

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND  
ETHICS IN WASHINGTON, and

REFUGEE AND IMMIGRANT CENTER  
FOR EDUCATION AND LEGAL SERVICES,  
INC.,

Plaintiffs,

v.

Civil Action No. 18-cv-2473-RC

U.S. DEPARTMENT OF HOMELAND  
SECURITY, and

KIRSTJEN M. NIELSEN, in her official  
capacity as Secretary of Homeland Security,

Defendants.

**DECLARATION OF BIANCA AGUILERA**

I, Bianca Aguilera, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a Staff Attorney in the Children’s Program at the Refugee and Immigrant Center for Education and Legal Services, Inc. (“RAICES”). I submit this declaration in support of Plaintiffs’ Motion for Preliminary Injunction and would testify competently as to the matters stated herein if called upon to do so.

2. RAICES is a nonprofit, non-partisan organization whose mission is to provide effective, free, and low-cost legal services to underserved immigrant children, families, and refugees in Texas. Founded in 1986 as the Refugee Aid Project by community activists in South Texas, RAICES has grown to be the largest immigration legal services provider in Texas, with offices in Austin, Corpus Christi, Dallas, Fort Worth, Houston, and San Antonio. To further its

mission, RAICES provides consultations, direct legal services, representation, assistance, and advocacy to communities in Texas and to clients after they leave the state.

3. As a staff attorney, I provide direct representation to Unaccompanied Children<sup>1</sup> in immigration and state court proceedings. My duties include conducting legal screenings and representation in immigration court to Unaccompanied Children detained in the custody of the Department of Health and Human Services Office of Refugee Resettlement (“HHS”). I have held this position since May 2017. Prior to that I was a Children’s Program Legal Fellow, providing similar support. I am a practicing attorney admitted in Texas since May 2017.

4. The Trump Administration’s Zero Tolerance immigration enforcement and family separation policy (“Zero Tolerance Policy”) has had a dramatic effect on RAICES and its clients. Since the policy was announced in April 2018, RAICES has provided legal representation and services to hundreds of migrant families forcibly separated by the U.S. Department of Homeland Security (“DHS”).

5. RAICES provides legal services to separated families at DHS detention centers throughout Texas, and to Unaccompanied Children at 13 locations operated by HHS in the San Antonio and Corpus Christi areas. As a staff attorney at RAICES, I have represented children in removal proceedings before the U.S. Executive Office for Immigration Review. I have screened many children for asylum, special immigrant juvenile status, and trafficking visas. I have also worked extensively with separated children. For example, in July 2018, the majority of the children in the HHS detention center I was assigned to had been separated from an adult relative.

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<sup>1</sup> For purposes of this Declaration, “Unaccompanied Children” refers to “Unaccompanied Alien Children” within the meaning of 6 U.S.C. § 279(g)(2).

6. When a migrant is apprehended at the border, DHS's U.S. Customs and Border Protection ("CBP") is typically the first government agency the migrant encounters. Within CBP, the Office of Field Operations ("OFO") inspects migrants entering at established ports of entry, and Border Patrol apprehends migrants who enter the United States between ports of entry. CBP transfers adult migrants in its custody to U.S. Immigration and Customs Enforcement ("ICE"), which detains certain migrants with pending immigration proceedings and deports migrants who receive final removal orders. Children apprehended at the border who are separated from their parents or legal guardians and reclassified as Unaccompanied Children are held in DHS custody until they can be transferred to HHS's Office of Refugee Resettlement, which is responsible for the long-term custodial care and placement of Unaccompanied Children.

7. RAICES has handled numerous cases where DHS failed to create records adequately documenting the circumstances of and reasons for child separations, including by failing to document information necessary to link a separated child and adult, and by failing to sufficiently describe a finding of parental criminal history or other purported basis for separation. These recordkeeping failures have directly harmed RAICES's clients, have persisted even after the court in *Ms. L. v. ICE*, No. 3:18-cv-428 (S.D. Cal.) issued its preliminary injunction in June 2018, and they continue to this day.

8. DHS's deficient recordkeeping has also harmed, and continues to harm, RAICES itself. As noted, RAICES's core mission is to provide effective legal services to migrant children and adults undergoing the complex immigration process, including families forcibly separated by DHS. These clients are in an exceedingly vulnerable position. Indeed, DHS routinely separates very young children—including infants and toddlers—who are pre-verbal, lack knowledge or

records relevant to a potential asylum claim, and otherwise incapable of protecting their own rights. Accordingly, because its clients have limited means and are entangled in the complex machinery of the immigration process, RAICES often must rely on records or information supplied by the government in representing its clients, such as Forms I-213, I-200, I-862, I-286, or I-870. These documents are typically created by DHS upon a migrant's apprehension and include sworn statements, narratives, biographical information, notices of rights and obligations, and charges or allegations. Because DHS is the first agency that encounters and processes migrant families before they are separated and transferred to other components, it is critical that they create proper records at the time of apprehension. The failure to do so creates a significant risk that information will be irretrievably lost or otherwise cause hardship. For these reasons, DHS's systematic failure to create proper records has significantly frustrated RAICES's ability to fulfill its core mission, requiring it to expend resources to counteract that harm.

9. To take one example, we represent a six-year-old child who is detained in HHS custody. He was apprehended entering the United States in December 2018 together with his older adult brother. However, DHS has not supplied to RAICES, nor does it appear to possess, any records documenting that the child was apprehended with his brother. It was only after speaking to the child's mother in his home country that RAICES learned that the child had in fact been separated from his brother and that the older brother was sent back to his home country. Not until speaking with the mother—which itself took several weeks to accomplish—did we learn the language the child spoke (which was neither English nor Spanish), and that his detained brother had been sent back home. Had DHS created records documenting that the boy was apprehended with his adult brother, as well as records sufficient to locate that brother, RAICES

could have spoken to the adult brother to seek to determine which language to best communicate with the child, and obtained other information instrumental to the child's case. DHS's recordkeeping failure thus forced RAICES to expend additional time and resources to effectively represent the six-year-old child.

10. DHS's failure to create proper records documenting child separations has also had a broader ripple effect throughout the immigration process for Unaccompanied Children, which has increased RAICES's workload and required it to reallocate resources. In the first instance, DHS's recordkeeping failures—including the failure to document adult companions with whom a child was apprehended at the border—have caused delays in identifying adult sponsors to whom HHS may release Unaccompanied Children. That is because migrant children apprehended at the border often lack information about family or potential sponsors in the United States. Typically, that information is maintained by the adult companion (including not only parents, but other adult family members or caretakers) with whom the child is apprehended at the border, as they are traveling together and the child is reliant on that adult. So, when DHS fails to create records from which a knowledgeable adult companion may be readily identified, it leads to delays in HHS's placement of those children and, in turn, prolongs their detention by HHS.

11. Prolonging HHS's detention of an Unaccompanied Child is itself harmful to the child. It also has other adverse effects. Specifically, because ICE typically does not commence removal proceedings against Unaccompanied Children until they have been detained for at least 60 days, increased detention times make it substantially more likely that the child's removal proceedings will begin while the child is still in HHS custody. This is critical because removal proceedings for detained Unaccompanied Children are demonstrably more difficult than they are

for released Unaccompanied Children. Among other things, detained Unaccompanied Children undergo the proceeding without the support of their family, and, since they are detained at government expense, the immigration court process happens quickly, usually within just a few weeks.

12. Prior to Zero Tolerance, Unaccompanied Children were generally released from HHS custody before this 60-day period—i.e., before removal proceedings commenced. Under that system, RAICES provided detained children with “know your rights” advice, consultations, and post-release referrals to counsel, but generally did not provide representation during the actual removal proceeding. This changed after Zero Tolerance. Due in part to DHS’s recordkeeping failures and attendant delay in the release of Unaccompanied Children, substantially more children have faced removal proceedings while they are still in HHS custody. This has, in turn, increased RAICES’s workload, and required it reallocate resources accordingly.

13. DHS’s poor recordkeeping also affects RAICES’s ability to prepare applications for relief and to obtain evidence for Unaccompanied Children we represent in removal proceedings. As noted, migrant children apprehended at the border often lack information about family or potential sponsors in the United States, knowledge of the reasons why the family fled their home country, or documents or evidence to support a potential asylum case, and that information is typically maintained by an adult companion, if any, with whom the child is apprehended at the border. Children, especially tender age children, struggle to fully articulate themselves in comparison to their adult companion. So, when DHS separates a child from a knowledgeable adult companion and fails to create records linking the child to the adult or document information the adult may possess relevant to the child’s asylum claim or immigration

case, RAICES's legal service efforts are hindered. To counteract this harm, RAICES must independently track down the separated adults to gather relevant information (which is further complicated if the adult is also detained) and must do so quickly to ensure adequate legal services and advice are provided to the children.

14. Similarly, DHS's deficient recordkeeping has impaired RAICES's ability to timely refer detained Unaccompanied Children to federal foster care. Transfer from HHS detention to a foster family may be possible for detained Unaccompanied Children who, among other factors, are eligible for immigration relief. RAICES performs legal screenings to determine if a child is potentially eligible for such relief. As part of our due diligence in conducting those legal screenings, we are typically required to corroborate the child's version of events that forms the basis for potential immigration relief with an adult relative, preferably a parent. However, in numerous situations, DHS's poor recordkeeping has prevented or delayed our efforts to locate a knowledgeable adult who can provide such corroboration, which delays the entire process and, in turn, prolongs the child's detention in HHS custody.

15. DHS's poor recordkeeping also complicates RAICES's efforts to comply with grant requirements to complete specific services in a timely fashion. RAICES receives federal funding from HHS to provide legal services to Unaccompanied Children. In turn, we are expected to provide "know your rights" presentations and intakes to all Unaccompanied Children within a certain number of days after their arrival at an HHS detention center. When working with children under 13 (defined by HHS as "tender age" children), it is nearly impossible to accurately complete an intake without support or assistance from a parent or adult relative. Yet

again, DHS's failure to create adequate records from which such adults can be readily identified has complicated RAICES's ability to complete this task.

16. DHS's deficient recordkeeping has also impeded our efforts to assist in reunifying separated children. For example, in November 2018, RAICES assisted a tender age child who entered the United States with her father and was later separated by DHS. The tender age child informed RAICES that she wanted to reunite with her father. RAICES did not have DHS records documenting the reason for their separation and it appears that none existed. Therefore, RAICES worked to ensure that the father did not pose any threat or danger to the child and, upon making that determination, began working with the HHS case manager to reunify the child and father. Yet, DHS's failure to create proper records from which HHS could determine where the father was detained or the status of his case hampered communication with the father and otherwise delayed the proceedings. The tender age child remained under HHS custody for several months and was released earlier this week.

17. It is my opinion and belief, based on my position and work in the field, that there is a critical need for DHS to document certain information relating to child separations, both before the child is separated from any accompanying adult and continuing through the immigration proceedings of the separated child and adult. If this data is not timely, contemporaneously, and accurately recorded, there is a significant risk it will be irretrievably lost or otherwise cause hardship to RAICES and its clients. For children, the critical data points include without limitation:

- Child's identifying information (name, date of birth, country of origin, physical appearance)
- Date of apprehension
- Location of apprehension
- Primary language



- Child's expected location in HHS custody and contact information for the HHS detention center
- Notation of whether the child entered the country with an adult companion (including both familial and non-familial adults)
- If the child entered the country with an adult companion(s):
  - Name of adult companion
  - Relationship between the child and the adult(s) (familial or otherwise), and identification of any documentation proving that relationship (e.g., guardianship papers)
  - Notation sufficient to link the Alien Registration Numbers (or "A-Numbers") of the child and adult(s) in DHS's system of records
  - Notation of whether child or adult possesses documentation, and if so, a list of such documentation
  - Date of child's separation from adult companion
  - Explanation of basis for separation, including any alleged criminal history of the adult
  - Notation of whether child or adult expressed fear of return or intention to seek asylum
  - Notation of whether adult was referred to another government agency for prosecution or detention and, if so, which agency

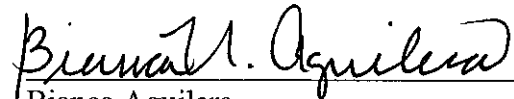
Similarly, for adults, the critical data points include without limitation:

- Adult's identifying information (name, date of birth, country of origin, physical appearance)
- Date of apprehension
- Location of apprehension
- Primary language
- Adult's expected location in DHS custody
- Whether the adult entered the country with a child (including both familial and non-familial children)
- If the adult entered the country with any children:
  - Name of child
  - Relationship between adult and child (familial or otherwise), and identification of any documentation proving that relationship (e.g., guardianship papers)
  - Notation sufficient to link the Alien Registration Numbers (or "A-Numbers") of the adult and child in DHS's system of records
  - Notation of whether the adult or child possesses documentation, and if so, a list of such documentation
  - Date of child's separation from adult companion
  - Explanation of basis for separation, including any alleged criminal history of the adult
  - Notation of whether adult or child expressed fear of return or intention to seek asylum

18. Proper documentation of the above data points is necessary to protect the rights of vulnerable migrant children and adults undergoing the bureaucratic rigors of the immigration process. Because separated children are often very young and incapable of protecting their own rights, DHS has a special responsibility to ensure that proper records of their separations are created. The consequences of DHS's failure to do so are grave and potentially irreversible. Indeed, it could well lead to the permanent separation of families for no reason other than bad recordkeeping. Such an outcome is inexcusable and, most certainly, preventable.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 7, 2019.

  
Bianca Aguilera

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CITIZENS FOR RESPONSIBILITY AND  
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U.S. DEPARTMENT OF HOMELAND  
SECURITY, and

KIRSTJEN M. NIELSEN, in her official  
capacity as Secretary of Homeland Security,

Defendants.

**DECLARATION OF KATHRINE RUSSELL**

I, Kathrine Russell, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a Staff Attorney with the RAICES Community Immigration Services Program at the Refugee and Immigrant Center for Education and Legal Services, Inc. (“RAICES”). I submit this declaration in support of Plaintiffs’ Motion for Preliminary Injunction and would testify competently as to the matters stated herein if called upon to do so.

2. RAICES is a nonprofit, non-partisan organization whose mission is to provide effective, free, and low-cost legal services to underserved immigrant children, families, and refugees in Texas. Founded in 1986 as the Refugee Aid Project by community activists in South Texas, RAICES has grown to be the largest immigration legal services provider in Texas, with offices in Austin, Corpus Christi, Dallas, Fort Worth, Houston, and San Antonio. To further its

mission, RAICES provides consultations, direct legal services, representation, assistance, and advocacy to communities in Texas and to clients after they leave the state.

3. As a staff attorney specializing in detained removal defense, I represent adult clients detained at the South Texas Detention Complex in Pearsall, TX. I have held this position since January 2018. Prior to that I was a supervising attorney in the immigration practice at Brooklyn Defender Services in Brooklyn, NY and a pro bono coordinating attorney with Kids in Need of Defense (KIND) in New York, NY. I am a practicing attorney admitted in Texas since 2009.

4. I offer this declaration primarily to describe several specific case examples of RAICES clients who have been harmed by recordkeeping failures of the U.S. Department of Homeland Security (“DHS”) and its component agencies U.S. Customs and Border Protection (“CBP”) and U.S. Immigration and Customs Enforcement (“ICE”).

5. RAICES has handled numerous cases where DHS failed to create records adequately documenting the circumstances of and reasons for family separations, including by failing to document information necessary to link a separated child and adult, and by failing to sufficiently describe a finding of parental criminal history or other purported basis for separation. These recordkeeping failures have directly harmed, and continue to harm, RAICES’s clients by, among other things: (1) preventing or delaying reunification of separated children with their parents or legal guardians; (2) delaying HHS’s placement of separated children; (3) prolonging detention of separated adults; (4) prolonging detention of separated children and, in turn, increasing the likelihood the children will face removal proceedings while still in HHS custody; (5) impeding the clients’ ability to present information supporting their asylum claims; and (6) impeding the clients from obtaining relief to which they may be entitled under the class

settlement in *Ms. L. v. ICE*, No. 18-cv-428 (S.D. Cal.). These recordkeeping failures persisted even after the *Ms. L* court issued its preliminary injunction in June 2018, and they continue to this day.

6. For example, RAICES represented a father, “J.M.,” who was separated from his wife and three minor daughters after being apprehended at the border in Spring 2018. As is often the case, J.M. was placed in ICE adult detention, while his wife and children were placed in ICE family detention. The wife and children succeeded on their credible fear claims and were released from ICE custody, and their immigration court proceedings are pending. J.M., however, failed his fear claim and was not released from ICE custody. During his immigration proceeding, RAICES attempted to show that J.M. is a parent who has been separated from his children and thus was protected by the *Ms. L* settlement agreement, but DHS reported that they had no record linking him to any of his three daughters. Eventually, due to difficulties from being detained for nearly eight months, J.M. accepted removal and is no longer in the United States. So, in this case, DHS’s recordkeeping failures deprived J.M. of his rights as a *Ms. L* class member and, in turn, prevented him from reunifying with his family.

7. In another case, RAICES represented a 24-year-old man from Honduras, “A.C.,” who was separated from his eight-year-old brother upon their entry to the United States on or about June 23, 2018. A.C. obtained legal guardianship of his brother in Honduras and brought the guardianship order and related documents with him to the United States. He informed DHS officials that he is his little brother’s legal guardian and provided them the supporting paperwork. But DHS failed to create and maintain records documenting A.C.’s guardianship of his little brother. This recordkeeping failure had several harmful consequences, including complicating A.C.’s ability to communicate with his younger brother, and prolonging HHS’s detention of the

younger brother. Indeed, had DHS properly documented A.C.'s guardianship, HHS would have been able to contact A.C. to obtain his consent to the eight-year-old brother's placement with a sponsor, which would have expedited and otherwise facilitated HHS's sponsorship determination. A.C. was held in ICE custody until his release in January 2019, while his eight-year-old brother was sponsored out of HHS custody by a relative also in January 2019, with nearly six full months of detention in HHS custody.

8. RAICES has also represented several parents who were, at one point, detained in ICE custody with their minor children. But after the parents reported to DHS officials that they were forced to assist transnational criminal organizations ("TCOs") in their home countries (*e.g.*, by being extorted or assisting under duress), and that this involuntary assistance was the very persecution they were fleeing from, DHS separated the families. DHS transferred the parents to ICE adult detention centers, reclassified the children as Unaccompanied Children, and then transferred the children to HHS custody. It does not appear that DHS adequately documented the reasons for these separations, and it failed to provide the parents with any documentation to that effect. DHS appears to have used the parents' forced assistance with TCOs to justify the separations.

9. For example, RAICES represented a woman, "Julia," who was detained together with her minor son at a family detention center after they entered the United States in July 2018. Julia has never been arrested or convicted of any crimes anywhere in the world. She had been kidnapped by a TCO in retaliation for her husband's activities against the TCO, during which time she was forced to cook and clean for her kidnappers. The kidnapping and retaliation for protected activities caused her to flee to the United States to seek asylum. In both her and her son's credible fear interviews, she was forthcoming and honest. Shortly thereafter, she and her

son were separated with no explanation provided to her. She was transferred to an adult detention center and her child was transferred to HHS custody. The asylum officer's credible fear interview notes did not indicate that Julia was subject to any bars to asylum or any recommendation that she be separated from her child. To our knowledge, DHS has never explained to Julia the basis of her separation or documented such an explanation. Because of delays in the reunification process, her son was detained in HHS custody for over five months before he was reunified with his mother.

10. In another case, RAICES represented "Y.L.C.," a mother from El Salvador who entered the United States in August 2018 with her minor son. Y.L.C. has never been arrested or convicted of any crimes anywhere in the world. She was detained together with her son in ICE custody at a family detention center. At her reasonable fear interview, she disclosed that she had been forced to participate in TCO activities which formed the basis for her fear claim. Shortly thereafter, she and her son were separated, and her son was transferred to HHS custody in New York, while she was transferred to adult detention. Again, DHS never informed Y.L.C. why she and her son were separated and nothing in the documents provided to her indicates as much. Because she had a prior removal order, and little possibility of release from detention, she accepted a removal order and was deported from the United States. Her son waived his opportunity to fight his case and returned to his home country as well to be with his mother.

11. RAICES represented another mother from Honduras, "C.Q.," who entered the United States in early June 2018 with her minor daughter. C.Q. has never been arrested or convicted of any crimes anywhere in the world. She and her daughter were detained together in ICE custody at a family detention center. At her credible fear interview, she disclosed that she was forced to pay extortion demands to a TCO, which eventually escalated into her being forced



to store TCO members' weapons in her store. These actions by the TCO forced her to flee to the United States to seek asylum. The asylum officer noted that C.Q. may be barred from asylum due to a "serious non-political crime" and approximately one week after the interview, C.Q. and her daughter were separated. C.Q. was transferred to an ICE adult detention center while her daughter was transferred to HHS custody. Again, DHS never informed C.Q. as to the basis of the separation and nothing in the documents provided to her indicates as such. After months of detention and separation from her daughter, C.Q. was finally released from detention on February 27, 2019 to be reunited with her daughter.

12. RAICES represented another mother, "M.G.U.," who was detained with her minor children at a family detention center. After her credible fear interview, she was separated from her children and transferred to an adult detention center, while her children were transferred to HHS custody. After some investigation, RAICES learned that she had a criminal conviction from several years ago for the non-violent crime of making a false claim to U.S. Citizenship. We believe this was the basis for the separation, although DHS did not document the reason for separation or relay it to M.G.U. or RAICES. M.G.U. was eventually reunified with her children pursuant to the preliminary injunction in *Ms. L*. She also pursued a case in the U.S. District Court for the District of Columbia with separate counsel. *See M.G.U. v. Nielsen*, 325 F. Supp. 3d 111, 124 (D.D.C. 2018). Although M.G.U. had already been reunified with her children by the time the court issued a decision in that case, *id.* at 114, the court did grant a preliminary injunction requiring reunification of another plaintiff with her son and prohibiting DHS from removing M.G.U. and the other plaintiffs pending further order of the court, *id.* at 124.

13. At least two other RAICES cases I worked on presented recordkeeping issues as well. In the first, we represented L.D.C., a woman who entered the United States in early June

2018 with her U.S. Citizen child and was separated from him. As a U.S. Citizen, her son was placed with a relative in the United States and was not detained. Although they entered together, ICE appeared to have no record of her entering with or being separated from her son. In the second case, we represented N.M., who entered the country with her nephew and was then separated from him when he was transferred to HHS custody. Throughout her detention, N.M. had absolutely no information about her nephew—she did not speak to him, and had no idea where he was detained. It appears that poor recordkeeping contributed to this lack of information. N.M. filed suit in the U.S. District Court for the District of Columbia, which issued a temporary restraining order preventing her removal. *See Nelsa Montufar-Mejia v. ICE*, No. 18-2131, ECF No. 4 (D.D.C. filed Sept. 13, 2018).

14. In my work I have also seen what appears to be a disconnect, and further evidence of poor recordkeeping, within DHS, and within ICE. In C.Q.'s case, for example, the ICE trial attorney, who prosecutes removal cases in immigration court, had no knowledge that my client had been separated from her daughter. During an immigration court proceeding, the trial attorney advised that he was unaware C.Q. had been separated from her daughter and expressed sympathy for her situation. Yet, given that DHS maintains a single "alien file" per migrant, if DHS had in fact adequately documented that C.Q. had been separated from her daughter, that information should have been readily available to the ICE trial attorney.


15. DHS's failure to adequately document the reasons for separations, particularly separations based on alleged parental criminal history, has impaired RAICES's representational functions and required it to use additional resources to counteract that harm. When DHS separates a family based on a parent's alleged criminal history, RAICES must determine, among other things, whether DHS's finding has any basis and, if so, the circumstances of the alleged

criminal offense. RAICES needs this information to either contest the finding or determine whether it is severe enough to warrant parental separation. These efforts are hindered when DHS's criminal history finding is cursory and poorly documented, and RAICES must expend extra time and effort investigating the issue.

16. For example, RAICES represents a father, "Y.Z.," who is currently detained and was separated from his minor daughter, who remains in HHS custody. The government initially took the position that the father was not entitled to relief under the *Ms. L* settlement agreement due to a criminal issue, but later reversed that determination. The father consequently received a new credible fear interview and obtained a positive credible fear finding, allowing him to seek asylum. However, ICE continued to refuse his reunification with his child ostensibly for the same criminal concern, although it has not provided Y.Z. or RAICES with any explanation or documentation to that effect. With little to no detail from DHS regarding the basis for the continued separation of Y.Z. from his daughter, RAICES spent months conducting numerous interviews with Y.Z., contacting the court where his arrest occurred, and taking other steps to confirm that all of Y.Z.'s criminal charges had in fact been dropped and that he did not have any convictions—all in an effort to ensure that Y.Z. may be reunified with his daughter. Y.Z. was just released and reunified with his daughter, after nearly eight months of separation, yesterday, March 5, 2019.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 6, 2019.

  
Kathrine Russell

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND  
ETHICS IN WASHINGTON, and

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SECURITY, and

KIRSTJEN M. NIELSEN, in her official  
capacity as Secretary of Homeland Security,

Defendants.

Civil Action No. 18-cv-2473-RC

**DECLARATION OF JONATHAN RYAN**

I, Jonathan Ryan, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the President and CEO at the Refugee and Immigrant Center for Education and Legal Services, Inc. (“RAICES”). I submit this declaration in support of Plaintiffs’ Motion for Preliminary Injunction and would testify competently as to the matters stated herein if called upon to do so.

2. RAICES is a nonprofit, non-partisan organization whose mission is to provide effective, free and low-cost legal services to underserved immigrant children, families, and refugees in Texas. Founded in 1986 as the Refugee Aid Project by community activists in South Texas, RAICES has grown to be the largest immigration legal services provider in Texas, with offices in Austin, Corpus Christi, Dallas, Fort Worth, Houston, and San Antonio. To further its

mission, RAICES provides consultations, direct legal services, representation, assistance, and advocacy to communities in Texas and to clients after they leave the state.

3. As President and CEO, I supervise and oversee the entire organization and all departments. I work closely with our Chief Officers to ensure day-to-day operations run smoothly, and am actively involved in development and recruitment. I have been in this role since 2008. Previously I was employed as a staff attorney at another local legal services organization where I provided legal services to immigrants detained in Immigration and Customs Enforcement (“ICE”) custody. I received my B.A. from Columbia College in New York and my J.D. from the University of Texas School of Law. I have been licensed to practice in Texas since 2005.

4. The Trump Administration’s Zero Tolerance immigration enforcement and family separation policy (“Zero Tolerance Policy”) has had a dramatic effect on RAICES and its clients. Since the policy was announced in April 2018, RAICES has provided legal representation and services to hundreds of migrant families forcibly separated by the U.S. Department of Homeland Security (“DHS”). RAICES has also created new programs and initiatives directly in response to Zero Tolerance, including its “Families Together Fund” and its “Legal Defense Fund.”

5. As its name suggests, the Families Together Fund is designed to keep families together as they navigate through the many obstacles presented by our immigration system. Through the program, RAICES ensures pro bono legal representation and comprehensive case management services to migrant families that are personalized to each family’s background, experiences and needs.

6. The Legal Defense Fund is intended to encourage solo practitioners and small firms to accept representation of separated families on a contract basis. Through this fund,

RAICES will distribute up to \$5,000 to qualified attorneys at certain stages over the life of a case, thereby supporting and promoting representation of impacted families at no cost to the clients. Other services RAICES offers directly, or in partnership with other organizations, include assistance with bond payments, emergency assistance, temporary housing, safety planning, and assistance with accessing mental health services and medical care, and support for basic travel needs.

7. Overall, issues relating to family separation and reunification now comprise a significant portion of RAICES's work. For example, staff working in our recently-created Families Together program have billed a total of 5735 hours since May 1, 2018 to date, which is equivalent to roughly 143 forty-hour work weeks. Since June 26, 2018, we have received referrals for over 100 released families in Texas who have been impacted by Zero Tolerance and are requesting representation in immigration court proceedings, and we have opened over 200 cases for legal services to released families. To address this increased workload, we were forced to create six new attorney positions and three new legal assistant positions. Prior to Zero Tolerance, family separation cases represented only a small fraction of our work.

8. RAICES has been harmed, and continues to be harmed, by DHS's failure to create records properly documenting child separations. As noted, RAICES's core mission is to provide effective legal services to migrant children and adults undergoing the complex immigration process, including families forcibly separated by DHS. Because these are vulnerable individuals of limited means who are entangled in the complex machinery of the immigration process, RAICES often must rely on records or information supplied by the government in representing and providing legal services to them. DHS, in particular, has a critical role in creating such records, because it is the first agency that encounters and processes

these individuals before they are transferred to other components. Consequently, DHS's systematic failure to create records adequately documenting the circumstances of and reasons for child separations has significantly impeded RAICES's core function of providing legal representation and services to migrant families, and RAICES has devoted substantial resources to counteract those recordkeeping failures.

9. I have reviewed the declarations of RAICES's Kathrine Russell and Bianca Aguilera submitted in this suit and agree with their observations regarding DHS's recordkeeping failures, and how those failures have harmed RAICES and its clients. I make the following additional observations.

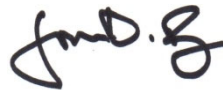
10. Due in part to DHS's recordkeeping failures, RAICES has undertaken its own efforts to help "match" separated family members, in order to facilitate release or representation of migrant families, or simply for our clients' peace of mind. For instance, in July 2018, RAICES launched several tools to assist families and other legal services providers in locating separated families, including its National Families Together Hotline and Separated Parents Intake database. The National Families Together Hotline allows members of the public to call RAICES and seek assistance with locating their loved ones inside of DHS's detention system. The Separated Parents Intake database allows lawyers working with separated children to seek assistance in locating their clients' parents who are detained by DHS. In addition, when we receive a request for assistance in identifying a separated family member, we typically check various government databases and hotlines to try to locate missing family members within the DHS detention system, and, in some instances, provide referrals to pro bono attorneys for legal assistance.

11. To run and maintain these new resources, RAICES diverted its staff away from their existing work so that they could create new systems, train volunteers, and maintain data. Between July 2018 and today, we have received over 1350 calls to the National Families Together Hotline, and inquiries on over 600 separated parents through the Separated Parents Intake database. Thus, RAICES has devoted significant time and resources to these new efforts, which would not have been required if DHS had created adequate records in the first place.

12. In the past few months, RAICES has continued to make significant changes to our internal policies and procedures to address family separation needs. For example, in June 2018, we revised an internal policy specific to parent/child separations that RAICES staff encountering Unaccompanied Children must follow each time they learn a child is separated. The policy requires RAICES staff to track the family's information in a separate spreadsheet, to make efforts to locate and communicate with the separated parent, and to provide legal information to the parent, if possible. These separate procedures require our staff to devote substantial time to locating and communicating with the parent, which impacts their available time to represent and provide legal services to other clients.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 6, 2019.



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Jonathan Ryan



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND  
ETHICS IN WASHINGTON, and

REFUGEE AND IMMIGRANT CENTER  
FOR EDUCATION AND LEGAL  
SERVICES, INC.,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND  
SECURITY, and

KIRSTJEN M. NIELSEN, in her official  
capacity as Secretary of Homeland Security,

Defendants.

Civil Action No. 18-cv-2473-RC

**DECLARATION OF NOAH D. BOOKBINDER**

I, Noah D. Bookbinder, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Executive Director of Citizens for Responsibility and Ethics in Washington (“CREW”), a plaintiff in the above-captioned action. I have served as CREW’s Executive Director since March 23, 2015.

2. CREW is a non-profit, non-partisan organization founded in 2003 that works on behalf of the public to foster an ethical and accountable government. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. To advance its mission, CREW uses a combination of research, litigation, advocacy, and public education about public officials and their actions.

3. As CREW's Executive Director, I oversee and am familiar with CREW's research, litigation, advocacy, and public education efforts.

***CREW's Longstanding Interest in Federal Records Management***

4. CREW has a strong operational interest in ensuring agency compliance with records responsibilities under the Federal Records Act ("FRA"). CREW's efforts to ensure such compliance stem from, among other things, CREW's mission to promote transparency in government activities and decision making, highlight industry influence over agency decisions, and combat ethics violations.

5. CREW has demonstrated its longstanding interest in FRA compliance in various ways, including through letters, complaints, and litigation. For example, in 2007, CREW brought a lawsuit against the Executive Office of the President; the Office of the President; Alan Swendiman, then head of the Office of Administration; the National Archives and Records Administration ("NARA"); and Dr. Allen Weinstein, then Archivist of the United States, challenging their knowing failure to recover, restore, and preserve millions of electronic communications created or received within the White House. *See CREW v. Exec. Office of President*, 587 F. Supp. 2d 48 (D.D.C. 2008).

6. In 2008, CREW sued then-Vice President Richard Cheney challenging his alleged adoption of policies and guidelines that excluded the public from records of his vice presidency in violation of federal recordkeeping laws. *See CREW v. Cheney*, 593 F. Supp. 2d 194 (D.D.C. 2008).

7. In 2018, CREW sued the Environmental Protection Agency, its then Administrator Scott Pruitt, NARA, and Archivist David Ferriero, challenging as contrary to law the failure of EPA and Administrator Pruitt to adequately document EPA policies, decisions, and

essential transactions as the FRA requires, and their failure to maintain a program that adequately documents EPA decisions and activities. *See CREW v. Pruitt*, 319 F. Supp. 3d 252 (D.D.C. 2018).

8. To further its mission of promoting government transparency and accountability, CREW also frequently files requests under the Freedom of Information Act (“FOIA”). CREW disseminates the documents it receives through FOIA requests on its website, [www.citizensforethics.org](http://www.citizensforethics.org), and social media, and uses the documents as the basis for reports, complaints, litigation, blog posts, and other publications widely disseminated to the public.

9. As a frequent FOIA requester, CREW has a unique interest in agencies’ compliance with the FRA. If an agency fails to create records documenting its functions, policies, decisions, procedures, and essential transactions in compliance with the FRA, 44 U.S.C. § 3101, CREW’s FOIA requests yield fewer or no responsive documents. Deprivation of these records frustrates CREW’s ability to fulfill its organizational objectives, including its goal of shedding light on the formulation and implementation of agency policies, and to educate the public about those activities.

10. Since the start of the Trump administration, CREW has submitted hundreds of FOIA requests on a wide variety of subjects. Many of CREW’s FOIA requests are still pending.

***CREW’s Interest in DHS’s Records Management Practices***

11. Since January 2017, CREW has submitted 18 separate FOIA requests to the U.S. Department of Home land Security (“DHS”), many of which remain outstanding.

12. Those pending requests include two that CREW sent to DHS on October 12, 2018. The first of these requests seeks six categories of documents:

- All documents from January 20, 2017 to the present reflecting policies, procedures, protocols, directives, or methods by which DHS identifies and

tracks alien minors taken in its custody, including without limitation documents reflecting policies on photographing, fingerprinting, or the issuance of bracelets or other identifying material to such minors.

- All documents from January 20, 2017 to the present concerning the creation, existence, or maintenance of a “central database” containing information compiled by DHS regarding “how [minors] illegally entered the country and whether or not they were with a parent or adult and, to the extent possible, the parent(s) or guardian(s) information and location,” which DHS and the U.S. Department of Health and Human Services (“HHS”) “can access and update when a parent(s) or minor(s) location information changes” (the “Central Database”), as described in the DHS Fact Sheet: Zero-Tolerance Prosecution and Family Reunification, dated June 23, 2018, <https://bit.ly/2K6QRpm>. This request includes without limitation all documents reflecting policies, procedures, protocols, or methods concerning the Central Database.
- All documents from January 20, 2017 to the present concerning the creation, existence, or maintenance of a “matching table” or manually-compiled spreadsheet maintained by HHS, U.S. Customs and Border Protection (“CBP”), and U.S. Immigration and Customs Enforcement personnel containing location information for separated parents and legal guardians and minors (the “Matching Table”), as described in the DHS Office of Inspector General report titled Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy, OIG-18-84, dated September 27, 2018, at pages 10-11, <https://bit.ly/2NhATFE> (“OIG-18-84 Report”). This request includes without limitation all documents reflecting policies, procedures, protocols, directives, or methods concerning the Matching Table.
- Documents from the Central Database, the Matching Table, or any other source of records sufficient to identify (a) the number of alien minors who were apprehended at ports of entry following DHS’s implementation of the Zero Tolerance Policy; (b) the number of such minors who were separated from their parents or legal guardians after being apprehended by DHS; (c) the number and locations of such minors who have been reunited with their parents or legal guardians, and the dates of those reunifications; and (d) the number and locations of such minors who remain, as of the date of this FOIA request, separated from their parents or legal guardians.
- All documents from January 20, 2017 to the present reflecting policies, procedures, protocols, directives, or methods by which the CBP Office of Field Operations (“OFO”) transmits to HHS information regarding alien minors who are apprehended at ports of entry and then transferred to HHS’s custody. This request includes without limitation (a) documents concerning OFO’s manual entry of information into Microsoft Word documents that are then emailed to HHS, as described in the OIG-18-84 Report at page 10; and (b) documents

concerning DHS's storage of information reflecting such transmissions from DHS to HHS, and its ability to retrieve that information.

- Documents sufficient to identify the number and dates of DHS's transmissions of information regarding alien minors to HHS that have occurred following DHS's implementation of the Zero Tolerance Policy.

A true and correct copy of this request is attached as **Exhibit A**.

13. CREW made this request to shed light on "serious deficiencies in DHS's record management policies and practices" documented in a report by DHS's Office of Inspector General, *Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy*. Exhibit A at 4. Those deficiencies have had catastrophic consequences in connection with DHS's implementation of the Zero Tolerance policy. *Id.* CREW also seeks these records to determine "whether DHS currently possesses critical data relating to alien family separations that it should possess if it were complying with applicable law and records management requirements." *Id.* CREW's request was further motivated by reports of "DHS's possible destruction of records that could have been used to reunite hundreds of families," which "would plainly violate the Federal Records Act, if not other laws." *Id.*

14. In response to a request from DHS, CREW made a clarification regarding one item of its FOIA request on November 5, 2018. To date, CREW has received no further response from DHS, nor any determination on this request within the meaning of FOIA.

15. The second FOIA request CREW sent to DHS on October 12, 2018 seeks "all documents reflecting currently operative policies, procedures, protocols, or directives concerning DHS's records management program." A true and correct copy of this request is attached as **Exhibit B**.

16. CREW submitted this request for the same reasons motivating its other October 12, 2018 request, described above. *See* Exhibit B at 3.

17. To date, DHS has not made a determination on this request within the meaning of the FOIA.

18. To the extent that these and other FOIA requests yield fewer or no responsive documents because of DHS's failure to comply with the FRA, CREW is deprived of critical documents and information that it needs to fulfill its mission. That mission includes shedding light on the formulation and implementation of agency policies, such as Zero Tolerance, that have a substantial impact on individuals with whom the government interacts.

19. Once this harm is inflicted, it cannot be undone. First, even if DHS later creates the records that it failed to create in the first instance, and CREW eventually obtains those records, CREW will still have been deprived of *timely* access to them. Such a deprivation is itself harmful to CREW, because stale information has less value to CREW's public education and advocacy efforts. Second, if the agency fails to create proper and contemporaneous records in the first instance, there is a significant risk that the agency will not be able to fully recreate those records after the fact, resulting in an irretrievable loss of records or information.

20. CREW will continue submitting FOIA requests to DHS, and other agencies, on matters relating to CREW's ongoing research, litigation, advocacy, and public education efforts, and has a continuing interest in agency compliance with recordkeeping responsibilities under the FRA. To the extent that CREW is unable to obtain records through FOIA requests because of legally deficient recordkeeping practices, CREW will continue to suffer harm from the deprivation of critical information it needs to fulfill its mission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: March 5, 2019



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Noah D. Bookbinder

**Exhibit A to  
Bookbinder Decl.**





October 12, 2018

**BY EMAIL:** [foia@hq.dhs.gov](mailto:foia@hq.dhs.gov)

Jonathan Cantor  
Acting Chief Privacy Officer/Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murry Lane SW  
STOP-0655  
Washington, D.C. 20528-0655

Re: Freedom of Information Act Request

Dear Mr. Cantor:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Department of Homeland Security (“DHS”) regulations.

Specifically, CREW requests:

1. All documents from January 20, 2017 to the present reflecting policies, procedures, protocols, directives, or methods by which DHS identifies and tracks alien minors taken in its custody, including without limitation documents reflecting policies on photographing, fingerprinting, or the issuance of bracelets or other identifying material to such minors.
2. All documents from January 20, 2017 to the present concerning the creation, existence, or maintenance of a “central database” containing information compiled by DHS regarding “how [minors] illegally entered the country and whether or not they were with a parent or adult and, to the extent possible, the parent(s) or guardian(s) information and location,” which DHS and the U.S. Department of Health and Human Services (“HHS”) “can access and update when a parent(s) or minor(s) location information changes” (the “Central Database”), as described in the DHS Fact Sheet: Zero-Tolerance Prosecution and Family Reunification, dated June 23, 2018, <https://bit.ly/2K6QRpm>. This request includes without limitation all documents reflecting policies, procedures, protocols, or methods concerning the Central Database.
3. All documents from January 20, 2017 to the present concerning the creation, existence, or maintenance of a “matching table” or manually-compiled spreadsheet maintained by HHS, U.S. Customs and Border Protection (“CBP”), and U.S. Immigration and Customs

Jonathan Cantor  
October 12, 2018  
Page 2

Enforcement personnel containing location information for separated parents and legal guardians and minors (the “Matching Table”), as described in the DHS Office of Inspector General report titled Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy, OIG-18-84, dated September 27, 2018, at pages 10-11, <https://bit.ly/2NhATFE> (“OIG-18-84 Report”). This request includes without limitation all documents reflecting policies, procedures, protocols, directives, or methods concerning the Matching Table.

4. Documents from the Central Database, the Matching Table, or any other source of records sufficient to identify (a) the number of alien minors who were apprehended at ports of entry following DHS’s implementation of the Zero Tolerance Policy; (b) the number of such minors who were separated from their parents or legal guardians after being apprehended by DHS; (c) the number and locations of such minors who have been reunited with their parents or legal guardians, and the dates of those reunifications; and (d) the number and locations of such minors who remain, as of the date of this FOIA request, separated from their parents or legal guardians.

5. All documents from January 20, 2017 to the present reflecting policies, procedures, protocols, directives, or methods by which the CBP Office of Field Operations (“OFO”) transmits to HHS information regarding alien minors who are apprehended at ports of entry and then transferred to HHS’s custody. This request includes without limitation (a) documents concerning OFO’s manual entry of information into Microsoft Word documents that are then emailed to HHS, as described in the OIG-18-84 Report at page 10; and (b) documents concerning DHS’s storage of information reflecting such transmissions from DHS to HHS, and its ability to retrieve that information.

6. Documents sufficient to identify the number and dates of DHS’s transmissions of information regarding alien minors to HHS that have occurred following DHS’s implementation of the Zero Tolerance Policy.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the

Jonathan Cantor  
October 12, 2018  
Page 3

document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *See Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A) and DHS regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

In April 2018, the Trump Administration announced a new “Zero Tolerance” immigration enforcement policy, requiring that all improper entry offenses be referred for criminal prosecution to the extent possible. As the DHS Office of Inspector General (“OIG”) has noted, this policy “fundamentally changed DHS’ approach to immigration enforcement.”<sup>1</sup> Specifically, “[b]ecause minor children cannot be held in criminal custody with an adult, alien adults who entered the United States illegally would have to be separated from any accompanying minor children when the adults were referred for criminal prosecution.”<sup>2</sup> The children were then held in “DHS custody until they could be transferred to the [HHS] Office of Refugee Resettlement.”<sup>3</sup>

The fallout from the Zero Tolerance Policy was catastrophic, resulting in thousands of children being ripped from their parents. Following massive public outcry, President Trump halted the family separations by Executive Order issued June 20, 2018. On June 26, 2018, a federal court ordered the Government to reunify separated children and parents within 30 days—an order it has still not fulfilled.

On September 27, 2018, the DHS OIG issued a report titled Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy. The OIG found that “DHS was not fully prepared to implement the Administration’s Zero Tolerance Policy or to deal with some of its after-effects,” and that “DHS . . . struggled to identify, track, and reunify families separated under Zero Tolerance due to limitations with its information technology system.”<sup>4</sup> The OIG further noted that contrary to DHS’s public statements in June 2018 that it had a “central database” with location information for separated parents and minors, “OIG found no evidence that such a database exists.”<sup>5</sup> The OIG also observed

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<sup>1</sup> OIG-18-84 Report at 2.

<sup>2</sup> *Id.* at 3.

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

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Id.* at 10.

Jonathan Cantor  
October 12, 2018  
Page 4

problems with DHS's record management practices, noting that the agency took "many weeks" to provide OIG with data relating to alien family separations and unification, that the data DHS eventually supplied did not appear to be maintained "in a readily accessible format," and that the data was "incomplete and inconsistent, raising questions about its reliability."<sup>6</sup>

Concerns have also been raised about DHS's possible destruction of records that could have been used to reunite hundreds of families.<sup>7</sup> Such conduct would plainly violate the Federal Records Act, if not other laws.

The requested records will shed light on serious deficiencies in DHS's record management policies and practices—deficiencies which have had catastrophic consequences in connection with the agency's implementation of the Zero Tolerance policy. The records will also reveal whether DHS currently possesses critical data relating to alien family separations that it should possess if it were complying with applicable law and records management requirements. As indicated by the widespread media coverage it has received, these are issues of intense public interest.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, [www.citizensforethics.org](http://www.citizensforethics.org). The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. See *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a "representative of the news media" and broadly interpreting the term to include "any person or organization which regularly publishes or disseminates information to the public").

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<sup>6</sup> *Id.* at 11.

<sup>7</sup> See Letter from CREW to U.S. Archivist, July 6, 2017, available at <https://bit.ly/2IWqi2o>; Caitlin Dickerson, Trump Administration in Chaotic Scramble to Reunify Migrant Families, *New York Times*, July 6, 2018, available at <https://nyti.ms/2MU6hKG>; Michelle Mark, Customs agents reportedly deleted records that could have been used to reunite hundreds of immigrant families, *Insider*, July 6, 2018, available at <https://bit.ly/2A7QzYO>; Letter from Sen. Blumenthal et al. to DHS, July 30, 2018, available at <https://bit.ly/2LEb0DP>.

Jonathan Cantor  
October 12, 2018  
Page 5

CREW routinely and systematically disseminates information to the public in several ways. CREW's website receives tens of thousands of page views every month. The website includes a blog that reports on and analyzes newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts the documents it receives under the FOIA on its website, and that site has been visited hundreds of thousands of times.

Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

### **Conclusion**

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or [nsus@citizensforethics.org](mailto:nsus@citizensforethics.org). Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me at either [nsus@citizensforethics.org](mailto:nsus@citizensforethics.org) or Nikhel Sus, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,



Nikhel Sus  
Staff Counsel

**Exhibit B to  
Bookbinder Decl.**



October 12, 2018

**BY EMAIL:** [foia@hq.dhs.gov](mailto:foia@hq.dhs.gov)

Jonathan Cantor  
Acting Chief Privacy Officer/Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murry Lane SW  
STOP-0655  
Washington, D.C. 20528-0655

Re: Freedom of Information Act Request

Dear Mr. Cantor:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Department of Homeland Security (“DHS”) regulations.

Specifically, CREW requests all documents reflecting currently operative policies, procedures, protocols, or directives concerning DHS’s records management program. This request includes without limitation (a) the “Policy & Procedures” publication referenced in Section 6 of DHS Records Management Directive 0550.1; and (b) all records management policies, procedures, protocols, or directives applicable to U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement.

Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records.

If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the

Jonathan Cantor  
October 12, 2018  
Page 2

document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. *See Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A) and DHS regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

In April 2018, the Trump Administration announced a new “Zero Tolerance” immigration enforcement policy, requiring that all improper entry offenses be referred for criminal prosecution to the extent possible. As the DHS Office of Inspector General (“OIG”) has noted, this policy “fundamentally changed DHS’ approach to immigration enforcement.”<sup>1</sup> Specifically, “[b]ecause minor children cannot be held in criminal custody with an adult, alien adults who entered the United States illegally would have to be separated from any accompanying minor children when the adults were referred for criminal prosecution.”<sup>2</sup> The children were then held in “DHS custody until they could be transferred to the [HHS] Office of Refugee Resettlement.”<sup>3</sup>

The fallout from the Zero Tolerance Policy was catastrophic, resulting in thousands of children being ripped from their parents. Following massive public outcry, President Trump halted the family separations by Executive Order issued June 20, 2018. On June 26, 2018, a federal court ordered the Government to reunify separated children and parents within 30 days—an order it has still not fulfilled.

On September 27, 2018, the DHS OIG issued a report titled Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy. The OIG found that “DHS was not fully prepared to implement the Administration’s Zero Tolerance Policy or to deal with some of its after-effects,” and that “DHS . . . struggled to identify, track, and reunify families separated under Zero Tolerance due to limitations with its information technology system.”<sup>4</sup> The OIG further noted that contrary to DHS’s public statements in June 2018 that it had a “central database” with location information for separated parents and

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<sup>1</sup> DHS OIG, Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy, OIG-18-84, at 2 (Sept. 27, 2018), *available at* <https://bit.ly/2NhATFE>.

<sup>2</sup> *Id.* at 3.

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

<sup>4</sup> *Id.* at 1.



Jonathan Cantor  
October 12, 2018  
Page 3

minors, “OIG found no evidence that such a database exists.”<sup>5</sup> The OIG also observed problems with DHS’s record management practices, noting that the agency took “many weeks” to provide OIG with data relating to alien family separations and unification, that the data DHS eventually supplied did not appear to be maintained “in a readily accessible format,” and that the data was “incomplete and inconsistent, raising questions about its reliability.”<sup>6</sup>

Concerns have also been raised about DHS’s possible destruction of records that could have been used to reunite hundreds of families.<sup>7</sup> Such conduct would plainly violate the Federal Records Act, if not other laws.

The requested records will shed light on serious deficiencies in DHS’s record management policies and practices—deficiencies which have had catastrophic consequences in connection with the agency’s implementation of the Zero Tolerance policy. As indicated by the widespread media coverage it has received, these are issues of intense public interest.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public’s right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, [www.citizensforethics.org](http://www.citizensforethics.org). The release of information obtained through this request is not in CREW’s financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a “representative of the news media” and broadly interpreting the term to include “any person or organization which regularly publishes or disseminates information to the public”).

CREW routinely and systematically disseminates information to the public in several ways. CREW’s website receives tens of thousands of page views every month. The website

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<sup>5</sup> *Id.* at 10.

<sup>6</sup> *Id.* at 11.

<sup>7</sup> *See* Letter from CREW to U.S. Archivist, July 6, 2017, available at <https://bit.ly/2IWqi2o>; Caitlin Dickerson, Trump Administration in Chaotic Scramble to Reunify Migrant Families, *New York Times*, July 6, 2018, available at <https://nyti.ms/2MU6hKG>; Michelle Mark, Customs agents reportedly deleted records that could have been used to reunite hundreds of immigrant families, *Insider*, July 6, 2018, available at <https://bit.ly/2A7QzYO>; Letter from Sen. Blumenthal et al. to DHS, July 30, 2018, available at <https://bit.ly/2LEb0DP>.

Jonathan Cantor  
October 12, 2018  
Page 4

includes a blog that reports on and analyzes newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. In addition, CREW posts the documents it receives under the FOIA on its website, and that site has been visited hundreds of thousands of times.

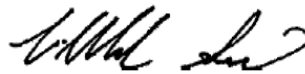
Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

### **Conclusion**

If you have any questions about this request or foresee any problems in fully releasing the requested records, please contact me at (202) 408-5565 or [nsus@citizensforethics.org](mailto:nsus@citizensforethics.org). Also, if CREW's request for a fee waiver is not granted in full, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to me at either [nsus@citizensforethics.org](mailto:nsus@citizensforethics.org) or Nikhel Sus, Citizens for Responsibility and Ethics in Washington, 455 Massachusetts Ave., N.W., Washington, D.C. 20001. Thank you for your assistance in this matter.

Sincerely,



Nikhel Sus  
Staff Counsel