



October 27, 2021

**Via Online Portal and Email**

Douglas Hibbard, Chief, Initial Request Staff  
Office of Information Policy U.S. Department of Justice  
441 G Street, N.W., 6<sup>th</sup> Floor  
Washington, D.C. 20530-0001  
[MRUFOIA.Requests@usdoj.gov](mailto:MRUFOIA.Requests@usdoj.gov)

**Freedom of Information Act Request: ODAG Communications**

Dear Mr. Hibbard:

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. Pursuant to 5 U.S.C. § 552(a), we make the following Freedom of Information Act request.

**I. Special Definitions**

“FBI” means the Federal Bureau of Investigation and/or any person with an email containing “fbi.gov”

“October 4 Memo” means U.S. Dep’t of Justice, ATTORNEY. GEN. MEM. RE PARTNERSHIP AMONG FEDERAL, STATE, LOCAL, TRIBAL, AND TERRITORIAL LAW ENFORCEMENT TO ADDRESS THREATS AGAINST SCHOOL ADMINISTRATORS, BOARD MEMBERS, TEACHERS, AND STAFF (Oct. 4, 2021) <https://www.justice.gov/ag/page/file/1438986/download>

“ODAG” means any person in the Office of the Deputy Attorney General

“OPA 21-960” means U.S. Dep’t of Justice Office of Public Affairs, *Justice Department Addresses Violent Threats Against School Officials and Teachers* (Oct. 4, 2021) <https://www.justice.gov/opa/pr/justice-department-addresses-violent-threats-against-school-officials-and-teachers>

“Record” has the meaning given at 44 U.S.C. § 3301(a)(1)

## II. Custodians

- A. ODAG
- B. Lisa O. Monaco
- C. All persons with the title Assistant Deputy Attorney General
- D. All attorneys in ODAG with a grade of GS-13 or above.

## III. Requested Records

A. All records of or concerning communications between all custodians and the FBI regarding the October 4 Memo, OPA 21-960, and/or the subject matter thereof. The time frame for this Item is October 1, 2021, to October 8, 2021.

B. The calendar(s) of all custodians in groups B, C, and D, listed above. The time frame for this Item is October 1, 2021, to October 8, 2021.

C. All records of or concerning communications between any custodian and any person having an email address containing eop.gov or dhs.gov regarding any of the subjects of Item A. The time frame for this Item is October 1, 2021, to October 8, 2021.

## IV. Processing

FOIA requires the Department to disclose records freely and promptly. The department must liberally construe AFL's requests and make a good faith effort to search for requested records using methods "which can be reasonably expected to produce the information requested." At all times, FOIA must be construed to carry out Congress's open government mandate according to the ordinary public meaning of its terms at the time of its enactment.<sup>1</sup> As a general matter:

- Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. If a record contains information responsive to a FOIA request, then the Department must disclose the entire record, as a single record cannot be split into responsive and non-responsive bits. Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.

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<sup>1</sup> 5 U.S.C. §§ 552(a)(3)(A), 552(a)(6)(A); *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978); *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151 (1989); *Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990).

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please construe both our Items and the term “record” broadly and give full effect to all applicable authorities.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move records to official systems within a certain time. AFL has a right to records in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.
- Please use all available tools to conduct a complete and efficient search for potentially responsive records. Many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program or similar policies. These provide options for searching emails and other electronic records in a manner reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, then please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted before our Items are processed. If potentially responsive records are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold.

## **V. Fee Waiver**

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10, AFL requests a waiver of all search and duplication fees.

Fees should be waived “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” AFL’s request concerns identifiable operations or activities of the government, and the information requested is likely to contribute significantly to the public understanding such activities.

AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. As a nonprofit organization primarily engaged in the dissemination of information to educate the public, AFL does not have a commercial purpose and the release of the information requested is not primarily in AFL’s financial interest. Our status as a qualified non-commercial public education and news media requester previously has been acknowledged and recognized by this department and by the Departments of Defense, Education, Energy, Interior, Health and Human Services, and Homeland Security, and the Office of the Director of National Intelligence.

## VII. Expedited Processing

AFL requests expedited processing of Items A and B. In support thereof, AFL certifies its compelling need for expedited processing under 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e), and states as follows:

A. As other federal agencies have acknowledged in granting AFL expedited processing, AFL is primarily engaged in disseminating information.”<sup>2</sup> Additionally, there is an urgency to inform the public regarding the circumstances behind both the October 4 Memo and OPA 21-960.<sup>3</sup> In these documents, the Attorney General *promised* a coordinated, nationwide federal law enforcement deployment against parents, a deployment including “each” United States Attorney, the FBI, and the department’s National Security Division. However, it is now clear the given justification for the unprecedented measures outlined therein was merely fabricated political pretext. Ostensibly, the October 4 Memo and OPA 21-960 were based on the manufactured, false, and now retracted National School Boards Association letter of September 29, 2021.<sup>4</sup>

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<sup>2</sup> See Exhibit 1.

<sup>3</sup> See Letter from Rep. Jim Jordan, Ranking Member, et al, to the Hon. Merrick B. Garland (Oct. 25, 2021) <https://republicans-judiciary.house.gov/wp-content/uploads/2021/10/2021-10-25-HJC-GOP-to-Garland-re-school-memo.pdf>

<sup>4</sup> See *id.*; see also Ronn Blitzer, *Garland Grilled on School Board Memo, Hunter Biden, Jan. 6 at House Judiciary Hearing*, FOX NEWS (Oct. 21, 2021) <https://www.foxnews.com/politics/merrick-garland-house-judiciary-committee-hearing-doj-testimony>; Samuel Chamberlin, *WH Aided School Board Group’s ‘Domestic Terrorism’ Letter Before Garland Sicked FBI on Parents*, THE NEW YORK POST (Oct.

In testimony before the House Judiciary Committee on October 21, 2021, he said that the letter “was brought to our attention, and that someone at the White House had discussed it with someone at the Justice Department. When asked who from the White House and department had that conversation, the Attorney General said he did not know.<sup>5</sup> The common public meaning of “urgency” at the time of § 552(a)(6)(E)(v)(II)’s enactment was “the quality or state of being urgent.” The common public meaning of “urgent”, in turn, was “requiring or compelling speedy action or attention.” The civil liberties and political implications of this matter are obvious, profound, and require and compel speedy production of the requested records. Accordingly, this request should receive expedited processing under 5 U.S.C. § 552(a)(6)(E)(i).

B. Our request also meets three of the department’s regulatory tests for expedited processing. First, it satisfies 28 C.F.R. § 16.5(e)(ii), for the reasons discussed above. Second, it satisfies § 16.5(iii), providing for expedited processing of requests for records involving the “loss of substantial due process rights.” Deploying federal law enforcement against perceived political opponents to, at a minimum, chill their First Amendment rights, and using a false, manufactured pretext to do so,

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21, 2021) <https://nypost.com/2021/10/21/wh-aided-school-board-groups-letter-before-garland-sicced-fbi-on-parents/>; Jordan Davidson, *AG Merrick Garland Admits Federal War On Parents Sprang From School Boards Letter, Not Evidence*, THE FEDERALIST (Oct. 21, 2021) <https://thefederalist.com/2021/10/21/ag-merrick-garland-admits-federal-war-on-parents-sprang-from-school-boards-letter-not-evidence/>; see also Nat’l School Board Ass’n, *Letter to Joseph R. Biden Re: Federal Assistance to Stop Threats and Acts of Violence Against Public Schoolchildren, Public School Board Members, and Other Public School District Officials and Educators* (sic) at 5 (Sept. 29, 2021) <https://nsba.org/-/media/NSBA/File/nsba-letter-to-president-biden-concerning-threats-to-public-schools-and-school-board-members-92921.pdf>. Alleging, “acute threats and actions that are disruptive to ... interstate commerce” (sic), the letter solicited “the expertise and resources of the U.S. Department of Justice, Federal Bureau of Investigation (FBI), U.S. Department of Homeland Security, U.S. Secret Service, and its National Threat Assessment Center”. The letter, however, was false and misleading. For example, it cited the case of a Virginia father who was arrested at a school board meeting as evidence of malicious threat. However, it neglected to mention he was arrested for attempting to speak out about his ninth-grade daughter, who had been raped in a girls’ bathroom by a boy who had access to the intimate facility solely because he “identified” as gender fluid and wore a dress, at a school board meeting about “equity.” Also, it asserted that “Coupled with attacks against school board members and educators for approving policies for masks to protect the health and safety of students and school employees, many public school (sic) officials are also *facing physical threats* because of propaganda purporting the false inclusion of critical race theory within classroom instruction and curricula.” (Emphasis added.) As support for this claim, it cited an analysis by the Armed Conflict Location & Event Data Project. However, this analysis concluded “all anti-CRT events involving these actors have remained peaceful.” In other words, the alleged source for the threshold claim that public school officials are facing physical threats over racial indoctrination proves the exact opposite. Association Letter at 1 n.1 <https://nsba.org/-/media/NSBA/File/nsba-letter-to-president-biden-concerning-threats-to-public-schools-and-school-board-members-92921.pdf> *citing* The Armed Conflict Location & Event Data Project (ACLED), “Fact Sheet: Demonstrations over Critical Race Theory in the United States,” July 14, 2021, [https://acleddata.com/acleddatanew/wp-content/uploads/2021/07/ACLED\\_Fact-Sheet\\_CRT-Demos\\_2021.pdf](https://acleddata.com/acleddatanew/wp-content/uploads/2021/07/ACLED_Fact-Sheet_CRT-Demos_2021.pdf); However, <https://acleddata.com/2021/07/14/fact-sheet-demonstrations-over-critical-race-theory-in-the-united-states/> reflects no violent anti-CRT protests.

<sup>5</sup> Blitzer, *supra* note 4.

would certainly seem to meet this test. Third, it satisfies § 16.5(e)(1)(iv), providing for expedited processing whenever it is determined that the request involves a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.<sup>6</sup>

C. Our request also meets the Circuit's three factor test for expedited processing test.<sup>7</sup> Respecting factor one, as discussed *supra*, the subject of our request is a matter public concern and media interest that is central to a pressing issue of the day. It is very much a currently unfolding story.<sup>8</sup> Respecting factor two, a delayed response will compromise significant and legally recognized interests. Specifically, if production is delayed, then both AFL and the public will be precluded from obtaining in a timely fashion information vital to the current and ongoing debate surrounding the October 4<sup>th</sup> Memo, OPA 21-960, and the Biden Administration's unprecedented

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<sup>6</sup> See notes 3, 4, and 5, *supra*; see also Tyler O'Neil, *Virginia Parents Slam Obama's 'Tone-deaf' Dismissal of Education Issues Amid Alleged Sexual Assault, Obama Suggested that an Alleged Sexual Assault Cover-up in School is 'Fake Outrage' and a 'Trumped-up' Issue*, FOX NEWS (Oct. 25, 2021) <https://www.foxnews.com/politics/virginia-parents-slam-obamas-tone-deaf-dismissal-of-education-issues-in-governor-race>; Chuck Ross, *Biden Admin Taps School Board Association Honcho For Post In Wake Of Infamous Letter, Appointment is the Latest Indication of the Biden Administration's Collaboration with the Group*, THE WASHINGTON FREE BEACON (Oct. 25, 2021) <https://freebeacon.com/biden-administration/school-board-association-president-got-federal-post-after-infamous-letter/>; Noah Pollack, TWITTER (Oct. 22, 2021, 8:21 pm) <https://twitter.com/NoahPollak/status/1451705222531674112> ("Breaking: In the wake of yesterday's @FreeBeacon report, National School Board Association announces "we regret and apologize for the letter" to Biden admin characterizing concerned parents as potentially domestic terrorists"); see also Valerie Richardson, *School Boards Group Apologizes for Letter Linking Protesting Parents to Domestic Terrorism, Attorney General Merrick Garland Created Task Force to Respond to Threats*, THE WASHINGTON TIMES (Oct. 23, 2021) <https://www.washington-times.com/news/2021/oct/23/nsba-apologizes-letter-linking-rowdy-school-board-/>; Chuck Ross, *'No Justification': School Board Association Retracts Letter Likening Parents to Domestic Terrorists, Admission comes in wake of Free Beacon report exposing coordination with White House*, THE WASHINGTON FREE BEACON (Oct. 23, 2021) <https://freebeacon.com/biden-administration/school-board-group-apologizes-for-comparing-parents-to-domestic-terrorists/>; Brittany Bernstein, *Parents Group Sounds Alarm Over AG Garland's Ties to Pro-CRT, Zuckerberg-Backed Consultancy*, NATIONAL REVIEW (Oct. 7, 2021) <https://www.nationalreview.com/news/parents-group-sounds-alarm-over-ag-garlands-ties-to-pro-crt-zuckerberg-backed-consultancy/>; Jerry Dunleavy, *GOP Senators Rise Conflict of Interest Concerns Over Garland's Son-In-Law's Education Company*, WASHINGTON EXAMINER (Oct. 10, 2021) <https://www.washingtonexaminer.com/news/gop-senators-raise-conflict-interest-concerns-garland-son-in-law-company-panorama-education>; Sen. Ted Cruz, Sen. Mike Lee, and Sen. Marsha Blackburn, Letter to the Hon. Merrick Garland, Attorney General (Oct. 8, 2021) <https://www.cruz.senate.gov/imo/media/doc/202110.08crtlettertoaggarland.pdf>; Elizabeth Elkind, *Daughter of Attorney General Who Ordered DOJ to Probe Angry Parents for Domestic Terrorism is Married to Founder of Education Group that Promotes Critical Race Theory: Merrick Garland Accused of a Conflict of Interest*, DAILY MAIL (Oct. 7, 2021) <https://www.dailymail.co.uk/news/article-10069425/Garland-accused-conflict-ties-education-group-promoting-Critical-Race-Theory.html>. Indeed, even this denial garnered media attention. Michael Lee, *America First Legal Request for Expedited FOIA on DOJ Targeting School Board 'Violence' Denied*, Fox News (Oct. 18, 2021) <https://www.foxnews.com/politics/america-first-legal-request-expedited-foia-seeking-information-doj-targeting-parents-denied>.

<sup>7</sup> *Al-Fayed v. Central Intelligence Agency*, 254 F.3d 300, 309-10 (D.C. Cir. 2001).

<sup>8</sup> *Brennan Ctr. for Just. at NYU Sch. of L. v. Dep't of Com.*, 498 F. Supp. 3d 87, 98 (D.D.C. 2020).

decision to use the department's coercive powers against American parents. Being closed off from the opportunity to debate the legality and propriety of the department's conduct here itself is a harm in an open democracy.<sup>9</sup> Disclosing relevant records months or even years from now will be of academic interest only—any damage will have been done and stale information is of little value.<sup>10</sup> Respecting factor three, AFL's request clearly concerns "federal government activity."

D. Any concerns the department or other requesters may raise about granting AFL expedited processing have been weighed by Congress, and Congress has concluded them to be of subsidiary importance to compelling and time-sensitive cases, such as this. Practically speaking, AFL believes it is difficult for the department to credibly argue expedited processing in this case would cause much delay to other requesters given the very specific nature of AFL's FOIA requests and the extremely limited time window.

## VIII. Production

AFL welcomes production on an agreed rolling basis to speed production and reduce agency burden. If possible, please provide responsive records in an electronic format by email, native format by mail, or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14<sup>th</sup> Street NW, 5<sup>th</sup> Floor, Washington, D.C. 20005.

## IX. Conclusion

If you have any questions about this request or believe further discussions regarding search and processing will speed the efficient production of records of interest to AFL, then please contact me at [FOIA@aflegal.org](mailto:FOIA@aflegal.org). Finally, please contact us immediately if AFL's request for a fee waiver is not granted in full. Thank you in advance for your cooperation.

Sincerely yours,

/s/ Reed D. Rubinstein  
Reed D. Rubinstein  
America First Legal Foundation

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<sup>9</sup> *Brennan Ctr.*, 498 F. Supp. 3d at 98; *Protect Democracy Project, Inc. v. U.S. Dep't of Def.*, 263 F. Supp. 3d 293, 299-300 (D.D.C. 2017); *Elec. Priv. Info. Ctr. v. Dep't of Just.*, 416 F. Supp. 2d 30, 41 (D.D.C. 2006).

<sup>10</sup> *Brennan*, 498 F. Supp.3d at 102 (citations omitted); *Payne Enterprises, Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988).

# EXHIBIT 1



August 31, 2021

VIA DHS PAL & ELECTRONIC MAIL – [FOIA@HQ.DHS.GOV](mailto:FOIA@HQ.DHS.GOV)

U.S. Department of Homeland Security  
Privacy Office, Mail Stop 0655  
2707 Martin Luther King Jr. AVE SE  
Washington, DC 20528-065

**Freedom of Information Act Request: Evacuations from Afghanistan.**

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

**I. Introduction**

For months, the Biden Administration assured Americans it had matters well in hand in Afghanistan, and that the terrorists were not about to take over. For example, at President Biden’s July 8, 2021, press conference, he said:

Q. Is a Taliban takeover of Afghanistan now inevitable?

THE PRESIDENT: No, it is not.

Q. Why?

THE PRESIDENT: Because you — the Afghan troops have 300,000 well-equipped — as well-equipped as any army in the world — and an air force against something like 75,000 Taliban. It is not inevitable.

\* \* \* \*

Q. Mr. President, thank you very much. Your own intelligence community has assessed that the Afghan government will likely collapse.

THE PRESIDENT: That is not true.<sup>1</sup>

These assurances were false.<sup>2</sup>

The Taliban is now in control, and the United States has completely withdrawn its military and diplomatic presence from Afghanistan. The Biden government claims to have evacuated over 120,000 individuals from Afghanistan, but its planning has been inept, its execution chaotic, and its reporting and transparency lacking in detail. It has withheld critical facts, including, among other things, the number of American citizens still in Afghanistan, the nationalities of all those evacuated, the locations of all non-citizens granted admission to the United States, the immigration status—or lack thereof—of all non-citizens, and the process, procedures, and criteria used for vetting and screening evacuees for security and other risks.

AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, to educate the public. At the core of this mission is keeping government officials accountable for their duty to faithfully execute the laws and protect and defend the Constitution and laws of the United States and to inform the public as to who the government is allowing entry to the country unscreened. Therefore, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, AFL hereby requests the following records within twenty business days.

## II. Definitions

“U.S. Citizen” means a natural born or naturalized citizen of the United States of America.

“INL Air Wing” means Bureau of International Narcotics and Law Enforcement Affairs Office of Aviation, its employees, contractors, vehicles, and aircraft, all as more particularly described at <https://www.state.gov/aviation-support/>

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<sup>1</sup> The White House, *Remarks by President Biden on the Drawdown of U.S. Forces in Afghanistan* (July 8, 2021) <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/08/remarks-by-president-biden-on-the-drawdown-of-u-s-forces-in-afghanistan/>.

<sup>2</sup> The evidence is the Biden Administration knew, or should have known, these assurances were false at the time they were made. *See, e.g.,* Dep't of Defense, *Lead Inspector General, Quarterly Report to the U.S. Congress on Operation Freedom's Sentinel (OFS), April 1, 2021 – June 30, 2021* at 3, 18, 22-25 (Aug. 17, 2021) <https://media.defense.gov/2021/Aug/17/2002832926/-1/-1/1/LEAD%20INSPECTOR%20GENERAL%20FOR%20OPERATION%20FREEDOM%E2%80%99S%20SENTINEL%20I%20QUARTERLY%20REPORT%20TO%20THE%20UNITED%20STATES%20CONGRESS%20I%20APRIL%201,%202021%20-%20JUNE%2030,%202021.PDF>; Joseph Clark, *Biden Administration Ignored Warnings on Afghanistan, Leaked State Dept. Cable Shows*, THE WASHINGTON TIMES (Aug. 21, 2021), <https://www.washingtontimes.com/news/2021/aug/20/state-department-cable-shows-biden-administration-/>;

“National Vetting Center” means the Center created pursuant to National Security Presidential Memorandum (NSPM)-9, *Optimizing the Use of Federal Government Information in the Support of the National Vetting Enterprise* and more particularly described at <https://www.cbp.gov/border-security/ports-entry/national-vetting-center>

“Non-U.S. person” means an alien as defined by 8 U.S.C. § 1101(a)(3).

“Parole authority” means the authority granted under 8 U.S.C. § 1182(d)(5).

“Refugee” has the meaning assigned to it by 8 U.S.C. § 1101(a)(42).

“Special Immigrant Visa” means Special Immigrant Visas for Iraqi and Afghan Translators/Interpreters as defined by Public Law 109-163, and subsequent amendments, and as detailed on the State Department’s website at <https://travel.state.gov/content/travel/en/us-visas/immigrate/siv-iraqi-afghan-translators-interpreters.html#references>.

### **III. Requested Records**

A. All records that mention or reference screening or vetting individuals being evacuated from Kabul and/or Afghanistan in the possession of the following custodians:

1. Secretary Alejandro Mayorkas
2. Deputy Secretary John Tien
3. Karen Olick
4. Any Deputy Chief of Staff to the Secretary
5. Any Counselor or Senior Counselor to the Secretary
6. Kimberly O’Connor
7. Randolph D. “Tex” Alles
8. Shonnie Lyon
9. John D. Cohen
10. Robert Silvers
11. Kelli Ann Burriesci
12. David Shahoulian
13. Samantha Vinograd
14. Serena Hoy
15. Marsha Espinosa
16. Meira Bernstein
17. Heather Fluit
18. Chris Tomney
19. Jennifer Daskal
20. Robert J. Fenton

The timeframe for this request is August 12, 2021, to August 31, 2021.

- B. All records related to DHS providing any other government partner any information on the identity of any person who boarded a U.S. operated aircraft leaving Afghanistan between August 10, 2021, and August 31, 2021.
- C. For any non-U.S. person evacuated by the United States out of Afghanistan between August 10, 2021, and August 31, 2021, records sufficient to show each person's application status (as a refugee, SIV, or otherwise) on the date that they were evacuated.
- D. All records that mention or reference screening, vetting, or processing for individuals seeking evacuation or resettlement out of Kabul, Afghanistan, or KBL. The time frame for this request is July 1, 2021, to the date this records request is processed.
- E. For the custodians referenced in request A above, all records that mention or reference the Department of Homeland Security's parole authority and/or paroling Afghans into the United States pursuant thereto. The time frame for this request is August 10, 2021, to August 31, 2021.
- F. All records of communications with, or that mention or reference, the National Vetting Center, and (1) contain the words "Kabul", "Afghan", "Bagram", or "KBL" or (2) refer to a person from Afghanistan seeking evacuation from and/or admission to the United States. The time frame for this request is July 1, 2021, to the date this records request is processed.
- G. All records of communications with, or that mention or reference coordination with the Department of Defense or the Department of State to screen or vet a person from Afghanistan seeking evacuation from Afghanistan and/or admission into the United States. The time frame for this request is July 1, 2021, to the date this records request is processed.
- H. Records sufficient to show (1) the number of U.S. Citizens evacuated or otherwise removed from Afghanistan, (2) the number non-U.S. persons evacuated or otherwise removed from Afghanistan and admitted or seeking admission into the United States, and (3) the number of non-U.S. persons identified as posing a potential security risk. The time frame for this request is March 1, 2021, to the date this records request is processed.
- I. Records sufficient to show the number of individuals evacuated from Afghanistan by nationality. The time frame for this request July 1, 2021, to the date this records request is processed.

- J. All records in the possession of any custodian identified in request A that mention or refer to—including the development or drafting of—the memo titled “Guidance for the Immigration Processing of Afghan Citizens During Operation Allies Refuge” dated August 23, 2021, sent from Secretary Mayorkas to Acting Commissioner Troy Miller.

#### IV. Redactions

Redactions are disfavored as the FOIA’s exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then Department of State must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; see also *Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, Department of State should produce email attachments.

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

## **V. Fee Waiver Request**

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11, AFL requests a waiver of all search and duplication fees associated with this request.

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public’s understanding of your policies and practices will be enhanced through AFL’s analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL’s financial interest. Other agencies, including the Departments of Education, Energy, Interior, and Homeland Security, and the Office of the Director of National Intelligence have previously granted AFL a fee waiver.

Second, waiver is proper as disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government.” The sudden and abrupt withdraw of forces from a country where the United States has maintained a presence for nearly 20 years, the rapid collapse of the local government to an international terrorist organization in the matter of days, and the Biden Administration’s inept response has made this an issue of intense public interest.

## VI. Request for Expedited Processing

AFL seeks expedited processing of requests A, B, E, and J.

Your regulations provide that you will grant expedited processing requests that demonstrate a “compelling need.”<sup>3</sup> You define “compelling need” as existing, *inter alia*, if the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal government activity.”<sup>4</sup> As demonstrated above, both criteria are met here.

First, AFL is an organization primarily engaged in disseminating information to the public. We intend to disseminate the information we receive and our analysis about this request to the public and to other members of the press.

Second, the Biden Administration claims more than 123,000 people, including about 6,000 American citizens, have been evacuated from Afghanistan.<sup>5</sup> However, the evacuation has been chaotic, poorly planned, and badly executed.<sup>6</sup> The Biden Administration turned over Kabul to the Taliban, giving it operational control over access to the Kabul airport and lists of U.S. Citizens and Afghan human assets.<sup>7</sup> Generally speaking, only individuals the Taliban allowed to leave Afghanistan were able to do so.

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<sup>3</sup> 6 C.F.R. § 5.5.

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

<sup>5</sup> *Transcript of Statement of Anthony Blinken on Afghanistan*, THE NEW YORK TIMES (Aug. 30, 2021) <https://www.nytimes.com/2021/08/31/us/politics/blinken-afghanistan-speech.html>

<sup>6</sup> Molly Hennessy-Fiske, *Americans Faced Taliban, Airport Chaos in Scramble to Evacuate Afghanistan*, LOS ANGELES TIMES (Aug 18, 2021), <https://www.latimes.com/world-nation/story/2021-08-18/american-c-struggle-to-leave-afghanistan>; Lauren Leatherby, Jim Huylebroek, Scott Reinhard & Sarah KerrAug, *The Dangerous Road to the Kabul Airport*, THE NEW YORK TIMES (Aug. 18, 2021), <https://www.nytimes.com/interactive/2021/08/18/world/asia/kabul-airport-afghanistan-maps.html> (“While American forces have taken control of Kabul’s airport, chaos dominates just outside. As thousands desperately try to flee Afghanistan, Taliban fighters have blocked entrances, fired rifles and beaten some people in the crowds.”).

<sup>7</sup> Aaron Blake, *The Biden administration’s increasingly muddy denials on giving the Taliban lists*, THE WASHINGTON POST (Aug. 30, 2021) <https://www.msn.com/en-us/news/us/the-biden-administration-e2-80-99s-increasingly-muddy-denials-on-giving-the-taliban-lists/ar-AANU3cH?ocid=uxbndlbing>; Jerry Dunleavy, *White House: Taliban Setting Up More Entry Points Beyond Perimeter to Stop*

Yet the Biden government has not transparently disclosed the vetting and screening process used to ensure evacuees do not pose a security risk. The lack of transparency is problematic first because this Administration has repeatedly disregarded U.S. immigration laws,<sup>8</sup> and second because it has, over a period of months, repeatedly misrepresented the facts on the ground. The Biden credibility gap is wide and deep with respect to Afghanistan, immigration enforcement, and respect for the rule of law. Accordingly, there is an urgent need for immediate disclosure of the measures being taken to verify identities, to vet for terror ties, and to protect American Citizens here at home.<sup>9</sup>

Finally, there is a high likelihood that the information AFL seeks in the above-specified requests will be rendered stale once foreign nationals are granted admission to the United States. Given that the processing of many tens of thousands foreign nationals for admission to the United States is apparently still in process, the requested records are needed urgently to inform the public and policy makers about the processes and criteria this Administration is using to screen and vet potential security risks, and to ensure applicable laws and regulations are being followed.

## VI. Production

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14<sup>th</sup> Street NW, 5<sup>th</sup> Floor, Washington, D.C. 20005.

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*ISIS-K Attacks*, THE WASHINGTON EXAMINER (Aug. 23, 2021) <https://news.yahoo.com/white-house-taliban-setting-more-170600073.html>; *Taliban Captured Key US Military Biometric Devices: Report*, The Times of India (Aug. 19, 2021), <https://timesofindia.indiatimes.com/world/us/taliban-captured-key-us-military-biometric-devices-report/articleshow/85445501.cms>.

<sup>8</sup> America First Legal Foundation, *AFL Files FOIAs Demanding Answers about the Biden Administration's Implementation of Catch-and-Release and Other Open Border Policies* (July 27, 2021), <https://www.aflegal.org/news/afl-files-foias-demanding-answers-about-the-biden-administrations-implementation-of-catch-and-release-and-other-open-border-policies>

<sup>9</sup> According to CNN, “The approach from the administration has been ‘get as many people on the plane as you can, and we’ll sort out the (immigration visa) stuff later’”. Geneva Sands and Evan Perez, *Arriving Afghans Without Paperwork Prompt Delays and Security Challenges*, CNN (Aug. 21, 2021), <https://www.cnn.com/2021/08/25/politics/arriving-afghans-paperwork-delays-security/index.html>.

Compare Lizzie Dearden, *Paris Attacks: Some Jihadists 'Took Advantage of Refugee Crisis to Slip into Europe'*, *French Prime Minister Says*, The Independent (Nov. 20, 2015), <https://www.independent.co.uk/news/world/europe/paris-attacks-some-jihadists-took-advantage-refugee-crisis-slip-europe-french-prime-minister-says-a6741466.html>.

## VII. Conclusion

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at [FOIA@aflegal.org](mailto:FOIA@aflegal.org). Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Thank you,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation



Homeland  
Security

*Privacy Office, Mail Stop 0655*

September 17, 2021

**SENT VIA E-MAIL TO: [info@aflegal.org](mailto:info@aflegal.org)**

Reed Rubinstein  
600 14th St. NW, 5th Floor  
Washington, DC 20005

Re: **2021-HQFO-01432**

Dear Mr. Rubinstein:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated August 31, 2021, and to your request for expedited handling and a waiver of all assessable FOIA fees. Our office received your request on August 31, 2021. Specifically, you requested:

A. All records that mention or reference screening or vetting individuals being evacuated from Kabul and/or Afghanistan in the possession of the following custodians:

1. Secretary Alejandro Mayorkas
2. Deputy Secretary John Tien
3. Karen Olick
4. Any Deputy Chief of Staff to the Secretary
5. Any Counselor or Senior Counselor to the Secretary
6. Kimberly O'Connor
7. Randolph D. "Tex" Alles
8. Shonnie Lyon
9. John D. Cohen
10. Robert Silvers
11. Kelli Ann Burriesci
12. David Shahoulian
13. Samantha Vinograd
14. Serena Hoy
15. Marsha Espinosa
16. Meira Bernstein
17. Heather Fluit
18. Chris Tomney
19. Jennifer Daskal
20. Robert J. Fenton

The timeframe for this request is August 12, 2021, to August 31, 2021.

B. All records related to DHS providing any other government partner any information on the identity of any person who boarded a U.S. operated aircraft leaving Afghanistan between August 10, 2021, and August 31, 2021.

C. For any non-U.S. person evacuated by the United States out of Afghanistan between August 10, 2021, and August 31, 2021, records sufficient to show each person's application status (as a refugee, SIV, or otherwise) on the date that they were evacuated.

D. All records that mention or reference screening, vetting, or processing for individuals seeking evacuation or resettlement out of Kabul, Afghanistan, or KBL.

The time frame for this request is July 1, 2021, to the date this records request is processed.

E. For the custodians referenced in request A above, all records that mention or reference the Department of Homeland Security's parole authority and/or paroling Afghans into the United States pursuant thereto. The time frame for this request is August 10, 2021, to August 31, 2021.

F. All records of communications with, or that mention or reference, the National Vetting Center, and (1) contain the words "Kabul", "Afghan", "Bagram", or "KBL" or (2) refer to a person from Afghanistan seeking evacuation from and/or admission to the United States. The time frame for this request is July 1, 2021, to the date this records request is processed.

G. All records of communications with, or that mention or reference coordination with the Department of Defense or the Department of State to screen or vet a person from Afghanistan seeking evacuation from Afghanistan and/or admission into the United States. The time frame for this request is July 1, 2021, to the date this records request is processed.

H. Records sufficient to show (1) the number of U.S. Citizens evacuated or otherwise removed from Afghanistan, (2) the number non-U.S. persons evacuated or otherwise removed from Afghanistan and admitted or seeking admission into the United States, and (3) the number of non-U.S. persons identified as posing a potential security risk. The time frame for this request is March 1, 2021, to the date this records request is processed.

I. Records sufficient to show the number of individuals evacuated from Afghanistan by nationality. The time frame for this request July 1, 2021, to the date this records request is processed.

J. All records in the possession of any custodian identified in request A that mention or refer to—including the development or drafting of—the memo titled "Guidance for the Immigration Processing of Afghan Citizens During Operation Allies Refuge" dated August 23, 2021, sent from Secretary Mayorkas to Acting Commissioner Troy Miller.

Your request for expedited treatment is hereby granted.

Furthermore, due to the subject matter of your request, I am transferring **items B, C, G, H and I** of this request to the FOIA Officer for **U.S. Citizenship & Immigration Services (USCIS)**, for processing under the FOIA and direct response to you. Please find their contact information below:

**U.S. Citizenship & Immigration Services (USCIS)**

Create an account to avoid delays! [FIRST](#)

National Records Center, FOIA/PA Office

P. O. Box 648010

Lee's Summit, MO. 64064-8010

Phone: 1-800-375-5283 (USCIS Contact Center) | Fax: 816-350-5785 | E-mail:

[uscis.foia@uscis.dhs.gov](mailto:uscis.foia@uscis.dhs.gov)

[USCIS Website](#)

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. Part 5 § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances under 6 C.F.R. Part 5 § 5.5(c). As your request seeks documents that will require a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request pursuant to 6 C.F.R. Part 5 § 5.5(c). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

You have requested a fee waiver. The DHS FOIA regulations at 6 C.F.R. Part 5 § 5.11(k) set forth six factors DHS must evaluate to determine whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations or activities of the government," (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities, (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons, (4) Whether the contribution to public understanding of government operations or activities will be "significant," (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure, and (6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Upon review of the subject matter of your request, and an evaluation of the six factors identified above, DHS has determined that it will conditionally grant your request for a fee waiver. The fee waiver determination will be based upon a sampling of the responsive documents received from the various DHS program offices as a result of the searches conducted in response to your FOIA request. DHS will, pursuant to DHS FOIA regulations applicable to media requesters, process the first 100 pages free of charge. If upon review of these documents, DHS determines that the disclosure of the information contained in those documents does not meet the factors permitting DHS to waive the fees, then DHS will at that time either deny your request for a fee waiver entirely, or will allow for a percentage reduction in the amount of the fees corresponding to the

amount of relevant material found that meets the factors allowing for a fee waiver. In either case, DHS will promptly notify you of its final decision regarding your request for a fee waiver and provide you with the responsive records as required by applicable law.

In the event that your fee waiver is denied, and you determine that you still want the records, provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS FOIA regulations as they apply to media requesters. As a media requester you will be charged 10 cents per page for duplication; the first 100 pages are free. In the event that your fee waiver is denied, we will construe the submission of your request as an agreement to pay up to \$25.00. This office will contact you before accruing any additional fees.

We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the analysts in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2021-HQFO-01432**. Please refer to this identifier in any future correspondence. The status of your FOIA request is now available online and can be accessed at: <https://foiarequest.dhs.gov/app/CheckStatus.aspx>, by using this FOIA request number.

If you have any questions, or would like to discuss this matter, please feel free to contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

A handwritten signature in black ink that reads "Jimmy Wolfrey". The signature is written in a cursive, slightly slanted style.

Jimmy Wolfrey  
Senior Director, FOIA Operations and Management  
(Acting)



August 31, 2021

Via Email & OSD/JS PAL - [dcsa.quantico.dcsa-hq.mbx.foia@mail.mil](mailto:dcsa.quantico.dcsa-hq.mbx.foia@mail.mil)

Freedom of Information Division  
1155 Defense Pentagon  
Washington, DC 20301-1155

**Freedom of Information Act Request: Evacuations from Afghanistan.**

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

**I. Introduction**

For months, the Biden Administration assured Americans it had matters well in hand in Afghanistan, and that the terrorists were not about to take over. For example, at President Biden’s July 8, 2021, press conference, he said:

Q. Is a Taliban takeover of Afghanistan now inevitable?

THE PRESIDENT: No, it is not.

Q. Why?

THE PRESIDENT: Because you — the Afghan troops have 300,000 well-equipped — as well-equipped as any army in the world — and an air force against something like 75,000 Taliban. It is not inevitable.

\* \* \* \*

Q. Mr. President, thank you very much. Your own intelligence community has assessed that the Afghan government will likely collapse.

THE PRESIDENT: That is not true.<sup>1</sup>

These assurances were false.<sup>2</sup>

The Taliban is now in control, and the United States has completely withdrawn its military and diplomatic presence from Afghanistan. The Biden government claims to have evacuated over 120,000 individuals from Afghanistan, but its planning has been inept, its execution chaotic, and its reporting and transparency lacking in detail. It has withheld critical facts, including, among other things, the number of American citizens still in Afghanistan, the nationalities of all those evacuated, the locations of all non-citizens granted admission to the United States, the immigration status—or lack thereof—of all non-citizens, and the process, procedures, and criteria used for vetting and screening evacuees for security and other risks.

AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, to educate the public. At the core of this mission is keeping government officials accountable for their duty to faithfully execute the laws and protect and defend the Constitution and laws of the United States and to inform the public as to who the government is allowing entry to the country unscreened. Therefore, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, AFL hereby requests the following records within twenty business days.

## II. Definitions

“U.S. Citizen” means a natural born or naturalized citizen of the United States of America.

“INL Air Wing” means Bureau of International Narcotics and Law Enforcement Affairs Office of Aviation, its employees, contractors, vehicles, and aircraft, all as more particularly described at <https://www.state.gov/aviation-support/>

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<sup>1</sup> The White House, *Remarks by President Biden on the Drawdown of U.S. Forces in Afghanistan* (July 8, 2021) <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/08/remarks-by-president-biden-on-the-drawdown-of-u-s-forces-in-afghanistan/>.

<sup>2</sup> The evidence is the Biden Administration knew, or should have known, these assurances were false at the time they were made. *See, e.g.*, Dep't of Defense, *Lead Inspector General, Quarterly Report to the U.S. Congress on Operation Freedom's Sentinel (OFS), April 1, 2021 – June 30, 2021* at 3, 18, 22-25 (Aug. 17, 2021) <https://media.defense.gov/2021/Aug/17/2002832926/-1/-1/1/LEAD%20INSPECTOR%20GENERAL%20FOR%20OPERATION%20FREEDOM%E2%80%99S%20SENTINEL%20I%20QUARTERLY%20REPORT%20TO%20THE%20UNITED%20STATES%20CONGRESS%20I%20APRIL%201,%202021%20-%20JUNE%2030,%202021.PDF>; Joseph Clark, *Biden Administration Ignored Warnings on Afghanistan, Leaked State Dept. Cable Shows*, THE WASHINGTON TIMES (Aug. 21, 2021), <https://www.washingtontimes.com/news/2021/aug/20/state-department-cable-shows-biden-administration-/>;

“National Vetting Center” means the Center created pursuant to National Security Presidential Memorandum (NSPM)-9, *Optimizing the Use of Federal Government Information in the Support of the National Vetting Enterprise* and more particularly described at <https://www.cbp.gov/border-security/ports-entry/national-vetting-center>

“Non-U.S. person” means an alien as defined by 8 U.S.C. § 1101(a)(3).

“Parole authority” means the authority granted under 8 U.S.C. § 1182(d)(5).

“Refugee” has the meaning assigned to it by 8 U.S.C. § 1101(a)(42).

“Special Immigrant Visa” means Special Immigrant Visas for Iraqi and Afghan Translators/Interpreters as defined by Public Law 109-163, and subsequent amendments, and as detailed on the State Department’s website at <https://travel.state.gov/content/travel/en/us-visas/immigrate/siv-iraqi-afghan-translators-interpreters.html#references>.

### **III. Requested Records**

A) All records that mention or reference screening or vetting individuals being evacuated from Kabul and/or Afghanistan in the possession of the following custodians:

- 1) Secretary of Defense Lloyd J. Austin III
- 2) Deputy Secretary of Defense Kathleen Hicks
- 3) Assistant to the Secretary of Defense for Public Affairs John Kirby
- 4) General Mark Milley
- 5) General Kenneth McKenzie
- 6) Chief of Staff to the Secretary of Defense Kelly Magsamen
- 7) General Counsel Caroline D. Krass
- 8) Under Secretary Dr. Colin H. Kahl
- 9) Assistant Secretary of Defense (Indo-Pacific Security Affairs) Ely Ratner
- 10)Melissa Dalton
- 11)Assistant Secretary of Defense (Special Operations and Low-Intensity Conflict) Christopher Maier
- 12)Assistant Secretary of Defense (Strategy, Plans, and Capabilities) Dr. Mara Karlin
- 13)Under Secretary of Defense (Intelligence and Security) Ronald Moultrie
- 14)Under Secretary of Defense (Personnel and Readiness) Gil Cisneros
- 15)Assistant Secretary of Defense (Readiness) Shawn Skelly
- 16)Secretary of the Army Christine Wormuth
- 17)Secretary of the Navy Carlos Del Toro
- 18)Secretary of the Air Force Frank Kendall III

The timeframe for this request is August 12, 2021, to August 31, 2021.

- B) Records sufficient to show the process the Department of Defense used to confirm the identity of each person who boarded a U.S. operated or controlled aircraft leaving Afghanistan between August 10, 2021, and August 31, 2021.
- C) For any non-U.S. person evacuated by the United States out of Afghanistan between August 10, 2021, and August 31, 2021, records sufficient to show each person's application status (as a refugee, SIV, or otherwise) on the date that they were evacuated.
- D) All records that mention or reference screening, vetting, or processing for individuals seeking evacuation or resettlement out of Kabul, Afghanistan, or KBL. The time frame for this request is July 1, 2021, to the date this records request is processed.
- E) For the custodians referenced in request A above, all records that mention or reference the Department of Homeland Security's parole authority and/or paroling Afghans into the United States pursuant thereto. The time frame for this request is August 10, 2021, to August 31, 2021.
- F) All records of communications with, or that mention or reference, the National Vetting Center, and (1) contain the words "Kabul", "Afghan", "Bagram", or "KBL" or (2) refer to a person from Afghanistan seeking evacuation from and/or admission to the United States. The time frame for this request is July 1, 2021, to the date this records request is processed.
- G) All records that mention or reference coordination with the Department of Homeland Security or the Department of State to screen or vet an individual seeking evacuation from Afghanistan and/or admission into the United States. The time frame for this request is July 1, 2021, to the date the records request is processed.
- H) All records that mention or reference (1) U.S. government property, whether military, intelligence-related, or otherwise, left behind or taken by the Taliban, or (2) any person(s) freed by or released to the Taliban. The time frame for this request is July 1, 2021, to the date this records request is processed.
- I) For the custodians identified in request A above, all records that mention or reference "Bagram" airbase. The time frame for this request is June 1, 2021, to the date this records request is processed.

- J) Records sufficient to show (1) the number of U.S. Citizens evacuated or otherwise removed from Afghanistan, (2) the number non-U.S. persons evacuated or otherwise removed from Afghanistan and admitted or seeking admission into the United States, and (3) the number of non-U.S. persons identified as posing a potential security risk. The time frame for this request is March 1, 2021, to the date this records request is processed.
- K) Records sufficient to show the number of individuals evacuated from Afghanistan by nationality. The time frame for this request July 1, 2021, to the date this records request is processed.

#### IV. Redactions

Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass'n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then Department of State must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; see also *Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, Department of State should produce email attachments.

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and

procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

## **V. Fee Waiver Request**

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 32 C.F.R. § 286.12, AFL requests a waiver of all search and duplication fees associated with this request.

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public’s understanding of your policies and practices will be enhanced

through AFL’s analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL’s financial interest. Other agencies, including the Departments of Education, Energy, Interior, and Homeland Security, and the Office of the Director of National Intelligence have previously granted AFL a fee waiver.

Second, waiver is proper as disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government.” The sudden and abrupt withdraw of forces from a country where the United States has maintained a presence for nearly 20 years, the rapid collapse of the local government to an international terrorist organization in the matter of days, and the Biden Administration’s inept response has made this an issue of intense public interest.

## VI. Request for Expedited Processing

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Your regulations provide that you will grant expedited processing requests that demonstrate a “compelling need.”<sup>3</sup> You define “compelling need” as existing, *inter alia*, if the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal government activity.”<sup>4</sup> As demonstrated above, both criteria are met here.

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<sup>3</sup> 32 C.F.R. § 286.8(e).

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

<sup>5</sup> *Transcript of Statement of Anthony Blinken on Afghanistan*, THE NEW YORK TIMES (Aug. 30, 2021) <https://www.nytimes.com/2021/08/31/us/politics/blinken-afghanistan-speech.html>

<sup>6</sup> Molly Hennessy-Fiske, *Americans Faced Taliban, Airport Chaos in Scramble to Evacuate Afghanistan*, LOS ANGELES TIMES (Aug 18, 2021), <https://www.latimes.com/world-nation/story/2021-08-18/american-c-struggle-to-leave-afghanistan>; Lauren Leatherby, Jim Huylebroek, Scott Reinhard & Sarah KerrAug, *The Dangerous Road to the Kabul Airport*, THE NEW YORK TIMES (Aug. 18, 2021), <https://www.nytimes.com/interactive/2021/08/18/world/asia/kabul-airport-afghanistan-maps.html> (“While American forces have taken control of Kabul’s airport, chaos dominates just outside. As thousands desperately try to flee Afghanistan, Taliban fighters have blocked entrances, fired rifles and beaten some people in the crowds.”).

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To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, records in native format or in PDF format on a USB drive.

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<sup>8</sup> America First Legal Foundation, *AFL Files FOIAs Demanding Answers about the Biden Administration's Implementation of Catch-and-Release and Other Open Border Policies* (July 27, 2021), <https://www.aflegal.org/news/afl-files-foias-demanding-answers-about-the-biden-administrations-implementation-of-catch-and-release-and-other-open-border-policies>

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Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14<sup>th</sup> Street NW, 5<sup>th</sup> Floor, Washington, D.C. 20005.

## **VII. Conclusion**

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at [FOIA@aflegal.org](mailto:FOIA@aflegal.org). Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Thank you,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation



**DEPARTMENT OF DEFENSE  
FREEDOM OF INFORMATION DIVISION  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155**

Ref: 21-F-1477  
August 31, 2021

Mr. Gene Hamilton  
America First Legal  
600 14th Street NW  
5th Floor  
Washington, District of Columbia 20005

Dear Mr. Hamilton:

This is an interim response to your August 31, 2021 Freedom of Information Act (FOIA) request, a copy of which is enclosed for your convenience. We received your request on August 31, 2021, and assigned it FOIA case number 21-F-1477. We ask that you use this number when referring to your request.

Upon review of your request, we are granting expedited processing in accordance with our Department of Defense (DoD) Regulation found at 32 CFR Part 286. Your request has been placed in our expedited processing queue and is currently being worked. We have initiated the necessary search actions with the appropriate components of the Office of the Secretary of Defense (OSD).

For your awareness, please understand that the granting of expedited processing does not provide for a guarantee that your request will be completed by a certain date, as all of our required procedures for searching and reviewing any records located must be followed. In fact, although we have already begun processing your request, we will not be able to respond within the FOIA's 20-day statutory time period as there are unusual circumstances which impact our ability to quickly process your request. The FOIA defines unusual circumstances as (a) the need to search for and collect records from a facility geographically separated from this office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. At least one, if not more of these scenarios applies or would likely apply to your request. While this office handles FOIA requests for OSD, the Joint Staff (JS) and other component offices, we do not actually hold their records and our office is not geographically located with these organizations. As we do not hold the records, until the required record searches are complete, we are unable to estimate the potential volume of records or the number of consultations that will be required to make a release determination. These circumstances impact the total time required to process your request to completion, so placing your request at the top of the FOIA queue, simply means that the work of processing your request is underway.

If you have requested a fee waiver, please note that decisions to waive or reduce fees are made on a case-by-case basis, and we will make a determination concerning your fee waiver request at the conclusion of the search and assessment of responsive records, should they exist. However, this office will only assess fees if we provide the final response to your FOIA

request within the statutory time allotted by the FOIA or if the responsive records total more than 5,000 pages, even after a good faith effort on our part to limit the scope of your request.

In some instances, we have found that requesters who narrow the scope of their requests experience a reduction in the time needed to process their requests. If you wish to narrow the scope of your request or have questions about the foregoing, please do not hesitate to contact your Action Officer, Michael Coen, at michael.e.coen2.civ@mail.mil or 571-372-0413.

Please note that this request should be sent to the United States Army, Air force and Navy. These services operates their own FOIA programs and also would have cognizance over the information you have requested. For your convenience, contact information for these services are provided below:

U.S. Army Freedom of Information Act Office  
Records Management and Declassification Agency  
9301 Chapek Rd. Bldg 1458  
Fort Belvoir, VA 22060

Department of the Air Force  
SAF/AAlI (FOIA)  
1000 Air Force Pentagon  
Washington, DC 20330-1000

SECNAV/CNO FOIA Office  
Chief of Naval Operations (DNS-36)  
2000 Navy Pentagon  
Washington, DC 20350-2000

Additionally, if you have concerns about service received by our office, please contact a member of our Leadership Team at 571-372-0498 or Toll Free at 866-574-4970.

Should you wish to inquire about mediation services, you may contact the OSD/JS FOIA Public Liaison, Tonya R. Fuentes, at 571-372-0462 or by email at OSD.FOIALiaison@mail.mil, or the Office of Government Information Services (OGIS) at the National Archives and Records Administration. The contact information for OGIS is as follows:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, MD 20740  
E-mail: ogis@nara.gov  
Telephone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 1-877-684-6448

We regret the delay in responding to your request and appreciate your patience. As previously stated, please contact the Action Officer assigned to your request, Michael Coen, and reference FOIA case number 21-F-1477, if you have any questions or concerns.

Sincerely,

*Stephen L. Fisher*

Stephanie L. Carr

*For* Chief

Enclosure:  
As stated



August 31, 2021

VIA ELECTRONIC MAIL - [FOIARequest@state.gov](mailto:FOIARequest@state.gov)

Kellie Robinson, Public Liaison  
U. S. Department of State  
A/GIS/IPS/PP  
2201 C Street N.W., Suite B266  
Washington, D. C. 20520-0000

**Freedom of Information Act Request: Evacuations from Afghanistan.**

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

**I. Introduction**

For months, the Biden Administration assured Americans it had matters well in hand in Afghanistan, and that the terrorists were not about to take over. For example, at President Biden’s July 8, 2021, press conference, he said:

Q. Is a Taliban takeover of Afghanistan now inevitable?

THE PRESIDENT: No, it is not.

Q. Why?

THE PRESIDENT: Because you — the Afghan troops have 300,000 well-equipped — as well-equipped as any army in the world — and an air force against something like 75,000 Taliban. It is not inevitable.

\* \* \* \*

Q. Mr. President, thank you very much. Your own intelligence community has assessed that the Afghan government will likely collapse.

THE PRESIDENT: That is not true.<sup>1</sup>

These assurances were false.<sup>2</sup>

The Taliban is now in control, and the United States has completely withdrawn its military and diplomatic presence from Afghanistan. The Biden government claims to have evacuated over 120,000 individuals from Afghanistan, but its planning has been inept, its execution chaotic, and its reporting and transparency lacking in detail. It has withheld critical facts, including, among other things, the number of American citizens still in Afghanistan, the nationalities of all those evacuated, the locations of all non-citizens granted admission to the United States, the immigration status—or lack thereof—of all non-citizens, and the process, procedures, and criteria used for vetting and screening evacuees for security and other risks.

AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, to educate the public. At the core of this mission is keeping government officials accountable for their duty to faithfully execute the laws and protect and defend the Constitution and laws of the United States and to inform the public as to who the government is allowing entry to the country unscreened. Therefore, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, AFL hereby requests the following records within twenty business days.

## II. Definitions

“U.S. Citizen” means a natural born or naturalized citizen of the United States of America.

“INL Air Wing” means Bureau of International Narcotics and Law Enforcement Affairs Office of Aviation, its employees, contractors, vehicles, and aircraft, all as more particularly described at <https://www.state.gov/aviation-support/>

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<sup>1</sup> The White House, *Remarks by President Biden on the Drawdown of U.S. Forces in Afghanistan* (July 8, 2021) <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/08/remarks-by-president-biden-on-the-drawdown-of-u-s-forces-in-afghanistan/>.

<sup>2</sup> The evidence is the Biden Administration knew, or should have known, these assurances were false at the time they were made. *See, e.g.*, Dep't of Defense, *Lead Inspector General, Quarterly Report to the U.S. Congress on Operation Freedom's Sentinel (OFS), April 1, 2021 – June 30, 2021* at 3, 18, 22-25 (Aug. 17, 2021) <https://media.defense.gov/2021/Aug/17/2002832926/-1/-1/1/LEAD%20INSPECTOR%20GENERAL%20FOR%20OPERATION%20FREEDOM%E2%80%99S%20SENTINEL%20I%20QUARTERLY%20REPORT%20TO%20THE%20UNITED%20STATES%20CONGRESS%20I%20APRIL%201,%202021%20-%20JUNE%2030,%202021.PDF>; Joseph Clark, *Biden Administration Ignored Warnings on Afghanistan, Leaked State Dept. Cable Shows*, THE WASHINGTON TIMES (Aug. 21, 2021), <https://www.washingtontimes.com/news/2021/aug/20/state-department-cable-shows-biden-administration-/>;

“National Vetting Center” means the Center created pursuant to National Security Presidential Memorandum (NSPM)-9, *Optimizing the Use of Federal Government Information in the Support of the National Vetting Enterprise* and more particularly described at <https://www.cbp.gov/border-security/ports-entry/national-vetting-center>

“Non-U.S. person” means an alien as defined by 8 U.S.C. § 1101(a)(3).

“Parole authority” means the authority granted under 8 U.S.C. § 1182(d)(5).

“Refugee” has the meaning assigned to it by 8 U.S.C. § 1101(a)(42).

“Special Immigrant Visa” means Special Immigrant Visas for Iraqi and Afghan Translators/Interpreters as defined by Public Law 109-163, and subsequent amendments, and as detailed on the State Department’s website at <https://travel.state.gov/content/travel/en/us-visas/immigrate/siv-iraqi-afghan-translators-interpreters.html#references>.

### **III. Requested Records**

A. All records that mention or reference screening or vetting individuals being evacuated from Kabul and/or Afghanistan in the possession of the following custodians:

1. Secretary Antony Blinken
2. Deputy Secretary Wendy Sherman
3. Brian P. McKeon
4. Victoria Nuland
5. Derek Chollet
6. Rema Blitter
7. Gentry Smith
8. Suzy George
9. Salman Ahmed
10. Jalina Porter
11. Ned Price
12. Samantha Power
13. Gabriela Chojkier
14. Amy Paro
15. Uzra Zeya
16. Nancy Izzo Jackson
17. Any person employed by, detailed to, or serving as a contractor for the INL Air Wing

The timeframe for this request is August 10, 2021, to August 31, 2021.

- B. Records sufficient to show the process the State Department used to confirm the identity of each person who boarded a U.S. operated or controlled aircraft leaving Afghanistan between August 10, 2021, and August 31, 2021.
- C. For any non-U.S. person evacuated by the United States out of Afghanistan between August 10, 2021, and August 31, 2021, records sufficient to show each person's application status (as a refugee, SIV, or otherwise) on the date that they were evacuated.
- D. All records that mention or reference screening, vetting, or processing for individuals seeking evacuation or resettlement out of Kabul, Afghanistan, or KBL. The time frame for this request is July 1, 2021, to the date this records request is processed.
- E. For the custodians referenced in request A above, all records that mention or reference the Department of Homeland Security's parole authority and/or paroling Afghans into the United States pursuant thereto. The time frame for this request is August 10, 2021, to August 31, 2021.
- F. All records of communications with, or that mention or reference, the National Vetting Center, and (1) contain the words "Kabul", "Afghan", "Bagram", or "KBL" or (2) refer to a person from Afghanistan seeking evacuation from and/or admission to the United States. The time frame for this request is July 1, 2021, to the date this records request is processed.
- G. All records of communications with, or that mention or reference coordination with the Department of Defense, the Department of Homeland Security, or the Department of Justice to screen or vet a person from Afghanistan seeking evacuation from Afghanistan and/or admission into the United States. The time frame for this request is July 1, 2021, to the date this records request is processed.
- H. All records that mention or reference (1) U.S. government property, whether military, intelligence-related, or otherwise, left behind or taken by the Taliban, or (2) any person(s) freed by or released to the Taliban. The time frame for this request is July 1, 2021, to the date this records request is processed.
- I. For the custodians identified in request A above, all records that mention or reference "Bagram" airbase. The time frame for this request is June 1, 2021, to the date this records request is processed.
- J. Records sufficient to show (1) the number of U.S. Citizens evacuated or otherwise removed from Afghanistan, (2) the number non-U.S. persons evacuated or otherwise removed from Afghanistan and admitted or seeking admission

into the United States, and (3) the number of non-U.S. persons identified as posing a potential security risk. The time frame for this request is March 1, 2021, to the date this records request is processed.

- K. Records sufficient to show the number of individuals evacuated from Afghanistan by nationality. The time frame for this request July 1, 2021, to the date this records request is processed.

#### **IV. Redactions**

Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass'n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then Department of State must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; see also *Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, Department of State should produce email attachments.

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those

files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

## **V. Fee Waiver Request**

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 22 C.F.R. § 171.16, AFL requests a waiver of all search and duplication fees associated with this request.

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public’s understanding of your policies and practices will be enhanced through AFL’s analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the infor-

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<sup>3</sup> 22 C.F.R. § 171.11(f).

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<sup>8</sup> America First Legal Foundation, *AFL Files FOIAs Demanding Answers about the Biden Administration's Implementation of Catch-and-Release and Other Open Border Policies* (July 27, 2021), <https://www.aflegal.org/news/afl-files-foias-demanding-answers-about-the-biden-administrations-implementation-of-catch-and-release-and-other-open-border-policies>

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Compare Lizzie Dearden, *Paris Attacks: Some Jihadists 'Took Advantage of Refugee Crisis to Slip into Europe'*, *French Prime Minister Says*, The Independent (Nov. 20, 2015), <https://www.independent.co.uk/news/world/europe/paris-attacks-some-jihadists-took-advantage-refugee-crisis-slip-europe-french-prime-minister-says-a6741466.html>.

Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14<sup>th</sup> Street NW, 5<sup>th</sup> Floor, Washington, D.C. 20005.

## **VII. Conclusion**

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at [FOIA@aflegal.org](mailto:FOIA@aflegal.org). Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Thank you,

/s/ Reed D. Rubinstein  
Reed D. Rubinstein  
America First Legal Foundation



United States Department of State

Washington, D.C. 20520

October 14, 2021

FOIA Case No. F-2021-09922

Reed D. Rubinstein  
America First Legal Foundation  
600 14th Street NW, 5th Floor  
Washington DC, 20005

Email: [FOIA@aflegal.org](mailto:FOIA@aflegal.org)

Dear Mr. Rubinstein:

This is in response to your Freedom of Information Act (FOIA) request, dated August 31, 2021, for records pertaining to vetting of Afghan nationals by the Biden Administration. Specifically, this letter addresses your appeal dated October 6, 2021, requesting expedited processing of sections A, B, J, and K of your request.

I understand the Department has granted your request for expedited processing. Therefore, your appeal has been overcome by events and there is nothing to appeal.

For further communications with this office, please contact [FOIAStatus@state.gov](mailto:FOIAStatus@state.gov) and include the case number F-2021-09922.

Sincerely,

/s/

Lori Hartmann  
Appeals Officer  
Office of Information Programs  
and Services



July 16, 2021

VIA FOIA Online & Email - [FOIARequests@cdc.gov](mailto:FOIARequests@cdc.gov)

CDC/ATSDR  
Attn: FOIA Office, MS-D54  
1600 Clifton Road, N.E.  
Atlanta, GA 30333

**Freedom of Information Act Request: Information Regarding Flagging  
“disinformation” to Facebook administrators.**

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to promote the rule of law in the United States by preventing Executive Branch overreach, ensuring due process and equal protection for all Americans, and advancing public knowledge and understanding of individual rights guaranteed under the Constitution and laws of the United States. AFL’s mission includes gathering official information, analyzing it, and disseminating it through reports, articles, press releases, emails, and/or through electronic media, including social media platforms. A core part of our educational mission is served by making public the partnership between the President and the agencies he directs, on the one hand, and social media and other corporate special interests, on the other, to control what American citizens are allowed to read, to see, and to say.

**I. Introduction**

Yesterday, White House Press Secretary Jen Psaki said “[i]n terms of actions . . . we've increased disinformation research and tracking. Within the Surgeon General's Office, we're flagging posts for Facebook that spread disinformation.” She also said “those engagements typically happen through members of our senior staff.”<sup>1</sup> This is an alarming admission—that the Biden Administration, at senior levels, is working with private corporations to censor speech that departs from the preferred narrative. The First Amendment does not permit the federal government to engage in content

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<sup>1</sup> Ian Schwartz, *WH's Psaki: We're Flagging Problematic Posts for Facebook That Spread Disinformation*, REALCLEARPOLITICS, [https://www.realclearpolitics.com/video/2021/07/15/psaki\\_were\\_flagging\\_problematic\\_posts\\_for\\_facebook\\_that\\_spread\\_disinformation.html](https://www.realclearpolitics.com/video/2021/07/15/psaki_were_flagging_problematic_posts_for_facebook_that_spread_disinformation.html) (Jul. 15, 2021).

moderation and infringe on free speech rights of individuals by labeling speech it does not like as “disinformation” and using private corporations to take down anything with which the government disagrees. One might expect such interactions to occur in Cuba, or China—but not in the United States. But it appears as though that is exactly what the White House Press Secretary admitted is occurring on a regular basis.

The American people have a right to know who from the government is saying what, to whom, and for what reasons. A social media company taking down content with which it disagrees is a troubling practice, but a social media company doing so at the behest of the United States is a significant problem. Accordingly, AFL requests access to the following records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, within twenty business days.

## **II. Requested Records**

1. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to any efforts to flag COVID-19 or COVID-19 vaccine related “misinformation” or “disinformation” to any social media company, including but not limited to Facebook, Twitter, TikTok, Instagram, Snapchat, Reddit, YouTube, LinkedIn, Tumblr, and Pinterest. The timeframe for this request is January 20, 2021, to date the records request is processed.
2. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes sufficient to show any and all communications with any social media company, including but not limited to Facebook, Twitter, TikTok, Instagram, Snapchat, Reddit, YouTube, LinkedIn, Tumblr, and Pinterest, regarding any efforts to flag COVID-19 or COVID-19 vaccine related “misinformation” or “disinformation”. The timeframe for this request is January 20, 2021, to date the records request is processed.
3. All records, including, but not limited to, communications with any email address for a White House office or individual serving in the White House, including those ending in “@who.eop.gov” or “@nsc.eop.gov” of, regarding, or relating to the “flagging” of “disinformation” to any social media company, including but not limited to Facebook, Twitter, Instagram, TikTok, Snapchat, Reddit, YouTube, LinkedIn, Tumblr, and Pinterest. The timeframe for this request is January 20, 2021, to date the records request is processed.
4. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes sufficient to show how CDC and/or the Administration will determine the veracity of any given post.

5. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, sufficient to show who will decide what is “misinformation” and the basis on which they will make that determination.
6. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, sufficient to show who will decide what is “disinformation” and the basis on which they will make that determination.
7. All communications with any email address ending in “@facebook.com”. The timeframe for this request is January 20, 2021, to date the records request is processed.
8. All communications with any email address ending in “@twitter.com”. The timeframe for this request is January 20, 2021, to date the records request is processed.
9. All communications with any email address ending in “@instagram.com”. The timeframe for this request is January 20, 2021, to date the records request is processed.
10. All communications with any email address ending in “@youtube.com”. The timeframe for this request is January 20, 2021, to date the records request is processed.
11. All records sufficient to show the identities of every natural or legal person engaged in “disinformation research and tracking” referenced by Ms. Psaki. The time frame for this request is January 20, 2021, to the date this records request is processed.
12. All records sufficient to show the identities of each of the “members of our senior staff” referenced by Ms. Psaki.

### **III. Redactions**

Redactions are disfavored as the FOIA’s exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass 'n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then CDC must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; *see also Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, CDC should produce email attachments.

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.

- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

#### **IV. Request for Expedited Processing**

Your regulations provide for the granting of expedited processing to requests that demonstrate a compelling need. Your regulations say you will process requests “on an expedited basis” whenever there is “an urgent need to inform the public about an actual or alleged Federal Government activity.”<sup>2</sup> We are an organization engaged in gathering, analyzing, and disseminating information, and there is great urgency to inform the public concerning patently unlawful and inappropriate federal activity, namely that the White House appears to be colluding with or at least pressuring social media companies to censor content running counter to the White House’s preferred political narrative. The fact that the White House Press Secretary just admitted to using social media companies to make an end run around the First Amendment has generated outrage and intense media interest. Also, the public has a compelling interest in the efficacy of federal COVID-19 policy. Given the strength of the public interest, and the strong possibility the public will have only a limited amount of time to express its opinions on this matter before those opinions themselves are deemed “disinformation” and censored, expedited processing is proper. Furthermore, this is a straightforward and simple document request that should take few resources to process.

#### **V. Fee Waiver Request**

We request a waiver of all applicable fees. 5 U.S.C. § 552(a)(4)(A)(iii) provides that you shall furnish requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”<sup>3</sup>

In this case, a fee waiver is appropriate because of the public’s right to know whether their government is using social media companies as tools of the state to make an end run around the First Amendment. The public also has a right to know how the decision to attempt this was made, and by whom, as it could constitute an impeachable offense. To date, the information requested has not been released in any

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<sup>2</sup> 45 C.F.R. § 5.27.

<sup>3</sup> 5 U.S.C. § 552(a)(4)(A)(iii); *see also Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115-19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

form to the public; its release in response to this request will therefore contribute significantly to public understanding of the operations of the government.

In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public's understanding of your internal policies and practices with respect to the granting of regulatory waivers will be enhanced through AFL's analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL's financial interest.

## **VI. Record Preservation Requirement**

We request that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.<sup>4</sup>

## **VII. Production**

To accelerate release of responsive records, AFL welcomes production on a rolling basis. Please provide responsive records in electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14<sup>th</sup> Street NW, 5<sup>th</sup> Floor, Washington, D.C. 20005.

## **VIII. Conclusion**

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at [FOIA@aflegal.org](mailto:FOIA@aflegal.org). Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Thank you,

/s/ Gene Hamilton

Gene Hamilton

America First Legal Foundation

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<sup>4</sup> *Chambers v. Dep't of the Interior*, 568 F.3d 998, 1004-05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); *Judicial Watch, Inc. v. Dep't of Commerce*, 34 F. Supp. 2d 28, 41-44 (D.D.C. 1998).



July 22, 2021

Gene Hamilton  
America First Legal Foundation  
Via email: foia@aflegal.org

Dear Mr. Hamilton:

The Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry (CDC/ATSDR) received your Freedom of Information Act (FOIA) request dated July 16, 2021. Your request assigned number is 21-01575-FOIA, and it has been placed in our complex processing queue.

### **Extension of Time**

In unusual circumstances, an agency can extend the twenty-working-day limit to respond to a FOIA request.

We will require more than thirty working days to respond to your request because:

- x We reasonably expect that two or more CDC centers, institutes, and offices (C/I/Os) may have responsive records.
- x We reasonably expect to receive and review voluminous records in response to your request.
- x We reasonably expect to consult with two or more C/I/O/s, or another HHS operating division or another federal agency about your request.

To process your request promptly, please consider narrowing the scope of your request to limit the number of responsive records. If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact the analyst handling your request LaShonda Schofield at 770-488-6241 or our FOIA Public Liaison, Roger Andoh at 770-488-6277. Additionally, you may contact the Office of Government Services (OGIS) to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services; National Archives and Records Administration; 8601 Adelphi Road-OGIS; College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

### **Expedited Processing**

You requested that we expedite processing your request. Your request is granted and your FOIA request would be processed as quickly as possible.

### **Fees and Fee Waivers**

You requested that we waive fees associated with processing your request, your request is granted, however we may charge reduced fees instead of waiving all fees. If we decide to charge reduced fees you will be notified.

**Fee Category**

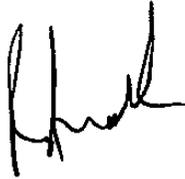
Because you are considered an “Other requester” you are entitled to two hours of free search time, and up to 100 pages of duplication (or the cost equivalent of other media) without charge, and you will not be charged for review time. We may charge for search time beyond the first two hours and for duplication beyond the first 100 pages. (10 cents/page).

**Cut-off-date**

If you don't provide us with a date range for your request, the cut-off date for your request will be the date the search for responsive records starts.

You may check on the status of your case on our FOIA webpage <https://foia.cdc.gov/app/Home.aspx> and entering your assigned request number. If you have any questions regarding your request, please contact me at 770-488-6241 or via email at [hur7@cdc.gov](mailto:hur7@cdc.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Andoh', written in a cursive style.

Roger Andoh  
CDC/ATSDR FOIA Officer  
Office of the Chief Operating Officer  
(770) 488-6399  
Fax: (404) 235-1852

21-01575-FOIA