost all of its employees, including, upon information and belief, those responsible for responding to FOIA requests.

13. Despite imminent and irreparable harm to children wrongly detained as adults, and strong public interest in the issues underlying the Request, in the more than three months since the Request was filed, Defendants have not provided Plaintiffs with *any* responsive records, in clear violation of their obligations under FOIA. 5 U.S.C. § 552(a)(3)(A).

14. Defendants' refusal to expedite the Request is contrary to the statutory requirement that a FOIA request must be expedited where a delay "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," or where the request is "made by a person primarily engaged in disseminating information" and urgency exists to inform the public concerning actual or alleged government activity. *Id.* §§ 552(a)(6)(E)(v)(I)–(II).

15. While Defendants improperly delay production of the requested records, unaccompanied children are being wrongly detained in ICE facilities, thrown in with the adult population, and denied appropriate education, recreation, socialization and mental and physical healthcare, as the result of procedurally defective and substantively incorrect age determinations. These children are at grave physical risk because they are not being segregated from adults held at the same facilities and are not having their physical and mental health needs met. They are also losing vital education, socialization, and recreational opportunities in their formative years. DHS's treatment of these vulnerable children as adults is causing them irreparable harm.

16. The information sought in the Request concerning how DHS and its component agencies make age determinations, and the federal government's related policies, directives, actions, reports and recommendations, is urgently needed to redress existing harm and prevent continuing and future injury. Moreover, Defendants' refusal to comply with FOIA and provide

the records covered by the Request is directly impeding the public's need to know about the federal government's activities with respect to age determinations for and improper treatment of young migrants.

17. Plaintiffs accordingly file this Complaint to obtain prompt judicial intervention to order Defendants to comply expeditiously with their obligations under FOIA.

JURISDICTION AND VENUE

18. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1346(a)(2) and the authority to issue declaratory judgments pursuant to 28 U.S.C. §§ 2201 and 2202. This Court has personal jurisdiction over the parties.

19. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B) because Plaintiff RFKHR maintains its principal places of business in this district.

PARTIES

20. Plaintiff RFKHR is a non-partisan, not-for-profit organization that promotes human rights through public education, information campaigns, and advocacy. It engages in strategic story telling by building narratives to bring about reform through public education, transparency, and litigation where necessary. A substantial focus of its public education work is devoted to the promotion of immigrants' rights and the harms of immigration detention. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating it to the public through its website, media, and information campaigns are critical and substantial components of RFKHR's work. RFKHR regularly publishes in-depth analyses of current events affecting human rights and broadly disseminates information to expose and rectify injustice. RFKHR disseminates content through its website, <https://rfkhumanrights.org/>, other websites like <https://endthepainongain.org> that host its human rights reports. It also issues press releases and public statements that reach thousands. Access to

current information about DHS practices is critical to those functions. Additionally, RFKHR has represented an immigrant under the age of 18 who was detained in adult immigration detention facilities in violation of the TVPRA.

21. NIP is a national, nonprofit organization dedicated to providing legal assistance and support to immigrant communities and advocating on behalf of noncitizens. NIP is primarily engaged in disseminating information to the public. It is the author of four treatises on immigration law published by Thomson Reuters. In addition to publishing practice advisories and community resources on immigration law topics disseminated to its members and a large public audience through its website, www.nipnlg.org, NIP provides technical and litigation assistance, participates in impact litigation, advocates for fair and just policies and legislation, and provides regular legal training to the bar and the bench. Access to current information about DHS practices is critical to those functions.

22. Plaintiff ACLU-LA is a not-for-profit organization that works to advance and preserve the individual rights and liberties guaranteed by the Constitution and laws of the United States and the State of Louisiana, including the rights of prisoners and immigrants. ACLU-LA regularly visits the immigration detention facilities that are within ICE's New Orleans Field Office Area of Responsibility (AOR). ACLU-LA is committed to principles of transparency and accountability in government and seeks to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and human rights. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating it to the press and to the public are critical and substantial components of the ACLU-LA's work. ACLU-LA regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other civil liberties-related current events. ACLU-LA

also publishes “know your rights” materials designed to educate the public about immigrants’ rights. ACLU-LA disseminates content through its website, <https://www.laaclu.org/>, and quarterly newsletters, which are sent to thousands of subscribers. Access to current information about DHS practices is critical to those functions.

23. Defendant DHS is a department of the Executive Branch of the United States, headquartered in Washington, D.C., charged with overseeing, among other areas, immigration enforcement and detention and border security. It exercises supervisory control over ICE, CRCL, CBP and the OIG. DHS has possession, custody, and control of all the records Plaintiffs seek in this action.

24. Defendant CBP is a component of DHS responsible for regulating international trade and enforcing U.S. trade, customs and immigration regulations.

25. Defendant ICE is a component of DHS that enforces immigration and customs laws and is responsible for detention of adult immigrants and removal of immigrants.

26. Defendant CRCL was established as an office within the DHS charged by statute with receiving and investigating complaints of civil rights and civil liberties abuses by DHS, conducting public outreach so that people are aware of their ability to file complaints, and annually submitting reports to Congress on the complaints it receives. As of March 21, 2025, DHS has placed almost all of CRCL’s employees on administrative leave, effectively shuttering this critical oversight body.

27. Defendant OIG is charged with conducting independent and objective investigations and audits of DHS programs and operations and keeping the Secretary of Homeland Security and Congress informed about problems and deficiencies in DHS operations and the need for corrective action.

28. Defendants DHS, CPB, ICE, CRCL and OIG are all federal agencies within the meaning of FOIA. 5 U.S.C. § 552(f)(1).

FOIA STATUTORY FRAMEWORK

29. FOIA requires federal agencies, upon request by a member of the public, to promptly release records within the possession of the agency, unless a statutory exception applies. *Id.* §§ 552(a)–(b).

30. Within 20 working days after receipt of a FOIA request, an agency must determine “whether to comply” with the request. *Id.* § 552(a)(6)(A)(i). The agency must “immediately notify” the requester of “such determination and the reasons therefor.” *Id.* § 552(a)(6)(A)(i)(I).

31. If an agency cannot meet the 20-day statutory time limit for processing a request because of “unusual circumstances,” the agency may unilaterally extend the deadline by 10 days. *Id.* §§ 552(a)(6)(B)(i), (a)(4)(A)(viii)(II)(aa) (“If an agency has determined that unusual circumstances apply,” then a failure to comply with the statutory time limit “is excused for an additional 10 days.”). “Unusual circumstances” exist if it is “reasonably necessary to the proper processing of the particular requests” “to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.” *Id.* § 552(a)(6)(B)(iii)(II).

32. If the agency fails to respond within the statutory time limit, the requester is deemed to have exhausted its administrative remedies and may immediately seek judicial recourse to compel the agency’s response to the FOIA request. *Id.* §§ 552(a)(6)(C)(i), (a)(4)(B).

33. FOIA and applicable agency regulations also require expedited processing for any FOIA request where a delay “could reasonably be expected to pose an imminent threat to the life or physical safety of an individual” or where the requester is “primarily engaged in disseminating

information” and it is urgent “to inform the public concerning actual or alleged Federal Government activity.” *Id.* § 552(a)(6)(E)(i), (v); *see also* 6 C.F.R. § 5.5(e)(1)(i)–(ii). An agency is statutorily required to respond to a request for expedited processing within 10 days of the date of the request. 5 U.S.C. § 552(a)(6)(E)(ii)(I); *see also* 6 C.F.R. § 5.5(e)(4).

34. Finally, FOIA also provides that this Court may assess attorneys’ fees and litigation costs against the United States if Plaintiffs prevail in this action. 5 U.S.C. § 552(a)(4)(E).

RELEVANT FACTS

Defendant’s Improper Age Determination Practices are Resulting in Immigrant Children Being Illegally Detained in Adult ICE Facilities

Legal Protections for Unaccompanied Immigrant Children

35. The TVPRA ensures that unaccompanied immigrant children in federal custody receive age-appropriate care and treatment because they are vulnerable. Specifically, the TVRPA requires DHS to promptly identify any unaccompanied immigrant that claims or is suspected to be under 18 years old, and to transfer that young person to the care and custody of the U.S. Department of Health and Human Services (HHS). 8 U.S.C. § 1232(b)(2)(B)–(b)(3).

36. Once in HHS custody, unaccompanied children must be “promptly placed in the least restrictive setting that is in the best interest of the child,” *Id.* § 1232(c)(2)(A), and the HHS sub-agency Office of Refugee Resettlement (ORR) then provides them with “classroom education, mental health and medical health services, case management and socialization and recreation.”⁵

⁵ Congressional Research Service, *Unaccompanied Alien Children: An Overview*, at 11, available at <https://crsreports.congress.gov/product/pdf/R/R43599>.

37. The TVPRA also ensures that children have access to fair procedures to determine asylum eligibility by requiring DHS to ensure that they have legal representation to the greatest extent practicable and that they are placed in full removal proceedings before an immigration judge, where they can present any and all claims for relief from removal. 8 U.S.C. § 1232(a)(5)(D).

38. To ensure that noncitizen children receive TVPRA protections, the TVPRA also prescribes how DHS must make age determinations when an individual in its custody claims or is suspected to be under 18 years old. The statute directs HHS, in “consultation” with DHS, to “develop procedures to make a prompt determination of the age of a [noncitizen], which shall be used by [DHS] and [HHS] for children in their respective custody.” *Id.* § 1232(b)(4). “At a minimum, these procedures shall take into account multiple forms of evidence, including the non-exclusive use of radiographs, to determine the age of the unaccompanied [noncitizen].” *Id.*

39. The resulting procedures are contained in Section 1.6 of the ORR Unaccompanied Children Program Policy Guide (“ORR Policy Guide”),⁶ and the “UC [Unaccompanied Child] Manual of Procedures: for ORR Staff, Contractors, and Grantees,” (“UC Manual”), at 71.⁷ The UC Manual requires that age determinations “be conducted in a holistic, research based, safe, child and gender-sensitive, and fair manner, avoiding any risk of violation of the physical integrity of the individual; giving due respect to human dignity.” *Id.* at 72.

40. Where an unaccompanied immigrant who claims or is suspected to be a child is also claiming asylum from his or her country of origin, officials are forbidden from contacting

⁶ Available at <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.6>.

⁷ Available at <https://immigrationlitigation.org/wp-content/uploads/2023/12/Section-1-Placement-in-ORR-Care-Provider-Facilities.pdf>.

that country’s consulate to obtain or verify the child’s birth certificate. *Id.* at 74–75. Instead, the UC Manual instructs officials to “gather[] information from as many sources as possible,” including interviews with the child and the child’s family or associates and information from the “[s]chool and/or church, mosque, or other religious institution the [child] attends[.]” *Id.*; *see also* ORR Policy Guide 1.6.0. & 1.6.2.

41. The UC Manual permits medical forensics only “as a last resort, after all available evidence from government-issued documents, other documents which may indicate age (e.g., school records, medical records, and social media), and statements and interviews from family members and associates of the [child] are exhausted.” UC Manual at 76; *see also* ORR Policy Guide 1.6.2. If medical forensics must be consulted, “only dental forensics can be used.” Skeletal forensics are forbidden. UC Manual at 76–77; *see also* ORR Policy Guide 1.6.2.

42. ICE requires its officials to make age determinations “consistent with” HHS’s age determination policy. ICE Directive Technical and Procedural Update, Age Determination Procedures for Custody Determination (“ICE Policy”), Policy No. ERO 11301.4, at 1 (Dec. 11, 2015). (Exh. 3). Under the controlling ICE Policy, medical age assessment techniques should be used only “as a last resort.” *Id.* § 5.1(4). Bone scans must take into account “the individual’s ethnic and genetic background,” recognizing that “no medical assessment can determine an exact age.” *Id.* § 5.1(4)(a)–(b).

43. ICE policy also requires the examining doctor to submit a report assessing the probability that the individual is an adult. An individual can be processed as an adult only if the probability is 75 percent or greater can he or she is over the age of 18. *Id.* § 5.3.

44. ICE policy limiting reliance on radiographs reflects and incorporates concerns from the medical and dental communities that bone and dental scans are unreliable determinants

of age.⁸ Civil rights groups also have challenged the disproportionate and racially discriminatory use of radiographs to determine age on young immigrants from Africa and South Asia, and charged that the radiographic analysis used to make age determinations is based on improper and unethical race-based science. *See, e.g.,* Compl. for Declaratory and Injunctive Relief, *Florence Immigrant and Refugee Rights Project et al. v. U.S. Dep’t of Health and Human Services*, No. 24-cv-6740 (S.D.N.Y. Sept. 5, 2024).

ICE Routinely Violates the TVPRA and its own Policies in Making Age Determinations

45. Notwithstanding the requirement that ICE make age determinations based on an evidence-based, wholistic approach that relies on radiographs only as a last resort, ICE frequently relies on radiographs as the exclusive basis for its age determinations, disregarding, and in some instances even destroying, other more reliable indicators of age. Worse yet, CBP officers have coerced young immigrants into making false statements that they are older than they actually are, in order to support erroneous determinations that unaccompanied children are adults.⁹

⁸ *See, e.g.,* Claire Corkish & Yareliz Diaz, *It’s Unethical to Use Dental X-Rays to Send Immigrant Children to Adult Detention Facilities*, BU School of Public Health (July 3, 2019), <https://www.bu.edu/sph/news/articles/2019/its-unethical-to-use-dental-x-rays-to-send-immigrant-children-to-adult-detention-facilities/>; Brittney Mejia & Kate Morrissey, *U.S. Is Using Unreliable Dental Exams to Hold Teen Migrants in Adult Detention*, LA Times (Jun. 2, 2019), <https://www.latimes.com/local/lanow/la-me-ln-immigrant-age-migrants-ice-dental-teeth-bangladesh-20190602-story.html>; *see also* DHS OIG, *Age Determination Practices for Unaccompanied Children in ICE Custody*, at 1 (Nov. 10, 2009), available at https://tracreports.org/tracker/dynadata/2010_01/OIG_10-12_Nov09.pdf (noting that use of radiographs to determine age “has been criticized by some in the medical and advocacy communities as unreliable”).

⁹ *See* Retention Memo, formerly available at <https://www.dhs.gov/sites/default/files/publications/retention-memo-cbp-age-determination-birthcertificateverification-05-11-20.pdf>. (Exh. 1). The results of that investigation have not been publicly released and are among the records sought by the Request.

46. As just one example, RFKHR represented an individual (I.J.) who arrived at the U.S. border requesting asylum as an unaccompanied 16-year-old after being separated from his guardian while traveling. *See* Compl. for Declaratory and Injunctive Relief, *I.J. v. Harper*, No.2:24-cv-00327 (E.D. La. Feb 6, 2024). Despite a birth certificate and soccer identification indicating that he was only 16, he was aggressively confronted by CBP officers who accused him of lying, declared that his identification was fake and that his soccer card would be thrown in the trash, and threatened to jail him if he did not admit to being over 18. *Id.* at 11. Terrified, I.J. signed a document CBP presented to him inaccurately stating that he was 18, based upon which he was detained in an adult ICE facility. *Id.* When I.J. subsequently recanted his false admission that he was 18, ICE subjected him to an unreliable bone scan, which yielded an incorrect report that he had “full bone maturation” and that his “skeletal development” indicated that he was 19. *Id.* at 13. ICE persistently disregarded multiple forms of documentation establishing that I.J. was a minor. *Id.* at 11-18. As a result of ICE’s illegal and improper age determination procedures, I.J. was wrongly detained for months in an adult male facility. *Id.* at 12, 15.

47. I.J.’s experience was not an isolated occurrence. Between 2015 to 2020, CRCL received more than 100 complaints of age determination abuses by CBP officers, including destruction of birth certificates, coerced false confessions from unaccompanied children that they are over the age of 18, and falsifying age records. Based on these numerous credible complaints, CRCL opened a broad investigation into CBP age determination practices.¹⁰ Additionally, in its 2022 Annual Report, CRCL reported that it had “investigated several complaints alleging that ICE improperly determined the ages of individuals in detention facilities who purported to be

¹⁰ *See* Retention Memo, formerly available at <https://www.dhs.gov/sites/default/files/publications/retention-memo-cbp-age-determination-birthcertificateverification-05-11-20.pdf>. (Exh. 1)

minor” and that it had identified “concerns with ICE’s age determination procedures.”¹¹ In that Annual Report, CRCL noted that it had sent a Recommendation Memo to ICE in July of 2021, in response to which ICE, in February 2022, “agreed to provide training about its age determination procedures to relevant ICE personnel and to update its age determination policies and procedures with a clarification about verifying age claims and a reminder about using medical assessments as a last resort.” *Id.* Notably, I.J., was subjected to improper age determination procedures *after* ICE made this commitment to update and provide additional training on age determination.

Plaintiffs’ FOIA Request

48. On January 27, 2025, Plaintiffs submitted a FOIA request to DHS, ICE, CPB, CRCL and DHSIG seeking records related to age determination policies and practices employed by DHS (including its component agencies). (Exh. 2). Specifically, the Request sought (1) records concerning CRCL’s investigations into DHS age determination and birth certificate verification procedures, including (a) all complaints about DHS age determination and birth certificate verification; (b) all communications between CRCL and DHS regarding instances of age determination; (c) all records created in response to age determination complaints filed with CRCL; (d) all expert reports, opinions or other materials relied on by CRCL in issuing guidance, training materials and policies to DHS or in investigating age determination complaints; (e) a copy of the July 2021 Recommendation Memo sent to ICE, referenced in the CRCL 2022 Annual Report; (f) copies of all complaints regarding age determination referenced in the CRCL 2022 Annual Report; (g) any CRCL retention memo issued related to the age determination investigation reference in the CRCL 2022 Annual Report; (h) a copy of the February 2022 ICE

¹¹ U.S. Dep’t of Homeland Sec., Office of Civil Rights and Civil Liberties, 2022 Annual Report to Congress (Nov. 17, 2023) at 58, available at https://www.dhs.gov/sites/default/files/2023-12/23_1117_crcl_fy22-annual-report-508.pdf.

response referenced in the CRCL 2022 Annual Report; (i) Any ICE training materials on age determination, including but not limited to materials used to train line officers and policy memos used to give agency-wide instructions to line officers, both those in existence during the investigation referenced in the CRCL annual report and those created as updates, changes or clarifications to the procedures following the Recommendation Memo referenced in the CRCL 2022 Annual Report; (2) a copy of the most current version of DHS “Age Determinations for Custody Procedures TPU;” (3) a copy of the most current version of the ICE, Enforcement and Removal Operations, Juvenile and Family Residential Management Unit Field Office Juvenile Coordinator Handbook; and (4) all Communications to and from DHS, ICE, and CBP personnel pertaining to age determinations or age decisions for individuals including the use of radiographs in age determinations. *Id.*

49. Plaintiffs filed the Request to assist with the representation of their clients and with the intent to widely disseminate the requested information to the public at no cost.

50. Plaintiffs sought expedited processing for the Request on two independent grounds.

51. First, Plaintiffs demonstrated in the Request that a lack of expedited disclosure of the records could “reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” 5 U.S.C. § 552(a)(6)(E)(v)(I); *see also* 6 C.F.R. § 5.5(e)(1)(i).

52. Second, Plaintiffs demonstrated that they are primarily engaged in disseminating information and there exists a clear “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(e)(1)(ii).

53. On January 28, 2025, CBP sent an email asserting (implausibly) that it had determined that the documents sought by the Request were not within its “purview” and recommended that Plaintiffs direct their Request to CRCL. (Exh. 4).

54. On February 5, 2025, ICE acknowledged receipt of the Request, informed Plaintiffs that the agency intended to invoke a 10-day extension of the statutory 20-day time limit to respond pursuant to 5 U.S.C. § 552(a)(6)(B), and denied Plaintiffs’ request for expedited processing. (Exh. 5). Also on February 5, by separate email, ICE informed plaintiffs that it had referred the Request to CRCL. (Exh. 6).

55. In denying Plaintiffs’ request for expedited processing, ICE took the position that Plaintiffs did not qualify for either category under 6 C.F.R. § 5.5(e)(1). It asserted that Plaintiffs “failed to demonstrate a particular urgency to inform the public about the government activity involved . . . beyond the public’s right to know about government activity generally” and that Plaintiffs’ request for expedited processing was “conclusory in nature.” (Exh. 5).

56. DHS, CRCL and OIG have not acknowledged receipt of the Request.

Defendants’ Failure to Respond to Plaintiffs’ FOIA Requests

57. Even without expedited processing (and even assuming all Defendants had properly invoked the 10-day extension, which they did not), Defendants’ responses to the Request were due by March 10, 2025, 30 business days (the default 20-day statutory time limit plus the 10-day extension invoked by ICE in its February 5, 2025 e-mail) after receiving the Request. 5 U.S.C. §§ 552(a)(6)(A), (a)(6)(B), (a)(4)(A)(viii)(II)(aa). None of the Defendants has provided any update to Plaintiffs on the status of their Request.

Defendants' Troubling Recent Actions to Impede Oversight of their Age Determination Practices and Obscure Relevant Information from the Public

58. Not only have Defendants failed to provide any records covered by Plaintiffs' FOIA Request, they have recently taken a series of actions designed to evade critical oversight and hide their improper treatment of young immigrants. Specifically, on March 21, 2025, DHS abruptly closed CRCL (along with two other DHS oversight bodies—the U.S. Citizenship and Immigration Services Ombudsman Office and the Office of the Immigration Detention Ombudsman), placing nearly all employees on leave (with separation dates of May 23, 2025), and ordering them to cease all work, including work on pending investigations. Thus, the DHS component that both ICE and CBP indicated would handle the Request no longer exists.

59. Additionally, Defendants have taken down important information previously available on the DHS website, related to CRCL's investigations of improper age determination practices, including the Retention Memo sent by CRCL to CBP discussing the nature of the more than 100 complaints it had received regarding age determination abuses.¹²

Exhaustion of Administrative Remedies

60. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), because Defendants failed to respond to Plaintiffs' Request by the statutory deadline under 5 U.S.C. § 552(a)(6)(A)(i), Plaintiffs are deemed to have exhausted their administrative remedies and may seek judicial recourse pursuant to 5 U.S.C. § 552(a)(4)(B).

¹² Nick Schwellenbach, *DHS Removed 100+ Civil Rights and Civil Liberties Records*, Project on Gov't Accountability (Apr. 21, 2025), <https://perma.cc/NWP7-SBD3>.

CAUSES OF ACTION

Count I **(against all Defendants)**

Violation of FOIA, 5 U.S.C. § 552(a)(3)(A), for Failure to Make Timely Available the Records Sought by Plaintiffs' Requests

61. Plaintiffs hereby incorporate by reference all facts and allegations above as if fully set forth herein.

62. Plaintiffs properly requested records within the possession, control, and custody of Defendants.

63. Defendants' failure to timely make available the records sought by Plaintiffs' Request violates FOIA, 5 U.S.C. § 552(a)(3)(A).

Count II **(against HHS, CBP, CRCL and OIG)**

Violation of FOIA, 5 U.S.C. § 552(a)(6)(E), for Unreasonable Failure to Grant Plaintiffs' Request for Expedited Processing

64. Plaintiffs hereby incorporate by reference all facts and allegations above as if fully set forth herein.

65. Defendants were statutorily required to expedite processing of Plaintiffs' Request because Plaintiffs demonstrated that: (i) "a failure to obtain [the] requested records on an expedited basis . . . could reasonably be expected to pose an imminent threat to the life or physical safety of an individual"; and (ii) Plaintiffs are "primarily engaged in disseminating information" and as a matter of urgency need "to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. §§ 552(a)(6)(E)(i)(I), 552(a)(6)(E)(v)(I)–(II). Although the harm to unaccompanied children wrongly determined to be adults due to improper age determination procedures is severe and irreparable, the damage from continued application of those procedures is ongoing. Children continue to be wrongly held in adult facilities, denied

education, recreation, socialization and mental and physical health care to which they are entitled under the law, and which are all vital to their development and wellbeing. Every day a child is wrongly held in adult detention imminently threatens their safety. The information sought in the Request is urgently needed to redress existing improper and incorrect age determinations and to prevent additional children from improper and harmful age determination by DHS agencies. Additionally, plaintiffs RFKHR and NIP are both primarily engaged in disseminating information and there is enormous public interest in the federal government's current immigration detention practices, and the public has an urgent need to know how DHS and its component agencies are illegally and incorrectly making age determinations that result in vulnerable children being detained in adult facilities and denied statutory protections.

66. Defendants' failure to grant Plaintiffs' request for expedited processing therefore violates FOIA, 5 U.S.C. § 552(a)(6)(E).

Count III
(against all defendants)

Violation of FOIA, 5 U.S.C. § 552(a)(6)(A)(i), for Failure to Timely Respond to Plaintiffs' Requests with Required "Determinations"

67. Plaintiffs hereby incorporate by reference all facts and allegations above as if fully set forth herein.

68. Plaintiffs properly requested records within the possession, control, and custody of Defendants. 5 U.S.C. § 552(a)(1)(A); 6 C.F.R. § 5.3.

69. Defendants' failure to timely respond to Plaintiffs' Request with required determinations violates FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and DHS's corresponding regulations promulgated thereunder, 6 C.F.R. § 5.6(c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a) Declare that Defendants have violated FOIA by failing to provide Plaintiffs with all non-exempt records responsive to Plaintiffs' Request;
- b) Declare that Defendants have violated FOIA by failing to timely respond to Plaintiffs' Request with the required determinations regarding the Request;
- c) Declare that Plaintiffs are entitled to disclosure of the requested records;
- d) Direct by injunction that Defendants perform adequate searches for records responsive to Plaintiffs' Request and provide Plaintiffs with all records responsive to Plaintiffs' Request that are not specifically exempted from disclosure under FOIA no later than 20 days after this Court issues an order granting Plaintiffs relief;
- e) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiffs' Request;
- f) Enjoin Defendants from charging Plaintiffs fees for the search, review, duplication and processing of Plaintiffs' Request;
- g) Retain jurisdiction over this action to ensure that no agency records are wrongfully withheld, including, if necessary, judicial review of any claim by Defendants that requested information is exempt from disclosure;
- h) Award Plaintiffs the costs of litigation, including any reasonable attorneys' fees incurred in this action, as provided by 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412(d)(1)(A); and
- i) Grant any other relief that the Court deems just and proper.

Dated: May 22, 2025
New York, NY

Respectfully submitted,

/s/ Anthony Enriquez

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**Homeland
Security**

May 11, 2020

MEMORANDUM FOR:

Mark A. Morgan
Acting Commissioner
U.S. Customs and Border Protection

Scott K. Falk
Chief Counsel
U.S. Customs and Border Protection
(b)(6)

FROM:

Cameron P. Quinn
Officer
Office for Civil Rights and Civil Liberties
(b)(6)

Attorney Advisor, Legal Counsel Division
Office of the General Counsel

SUBJECT:

Age Determination and Birth Certificate Verification Procedures
Complaint Nos. 15-12-CBP-0726, 15-12-CBP-0727,
16-03-CBP-0116, 16-04-CBP-0124, 16-04-CBP-0128,
16-05-CBP-0176, 16-01-CBP-0338, 16-09-DHS-0430,
17-02-CBP-0023, 17-01-CBP-0024, 17-01-CBP-0025,
17-05-CBP-0230, 17-08-CBP-0303, 18-08-CBP-0281,
18-10-DHS-0515, 18-10-DHS-0509, 19-03-CBP-0166,
and 19-07-CBP-0301

Over the last five years, the U.S. Department of Homeland Security, Office for Civil Rights and Civil Liberties (CRCL) has received over 100 allegations that U.S. Customs and Border Protection (CBP) violated the civil rights and civil liberties of unaccompanied alien children (UAC) when determining their ages or verifying the authenticity of their birth certificates. These allegations arise from reported incidents at both U.S. Border Patrol (USBP) stations and Office of Field Operations (OFO) ports of entry. These include similar allegations, such as CBP discarding and destroying birth certificates, pressuring and coercing UAC into incorrectly claiming they are adults, and falsifying records of UAC's ages.

From these numerous allegations, CRCL has chosen a sample of 18 that represent the various types of allegations received by CRCL and has opened them as complaint investigations. CRCL has summarized each of the 18 complaints below. CRCL previously opened and notified CBP of 16 of these investigations through complaint initiation documents related to the individual

matters.¹ Please note that CRCL has been monitoring this issue for some time and has waited to initiate a larger investigation until it had accrued substantial information indicating a potential civil rights related concern. Accordingly, these complaints range from fiscal year 2015 to 2019. CRCL continues to receive similar allegations and has decided to no longer open complaints on this issue due to the length of time it takes to receive information from CBP related to these matters.² To date CRCL has received over 100 allegations related to these issues. The purpose of this memorandum is to notify you of the two additional complaints and to indicate that all 18 complaints, summarized below, are now retained for investigation.

ALLEGATIONS

As noted above, CRCL previously requested information related to the following 16 complaints. Accordingly, CBP is already aware of these matters and previously provided CRCL documents and other information related to these complaints. Nonetheless, we are providing summaries, because these complaints are incorporated into our larger investigation.

Allegations Involving Minors Being Treated as Adults

Complaint No. 15-12-CBP-0726

On September 17, 2015, CRCL received allegations regarding UAC (b)(6) (b)(6), who was reportedly 17 at the time of his encounter with USBP. According to his Form I-213, USBP apprehended him on September 2, 2015, and took him to McAllen Border Patrol Station for processing. He alleged that Border Patrol Agents (BPAs) threatened to charge him with forgery when he showed them his birth certificate. He alleged that BPAs placed him in detention with adults for approximately three days. His I-213 states that he admitted to being an adult, that the birth certificate in his possession was not his, and that his correct birthdate is January 2, 1997. An addendum to his I-213 also states that he claimed to be a minor and that his uncle provided a birth certificate with a birthdate of January 2, 1998.

Complaint No. 15-12-CBP-0727

On September 17, 2015, CRCL received allegations regarding unaccompanied UAC (b)(6) (b)(6), who was reportedly 15 at the time of her encounter with USBP. According to her I-213, USBP apprehended her on September 13, 2015, and took her to Harlingen Border Patrol Station for processing. Her I-213 also states that she was taken to McAllen Border Patrol Station prior to transfer to the Office of Refugee Resettlement (ORR) on September 16, 2015. She alleged that BPAs accused her and two other minors of lying about their age, ripped-up her birth certificate, and placed her in a holding cell with adults for two days. She alleged that a BPA asked those in the cell if any of them were minors and that she and two

¹ Per CRCL's complaint process, CRCL complaint investigations may follow different paths. Short form complaints are investigated by CRCL. Referred complaints are investigated by CBP's Office of Professional Responsibility, and CRCL reviews the record of investigation. Retained complaints, such as this matter, often group similar short form and referred complaint to form a retained complaint that address a large policy or procedural issue.

² These new and similar allegations are recorded in CRCL's database, which is monitored for patterns and trends. Should CBP like more information on these additional allegations, CRCL can provide it.

others indicated they were. Following that, she reported they were moved into an empty holding cell, where she remained for a brief period.

Complaint No. 16-03-CBP-0116

On December 15, 2015, CRCL received allegations regarding UAC (b)(6) (b)(6), who was reportedly 17 at the time of her encounter with USBP. According to her I-213, USBP apprehended her on December 3, 2015, and took her to Brownsville Border Patrol Station for processing. She alleged that BPAs accused her of lying about her age and placed her in an adult detention facility for approximately five to six days. She alleged that a BPA humiliated her during her questioning, saying, "You are a fucking lady. Stop lying. You are a lady and a bitch. Everyone from Guatemala are fucking liars. You are 30 or 40 years old. Look at the wrinkles you have." According to ENFORCE Alien Removal Module (EARM), on December 5, 2015, she was transferred to Port Isabel Service Detention Center, where she remained until December 10, 2015, when the Consulate of Guatemala reportedly verified her date of birth.

Complaint No. 16-04-CBP-0124

On January 8, 2016, CRCL received allegations regarding UAC (b)(6) (b)(6), who was reportedly 17 at the time of his encounter with USBP. According to his I-213, USBP apprehended him on December 27, 2015, and took him to Yuma Border Patrol Station for processing. He alleged that he reported his correct date of birth but was given a bracelet with a birthdate that made him 18. He alleged that he repeatedly notified BPAs that he was a minor and could verify his age, but he was ignored, told that nothing could be done, and was processed as an adult. According to EARM, he was released from the Florence Staging Facility on or about January 6, 2016, after CBP received a copy of his birth certificate.

Complaint No. 16-04-CBP-0128

On December 31, 2015, CRCL received allegations regarding UAC (b)(6) (b)(6) who was reportedly 16 at the time of his encounter with USBP. According to his I-213, BPAs apprehended him on December 26, 2015, and took him to Yuma Border Patrol Station for processing. He alleged that BPAs told him that he would be deported, because he is an adult. According to EARM, he was transferred to the Florence Staging Facility, where he was detained from December 29-31, 2015. An officer at the U.S. Immigration and Customs Enforcement (ICE) facility reportedly inquired about his age and assisted him with getting a forensic dental test to prove he was a minor.

Complaint No. 16-05-CBP-0176

On February 9, 2016, CRCL received allegations regarding UAC (b)(6) (b)(6), who was reportedly 17 at the time of his encounter with USBP. According to his I-213, BPAs apprehended him on December 19, 2015, and took him to Brownsville Border Patrol Station for processing. He alleged that he told BPAs that he was 17, but they believed he was 25. He alleged that BPAs separated him from his brother, who was 15 at the time, and placed Arturo

in a 3' x 8' cell with another individual. He alleged that BPAs ordered both of them to remove all of their clothing and kept him in the cell from December 19, 2015, until the early morning of December 21, 2015, when he was removed from the cell, fingerprinted, and confirmed to be a minor. He said that after USBP determined he was a minor, he was transferred to an ORR shelter, where he was reunited with his brother.

Complaint No. 16-01-CBP-0338

On October 4, 2015, CRCL received allegations regarding UAC (b)(6) (b)(6), who was reportedly 17 at the time of his encounter with USBP. According to his I-213, BPAs apprehended him on June 30, 2015, and took him to Douglas Border Patrol Station for processing. He alleged that BPAs asked him his age during transport and that he responded that he was 17. He alleged that he witnessed a BPA write that he was 18. He said that he was reluctant to correct the BPA, because the BPA reportedly had previously hit him and he was fearful. He alleged that he also told another BPA at the station that he was 17, but he was again documented as being 18. He was reportedly transferred to the Florence Staging Facility with adults and remained there for several days until he reportedly informed someone that he was a minor. He alleged that he was isolated from general population for several days until a doctor examined his teeth and confirmed that he was a minor. According to an amendment on his I-213, the Guatemalan Consulate provided USBP his birth certificate on July 16, 2015, confirming he was a minor.

Complaint No. 16-09-DHS-0430

On June 13, 2016, CRCL received allegations regarding UAC (b)(6) (b)(6), who was reportedly 17 at the time of his encounter with USBP. According to his I-213, BPAs apprehended him on May 28, 2016, and took him to the Brownsville Border Patrol Station for processing. He alleged that he informed BPAs that he was a minor and was initially placed in a hold room with other minors. He alleged that after 30 minutes he was transferred to an "adult immigration cell," because he could not provide documentation to prove his age. According to EARM, he was transferred to Port Isabel Service Detention Center, where he was detained with adults from May 29, 2016, until June 10, 2016, when the Honduran Consulate provided a copy of his birth certificate to ICE confirming he was minor.

Complaint No. 17-08-CBP-0303

On April 25, 2017, CRCL received allegations regarding UAC (b)(6) (b)(6), who was reportedly 13 at the time of his encounter with USBP. According to his I-213, BPAs apprehended him on April 6, 2017, and took him to McAllen Border Patrol Station for processing. He alleged that he told a BPA that he was only 13, but they reportedly responded that he looked 23 and was not a minor. He alleged that he presented his birth certificate, but the BPA reportedly said it was fraudulent. The UAC alleged that the BPA laughed at him, accused him of providing false information, and threw his birth certificate in the trash. He alleged that the BPA threatened that he would be detained for years and that he would knock out his teeth, if he did not admit to being an adult. He alleged that he felt pressured by the reported threats and claimed to be 19. According to EARM, he was transferred from Harlingen

Border Patrol Station to the South Texas Detention Facility, where he spent 28 days. According to EARM, The UAC was able to verify his actual age after being interviewed by the Honduran Consulate on May 5, 2017.

Complaint No. 18-08-CBP-0281

On May 2, 2018, CRCL received allegations regarding UAC (b)(6) (b)(6), who was reportedly 16 at the time of his encounter with USBP. According to his I-213, BPAs apprehended him on March 28, 2018, and took him to the Fort Brown Border Patrol Station. He alleged that he provided a BPA his birth certificate, which indicated his date of birth as November 16, 2001. He alleged that the BPA told him that the birth certificate was not valid. According to an EARM entry on March 29, 2018, he “provided a false DOB (11/16/2001) in order to qualify as a juvenile while at the Fort Brown Border Patrol Station.” EARM does not indicate whether he provided a birth certificate. According to EARM, he “later admitted while at the RGV Centralized Processing Center that his correct date of birth is 11/16/1999.” According to EARM, after being transferred to an adult detention facility, he reportedly contacted his sister, who on April 20, 2018, faxed a copy of his birth certificate that confirmed he was 16.

Complaint No. 18-10-DHS-0515

On July 16, 2018, CRCL received allegations regarding UAC (b)(6) (b)(6), who was reportedly 17 at the time of her encounter with USBP. According to her I-213, BPAs apprehended her on May 5, 2018, and took her to the Rio Grande Valley Centralized Processing Center (CPC) for processing. She alleged that she presented her birth certificate and notified USBP that she was a minor. She alleged that USBP called her a liar and said that her birth certificate belonged to someone else. According to her I-213, “The subject presented an altered Honduran birth certificate claiming to be a 17 year old UAC. After further interview and questioning the subject of the document presented, the subject freely self-admitted to her DOB being wrong. The subject stated her true DOB is (b)(6). The subject is 19 years old.” USBP reportedly held her at the CPC for seven days and transferred her to the custody of ICE, who held her in adult detention facilities for about a month until ICE was able to confirm that she was a minor.

Complaint No. 18-10-DHS-0509

On July 3, 2018, CRCL received allegations regarding UAC (b)(6) (b)(6), who was reportedly 16 at the time of his encounter with USBP. According to his I-213, BPAs apprehended the UAC on May 25, 2018, and took him to Brownsville Border Patrol Station for processing. The UAC alleged that he provided his birth certificate indicating that he was 16, but BPAs did not believe that he was a minor. USBP reportedly processed him as an adult and transferred him to the custody of ICE at Port Isabel Detention Center on May 30, 2018. According to EARM, the Honduran Consulate eventually was able to verify his age, concluding that he is a minor.

CRCL has not previously provided notice of or requested information related to the following two complaints.

Complaint No. 19-03-CBP-0166

On December 20, 2018, CRCL received allegations regarding UAC (b)(6) (b)(6), who was reportedly 16 at the time of his encounter with USBP. According to his I-213, BPAs apprehended him on December 18, 2015, and took him to McAllen Border Patrol Station for processing. He allegedly provided his birth certificate, indicating a date of birth of February 19, 1999. The BPA reportedly did not believe him and threatened him with imprisonment and deportation for lying. According to his I-213, he admitted to being an adult and that his grandfather provided him a fake birth certificate. According to the I-213, "It is evident subject is an 18 year old adult, however, since subject is in possession of what he indicated to be a fake document, the Juvenile Placement Request will be submitted."

Complaint No. 19-07-CBP-0301

On April 26, 2019, CRCL received allegations regarding UAC (b)(6) (b)(6), who was reportedly 17 at the time of his encounter with USBP. According to his I-213, BPAs apprehended him on March 12, 2019, and took him to the Tucson Coordination Center for processing. He alleged that provided his correct date of birth, indicating that he was a minor, and was placed in custody with other minors. After several days, a BPA reportedly approached him and other minors, said that there were adults among their group, and threatened to put anyone determined to be an adult in jail. He reportedly was worried that his birth certificate may have been inaccurate based upon a story his mother had told him of his birth being registered late. He alleged that he spoke with a BPA and stated that he believed he was a minor, and the BPA reportedly responded that his birth certificate was likely fake. He alleged that his parents could verify, but the BPA refused to assist. According to EARM, he was transferred to an adult detention facility, where he was held for several weeks until the Honduran Consulate confirmed that he was a minor.

Allegations Involving Inappropriate Handling of Birth Certificates*Complaint No. 17-02-CBP-0023*

On November 1, 2016, CRCL received allegations regarding UAC (b)(6) (b)(6) and his brother (b)(6), who were reportedly 15 and 17, respectively, at the time of their encounter with OFO. According to their I-213s, the UAC attempted to enter the United States at the Calexico West Port of Entry on October 27, 2016. According to EARM, after being referred for further inspection, they were escorted to the Admissibility Enforcement Unit for further processing. They alleged that an officer in a blue uniform took their birth certificates and did not return them when they were transferred to ORR custody on October 28, 2016.

Complaint No. 17-01-CBP-0024

On October 4, 2016, CRCL received allegations regarding UAC (b)(6) (b)(6), who was reportedly 16 at the time of his encounter with USBP.

According to his I-213, BPAs apprehended him on September 29, 2016, and took him to McAllen Border Patrol Station for processing. He alleged that USBP did not return his birth certificate when he was transferred to ORR custody on October 2, 2016.

Complaint No. 17-01-CBP-0025

On October 3, 2016, CRCL received allegations regarding UAC (b)(6) (b)(6), who was reportedly 17 at the time of her encounter with OFO. According to her I-213, she attempted to enter the United States without proper documents at the Paso Del Norte Port of Entry on September 26, 2016, and was transferred to a nearby hold room, where she spoke with a CBP Officer (CBPO). She alleged that she provided the CBPO her birth certificate, which she reportedly later saw attached to other documents and in the possession of another official. She alleged that CBP did not return her birth certificate when she was transferred to ORR custody on September 28, 2016.

Complaint No. 17-05-CBP-0230

On February 27, 2017, CRCL received allegations regarding UAC (b)(6) (b)(6) who was reportedly 16 at the time of her encounter with USBP. According to her I-213, BPAs apprehended her on December 17, 2016, and took her to McAllen Border Patrol Station for processing. She alleged that a BPA took her birth certificate and court documents, which detailed sexual abuse in her home country, and threw them in the trash. She alleged that she told another BPA what happened, and he reportedly retrieved the documents from the trash. The BPA allegedly returned her birth certificate, but not her court documents.

ADDITIONAL AREAS TO BE REVIEWED

The allegations discussed above relate to the age determination of UAC in CBP custody and CBP's handling of UAC birth certificates. In addition to these allegations, CRCL will review any other important civil rights and civil liberties issues that may arise during the review of these complaints.

CRCL

CRCL mission. CRCL supports the Department's mission to secure the Nation while preserving individual liberty, fairness, and equality under the law. CRCL integrates civil rights and civil liberties into all the Department's activities:

- Promoting respect for civil rights and civil liberties in policy creation and implementation by advising Department leadership and personnel, and state and local partners;
- Communicating with individuals and communities whose civil rights and civil liberties may be affected by Department activities, informing them about policies and avenues of redress, and promoting appropriate attention within the Department to their experiences and concerns;

- Investigating and resolving civil rights and civil liberties complaints filed by the public regarding Department policies or activities, or actions taken by Department personnel;
- Leading the Department's equal employment opportunity programs and promoting workforce diversity and merit system principles.

CRCL authorities. Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, CRCL is charged with investigating and assessing complaints against DHS employees and officials of abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion. In investigating complaints, if CRCL believes that the complaints raise similar issues, CRCL may look into whether there are systemic problems that justify a broader investigation. Pursuant to its authority under 6 U.S.C. § 345(a)(3), CRCL shall assist components to “periodically review Department policies and procedures to ensure that the protection of civil rights and civil liberties is appropriately incorporated into Department programs and activities.”³ Additionally, pursuant to DHS Delegation Number 19003, issued October 26, 2012, the Secretary has delegated to the Officer of CRCL the authority to “assess new and existing policies throughout the Department for the policies’ impact on civil rights and civil liberties” and “review . . . programs within any Component to ensure compliance with standards established by the Officer for CRCL to protect civil rights and civil liberties.” The procedures for CRCL investigations and the recommendations they may generate are outlined in DHS Management Directive 3500, DHS Instruction 046-01-001, and DHS Instruction 046-01-002.

Access to information. 42 U.S.C. § 2000ee-1(d) grants CRCL access to the “information, material, and resources necessary to fulfill the functions” of the office, including the complaint investigation function. Management Directive 3500 further authorizes CRCL to:

- “Notify[] the relevant DHS component(s) involved of the matter and its acceptance by CRCL, and whether the matter will be handled by CRCL or by the component organization”;
- “Interview[] persons and obtain[] other information deemed by CRCL to be relevant and require[e] cooperation by all agency employees”; and
- “Access[] documents and files that may have information deemed by CRCL to be relevant.”

Additionally, DHS Instruction 046-01-002 (V)(B)(2) provides component heads are to ensure that CRCL is given access to information, material, and personnel determined by CRCL to be necessary to carry out or review investigations. This memorandum serves as a request for information or assistance pursuant to § 5.1(e) of the “Memorandum of Agreement between

³ In addition, pursuant to 42 U.S.C. § 2000ee-1(a)(2), CRCL has the authority to “periodically investigate and review department, agency, or element actions, *policies, procedures, guidelines*, and related laws and their implementation to ensure that such department, agency, or element is adequately considering privacy and civil liberties in its actions” (emphasis added).

[CRCL] and [CBP] Regarding the Coordination of CRCL Complaint Investigations" dated February 28, 2017.⁴

Reprisals forbidden. In addition, 42 U.S.C. § 2000ee-1(e) forbids any Federal employee to subject a complainant or witness to any "action constituting a reprisal, or threat of reprisal, for making a complaint or for disclosing information to" CRCL in the course of this investigation. This memorandum and the accompanying request for documents and information are issued pursuant to these authorities.

Privilege and required transparency. Our communications with CBP personnel and documents generated during this review, particularly the final report, will be protected to the maximum extent possible by attorney-client and deliberative process privileges. Under 6 U.S.C. § 345(b), however, we submit an annual report to Congress—also posted on CRCL's website—that is required to detail "any allegations of [civil rights/civil liberties] abuses . . . and any actions taken by the Department in response to such allegations."

We look forward to working with your staff on this matter and will report back to you on our findings and any recommendations.

SCOPE OF REVIEW

The purpose of our review is to 1) determine whether CBP has complied with applicable policies and procedures related to the age determination of purported UAC in CBP custody; 2) determine whether CBP has complied with applicable policies and procedures related to the handling of birth certificates; 3) investigate the allegations in the complaints referenced; 4) determine if the facts we find suggest that the Constitution, a federal statute, or a Departmental policy has been violated; and 5) assess whether CBP should take any steps to address and concerns found during the investigation.

QUESTIONS PRESENTED

(b)(5)

INITIATING THE INVESTIGATION

We request an initial discussion with your agency about these complaints and CRCL's plans for reviewing the matter. (b)(6) will be handling the review. We request that CBP schedule an initial discussion with Mr. (b)(6) as soon as possible. We look forward to working together to determine all the facts surrounding this matter and, if appropriate, the best way forward. If you

⁴ § 5. l(e) of the Memorandum of Agreement provides, in relevant part, that CRCL will issue information requests clearly identifying the documents, information, video and personnel CRCL is requesting from CBP and that CBP will provide the same within 60 days unless an extension is approved by CRCL.

have any questions, please do not hesitate to contact Mr. (b)(6) by phone at (b)(6) or by email at (b)(6)

Copies to:

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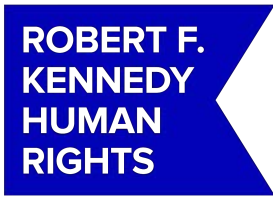
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HUMAN
RIGHTS



NATIONAL
IMMIGRATION
PROJECT

Lawyers for the Movement



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January 27, 2025

Sent via Email and U.S. Certified Mail

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RE: FREEDOM OF INFORMATION ACT REQUEST

To Whom it May Concern:

Robert F. Kennedy Human Rights (“RFK HR”), the National Immigration Project (“NIPNLG”) and the American Civil Liberties Union of Louisiana (“ACLU-LA”) (collectively, “Requesters” or “we”) submit this request pursuant to the Freedom for Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended, for public records in the custody of the Department of Homeland Security (“DHS”) and its component agencies, U.S. Immigration and Customs Enforcement (“ICE”), U.S. Customs and Border Protection (“CBP”), the Office for Civil Rights and Civil Liberties (“CRCL”), and the Office of the Inspector General (“OIG”). We request copies of the records identified in the numbered paragraphs below, pertaining to DHS’s current age determination policies.

We ask that you please direct this request to all appropriate offices and departments within each agency, including but not limited to: the Office of Immigration Detention Ombudsman (“OIDO”), Enforcement Removal Operations (“ERO”), ICE Health Service Corps (“IHSC”) and

the IHSC Managed Care Branch, DHS/ICE/CBP Offices of Public Relations (“OPR”), Homeland Security Investigations (“HSI”), Juvenile and Family Residential Management Unit (“JFRMU”), ICE Detention and Removal Office (“DRO”), and the Field Office Juvenile Coordinator (“FOJC”).

We also request expedited processing for this request, pursuant to 5 U.S.C. § 552(a)(6)(E) and agency regulations, and a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). In accordance with 5 U.S.C. § 552(a)(6)(A)(i), we expect a response to this request within 20 working days, unless otherwise permitted by statute.

Purpose of the Request

This request concerns DHS’s age determination procedures,¹ including the use of CBP border interviews, dental and bone radiographs, and birth certificate verification procedures, to determine the age of individuals in its custody. Age determination procedures are a crucial component of the statutory scheme that affords numerous protections and rights² to unaccompanied children. Requestors have witnessed and represented children subjected to adult ICE detention based on potentially racially discriminatory application of these age determination procedures, including the use of scientifically debunked radiographs and statements coerced from children by CBP officials.³

In its 2022 Annual Report, CRCL reported that it had “investigated several complaints alleging that ICE improperly determined the ages of individuals in detention facilities who

¹ To determine age, 8 U.S.C. § 1232(b)(4) provides that: “The Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security, shall develop procedures to make a prompt determination of the age of an alien, which shall be used by the Secretary of Homeland Security and the Secretary of Health and Human Services for children in their respective custody. At a minimum, these procedures shall take into account multiple forms of evidence, including the non-exclusive use of radiographs, to determine the age of the unaccompanied alien.”

² The Trafficking Victims Protection Reauthorization Act (“TVPRA”) creates a specific set of rights and protections for unaccompanied immigrant children in the custody of the federal government. *See generally* 8 U.S.C. § 1232. Among those are the right to be held in separate accommodations from adults and to be placed in the least restrictive setting that is in the best interest of the child. *Id.* DHS regulations, which apply to ICE and CBP facilities, require sight, sound, and physical separation of detained people under age 18 from detained adults. *See* 8 C.F.R. §§ 115.14(b), 115.114(b).

³ *See e.g.*, Robert F. Kennedy Human Rights, et al., *Human Rights groups file federal lawsuit for unaccompanied child wrongfully held in ICE detention* (February 26, 2024), <https://rfkhumanrights.org/press/human-rights-groups-file-federal-lawsuit-for-unaccompanied-child-wrongfully-held-in-ice-detention/>; *see also* Corkish & Diaz, *It’s Unethical to Use Dental X-Rays to Send Immigrant Children to Adult Detention Facilities*, BU School of Public Health (Jul 3, 2019); Brittny Mejia, Kate Morrissey, *U.S. Is Using Unreliable Dental Exams to Hold Teen Migrants in Adult Detention*, LA Times (Jun. 2, 2019); *see also* DHS OIG, *Age Determination Practices for Unaccompanied Children in ICE Custody*, at 1 (Nov. 10, 2009) (noting that use of radiographs to determine age “has been criticized by some in the medical and advocacy communities as unreliable”).

purported to be minor” and that it had identified “concerns with ICE’s age determination procedures.”⁴ In response to a Recommendation Memo sent by CRCL to ICE in July 2021, ICE had “agreed to provide training about its age determination procedures to relevant ICE personnel and to update its age determination policies and procedures with a clarification about verifying age claims and a reminder about using medical assessments as a last resort.”⁵ CRCL has investigated similar complaints with respect to age determinations of children in CBP custody. In a May 11, 2020, memorandum notifying CBP that CRCL had opened an investigation to determine “whether CBP has complied with applicable policies and procedures related to the age determination” of unaccompanied children in CBP custody (hereafter “2020 CRCL Investigation Retention Memo”), CRCL stated:

Over the last five years, the U.S. Department of Homeland Security, Office for Civil Rights and Civil Liberties (CRCL) has received over 100 allegations that U.S. Customs and Border Protection (CBP) violated the civil rights and civil liberties of unaccompanied children (UAC) when determining their ages or verifying the authenticity of their birth certificates. These allegations arise from reported incidents at both U.S. Border Patrol (USBP) stations and Office of Field Operations (OFO) ports of entry. These include similar allegations, such as CBP discarding and destroying birth certificates, pressuring and coercing UAC into incorrectly claiming they are adults, and falsifying records of UAC's ages.⁶

The results of that investigation have not been publicly released by CRCL. In the meantime, Requestors remain deeply concerned about improper age determinations of children, particularly Black migrants in ICE and CBP custody.

Requesters are immigrant rights organizations that provide legal representation to individuals detained by DHS, including in facilities under the jurisdiction of the NOLA ICE Field Office. Requesters work closely with people detained at these facilities and advocate alongside them. Knowledge of DHS’s current age determination procedures is relevant for Requesters’ representation of people detained at NOLA ICE Facilities and for Requesters’ advocacy efforts to ensure the rights of people detained at these facilities are respected.

Requesters have a vested interest in the conditions in which their clients and community members are held. Requesters urgently seek information on the federal government’s policies, directives, and actions relating to age determinations of those in DHS custody. The disclosure of the information sought below will contribute to “public understanding of the operations or activities of the government,” 5 U.S.C. § 552(a)(4)(A)(iii), and will provide the public with information necessary to engage in the democratic process and public debate regarding the use of

⁴ DHS CRCL, Fiscal Year 2022 Annual Report to Congress 58 (Nov. 17, 2023), available at https://www.dhs.gov/sites/default/files/2023-12/23_1117_crcl_fy22-annual-report-508.pdf.

⁵ *Id.* at 58.

⁶ Memorandum from Cameron P. Quinn, Officer, Office for Civil Rights and Civil Liberties, to Mark A. Morgan, Acting Commissioner, U.S. Customs and Border Patrol, et. al. (May 11, 2020), available at <https://www.dhs.gov/sites/default/files/publications/retention-memo-cbp-age-determination-birthcertificateverification-05-11-20.pdf>.

ICE detention. This FOIA request furthers the efforts of Requestors to investigate, educate the public about, and advocate against anti-Black racism within federal immigration enforcement agencies, to challenge the mass detention of immigrants generally, and expose inhumane conditions within immigration detention. We seek this information in order to better advocate for our clients and to advance the civil rights and safety of all children in federal immigration detention. Disclosure would thus be “in the public interest.” 6 C.F.R. § 5.11(k)(1).

Definitions

The Records request below incorporates the following definitions:

“Communications” refers to the transmittal of information in any format, including, but not limited to, the communication formats listed under “Record.”

Requestors use the terms “Age determination” and “age redetermination” interchangeably to define any material that pertains to the policies and practices of determining the age of individuals in DHS, ICE, CBP, or ORR custody and particularly whether individuals in custody are over 18 years of age.

“Age decision” refers to a finalized decision in any form, including an email, transfer document or request, case note, Significant Incident Report (SIR), I-213, Record of Investigation, or medical report that determines a person’s age. This also includes any age decision documentation, including memos, created by ORR that is in DHS possession.

“Personnel” refers to an individual employed by an organization or authorized to act on behalf of an organization, including employees, contractors, contractors’ employees, agents, or representatives.

“Records” refers to all information in electronic, written, and/or printed form that is in DHS’s constructive possession, directly or indirectly, regardless of where or how the information originated or where or how DHS received it, encompassing but not limited to any information in the Custody of any contractors for purposes of information management for DHS, and including but not limited to: messaging communications between phones or other electronic devices, including but not limited to communications sent via short message service (“SMS”), multimedia message service (“MMS”), or any other messaging service, via Blackberry Messenger, iMessage, WhatsApp, Facebook, Signal, G-Chat, Instagram direct message, Twitter direct message, Slack, and/or any other messaging and communications platform; emails, letters, faxes, and/or any other form of correspondence; minutes and/or notes of meetings and/or phone calls; voicemail messages; images, video, and/or audio data; social media posts; calendar entries; files and their contents, including any notes; logs, spreadsheets, worksheets, and/or coversheets; database entries, analyses of data; metadata; investigations, reports, studies, and/or reviews; internal memoranda; contract, agreements, and/or memoranda of understanding, including but not limited to Intergovernmental Services Agreements; presentations, formal or informal; training criteria, standards, evaluations, and/or materials; orders, directives, and/or instructions; legal opinions and/or memoranda; Policies, procedures, protocols, and/or manuals; guidance and/or guidelines; bulletins, advisories,

and/or alerts; as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing notations, drafts, and revisions.

“Training Materials” refers to all Records used to instruct, guide, or otherwise prepare Personnel for any aspect of their employment or contract including, but not limited to, electronic Records.

In requesting “Policies,” the Requesters seek national policies and guidance, in any format, including memoranda. However, Requesters do not refer to or seek copies of the Performance-Based National Detention Standards, unless annotated or incorporated in another record.

In requesting “Communications,” the Requesters seek any record of written correspondence or verbal correspondence, whether formal or informal, in any format, including intra-agency, interagency correspondence, and agency correspondence with third parties.

The date range for all searches should be understood to commence with each provided start date and to end on the date the search for documents responsive to that request is commenced by the agency. *See Ferguson v. U.S. Dep’t of Educ.*, 2011 WL 4089880, at *11 (S.D.N.Y. Sept. 13, 2011) (commencement date of agency’s search was reasonable cut-off date).

Request for Information

Requesters seek the following Records, beginning January 1, 2015, through the time the search responsive to this FOIA request is completed, unless otherwise specified:

1. Any and all Records that were prepared, received, transmitted, collected, and/or maintained by CRCL in connection to its investigation(s) concerning age determination and birth certificate verification procedures, commenced on or before May 11, 2020, including the investigations referenced in the 2020 CRCL Investigation Retention Memo and in the 2022 CRCL Annual Report.⁷ This includes:
 - a. All complaints filed with CRCL regarding alleged violations of the civil rights of unaccompanied non-citizen children when determining their ages or verifying the authenticity of their birth certificates by DHS component agencies including ICE and CBP;
 - b. All Records of Communications between CRCL and DHS component agencies (including CBP and ICE) regarding instances of age determination;

⁷ Memorandum from Cameron P. Quinn, Officer, Office for Civil Rights and Civil Liberties, to Mark A. Morgan, Acting Commissioner, U.S. Customs and Border Patrol, et. al. (May 11, 2020), available at <https://www.dhs.gov/sites/default/files/publications/retention-memo-cbp-age-determination-birthcertificateverification-05-11-20.pdf>; DHS CRCL, Fiscal Year 2022 Annual Report to Congress 58 (Nov. 17, 2023), available at https://www.dhs.gov/sites/default/files/2023-12/23_1117_crcl_fy22-annual-report-508.pdf.

- c. Any and all Records created in response to complaints filed with CRCL regarding age determination, including all Records related to any past or planned guidance, policies or recommendations by CRCL to DHS (including CBP and ICE) regarding proper implementation of DHS's age determination policies;
 - d. Any and all expert reports, opinions, findings, or materials relied upon by CRCL in issuing the above guidance, training materials, policies or recommendations to DHS and/or investigating alleged complaints involving age determinations.
 - e. A copy of the July 2021 CRCL Recommendation Memo sent to ICE, as referenced in the 2022 CRCL Annual Report;
 - f. Copies of all complaints involving age determinations referenced in the 2022 CRCL Annual Report;
 - g. Any CRCL retention memo issued related to the age determination investigation referenced in the 2022 CRCL Annual Report;
 - h. A copy of the February 2022 ICE response, as referenced in the 2022 CRCL Annual Report;
 - i. Any ICE training materials on age determinations as developed as referenced in those CRCL retention and recommendation memos;
 - j. Any ICE policy/procedure updates/changes/clarifications on age determinations as referenced in those CRCL retention and recommendation memos.
2. A copy of the most current version of the DHS "Age Determinations for Custody Procedures TPU;"
 3. A copy of the most current version of the ICE, Enforcement and Removal Operations, Juvenile and Family Residential Management Unit Field Office Juvenile Coordinator Handbook;
 4. All Communications to and from DHS, ICE, and CBP personnel pertaining to age determinations or age decisions for individuals including the use of radiographs in age determinations.

Format of Request

The Requesters request that responsive documents and materials be produced in their entirety, including all attachments, enclosures, hyperlinks and internal links, and exhibits. If it is determined that a document contains material or information that falls within a statutory exemption to mandatory disclosure under FOIA, the Requesters ask that such material or information be reviewed for possible discretionary disclosure, consistent with the presumption of openness codified in the Freedom of Information Act Improvement Act of 2016, Pub. L. 114185, 130 Stat.

538. If terms or codes are not in the form template and/or publicly defined, please provide a glossary or other descriptive records containing definitions of acronyms, numerical codes, or terms contained in data responsive to this request. Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records.

Please provide the requested documents in the following format:

- Data Records in native format when possible (e.g., Excel spreadsheets in Excel);
- Other Records in PDF format when possible;
- Electronically searchable when possible;
- Email attachments provided in sequential order following the email, to preserve the “parent-child” relationship, such that Requesters are able to identify which documents were the attachments to which emails;
- Email parents include BCC and any other hidden fields; and
- Other metadata preserved for all Records.

Please furnish all applicable Records in electronic format as specified above to via email: Sarah Decker at decker@rfkhumanrights.org and Sarah Gillman at gillman@rfkhumanrights.org.

Requesters

RFK HR

RFK HR is a non-partisan, not-for-profit organization that advocates for human rights issues and pursues strategic litigation to hold governments accountable for human rights abuses, including by pursuing immigrants’ rights and anti-detention advocacy and litigation. RFK HR is committed to transparency, government accountability, and education. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating it to the press and the public is a critical and substantial component of RFK HR’s work. RFK HR regularly publishes in-depth analysis of current events affecting human rights and disseminates information to expose injustice. RFK HR disseminates content through its website—<https://rfkhumanrights.org/>—and by publishing reports, issuing press releases, and making public statements that reach thousands.

NIPNLG

NIPNLG is a national, nonprofit organization dedicated to providing legal assistance and support to immigrant communities and advocating on behalf of noncitizens. Members and supporters of NIPNLG include attorneys, legal workers, law students, judges, jailhouse lawyers, grassroots advocates, community organizations, and others seeking to defend and expand the rights of immigrants in the United States. NIPNLG litigates, advocates, educates, and builds bridges across movements to ensure that those who are impacted by the U.S. immigration and criminal legal systems are uplifted and supported.

NIPNLG is primarily engaged in disseminating information to the public. It is the author of four treatises on immigration law published by Thomson Reuters. NIPNLG provides technical and

litigation assistance, participates in impact litigation, advocates for fair and just policies and legislation, provides legal training to the bar and the bench, and regularly publishes practice advisories and community resources on immigration law topics that are disseminated to its members and a large public audience through its website, www.nipnlg.org.

ACLU-LA

ACLU-LA is a not-for-profit organization that works to advance and preserve the individual rights and liberties guaranteed by the Constitution and laws of the United States and the State of Louisiana in matters that affect civil liberties and human rights, including the rights of prisoners and immigrants. ACLU-LA is committed to principles of transparency and accountability in government and seeks to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and human rights. Obtaining information about government activity, analyzing that information, and widely publishing and disseminating it to the press and the public is a critical and substantial component of the ACLU-LU's work.

ACLU-LA regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other civil liberties-related current events. ACLU-LA also publishes "know your rights" materials designed to educate the public about immigrants' rights. ACLU-LU disseminates content through its website—<https://www.laaclu.org/>—and quarterly newsletters received by thousands of subscribers.

Expedited Processing

We request expedited treatment for this FOIA request. This request qualifies for expedited treatment pursuant to 5 U.S.C. § 552(a)(6)(E) and applicable regulations. As demonstrated above, there is a "compelling need" for expedited processing sought by the Requesters. 5 U.S.C. § 552(a)(6)(E)(i)(I). The lack of expedited disclosure of records could "reasonably be expected to pose an imminent threat to the life or physical safety of an individual." 5 U.S.C. § 552(a)(6)(E)(v)(I); 6 C.F.R. § 5.5(d)(1)(i). Moreover, there exists a clear "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(e)(1)(ii) (expedited processing is warranted where there is "[a]n urgency to inform the public about an actual or alleged federal government activity"). The Requesters are therefore entitled to expedited processing of this request.

Fee Waiver Request

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), the Requesters apply for a fee waiver. FOIA and applicable agency regulations require fees to be waived when it is determined, based upon the submission of the requester, that 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* 5 C.F.R. § 5.11(k)(1) (permitting fee waiver when "disclosure of the requested information is in the public interest" and "is not primarily in the commercial interest of the requester"); 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k).

Requesters are non-profit organizations that advocate alongside individuals detained at facilities nation-wide. Access to this information is crucial for the Requesters and the communities they serve to evaluate immigration enforcement actions in their communities, including the conditions of confinement and protocols for detention, confinement and release, and their potential detrimental effects in their communities.

Conclusion

Thank you for your consideration of this request. There is an urgent need to inform the public of the policies and practices related to the U.S. government's age determination policies, where their implementation has resulted and will continue to result in civil and human rights violations, including racially discriminatory outcomes. This information will assist advocates defending the rights of detained people, including those detained in the NOLA ICE facilities.

If this request is denied in whole or part, the Requesters ask that DHS and its component agencies to justify all deletions or redactions by reference to specific exemptions of FOIA. The Requesters expect DHS and its component agencies to release all segregable portions of otherwise exempt material, and reserve the right to appeal a decision to withhold any records or to deny Requesters' application for waiver of fees.

We look forward to your reply to the request for expedited processing within 10 business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Notwithstanding your decision on the matter of expedited processing, we look forward to your reply to the records request within 20 business days, as required under 5 U.S.C. § 552(a)(6)(A)(I). In the event the government is unable to meet that deadline, the Requesters are willing to discuss an appropriate schedule for rolling productions.

If you have any questions regarding the processing of this request, please contact Sarah Decker at 908-967-3245 or decker@rfkhumanrights.org, or Sarah Gillman at 646-289-5593 or gillman@rfkhumanrights.org.

Certification

The Requesters certify that the above information is true and correct to the best of the Requesters' knowledge. *See* 6 C.F.R. § 5.5(e)(3).

Sincerely,



Sarah Decker, Esq.
Sarah Gillman, Esq.
Robert F. Kennedy Human Rights

Rebecca Scholtz, Esq.
Matt Vogel, Esq.
National Immigration Project

Nora Ahmed, Esq.
Andrew Perry, Esq.
ACLU of Louisiana

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ENFORCEMENT AND REMOVAL OPERATIONS**

Directive TECHNICAL AND PROCEDURAL UPDATE (TPU)

Age Determination Procedures for Custody Determination

Policy Number: ERO 11301.4

Issue Date: 12/11/2015

Superseded: Directive Technical and Procedural Update "Age Determination Procedures for Custody Determination," ERO 11301.3, dated Sept. 24, 2014.

Federal Enterprise Architecture Number: 301-112-002b

1. **Purpose/Background.** This TPU supersedes the Directive, "Age Determination Procedures for Custody Determination." This TPU updates policy and procedures for determining the age of individuals in ERO custody, including unaccompanied children (UC) to align with changes made by the Department of Health and Human Services (HHS).
- 1.2. Determining whether an individual in ERO custody is a minor or an adult often presents challenges, including one or more of the following:
 - 1) Lack of documentation;
 - 2) Contradictory or fraudulent identity documentation or statements;
 - 3) Physical appearance of the alien;
 - 4) Diminished capacity of the alien.
2. **Policy.** ERO determines the age of individuals in our custody consistent with HHS's Office of Refugee Resettlement (ORR), "ORR Policy Guide Children Entering the United States Unaccompanied, 1.6: Determining the Age of an Individual without Lawful Immigration Status," (August 28, 2015), attached.
 - 2.1. This directive applies to age-determination procedures only.. It does not alter other policies regarding the care, feeding, and well-being of ERO detainees.
3. **Definitions.** The following definitions apply for the purpose of this directive only.
 - 3.1. **Adult:** a person who is 18 years of age or older.
 - 3.2. **Juvenile/Minor:** a person who is under the age of 18 years.
 - 3.3. **Medical Payment Authorization Request:** a request for medical, dental, or mental health services payment.

3.4. Unaccompanied Child (UC): a child who:

- 1) Has no lawful immigration status in the United States;
- 2) Has not attained 18 years of age; and
- 3) With respect to whom:
 - There is no parent or legal guardian in the United States; or
 - No parent or legal guardian is available to provide care and physical custody.

4. Responsibilities.

- 4.1. **The Custody Management Division (CMD)** is the Office of Primary Interest and manages, administers, and ensures compliance with this directive.
- 4.2. **Field Office Directors (FODs)** establish local procedures that comply with the age-determination procedures in the HHS Instruction.
- 4.3. **Field Office Juvenile Coordinators (FOJCs)** implement age-determination procedures established by their respective FODs, in coordination with IHSC Managed Care Branch personnel.
- 4.4. **ICE Health Service Corps (IHSC)**, the medical authority for ICE, develops procedures to assist ERO in completing age determinations as provided in the HHS Instruction. IHSC also maintains a list of medical and dental practitioners fully qualified in age-determination techniques.
- 4.5. **IHSC Managed Care Branch** provides assistance to ERO field staff by coordinating age-determination procedures for identifying minors.

5. Procedures.

- 5.1 FODs implement local procedures to determine the age of individuals in their custody in accordance with the ORR Policy Guide, following the steps outlined below. FOJCs evaluate the information collected and establish both that the documents are valid and that the individual in question is the rightful bearer of those documents (i.e., not an imposter).

Note:

- Information from each category is not required.

- Step 4 is used when age is indeterminable from steps 1 through 3, with arrangements coordinated by IHSC.
- Until the age determination is made, the individual in custody is entitled to all services provided to juveniles.

Officers follow the regulatory confidentiality protections afforded to asylum seekers and other protected classes when interacting with third parties, as provided in 8 C.F.R. §§ 208.6 and 1208.6.


1) Acceptable documentation:


- a) Official government-issued documents, including birth certificates. If you question a document's authenticity or the alien possesses no documentation, verify the validity of the alien's claim by contacting government officials of the alien's home country.
 - b) Other objective documentation (e.g. baptismal certificates, school records, medical records) that indicate the alien's date of birth.
- 2) Statements by individuals (including the one whose age is in question) asserting personal knowledge of the alien's age, and who ERO concludes can credibly attest to the person's age.
- a) Statements provided by the individual regarding his/her age or birth date. Generally, an alien's uncorroborated declaration regarding age is not used as the sole basis for an age determination.
 - b) Statements from the alien's parent(s) or legal guardian(s), if such persons can be identified and contacted.
 - c) Statements from other persons.
- 3) Information from another government agency (Federal, State, local, or foreign).
- a) State/local arrest records.
 - b) Child welfare agency records.
 - c) Consular records.
- 4) Age assessment procedures (e.g., dental and skeletal [bone] maturity assessments using x-rays or other medical techniques identified by the

[REDACTED]

medical community as appropriate) may be used as a last resort, when no conclusive information is available.

- a) The examination will be performed by a medical professional experienced in age assessment method(s), taking into account the individual's ethnic and genetic background.
 - b) As no medical assessment method can determine an exact age, best practice relies on the estimated probability that an individual is 18 years or older.
- 5.2. Request assistance from IHSC by initiating a "Medical Payment Authorization Request" through the IHSC Managed Care Branch. IHSC will coordinate with a licensed and credentialed forensic practitioner.
- 5.3. IHSC will provide a written report to the case officer on the same day as the examination if all possible, detailing the forensic method used to determine age and the probability that the alien is a juvenile or an adult.
- 1) The examining doctor submits a written report indicating the probability percentage that the individual is a minor or an adult.
 - 2) The FOD or designee (SDDO or above) reviews the medical report.
 - 3) If the probability of an individual being 18 years old or older is 75 percent or greater, process the individual as an adult.
- 5.4. The FOD will promptly evaluate new information regarding the age of the individual in ERO custody if presented by the individual or his/her legal representative.
6. **Recordkeeping.** The FOJC maintains a record of results, especially radiographic (x-ray), in appropriate fields of the ENFORCE Custody Actions and Decisions Screen and maintains a copy in the alien's A-file. The FOJC documents all information relied upon to determine age (the information referenced, data systems used, individuals or agencies consulted, statements, and conclusions) in accordance with local procedure using Form I-213, Record of Inadmissible/Deportable Alien; Form G-166C, Memorandum of Investigation; or memorandum to file.
7. **Authorities/References.**
- 7.1. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5074 (December 23, 2008); 8 U.S.C. § 1232 (b) (4).

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- 7.2. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), "ORR Policy Guide, 1.6 Determining the Age of an Individual without Lawful Immigration Status," (August 28, 2015); <http://www.acf.hhs.gov/programs/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.6>
8. **No Private Right Statement.** This directive is an internal policy of ERO. It is not intended to, does not and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil or criminal matter.



Tae Johnson
Assistant Director for Custody Management
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement

12/11/15

Date



ROBERT F.
KENNEDY
HUMAN
RIGHTS

Sarah Decker <decker@rfkhumanrights.org>

CBP FOIA - CBP-FO-2025-055593

2 messages

cbpfoia@cbp.dhs.gov <noreply@securerelease.us>
Reply-To: cbpfoia@cbp.dhs.gov
To: decker@rfkhumanrights.org

Tue, Jan 28, 2025 at 4:19 PM

Sarah Decker
Robert F. Kennedy Human Rights
[1300 19th Street NW](#)
[#750](#)
[Washington, District of Columbia 20036](#)

01/28/2025

CBP-FO-2025-055593

Dear Sarah Decker,

Your request was received in this office on 1/27/2025 in which you requested any and all Records that were prepared, received, transmitted, collected, and/or maintained by CRCL in connection to its investigation(s) concerning age determination and birth certificate verification procedures, commenced on or before May 11, 2020, including the investigations referenced in the 2020 CRCL Investigation Retention Memo and in the 2022 CRCL Annual Report. After assessing your request, we have determined the records you seek are not under the purview of U.S. Customs and Border Protection. We recommend that you redirect your request to U.S. Department of Homeland Security, The Office of Civil Rights and Liberties (CRCL) <https://www.dhs.gov/foia-transparency-initiative>.

Please note that this message has been sent from an unmonitored e-mail account. Any messages sent to this account will not be read.

Sincerely,

U.S. Customs and Border Protection

Sarah Decker <decker@rfkhumanrights.org>
To: Judith Mogul <judith.mogul@rfkhumanrights.org>

Wed, May 14, 2025 at 3:39 PM

[Quoted text hidden]

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Sarah Decker (she/her)
Staff Attorney
U.S. Advocacy & Litigation
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EXPOSE INJUSTICE.

TEACH CHANGE.

SHAPE HISTORY.



ROBERT F.
KENNEDY
HUMAN
RIGHTS

Sarah Decker <decker@rfkhumanrights.org>

ICE FOIA 2025-ICFO-16332

2 messages

ice-foia@ice.dhs.gov <noreply@securerelease.us>

Wed, Feb 5, 2025 at 3:01 PM

Reply-To: ice-foia@ice.dhs.gov

To: decker@rfkhumanrights.org

02/05/2025

Sarah Decker

RE: ICE FOIA Case Number 2025-ICFO-16332

Dear Requester:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated 1/27/2025, your request for a waiver of all assessable FOIA fees, and your request for expedited treatment. Your request was received in this office on 1/27/2025. Specifically, you have requested any and all Records that were prepared, received, transmitted, collected, and/or maintained by CRCL in connection to its investigation(s) concerning age determination and birth certificate verification procedures, commenced on or before May 11, 2020, including the investigations referenced in the 2020 CRCL Investigation Retention Memo and in the 2022 CRCL Annual Report.

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're able to narrow the scope of your request please contact our office. Narrowing the scope may speed up the search process. We will make every effort to comply with your request in a timely manner.

ICE evaluates fee waiver requests under the legal standard set forth above and the fee waiver policy guidance issued by the Department of Justice on April 2, 1987, as incorporated into the Department of Homeland Security's Freedom of Information Act regulations. These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. I have considered the following factors in my 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 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 requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

Upon review of your request and a careful consideration of the factors listed above, I have determined to grant your request for a fee waiver.

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(e)(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(e)(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(e)(3).

Your request for expedited processing is denied because you do not qualify for either category under 6 C.F.R. § 5.5(e)(1). You failed to demonstrate a particular urgency to inform the public about the government activity involved in the request beyond the public's right to know about government activity generally. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

If you deem the decision to deny expedited treatment of your request an adverse determination, you have the right to appeal. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.5(e)(2). You may submit your appeal electronically at GILDFOIAAppeals@ice.dhs.gov or via regular mail to:

U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
500 12th Street, S.W., Mail Stop 5900
Washington, D.C. 20536-5900

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.

If you have any questions please contact FOIA Public Liaison Daniel Edgington, at (866) 633-1182 or [500 12th St, SW](#) Stop 5009 Washington, DC 20536-5009. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, [8601 Adelphi Road](#)-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448.

Your request has been assigned reference number 2025-ICFO-16332. Please use this number in future correspondence.

Sincerely,

ICE FOIA Office
Immigration and Customs Enforcement
Freedom of Information Act Office
[500 12th Street, S.W.](#), Stop 5009
Washington, D.C. 20536-5009

ice-foia@ice.dhs.gov <noreply@securerelease.us>
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Upon initial review of your request, I have determined that the information you are seeking is also under the purview of the Civil Rights and Civil Liberties (CRCL) a DHS component. Therefore, I am referring your request to the FOIA Officer for CRCL, for processing and direct response to you. You may contact that office at:

Office for Civil Rights and Civil Liberties
Mail Stop 0190
ATTN:CRCL FOIA Officer
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave SE
Washington, DC 20528-0190
CRCLFOIA@hq.dhs.gov

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ROBERT F.
KENNEDY
HUMAN
RIGHTS

Sarah Decker <decker@rfkhumanrights.org>

ICE FOIA 2025-ICFO-16332

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