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American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN®



August 19, 2020

FOIA Officer  
U.S. Customs and Border Protection  
90 K Street, NE  
FOIA Division  
Washington, DC 20229

*Via email*

**Re: Freedom of Information Act Request Regarding DHS/CBP Implementation of CDC Interim Final Rule**

Dear FOIA Officer:

The American Immigration Council (Council), The Center for the Human Rights of Children (CHRC), Loyola University Chicago School of Law, and the Illinois Chapter, American Academy of Pediatrics (ICAAP) (collectively, “Requesters”) submit the following Freedom of Information Act (FOIA) request for records regarding Customs and Border Patrol (CBP) directives and operations implemented pursuant to a Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) [Interim Final Rule](#) published in the Federal Register on March 26, 2020.<sup>1</sup> Specifically, this request seeks information related to guidance or directives between CBP and the CDC related to the expulsion of unaccompanied alien children from the U.S. under the new interpretation and subsequent guidance. Likewise, the request seeks information related to the implementation of such orders, including the number of unaccompanied alien children subject to CBP’s interpretation of the CDC Interim Final Rule

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.

**I. REQUEST FOR INFORMATION**

The present request is for the following records<sup>2</sup> from the CBP:

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<sup>1</sup> Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17060 (Mar. 26, 2020).

<sup>2</sup> For purposes of the present FOIA request, where not otherwise specified, the term “records” includes but is not limited to any and all communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, spreadsheets, charts, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on

## **A. CDC Guidance to CBP**

- A copy of the final interagency memo or directive referenced in the [leaked CBP internal memo](#)<sup>3</sup> regarding “Operation Capiro,” which states that “The Director of the Centers for Disease Control and Prevention (CDC) under the Authority of the Public Health Service Act, has directed CBP to prohibit introduction of certain persons into the United States who, due to the existence of COVID-19 in countries or places through which persons are travelling, create a serious danger of such introduction of the disease into the United States.”
- A copy of the final internal memo or directive from CBP to field offices or sector chiefs regarding existing and planned quarantine measures taken by CBP at field offices and processing sites prior to March 20, 2020.
- A current list of quarantine measures implemented at CBP field offices and processing sites under guidance from CDC.
- A copy of the “Pandemic Integrated Logistics Support Plan” (ILSP) approved by the DHS Chief Readiness Support Officer (CRSO) on June 15, 2015<sup>4</sup>, and implemented by CBP, and copies of all subsequently updated or revised versions of the ILSP implemented by CBP.

## **B. Application of CDC Guidance to Unaccompanied Alien Children (UAC)<sup>5</sup>**

- A copy of the final internal memo or directive from CBP to field offices or sector chiefs explaining how the CDC Interim Final Rule will be applied to UAC encountered at the border.
- A copy of the final internal memo or directive from CBP to field offices and sector chiefs explaining the criteria for determining whether a person “create[s] a serious danger of [the] introduction of [COVID-19].”
- A current list of child protection protocols followed by CBP officers for ensuring the safety, welfare, and integrity of UAC when UAC are encountered by CBP and subsequently detained at non-official CBP sites, including but not limited to hotels, motels, and temporary housing facilities, pending an expulsion determination.
- A copy of the final internal memo or directive from CBP to field offices and sector chiefs explaining the effect of a UAC’s negative COVID-19 test on his or her eligibility for expulsion under the CDC Interim Final Rule.

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computers and/or other electronic storage devices, electronic communications and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

<sup>3</sup> Memorandum from U.S. Customs and Border Protection to U.S. Border Patrol Officers (March, 2020) available at <https://www.documentcloud.org/documents/6824221-COVID-19-CAPIO.html>.

<sup>4</sup> See OFF. OF THE INSPECTOR GEN., U.S. DEP’T. OF HOMELAND SEC., OIG-17-2, DHS Pandemic Planning Needs Better Oversight, Training, and Execution, 13 (2016) available at <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-02-Oct16.pdf>

<sup>5</sup> 6 U.S.C. 279(g)(2) “unaccompanied alien child” definition; see also 8 U.S.C. § 1232(a)(5)(D)(i) mandating that UAC be placed in Section 240 removal proceedings under the INA.

**C. CBP Consideration of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)**

- Copies of memos, directives, emails, or any written correspondence between the DHS Office of the General Counsel and the CBP Office of the Chief Counsel referencing the statutory obligations under the TVPRA concerning the requirement that UAC be placed in removal proceedings and the CDC Interim Final Rule.
- A copy of the final memo or directive from the DHS Office of General Counsel to the CBP Office of the Chief Counsel regarding how the CDC Interim Final Rule is to be implemented within the interior of the United States and the applicability of the order to UAC already placed in removal proceedings.

**D. Data on Application of CDC Guidance to UAC**

- For FY2020, from March to the present, the total number of UAC who have not been admitted due to expulsion under the CDC Interim Final Rule.
- For FY 2020, from March to the present, the total number of UAC who had been placed into removal proceedings and who were subsequently subject to expulsion under the CDC Interim Final Rule.

**II. FEE WAIVER REQUEST**

Requesters seek a fee waiver because the information they seek 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 [requesters]....” 5 U.S.C. § 552(a)(4)(A)(iii).

As outlined below, Requesters seek to shed public light on the expulsion of unaccompanied children seeking protection at the U.S. border under the CDC Interim Final Rule. Requesters are non-profit organizations without a commercial interest in the release of this information and intend to make the information received in response to this request available to the public at no charge. Further, the Council has a demonstrated track record of disseminating information obtained via FOIA requests to the public, and Requesters collectively reach a wide audience, which includes varied segments of the U.S. public. All Requesters disseminate information to the public regarding proposed changes to federal regulations impacting immigrants.

*A. Disclosure Will Contribute to Public Understanding of CBP Operations Related to the CDC Guidance*

This FOIA request seeks information that will provide critical insight and understanding about the enforcement of public health measures at the border in response to the COVID-19 pandemic. Children who arrive at U.S. borders are entitled to various federal protections under the TVPRA and the Refugee Act of 1980. The public has a right to know whether CBP is not properly implementing U.S. statutory and international commitments to human rights as a result of the pandemic. The correspondence and data sought in this request will contribute to public

understanding of the present obstacles asylum seekers and unaccompanied children face upon apprehension at the border in asserting due process rights to asylum and protection. CBP correspondence regarding quarantine measures taken at the border prior to the CDC Interim Final Rule will help inform the manner in which public health concerns are being handled on a federal level – a matter of national public health. CBP correspondence regarding the CDC Interim Final Rule and the implementation of the Order’s directives will help inform the public about the role of CBP personnel in addressing the concurrent public health concerns as well as statutory obligations. The data requested will help inform how many children have been subjected to the – possibly unlawful – interpretation.

As outlined further below, the Council, CHRC, and ICAAP intend to make the information received in response to this request available to the public at no charge. Further, all three requesting parties have significant audience reach, which includes varied segments of the U.S. public.

#### *B. Disclosure of the Information Is Not in the Commercial Interest of the Requesters*

The Council is a not-for-profit organization and has no commercial interest in the present request. *See e.g.* 6 C.F.R. § 5.11(k)(3)(i)-(ii). The Council was established to increase public understanding of immigration law and policy, advocate for the fair and just administration of U.S. immigration laws, protect the legal rights of noncitizens and citizens, and educate the public about the enduring contributions of immigrants. Through research and analysis, the Council has become a leading resource for policymakers at the national, state, and local levels who seek to understand the power and potential of immigration and to develop policies that are based on facts rather than myths. The Council seeks to ensure that immigration laws are implemented and executed in a manner that comports with due process through the pursuit of government compliance and transparency.

To further its mission, the Council regularly provides information to the public based on its FOIA requests.<sup>6</sup> As with all other reports and information available on the Council’s website, the information that the Council receives in response to this FOIA request will be available to immigration attorneys, noncitizens, policymakers and other interested members of the public on its publicly accessible website free of charge. Between June 1, 2019 and the present, the Council has received more than 2.6 million pageviews from more than 1.6 million visitors.

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<sup>6</sup> *See, e.g.*, Guillermo Cantor, Emily Ryo, and Reed Humphrey, “Changing Patterns of Interior Immigration Enforcement in the United States, 2016 -2018,” AMERICAN IMMIGRATION COUNCIL (July 1, 2019), <https://americanimmigrationcouncil.org/research/interior-immigration-enforcement-united-states-2016-2018>; AMERICAN IMMIGRATION COUNCIL, “Stays of Removal Responses from EOIR,” (May 2019), [https://americanimmigrationcouncil.org/sites/default/files/foia\\_documents/board\\_of\\_immigration\\_appeals\\_interpretation\\_of\\_stay\\_of\\_removal\\_foia\\_production.pdf](https://americanimmigrationcouncil.org/sites/default/files/foia_documents/board_of_immigration_appeals_interpretation_of_stay_of_removal_foia_production.pdf); Guillermo Cantor and Walter Ewing, AMERICAN IMMIGRATION COUNCIL, *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered* (August 2017) (examining records of alleged misconduct by Border Patrol employees), [http://bit.ly/Council\\_StillNoActionTaken](http://bit.ly/Council_StillNoActionTaken).

CHRC is a non-profit organization with no commercial interest in the present request. CHRC's mission is to advance the rights of children. Together with faculty, students, and organizational partners, it provides the public with interdisciplinary research, education, information, and resources related to child rights issues. CHRC reaches its audience through its website, publications available in the public domain, public convenings and conferences, and through the broader Loyola University Chicago community and its partners. As described above, CHRC seeks the requested information for the purpose of disseminating it to the general public, free of charge.

CHRC regularly disseminates information about the U.S. immigration system and child rights issues to the public in accessible ways and develops leading interdisciplinary scholarship, training, and support for legal practitioners and community members. CHRC's public education efforts have included the following public conferences/convenings: "DACA, Where Do We Go From Here," webinar,(2020), Bi-National Institute, Trauma at the Border and Beyond (2019), "Identifying and Responding to Potential Child Trafficking Victims in Federal Custody" (in collaboration with the American Bar Association and ProBAR, Harlingen, TX, (2018), "The Child Migrant: Children Crossing Borders, An Interdisciplinary Day Long Teach-In" (2014). Moreover, information posted to CHRC's website is often linked to the websites and information networks of other organizations and advocacy groups. Information about CHRC's public programs is widely disseminated through CHRC's website, the School of Law's website, Loyola University Chicago's website, as well as a CHRC listserv of over 2500 members. Participants in past convenings include not just Loyola students and faculty, but also members of community organizations, schools, faith-based organizations, non-profit organizations, government agencies, individuals, and others nationally.

ICAAP is an independent not-for-profit organization with no commercial interest in the present request. ICAAP is committed to promoting and advocating for optimal child, youth and family well-being, as well as access to quality healthcare. ICAAP engages in policy advocacy, education, and community outreach in order to improve the quality and access to health care for children. ICAAP's membership comprises pediatricians throughout Illinois but also includes other physicians, dentists, nurses, allied health professionals, and non-health professionals. In its communications, ICAAP aims to share content that is educational for physicians, other healthcare professionals, families, caregivers, and to members of the public to continue moving toward optimal child health and improved quality of life for children and their families. ICAAP has a broad audience, which it reaches through direct membership, newsletters, and its website, [illinoisaaap.org](http://illinoisaaap.org). ICAAP intends to disseminate the information obtained via this request to the public free of charge.

### **III. EXEMPTIONS**

Please note that Requesters do not seek the names of individuals or other personally identifiable information. CBP should provide unique identifiers for individuals, if available. Otherwise, Requesters understand that the agency will redact any personally identifiable information.

If CBP withholds records based on its assessment that statutory exemptions apply to any of the records requested, please describe in detail the nature of the records withheld and the specific exemption or privilege upon which the record is withheld. If any portion(s) of the requested records are determined to be exempt, please provide the non-exempt portions. 5 U.S.C. §552(a)(8)(A)(ii)(II).

#### **IV. FORMAT OF PRODUCTION**

Electronic versions in the native format of the requested documents are preferred. For documents which are not available in this format, please provide records electronically in a text-searchable, static-image format (PDF). Please also provide any data in a workable format, such as Microsoft Excel. 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. Finally, if email correspondence references an attachment, please provide the attachment as well.

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Thank you in advance for your attention to this request. If you have any questions regarding this request, please feel free to email or call Sarah J. Diaz at the contact information under the first signature block below.

Sincerely,

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