

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

AMERICA FIRST LEGAL FOUNDATION,
600 14th Street, NW
Fifth Floor
Washington, DC 20005

Plaintiff,

v.

ANTHONY COLEY, in his official capacity
as
Director, Office of Public Affairs
United States Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530-0001

and

UNITED STATES DEPARTMENT
OF JUSTICE,
950 Pennsylvania Ave., N.W.
Washington, DC 20530-0001

Defendants.

Civil Action: 1:21-cv-03024

FIRST AMENDED COMPLAINT

Summary of the Case

1. America First Legal Foundation (“AFL”) filed Freedom of Information Act (“FOIA”) requests with the U.S. Department of Justice (“the Department” or “DOJ”) related to the Department’s role in airlifting foreign nationals to the United States from Afghanistan; activities within the Voting Section of the Civil Rights

Division (“CRT”), to include targeting the State of Georgia’s election integrity measures; and the Attorney General’s October 4, 2021, Memorandum.

2. For each such matter, AFL sought expedited processing pursuant to 5 U.S.C. § 552 (a)(6)(E) and 28 C.F.R. § 16.5(e) and for each such matter the Department denied AFL’s request for expedited processing.

3. In each case, AFL appealed the denial through the administrative process, and the Department subsequently denied each appeal.

4. AFL brought this suit, challenging the denials of expedited processing and challenging an unlawful pattern or practice on November 15, 2021. *See* Doc. 1.

5. After briefing on partial summary judgment related to the pattern or practice claim, this Court granted the Defendant’s partial motion for summary judgment and dismissed AFL’s second claim for relief of its complaint. *See* *Doc.* 10.

6. The parties subsequently conferred and filed a Joint Status Report on December 12, 2022, proposing a new schedule for proceedings. *See* Doc. 14

7. The next day, the Court issued a Minute Order ordering Plaintiffs to file this Amended Complaint by December 23, 2022.

8. This amended complaint follows to clarify the remaining dispute between the parties given the Court’s prior ruling in this case.

Jurisdiction and Venue

9. The Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201.

10. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

Parties

11. AFL is a nonprofit organization with its principal office in the District of Columbia.

12. Mr. Coley is Director of the DOJ's Office of Public Affairs.

13. The DOJ is an agency under 5 U.S.C. § 552(f), with headquarters at 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

14. The Defendants have possession, custody, and control of the requested records.

Facts

The "Afghanistan Request"

15. On August 31, 2021, AFL submitted request FOIA-2021-02103 and requested expedited processing of two portions of its request for records relating to the DOJ's involvement in the airlift of individuals out of the Afghanistan and into the United States. Exhibit 1, at 9.

16. DOJ denied expedited processing on September 10, 2021. *Id.* at 18.

17. AFL appealed on October 22, 2021. *Id.* at 1.

18. DOJ denied AFL's appeal—tracking number A-2022-00151—on November 1, 2021. Exhibit 2.

19. To date, DOJ has not indicated that it has searched for or processed any records.

20. To date, DOJ has not produced or provided any responsive records to this request.

The “Voting Request”

21. On August 31, 2021, AFL submitted request 21-00291-F to CRT, requesting expedited processing of records relating to the CRT Voting Section and its conduct with respect to the State of Georgia’s election integrity measures. Exhibit 3, at 9.

22. On September 10, 2021, CRT responded that portions of AFL’s request were improper FOIA requests and denied expedited processing with respect to the remaining requests without specifying the grounds for that determination. *Id.* at 20.

23. AFL appealed on October 6, 2021. *Id.* at 1.

24. This appeal was assigned tracking number A-2022-00012. Exhibit 4.

25. DOJ denied AFL’s appeal, without any reasoning or justification, by email on October 27, 2021. Exhibit 5. However, in DOJ’s FOIA portal, the appeal status remains as “in process.”

26. To date, DOJ has not indicated that it has searched for or processed any records.

27. To date, DOJ has not produced or provided any responsive records to this request.

The “October 4 Memo Request”

28. On October 7, 2021, AFL submitted a FOIA relating to the Attorney General’s October 4 Memorandum directing, *inter alia*, the Criminal Division, all U.S. Attorneys, and the Federal Bureau of Investigation (“FBI”) to take official action in

furtherance of responding to parents who vocalized concerns at school board meetings. Exhibit 6, at 10.

29. AFL filed this with the Office of Information Policy (“OIP”) (covering custodians within the Office of the Attorney General, the Office of the Deputy Attorney General, the Office of the Associate Attorney General, the White House Liaison, and the Office of Public Affairs), the Office of Legal Counsel (“OLC”), CRT, the Criminal Division (“CRIM”), the Executive Office of U.S. Attorneys (“EOUSA”), and the FBI. *Id.*

30. AFL requested expedited processing from each component. *Id.* at 17-19.

31. OIP assigned the FOIA tracking number FOIA-2022-00056 and denied expedited processing. *Id.* at 21-23.

32. OLC assigned the FOIA tracking number FY22-003 and denied expedited processing. *Id.* at 25-27.

33. CRIM assigned the FOIA tracking number CRM-301677502 and denied expedited processing. *Id.* at 29-30.

34. EOUSA assigned the FOIA tracking number EOUSA-2022-000037 and rejected the FOIA on the grounds that it insufficiently described the records sought. *Id.* at 32-33.

35. CRT assigned the FOIA tracking number FOI/PA No. 22-00004-F and did not address AFL’s request for Expedited Processing. *Id.* at 35-37.

36. FBI has not responded.

37. AFL appealed all these determinations by a single letter filed with DOJ on October 19, 2021. *See* Exhibit 6.

38. OIP assigned AFL's appeal tracking number A-2022-000127, Exhibit 7, and denied it on October 27, 2021. Exhibit 8.

39. OLC assigned AFL's appeal tracking Number A-2022-00180, Exhibit 9, and denied it on October 28, 2021. Exhibit 10.

40. CRIM assigned AFL's appeal tracking Number A-2022-00181, Exhibit 11, and denied it on October 29, 2021. Exhibit 12.

41. EOUSA assigned AFL's appeal tracking Number A-2022-00182, Exhibit 13, and denied it by email on October 28, 2021. Exhibit 14.

42. CRT assigned AFL's appeal tracking Number A-2022-00183, Exhibit 15, and dismissed it as moot on October 28, 2021. Exhibit 16.

43. To date, DOJ has not indicated that it has searched for or processed any records.

44. To date, DOJ has not produced or provided any responsive records to this request.

**Claim for Relief
Violation of 5 U.S.C. § 552**

45. AFL incorporates by reference paragraphs 1–44.

46. AFL properly requested records within the possession, custody, and control of the Defendant.

47. The Defendant failed to conduct a reasonable search for responsive records, and the requested records are not exempt from disclosure pursuant to any FOIA exemption. *See* 5 U.S.C. § 552(b).

48. Moreover, the Defendant failed to disclose any segregable, non-exempt portions of responsive records. *See id.*

49. The Defendant failed to respond to AFL's request within the statutory time-period. 5 U.S.C. § 552(a)(6).

50. Accordingly, AFL has exhausted its administrative remedies. 5 U.S.C. § 552(a)(6)(C).

51. AFL should be granted declaratory and injunctive relief under 5 U.S.C. § 552(a)(4)(b).

Relief Requested

WHEREFORE, AFL respectfully requests this Court:

A. Declare that the records sought by AFL's April 4, 2022, request must be disclosed pursuant to 5 U.S.C. § 552;

B. Order the Defendant to search immediately, demonstrating search methods reasonably likely to lead to the discovery of responsive records;

C. Order the Defendant to produce by a date certain all non-exempt records responsive to AFL's FOIA request, accompanied by a Vaughn index of any responsive records or portions of responsive records being withheld under claim of exemption;

D. Order the Defendant to grant AFL's request for a fee waiver;

E. Award AFL attorneys' fees and costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

F. Grant AFL such other and further relief as this Court deems proper.

December 21, 2022,

Respectfully submitted,

/s/ Andrew J. Block

CHRISTOPER E. MILLS
DC Bar No. 1021558
Spero Law LLC
557 East Bay St. #22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law
Counsel to America First Legal Foundation

REED D. RUBINSTEIN
D.C. Bar No. 400153
AMERICA FIRST LEGAL FOUNDATION
611 Pennsylvania Ave., S.E. #231
Washington, D.C. 20003
(202) 964-3721
reed.rubinstein@aflegal.org
*Counsel for Plaintiff America First
Legal Foundation*

ANDREW J. BLOCK
D.C. Bar No. 90002845
AMERICA FIRST LEGAL FOUNDATION
611 Pennsylvania Ave., S.E. #231
Washington, D.C. 20003
(202) 836-7958
andrew.block@aflegal.org
*Counsel for Plaintiff America First
Legal Foundation*



October 22, 2021

VIA FOIA STAR

U.S. Department of Justice
Office of Information Policy
Sixth Floor, 441 G Street, NW
Washington, D.C. 20530

Re: Appeal and Notice of Intent to Sue, FOIA-2021-02103

Dear Sir/Madam:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, 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. 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. Holding government officials accountable for faithfully executing our laws and protecting our citizens are among our core concerns.

AFL is “primarily engaged in disseminating information” for the purposes of 5 U.S.C. § 552(a)(6)(E). We distribute our work widely, posting government records for the benefit of the public, Congress, policymakers, and scholars; and creating and disseminating distinct work on media outlets of all sorts through the exercise of our editorial skills. We intend to disseminate information and analysis about this request—and any information obtained in response—on our website and social media outlets. Our email list contains over 65,000 unique email addresses, our Twitter page has nearly 10,000 followers, the Twitter page of our Founder and President has over 83,800 followers, and we have another 18,000 followers on GETTR. Courts have found

other organizations engaged in similar activities “easily” satisfy the legal standard with less than half the followers and subscribers AFL currently has.¹

I. Background

On August 31, 2021, AFL submitted FOIA-2021-02103 to the Department of Justice (DOJ) Office of Information Policy (OIP) to obtain records related to the Biden Administration’s evacuation and vetting of Afghan nationals in the aftermath of its failed Afghanistan retreat. See Exhibit 1. Expedited processing was requested for Items A and B thereof. Item A requested:

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) Attorney General Merrick B. Garland
- 2) Deputy Attorney General Lisa O Monaco
- 3) DOJ Chief of Staff (sic)
- 4) Assistant Attorney General for National Security Division
- 5) Deputy Assistant Attorney General for Counterterrorism in NSD
- 6) NSD Chief of Staff

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

Item B requested:

All records related to DOJ 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.

OIP denied expedition on September 10, 2021. See Exhibit 2.

¹ *Protect Democracy Project, Inc., v. United States Dep’t of Justice*, 498 F. Supp. 3d 132, 139-40 (D.D.C. 2020); see also *Brennan Center for Justice at NYU School of Law v. Department of Commerce*, 498 F. Supp. 3d 87, 98 (D.D.C. 2020); accord *Cause of Action v. FTC*, 799 F.3d 1108, 1125-26 (D.C. Cir. 2015). *Brennan Center* is instructive and suggestive:

The Brennan Center asserts that it is primarily engaged in dissemination of information as ‘a non-partisan law and public policy’ group that ‘regularly writ[es], publish[es], and disseminat[es] information’ and maintains an online library of thousands of articles, including over forty articles about the census. Defendants do not dispute the Brennan Center’s status as an organization “primarily engaged in disseminating information,” and other courts have found that similar organizations meet this standard.

Brennan Center, 498 F. Supp.3d at 98 (citations omitted). The FOIA sets one standard for all requestors. Treating AFL differently than others similarly situated, whether at the direction of individual political officials in OAG or OPA or otherwise violates AFL’s due process rights.

FOIA-2021-02103 documented AFL's compelling need for expedited processing of Items A and B pertaining to the admission and vetting of Afghan and other foreign nationals into the United States. It adequately articulated the urgency for immediate disclosure of records pertaining to the measures being taken, or not being taken, to verify identities, to vet for terror ties, and to protect American citizens here at home.² Nearly identical requests were filed with several other Cabinet agencies involved in the Afghanistan withdrawal. All, save for DOJ, granted expedited processing. See Exhibit 3 (Department of Defense); Exhibit 4 (Department of Homeland Security); and Exhibit 5 (Department of State).

Accordingly, AFL timely appeals OIP's denial of expedited processing.³

II. OIP Should Grant Expedited Processing

OIP denied expedition on two apparently independent grounds. First:

Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied. This Office cannot identify a particular urgency to inform the public about an actual or alleged federal government activity beyond the public's right to know about government activities generally.

Exhibit 2 at 1. Second:

² Exhibit 1 at 6 – 7 (citations omitted). See also 5 U.S.C. § 552(a)(6)(E); 28 C.F.R. § 116.5(e); *Protect Democracy Project, Inc. v. DOD*, 263 F. Supp. 3d 293, 300 (D.D.C. 2017). These are not hypothetical concerns. See U.S. Dep't of Justice (W.D. Wis.), *Grand Jury Returns Indictments Charging 2 Afghan Evacuees with [Sex] Crimes While at Fort McCoy & Wisconsin Residents with Gun & Drug Crimes* (Sept. 22, 2021) (“Bahrullah Noori, 20, is charged with attempting to engage in a sexual act with a minor using force against that person, and with three counts of engaging in a sexual act with a minor, with one count alleging the use of force. The indictment alleges that that the victims had not attained the age of 16 years and were at least four years younger than the defendant. Mohammad Haroon Imaad, 32, is charged with assaulting his spouse by strangling and suffocating her.”) <https://www.justice.gov/usao-wdwi/pr/grand-jury-returns-indictments-charging-afghan-evacuees-crimes-while-fort-mccoy>; U.S. Dep't of Justice (W.D. Pa.), *Syrian Man Indicted on Terrorism Charges After Planning Attack on Christian Church, Indictment Alleges Mustafa Alowemer Plotted Attacks in the Name of ISIS* (July 18, 2021) <https://www.justice.gov/usao-wdpa/pr/syrian-man-indicted-terrorism-charges-after-planning-attack-christian-church>; Dillon Burroughs, *Congresswoman Reveals Disturbing Thing She Found When Visiting Camp for Afghan Refugees in US*, THE WESTERN JOURNAL (Oct. 20, 2021) <https://www.westernjournal.com/congresswoman-reveals-disturbing-thing-found-visiting-camp-afghan-refugees-us/>; Nick Miroff, *U.S. has flagged 44 Afghan evacuees as potential national security risks over the past two weeks, vetting reports show*, THE WASHINGTON POST (Sept. 10, 2021) https://www.washingtonpost.com/national/afghan-refugees-security-risks/2021/09/09/a0c5d1ac-1194-11ec-a511-cb913c7e5ba0_story.html

³ The FOIA sets one standard for all federal agencies. Accordingly, it should be applied the same way by all federal agencies. Inconsistent and contradictory processing determinations, especially on a matter of such political sensitivity and public interest as Afghan vetting, raise obvious policy and practice due process concerns. See *Citizens for Resp. & Ethics in Washington v. U.S. Dep't of Hous. & Urb. Dev.*, 415 F. Supp. 3d 215, 225 (D.D.C. 2019).

You have also indicated that you are seeking expedited processing of your request pursuant to the Department's standards permitting expedition for requests based on circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual (See *id.* § 16.5(d)(i)) and involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence" (See *Id.* (sic) § 16.5(d)(iv)). In neither instance have you provided a statement explaining in detail the basis for your request to receive expedited processing under these standards.

Id. As explained below, neither ground is sufficient and expedited processing should have been granted.

A. *Items A And B Meet The "Urgency" Test.*

The FOIA mandates expedited processing when a requestor demonstrates "compelling need." 5 U.S.C. § 552(a)(6)(E)(i)(II). "Compelling need," in relevant part, means an "urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v). 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."⁴ As explained in FOIA-2021-02103, the Biden Administration's extraordinarily incompetent retreat from Afghanistan and its chaotic failure to disclose how it decided whom to admit and whom to exclude from the United States were at the time of the request and remain to this day matters compelling speedy action or attention.⁵

Alternatively, the Circuit test for expedited processing requires the department to weigh three main factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity.⁶ AFL meets this test as well.

Respecting factor one, as noted above, the vetting of Afghans admitted into the United States is assuredly a matter of public concern and media interest, and central to pressing issues of the day. The public must know why these Afghans, most of whom are apparently ineligible for a Special Immigrant Visa (given to eligible Afghan translators and interpreters who worked directly with the U.S. Armed Forces or

⁴ The FOIA must be interpreted in accord with the ordinary public meaning of its terms at the time of enactment. *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020).

⁵ See *Exhibit 1* at 6 n. 5, 6, and 7 n. 7, 9.

⁶ *Al-Fayed v. Central Intelligence Agency*, 254 F.3d 300, 309-10 (D.C. Cir. 2001).

under Chief of Mission (COM) authority at U.S. Embassy Baghdad or U.S. Embassy Kabul, and not others who worked for the United States), were admitted to our country; and why it is so many U.S. citizens, green card holders, and Afghan allies remain under Taliban control and at risk.⁷

Respecting factor two, if production is delayed, then both AFL and the public at large will be precluded from obtaining in a timely fashion information vital to the current and ongoing debate surrounding refugee vetting. Being closed off from the opportunity to debate the Biden Administration's conduct here is a serious harm in an open democracy.⁸ Disclosing relevant records months or years from now will be of academic interest only, for any damage will have been done and stale information is of little value.⁹

Respecting factor three, Items A and B involve "federal government activity."

B. *Items A And B Meet The 28 C.F.R. §16.5(e)(1) Test.*

Section 16(e)(1)(i) provides "Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve: (i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual". AFL cannot identify "an individual" who can reasonably be expected to suffer imminent threat to life or physical safety if expedited processing is denied. Therefore, AFL withdraws its request for expedited processing under this subsection.

Section 16(e)(1)(iv) provides "Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the

⁷ *Compare Payne Enters. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988); *Am. Oversight v. U.S. Dep't of State*, 414 F. Supp. 3d 182, 186 (D.D.C. 2019); *Elec. Privacy Info. Ctr. v. U.S. Dep't of Justice*, 416 F. Supp. 2d 30, 40-41 (D.D.C. 2006).

⁸ *Protect Democracy Project, Inc. v. U.S. Dep't of Def.*, 263 F. Supp. 3d 293, 299-300 (D.D.C. 2017). The court reasoned:

But do the requests touch on 'a matter of current exigency to the American public,' and would 'delaying a response...compromise a significant recognized interest,' *Al-Fayed*, 254 F.3d at 310? Likely, the answer to both questions is yes. Regarding nationwide 'exigency': In its requests, submitted the day after the April 6 missile strikes against Syria, Protect Democracy explained that 'the President's decision to initiate military action is of the utmost importance to the public,' and that 'whether the President has the legal authority to launch [such] a military strike' is similarly critical. Few would take issue with these assertions. But as evidence that they were justified, one need look no further than the widespread media attention—including by some of the nation's most prominent news outlets—paid both to the April 6 strike and its legality, as early as the date of Protect Democracy's requests.

Id. at 299. If the one or two news cycles worth of attention given to one missile strike is sufficient then Afghan vetting should qualify as well.

⁹ *Payne* 837 F.2d at 494.

government's integrity that affect public confidence.” As a threshold matter, AFL notes that in denying AFL expedited processing for its request FOIA-2022-00056, both OIP and the Office of Legal Counsel said “the Director of the Office of Public Affairs determines whether a request pertains to ‘[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.’ 28 C.F.R § 16.5(e)(1)(iv); *see id.* § 16.5(e)(2).” It is not clear whether the Director of the Office of Public Affairs has made a similarly erroneous determination with respect to FOIA-2021-02103. It would not be surprising if he did, because the Biden Administration’s chaotic Afghan vetting has been a major embarrassment with significant adverse political consequences for the Biden White House and the Democrat party.¹⁰

Regardless, on the record before OIP, and under applicable and controlling authorities, expedited processing should be granted.¹¹ As first documented, Afghan vetting is a matter of widespread and exceptional media interest in which there exist possible questions about the Biden Administration’s integrity that affect public confidence. AFL need not prove government wrongdoing to obtain records on an expedited basis. Rather, FOIA-2021-02103, fairly read, must simply provide grounds to support the contention that the matter is time sensitive, and that it concerns a “matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.”¹²

OIP contends AFL failed to explain “in detail” the basis for its request to receive expedited processing 28 C.F.R. § 16.5(e)(1)(iv). But FOIA-2021-02103 established both time sensitivity and the fact that Afghan vetting was a matter of widespread and exceptional medial interest affecting public confidence in the government’s integrity.¹³ This story is currently unfolding; disclosure of the requested records should yield information bearing directly on the critical questions of what the government knew about the Afghans it is bringing or hosting and resettling into the United States, when it knew it, and whether it is now being truthful with the public

¹⁰ *Letter from the Hon. Yvette Herrell, et al, to the Hon. Joseph R. Biden* (Sept. 8, 2021) <https://herrell.house.gov/sites/evo-subsites/herrell.house.gov/files/evo-media-document/Afghan%20Vetting%20Letter.pdf>; Dan Balz et al., *Americans Support Afghanistan Pullout—But Not the Way it Was Done, a Post-ABC Poll Finds*, WASHINGTON POST (Sept. 3, 2021), https://www.washingtonpost.com/politics/post-abc-poll-biden-afghanistan/2021/09/02/5520cd3e-0c16-11ec-9781-07796ffb56fe_story.html (“The Afghanistan withdrawal has contributed to a drop in Biden’s overall approval rating, which for the first time in his presidency is net negative. The poll finds 44 percent saying they approve of how he is handling his job, while 51 percent disapprove”); Domenico Montanaro, *Biden’s Approval Rating Hits a New Low After the Afghanistan Withdrawal*, NPR (Sept. 2, 2021), <https://www.npr.org/2021/09/02/1033433959/biden-approval-rating-afghanistan-withdrawal>. *See generally*, *Citizens for Responsibility*, 415 F. Supp. 3d at 225.

¹¹ *Am. C.L. Union v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 31 (D.D.C. 2004) (citations omitted); *Brennan Center*, 498 F. Supp. 3d at 98–99; *Citizens for Responsibility*, 436 F. Supp. 3d at 360-61.

¹² *Citizens for Responsibility*, 436 F. Supp. 3d at 361.

¹³ Exhibit 1 at 6-7.

about past circumstances and present or future risks. Public confidence in law enforcement is of paramount importance. Expedition is therefore appropriate.¹⁴

III. Conclusion

Please contact the undersigned at FOIA@aflegal.org if you require additional clarification or information.

/S/ REED D. RUBINSTEIN
Reed D. Rubinstein
America First Legal Foundation

¹⁴ *Am. C.L. Union*, 321 F. Supp. 2d at 30.

EXHIBIT 1



August 31, 2021

Via FOIA STAR

Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

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.¹

These assurances were false.²

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/>

¹ 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/>.

² 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-;](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) Attorney General Merrick B. Garland
 - 2) Deputy Attorney General Lisa O Monaco
 - 3) DOJ Chief of Staff
 - 4) Assistant Attorney General for National Security Division
 - 5) Deputy Assistant Attorney General for Counterterrorism in NSD
 - 6) NSD Chief of Staff

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

- B) All records related to DOJ 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) All documents that mention or reference refugee or SIV screening 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 the records request is processed.
- D) All records that mention or reference coordination with the Department of Defense, the Department of State, or the Department of Homeland Security to

screen or vet any 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.

- E) All records regarding either 1) inquiries from the interagency or 2) information provided to an interagency partner about people seeking admission to the United States, or onto a United States operated aircraft out of Afghanistan.
- F) All records of derogatory information provided to the Department of State on individuals evacuated from Afghanistan between August 16, 2021, and August 31, 2021.

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 28 C.F.R. § 16.10, 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 and B.

Your regulations provide that you will grant expedited processing requests that demonstrate a “compelling need.”³ 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.”⁴ 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.⁵ However, the evacuation has been chaotic, poorly planned, and badly executed.⁶ The Biden Administration turned over Kabul to the Taliban, giving it operational control over access to the

³ 28 C.F.R. § 16.5(e).

⁴ *Id.*

⁵ *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>

⁶ 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.”).

Kabul airport and lists of U.S. Citizens and Afghan human assets.⁷ Generally speaking, only individuals the Taliban allowed to leave Afghanistan were able to do so.

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,⁸ 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.⁹

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.

⁷ 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 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>.

⁸ 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>

⁹ 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>.

Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14th Street NW, 5th 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. 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

EXHIBIT 2



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

September 10, 2021

Reed Rubinstein
foia@aflegal.org

Re: FOIA-2021-02103
DRH:GMG

Dear Reed Rubinstein:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request dated and received in this Office on August 31, 2021, in which you requested records concerning the vetting of individuals being evacuated from Afghanistan since July 1, 2021.

You have requested expedited processing of your request pursuant to the Department's standard permitting expedition for requests based on circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. See 28 C.F.R. § 16.5(e)(1)(i) (2018). Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied. Your letter fails to explain how access to the requested records would alleviate a specific threat to the life or physical safety of an individual.

Additionally, you have requested expedited processing of your request pursuant to the Department's standard permitting expedition for requests involving "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." See 28 C.F.R. § 16.5(e)(1)(ii) (2018). Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied. This Office cannot identify a particular urgency to inform the public about an actual or alleged federal government activity beyond the public's right to know about government activities generally.

You have also indicated that you are seeking expedited processing of your request pursuant to the Department's standards permitting expedition for requests based on circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual (See id. § 16.5(d)(i)) and involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence" (See Id. § 16.5(d)(iv)). In neither instance have you provided a statement explaining in detail the basis for your request to receive expedited processing under these standards.

To the extent that your request requires a search in another Office, consultations with other Department components or another agency, and/or involves a voluminous amount of

-2-

material, your request falls within “unusual circumstances.” See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2018). Accordingly, we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner, and the time needed to complete our work on your request will necessarily depend on a variety of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your request. At this time we have assigned your request to the complex track. In an effort to speed up our process, you may wish to narrow the scope of your request to limit the number of potentially responsive records so that it can be placed in a different processing track. You can also agree to an alternative time frame for processing, should records be located, or you may wish to await the completion of our records search to discuss either of these options. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request.

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 handing your request, Georgianna Gilbeaux, by telephone at the above number or you may write to them at the above address. You may contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your request at: Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001; telephone at 202-514-3642.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration 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, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP’s FOIA STAR portal by creating an account following the instructions on OIP’s website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,



Douglas R. Hibbard
Chief, Initial Request Staff

EXHIBIT 3



August 31, 2021

Via Email & OSD/JS PAL - 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.¹

These assurances were false.²

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/>

¹ 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/>.

² 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-;](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

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

Your regulations provide that you will grant expedited processing requests that demonstrate a “compelling need.”³ 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.”⁴ 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.⁵ However, the evacuation has been chaotic, poorly planned, and badly executed.⁶ The Biden Administration turned over Kabul to the Taliban, giving it operational control over access to the

³ 32 C.F.R. § 286.8(e).

⁴ *Id.*

⁵ *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>

⁶ 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.”).

Kabul airport and lists of U.S. Citizens and Afghan human assets.⁷ Generally speaking, only individuals the Taliban allowed to leave Afghanistan were able to do so.

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,⁸ 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.⁹

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.

⁷ 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 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>.

⁸ 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>

⁹ 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>.

Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14th Street NW, 5th 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. 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

EXHIBIT 4



August 31, 2021

VIA DHS PAL & ELECTRONIC MAIL – 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.¹

These assurances were false.²

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/>

¹ 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/>.

² 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-;](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.”³ 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.”⁴ 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.⁵ However, the evacuation has been chaotic, poorly planned, and badly executed.⁶ 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.⁷ Generally speaking, only individuals the Taliban allowed to leave Afghanistan were able to do so.

³ 6 C.F.R. § 5.5.

⁴ *Id.*

⁵ *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>

⁶ 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.”).

⁷ 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,⁸ 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.⁹

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 14th Street NW, 5th Floor, Washington, D.C. 20005.

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>.

⁸ 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>

⁹ 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. 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

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

[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.

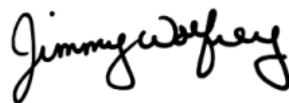
In the event that your fee waiver is denied, and you determine that you still want the records, provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS FOIA regulations as they apply to media requesters. As 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)

EXHIBIT 5



August 31, 2021

VIA ELECTRONIC MAIL - 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.¹

These assurances were false.²

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/>

¹ 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/>.

² 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-;](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-

mation 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, J, and K.

Your regulations provide that you will grant expedited processing requests that demonstrate a “compelling need.”³ 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.”⁴ 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.⁵ However, the evacuation has been chaotic, poorly planned, and badly executed.⁶ The Biden Administration turned over Kabul to the Taliban, giving it operational control over access to the

³ 22 C.F.R. § 171.11(f).

⁴ *Id.*

⁵ *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>

⁶ 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.”).

Kabul airport and lists of U.S. Citizens and Afghan human assets.⁷ Generally speaking, only individuals the Taliban allowed to leave Afghanistan were able to do so.

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,⁸ 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.⁹

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.

⁷ 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 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>.

⁸ 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>

⁹ 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>.

Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14th Street NW, 5th 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. 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

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 and include the case number F-2021-09922.

Sincerely,

/s/

Lori Hartmann
Appeals Officer
Office of Information Programs
and Services



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Reed Rubinstein

foia@aflegal.org

November 1, 2021

Re: Appeal No. A-2022-00151
Request No. FOIA-2021-02103
MWH:EAH

VIA: online portal

Dear Reed Rubinstein:

This is to advise you that your administrative appeal from the action of of the Office of Information Policy was received in this Office on October 22, 2021. You appealed from IR Staff's denial of your request for expedited treatment of your Freedom of Information Act request.

In your appeal letter, you assert that your request is entitled to expedited treatment pursuant to the second and fourth standards enumerated in the Department of Justice's regulations. Expedited treatment pursuant to the first standard will be granted where not doing so "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." 5 U.S.C. § 552(a)(6)(E)(v)(I). See also 28 C.F.R. § 16.5(e)(1)(i) (2020). Under the second standard, you must show that there is "[a]n urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II). See also 28 C.F.R. § 16.5(e)(1)(ii) (2020). Under the third standard, you must show that the request involves "[t]he loss of substantial due process rights." 28 C.F.R. § 16.5(e)(1)(iii) (2020). Under the fourth standard, you must show that the subject matter of your request is a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence." Id. at § 16.5(e)(1)(iv). This Office makes determinations regarding the first three standards, while the Department's Director of Public Affairs makes determinations regarding the fourth standard. See id. at § 16.5(e)(2).

After carefully considering your appeal, I am affirming IR Staff's action in denying your request for expedited treatment. In deciding whether you have demonstrated that there is an "urgency to inform the public" under 28 C.F.R. § 16.5(e)(1)(ii) (2020), I considered three factors: "(1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity." Al-Fayed v. CIA, 254 F.3d 300, 310 (D.C. Cir. 2001). Although your request concerns a federal

government activity, you have not established that the requested records are a matter of current exigency to the American public, nor that delaying a response would compromise a significant recognized interest. Furthermore, although you may well engage in the dissemination of information, you have not demonstrated that you are "primarily engaged" in disseminating information. See Landmark Legal Found. v. EPA, 910 F. Supp. 2d 270 (D.D.C. 2012) (noting that plaintiff must be "primarily, and not just incidentally, engaged in information dissemination"); ACLU of N. Cal. v. DOJ, No. 04-4447, 2005 WL 588354, at *14 (N.D. Cal. Mar. 11, 2005) (holding that information dissemination must be "*the* main activity" rather than merely "*a* main activity" of plaintiff to satisfy expedition standard). Without such a showing, expedited processing pursuant to the second standard is not warranted.

The Director of Public Affairs considered your request for expedited processing under the fourth standard and determined that your request should be denied. I agree with the determination of the Director of Public Affairs that expedited treatment of your request is not warranted under this standard because you have failed to sufficiently demonstrate that the subject of your request is "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(e)(1)(iv) (2020).

I note that you requested expedited treatment of your appeal. Because I am closing your underlying appeal within ten calendar days, your request for expedited treatment of this appeal is moot.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of IR Staff in response to your request for expedited processing.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

X
Matthew Hurd,
Chief, Administrative Appeals Staff



October 6, 2021

VIA FOIA STAR

Office of Information Policy (OIP)
U.S. Department of Justice
6th Floor
441 G St. NW
Washington, DC 20530

Re: 28 CFR § 16.8 Administrative Appeal, FOIA Request 21-00291-F (CRT)

To Whom it May Concern:

America First Legal Foundation (AFL) is a national, nonprofit organization working 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.

On August 31, 2021 AFL submitted Freedom of Information Act (FOIA) Request 21-00291-F to the Civil Rights Division of the Department of Justice (CRT).¹ CRT, by letter from Kilian Kagle, Chief of CRT's Freedom of Information/Privacy Acts Unit, replied on September 10, 2021.² AFL appreciates CRT's detailed adjudication of our Request, but appeals CRT's determinations that Items H, I and J are not proper FOIA requests, and that expedited processing will not be granted.

I. Standard of Review

The FOIA broadly requires agencies to disclose federal records freely and promptly.³ The department must liberally construe requests and bears the burden of proving it has made a good faith effort to search for the requested records using methods "which can be reasonably expected to produce the information requested."⁴ At all times, the

¹ Exhibit 1.

² Exhibit 2.

³ *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

⁴ *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).

FOIA must be construed in accord with the ordinary public meaning of its terms at the time of its enactment to carry out Congress’s open government mandate.⁵

II. Items H, I, and J are Proper FOIA Requests.

CRT declared AFL’s Items H, I, and J improper FOIA requests. It stated:

Those requests do not seek records, rather they are more akin to interrogatories in civil discovery and ask CRT to research records, analyze those records, conduct legal research and provide AFL with substantive answers to its questions. Under the Freedom of Information Act, agencies are not required to satisfy a request for records proving the veracity, justification or underlying determination of a specific statement by an Official as it would require an Agency to undertake research, analysis and formulation of opinions. *Hall & Assocs. v. EPA*, No. 16-5315, 2018 WL 1896493, at *2 (D.C. Cir. Apr. 9, 2018).⁶

AFL disagrees.

To begin, *Hall* does not stand for the proposition for which CRT cites it.⁷ The requester in *Hall* asked the agency “to agree or disagree with the various contentions of the Coalition under the guise of a FOIA request” and to provide all documents proving a government statement “wrong.”⁸ In an unpublished decision, the Court of Appeals for the District of Columbia held quoting a statement regarding scientific misconduct and asking the agency to provide all documents proving that statement wrong “did not reasonably describe the documents sought [] and would have required EPA to undertake research, analysis, and formulation of opinions—actions not required by FOIA.”⁹

Here, by contrast, CRT did not allege that AFL failed to reasonably describe the requested records. Nor did AFL ask CRT to agree or disagree with contentions, or conduct original legal research and render an opinion, or create or retain records.¹⁰ Rather, AFL requested records in the department’s possession of specific facts (Requests H5, H6, H7, J1, J2, and J5); identifying specific agency decision makers (Requests I5, I6, and I7); of specific interagency activities (Requests I3 and I4); of the department’s legal and operational understanding of “disinformation” and “misinformation”, terms without legal meaning that are apparently the fulcrum for key law enforcement activities and interagency partnerships (Requests H1, H3, I1,

⁵ *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020).

⁶ Exhibit 2, at 5

⁷ Compare *id.* with Dep’t of Justice, *Guide to the Freedom of Information Act* at 31 n. 119 (Aug. 20, 2021) <https://www.justice.gov/oip/page/file/1199421/download#page=25>.

⁸ *Hall & Assocs. v. Env’t Prot. Agency*, 83 F. Supp. 3d 92, 101-102 (D.D.C. 2015).

⁹ *Hall & Assocs. v. Env’t Prot. Agency*, No. 16-5315, 2018 WL 1896493, at *2 (D.C. Cir. Apr. 9, 2018).

¹⁰ See *Kissinger v. Repts. Comm. for Freedom of the Press*, 445 U.S. 136, 152 (1980).

J3, and J4); and reflecting the Attorney General’s understanding of “disinformation” as used in his June 11, 2021 policy address, and in his law enforcement decisions (Requests H2 and I2).¹¹

AFL did *not* request the department to create new documents, answer questions with a narrative response, or engage in anything resembling a civil discovery process. Each response was carefully crafted to seek records, including communications among staff, to shed light on the Attorney General’s policies as articulated in his address, and importantly, how the department is interpreting and implementing those policies and the Biden Executive Order 14109 and interagency partnership to “combat election disinformation” referenced therein.

AFL and the public are entitled to know what the Department is up to regarding voting rights, election integrity, and its role as the apparent point of the spear in the Biden Administration’s assault and “combat” on domestic “disinformation” and “misinformation.” Distressingly, it appears the department and the Biden Administration have invested these terms, though elastic enough to encompass any speech on any topic the government wishes to suppress and punish, with real legal consequences.¹² Request H, I, and J are ordinary, proper, and standard FOIA requests. AFL’s appeal should be granted.

III. AFL is Entitled to Expedited Processing.

CRT erroneously denied AFL expedited processing because:

You have not demonstrated that your request meets the criteria necessary for expedited processing. Moreover, as I am sure you understand, CRT receives a high volume of requests, many from requestors who also ask for expedited processing. We have a limited number of staff dedicated to responding to FOIA requests and cannot always allow new requests to take precedence over the hundreds of previously submitted requests.¹³

AFL disagrees.

First, CRT should have specified why AFL’s request failed to meet the criteria for expedited processing. It did not. It simply asserted that the request did not meet the criteria and cited workload as a justification. This is an improper denial.

¹¹ U.S. Dep’t of Justice, *Attorney General Merrick Garland Delivered a Policy Address Regarding Voting Rights* (June 11, 2021) <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivered-policy-address-regarding-voting-rights>

¹² *Id.*; Nat’l Sec. Council, *National Strategy for Countering Domestic Terrorism* at 9, 18, 20, 29 (June 2021) <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>

¹³ Exhibit 2, at 5.

Second, AFL has proven “compelling need” under 5 U.S.C. § 552(a)(6)(E). First, the record shows multiple federal agencies have acknowledged AFL is primarily “engaged in disseminating information.”¹⁴ To AFL’s knowledge, the department has never disputed this. Second, the record shows the department’s voting and election integrity operations, as well as the department’s plan to “combat” “disinformation” are assuredly matters of “actual or alleged Federal Government activity.” To AFL’s knowledge, the department has never disputed this, either. Third, 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.” To AFL’s knowledge, the department agrees voting rights, election integrity, and combatting election “misinformation” or “disinformation” all require and compel speedy action and attention. Why, otherwise, would the Attorney General have promised on June 11, 2021, “within the next thirty days – we will double the [Civil Rights] division’s enforcement staff for protecting the right to vote”, affirmed that “we will not wait for...legislation to act”, committed to “partner with other federal agencies to combat election disinformation that intentionally tries to suppress the vote”, or joined an unprecedented, coordinated, interagency effort targeting American citizens who are deemed to disseminate undefined “disinformation” and/or “misinformation”?¹⁵ Accordingly, AFL should have been granted expedited processing and is entitled to injunctive relief.

In the alternative, 28 C.F.R. § 16.5(e) is the department’s expedited processing regulation. 28 C.F.R. § 16.5(e)(ii) repeats the statutory factors. Therefore, as explained above, AFL is entitled to expedited processing here as well. But as permitted by statute, the department has expanded expedited processing to include requests for records involving the loss of substantial due process rights or matters of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.¹⁶ Again, AFL has made the requisite determination. Attaching legal and intelligence agency consequences to undefined terms such as “disinformation” and “misinformation” as the department seems to do obviously threatens the “loss of substantial due process rights” under 28 C.F.R. § 16.5(e)(1)(iii).¹⁷ Additionally, the department’s voting rights and election integrity law enforcement activities are self-evidently of urgent and

¹⁴ Exhibit 1, at 10 n.9.

¹⁵ U.S. Dep’t of Justice, *Attorney General Merrick Garland Delivered a Policy Address Regarding Voting Rights* (June 11, 2021) <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivered-policy-address-regarding-voting-rights>; Nat’l Sec. Council, *National Strategy for Countering Domestic Terrorism* at 9, 18, 20, 29 (June 2021) <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>

¹⁶ 28 C.F.R. §§ 16.5(e)(1)(iii), (iv).

¹⁷ See generally note 15, *supra*.

intense public interest and concern in which there are possible questions about the government's integrity that affect public confidence under 28 C.F.R. § 16.5(e)(1)(iv).¹⁸

Also in the alternative, the Circuit test for expedited processing requires weighing three main factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity. AFL meets this test as well.

Respecting factor one, as noted above, the record shows voting rights, election integrity, and the government's efforts and plan to "combat election disinformation" are assuredly matters of public concern and media interest. There is little doubt the subject matter of the requests is central to a pressing issue of the day.

Respecting factor two, if production is delayed, then both AFL and the public at large will be precluded from obtaining in a timely fashion information vital to the current and ongoing debate surrounding election integrity, voting rights, and, critically, the Biden Administration's unprecedented decision to use the coercive power of federal government against American citizens under the rubric of "misinformation"—a malleable term without fixed statutory or regulatory definition that lends itself to government abuse and the unlawful targeting of political opponents or citizens who dare to speak or think differently.¹⁹ Being closed off from the opportunity to debate the Department's voting rights, election integrity, and "election misinformation" law enforcement policies and activities itself is a harm in an open democracy.²⁰ And the

¹⁸ Hannah Bleau, *Poll: Majority of Voters Support Voter ID and Reject 'Racism' as Reason for Election Integrity Laws*, BREITBART (July 8, 2021) <https://www.breitbart.com/politics/2021/07/08/majority-voters-support-voter-id-reject-racism-reason-election-integrity-laws/> (finding that 63% of voters identify election integrity as one of their top issues). *See also*, Catherine Kim, *Poll: 70 Percent of Republicans Don't Think the Election Was Free and Fair*, POLITICO (Nov. 9, 2020) <https://www.politico.com/news/2020/11/09/republicans-free-fair-elections-435488> (finding that Republicans trust in the election plummeted after Biden won, and Democrats trust skyrocketed). *See, also*, Richard Cowan, *U.S. Senate's Schumer Mulls Passing Election Reform Without Republicans*, REUTERS (Sept. 21, 2021) <https://news.yahoo.com/u-senate-leader-schumer-opens-152145631.html>; Carl Hulse, *Democrats Propose a Compromise Bill on Voting Rights* THE NEW YORK TIMES (Sept. 14, 2021) <https://www.nytimes.com/2021/09/14/us/politics/voting-rights-bill-democrats.html>; U.S. Dep't of Justice, *Attorney General Merrick B. Garland Delivers Remarks at Justice Department Leadership Meeting with State and Local Election Officials on Threats to Election Workers* (Aug. 26, 2021) <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-justice-department-leadership-meeting>; U.S. Dep't of Justice, *Justice Department Files Lawsuit Against the State of Georgia to Stop Racially Discriminatory Provisions of New Voting Law* (June 25, 2021) <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-state-georgia-stop-racially-discriminatory>.

¹⁹ Steven Nelson, *White House 'Flagging' Posts for Facebook to Censor Over COVID 'Misinformation'*, NEW YORK POST (July 15, 2021) <https://nypost.com/2021/07/15/white-house-flagging-posts-for-facebook-to-censor-due-to-covid-19-misinformation/>.

²⁰ In *Protect Democracy Project*, the District Court reasoned:

possibility exists that extra-legal law enforcement action may be taken by the department against States and other political opponents of the current Administration in the name of “voting rights” and “election integrity” and “stopping election misinformation.” For example, the department is now suing Georgia, dubiously claiming Georgia’s new election integrity measures are discriminatory.²¹ 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.²² Respecting factor three, AFL’s requests manifestly concern “federal government activity.”

Although CRT cited burden and pending requests as grounds for denying expedited processing, the department cannot claim that a request to comply with the law is an undue burden on its own or others’ interests, and any complaints about the burdens of complying with the law must be addressed to Congress.²³ 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.

Finally, we believe CRT generally exercises its administrative discretion and waives the requirement of a separate certification of need for expedited processing under 28 C.F.R. § 16(e)(3) as a matter of course. We assume it has done so here as well. If, however, the absence of a separate certification is the reason AFL was denied expedited processing, please accept this appeal in lieu thereof. Alternatively, AFL is

But do the requests touch on ‘a matter of current exigency to the American public,’ and would ‘delaying a response...compromise a significant recognized interest,’ *Al-Fayed*, 254 F.3d at 310? Likely, the answer to both questions is yes. Regarding nationwide ‘exigency’: In its requests, submitted the day after the April 6 missile strikes against Syria, Protect Democracy explained that ‘the President’s decision to initiate military action is of the utmost importance to the public,’ and that ‘whether the President has the legal authority to launch [such] a military strike’ is similarly critical. Few would take issue with these assertions. But as evidence that they were justified, one need look no further than the widespread media attention—including by some of the nation’s most prominent news outlets—paid both to the April 6 strike and its legality, as early as the date of Protect Democracy’s requests.

Protect Democracy Project, Inc. v. U.S. Dep’t of Def., 263 F. Supp. 3d 293, 299-300 (D.D.C. 2017). If the one or two news cycles worth of attention given to one missile strike is sufficient to constitute “urgent” then certainly, issues related to voting integrity and election law are urgent as well.

²¹ Department of Justice, *Justice Department Files Lawsuit Against the State of Georgia to Stop Racially Discriminatory Provisions of New Voting Law*, <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-state-georgia-stop-racially-discriminatory>.

²² See *Payne Enterprises, Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988).

²³ *Protect Democracy Project, Inc.*, 263 F. Supp. 3d at 300 citing *Fiduccia v. U.S. Dep’t of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999).

willing to separately submit such a certification in such form as the department might specify.

IV. Conclusion.

Accordingly, AFL asks for this appeal to be granted and for expedited processing to be provided on FOIA Request 21-00291-F at the earliest practicable time. Please contact the undersigned at FOIA@aflegal.org if additional clarification or information is required.

28 C.F.R. § 16.5(e)(4) provides that “If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.” Given the clarity of the record and the urgency of the issue, we request a determination within five (5) business days.

/S/

Reed D. Rubinstein
America First Legal Foundation

cc: DOJ Office of Information Policy by email at DOJ.OIP.FOIA@usdoj.gov
CRT FOIA Division by email CRT.FOIArequests@usdoj.gov

EXHIBIT 1



August 31, 2021

VIA ONLINE PORTAL – CRT.FOIArequests@usdoj.gov

Kilian Kagle, Chief
FOIA/PA Branch
Civil Rights Division
4CON, Room 6.153
950 Pennsylvania Ave, N.W.
Washington, DC 20530

Freedom of Information Act Request for Records from the Civil Rights Division’s Voting Section

Dear Mr. Kagle:

This Freedom of Information Act (FOIA) request for records from the U.S. Department of Justice (DOJ) regarding the Biden Administration’s apparent weaponization of the Civil Rights Division’s (CRT) Voting Section is directed to you in accordance with the Department’s “Find a FOIA Contact” webpage.¹

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. Our mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and social media platforms to educate the public.

As a part of this mission, we work to let the American people know what their government is doing, and who is doing it. The federal government is—at all levels—accountable to the people and to the electorate. But longstanding and apparently well-founded concerns regarding both the security of our election processes and systems and the extent and impact of voter fraud have stimulated great public interest in voting and election integrity.²

¹ See [Find a FOIA Contact at DOJ | OIP | Department of Justice](#)

² See, e.g., *Letter from Sens. Elizabeth Warren, Amy Klobuchar, Ron Wyden, and Mark Pocan to Sarni Mnaymneh, Founder and Co-Chief Executive Officer H.I.G. Capital, LLC, et al* (Dec. 6, 2019) <https://www.warren.senate.gov/imo/media/doc/H.I.G.%20McCarthy,%20&%20Staple%20Street%20letters.pdf>. In December 2019, Sen. Warren and the other Democrats were, “[P]articularly concerned

DOJ has sued the State of Georgia for enacting legislation protecting the Constitution’s “one person, one vote” requirement.³ However, DOJ’s suit seemingly lacks a competent statutory or Constitutional foundation. On June 11, 2021, the Biden Administration’s Attorney General promised to “double” the Voting Section’s head count on or before July 21, 2021.⁴ Over a decade ago, the Heritage Foundation documented how the Voting Section had become an adjunct of the Democrat party.⁵ Accordingly, there is ample reason for concern the Biden Administration is intent on using DOJ enforcement resources, and taxpayer dollars, not to protect the law but rather to protect Democrat politicians.

FOIA’s purpose is to ensure an informed citizenry, which is vital to the functioning of a democratic society, needed to check against corruption, and required to hold the governors accountable to the governed. 5 U.S.C. § 552; *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). AFL believes it is critical to educate the American public regarding the affiliations, backgrounds, and qualifications of the individuals who may be using the machinery of law enforcement to chill lawful State efforts to aimed at ensuring fair, lawful, and transparent elections. Given strong and ongoing public debate and interest in matters of election law and voting rights, our request is self- evidently a matter of pressing public concern.⁶ Therefore, AFL requests production of the following records within twenty days.

I. Special Definitions

“DOJ” means the U.S. Department of Justice Office of the Attorney General, the Civil Rights Division, and the Voting Section, jointly and severally.

“CRT” means the Civil Rights Division within the DOJ.

that secretive and ‘trouble-plagued Companies,’ owned by private equity firms and responsible for manufacturing and maintaining voting machines and other election administration equipment, ‘have long skimmed on security in favor of convenience,’ leaving voting systems across the country ‘prone to security problems.’” *Id.* at 1; *see also* Jack McEvoy, *Connecticut Dem Indicted for Voter Fraud*, THE WASHINGTON FREE BEACON (Jul. 31, 2021), <https://freebeacon.com/elections/connecticut-dem-indicted-for-voter-fraud/>.

³ *Reynolds v. Sims*, 337 U.S. 533 (1964).

⁴ [Attorney General Merrick B. Garland Delivered a Policy Address Regarding Voting Rights | OPA | Department of Justice](#) (June 11, 2021).

⁵ Hans A. Von Spakovsky, *Abusing the Voting Rights Act*, NATIONAL REVIEW (Feb. 23, 2011), <https://www.nationalreview.com/2011/02/abusing-voting-rights-act-hans-von-spakovsky/>.

⁶ . According to a recent poll regarding voters’ top priorities, conducted by Georgetown University in June of 2021, “The number three issue overall is ‘voting rights.’” *NEW POLL: VOTERS RATE POLITICAL DIVISION AS TOP ISSUE FACING THE COUNTRY*, GEORGETOWN UNIVERSITY (Jun. 15, 2021), <https://politics.georgetown.edu/2021/06/15/new-poll-georgetown-institute-of-politics-and-public-service-releases-june-2021-battleground-poll/>.

“Georgia Case” means the case known as *United States v. The State of Georgia, et al*, Case 1:21-cv-02575-JPB (June 25, 2021) described and available at <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-state-georgia-stop-racially-discriminatory>

“Policy Address” means the text of *Attorney General Merrick B. Garland Delivered a Policy Address Regarding Voting Rights, Washington, DC ~ Friday, June 11, 2021*, posted at <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivered-policy-address-regarding-voting-rights>.

“Voting Section” means the Voting Section of CRT.

II. Requested Records

- A. For all Voting Section attorneys, both political appointees and career, who are at the GS Grade 12 Step 1 or higher:
1. The most recent resume provided by the individual to the agency in connection with determining the appropriate salary for the individual, or if that is not available, a recent resume contained within the agency’s records. AFL has no objection to the redaction of employee’s contact information, such as email, address, phone numbers etc.; however, prior employment, education, and descriptions of such experiences are not exempt and should be produced.
 2. Any waivers issued to the individual pursuant to 18 U.S.C. § 208(b).
 3. Any authorizations for the individual issued pursuant to 5 C.F.R. § 2635.502.
 4. Any Ethics Pledge waivers, issued pursuant to Section 3 of Executive Order 13989 and Office of Government Ethics Legal Advisory 21-04, received by the individual.
 5. Any ethics agreement executed by the individual; any Certification of Ethics Agreement Compliance; and any records relating to any violation by an individual of his or her ethics agreement.
 6. Records reflecting any recusal determination made or issued for the individual.
 7. Any mandatory public financial disclosures filed by the individual since January 1, 2017.
- B. For all attorneys employed by, detailed or assigned to, and/or supervising the Voting Section (career and political appointees), all records of, and/or referring,

regarding, or relating to communications with, any of the following persons between February 1, 2016, and the present:

1. ACLU
 2. Common Cause
 3. Brennan Center for Justice
 4. FairFight
 5. Future Forward USA
 6. LCV Victory Fund
 7. Change Now PAC
 8. Take Back 2020
 9. America's Progressive Promise PAC
 10. Priorities USA Action
 11. American Bridge 21st Century
 12. Piedmont Rising
 13. NextGen Climate Action
 14. Unite the Country
 15. Forward Majority Action
 16. Black PAC
 17. Senate Majority PAC
 18. Pacronym
 19. Mark E. Elias
 20. Any person having an email address containing "perkinscoie.com"
- C. All records of, regarding, referring, or relating to expansion of the size and staff of the Voting Section, to include all communications regarding potential new hires, detailees, and/or the category or types of attorneys whom leadership will seek out to fill the new positions, and any preferred affiliations, background, or qualifications. The time frame for this request is January 20, 2021, to the present.
- D. For any attorney employed by or detailed to the Voting Section, all records of, and/or regarding, referring, or relating to communications with, any person having an email address containing eop.gov. The time frame for this request is January 21, 2021, to the present.
- E. All records sufficient to identify every person employed by or detailed to DOJ, CRT, and/or the Voting Section, who analyzed, reviewed, researched, evaluated, approved the legal sufficiency of, and/or authorized the filing of the Georgia Case. The time frame for this request is January 21, 2021, to the present.
- F. All records of, referring, regarding, or relating to communications between any person employed by or detailed to DOJ, CRT, and/or the Voting Section, and any person having an email address containing eop.gov, referring, regarding,

or relating to the Georgia Case. The time frame for this request is January 21, 2021, to the present.

- G. All records sufficient to identify each person who wrote, reviewed, revised, contributed to, or approved all or part of the Policy Address.
- H. With respect to the phrase “And some jurisdictions, based on disinformation, have utilized abnormal post-election audit methodologies that may put the integrity of the voting process at risk and undermine public confidence in our democracy” used in the Policy Address, all records sufficient to identify the following:
 - 1. DOJ’s legal and/or operational definition of the word “disinformation”.
 - 2. What Attorney General Garland meant by the word “disinformation”.
 - 3. DOJ’s legal and/or operational meaning of the phrase “abnormal post-election audit methodologies”.
 - 4. What Attorney General Garland meant by the phrase “abnormal post-election audit methodologies”.
 - 5. All “jurisdictions” using “abnormal post-election audit methodologies that may put the integrity of the voting process at risk.”
 - 6. The “abnormal post-election audit methodologies that may put the integrity of the voting process at risk”.
 - 7. How the referenced “abnormal post-election audit methodologies” “may put the integrity of the voting process at risk”.
- I. With respect to the phrase “We will also partner with other federal agencies to combat election disinformation” used in the Policy Address, all records sufficient to identify the following:
 - 1. DOJ’s legal and/or operational definition of the phrase “election disinformation.”
 - 2. What Attorney General Garland meant by the phrase “election disinformation.”
 - 3. All measures taken by DOJ to “partner with other federal agencies to combat election disinformation.”
 - 4. All “other federal agencies”.

5. The identities and titles of all DOJ political appointees who decide or define what is and what is not “election disinformation.”
 6. The identities and titles of all DOJ career employees who decide or define what is and what is not “election disinformation.”
 7. The identities of all DOJ contractors and consultants who decide or define what is and what is not “election disinformation.”
- J. With respect to the phrase “Particularly concerning in this regard are several studies showing that, in some jurisdictions, nonwhite voters must wait in line substantially longer than white voters to cast their ballots” used in the Policy Address, all records sufficient to identify the following:
1. The “several studies”.
 2. The “jurisdictions”.
 3. DOJ’s legal and/or operational definition of “nonwhite”.
 4. DOJ’s legal and/or operational definition of “white”.
 5. When the Voting Section first became aware “nonwhite voters must wait in line substantially longer than white voters to cast their ballots.”
- K. All records of communications referencing, regarding, or pertaining to the Policy Address between DOJ and any person with an email address containing eop.gov.

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 the DOJ 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, you 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. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii) and your regulations, 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 without charge 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 government agencies, including the Department of Homeland Security, the Department of Education, and the Department of the Interior, have acknowledged AFL is entitled to a fee waiver as a representative of the news media under 5 U.S.C. § 552(a)(4)(A)(ii)(II) and granted our requests for waiver of search fees.

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." 5 U.S.C. § 552(a)(4)(A)(iii). The public has a significant interest in DOJ's compliance with and faithful execution of the laws, and in its respect for our citizens' Constitutional rights. The Public is also deeply interested in voting rights in the United States, with a recent poll by Georgetown University finding that it is voters' third most important issue.⁷ Given the public interest in the subject and the DOJ's activity in this area, it is clear that disclosure of this information would "contribute significantly to public understanding of operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii). AFL is thus entitled to a fee waiver as disclosure is in the public interest.

V. Expedited Processing

AFL seeks and should be granted expedited processing. 28 CFR § 16.5(e) provides in relevant part:

⁷ GEORGETOWN, *supra* note 5.

(e) *Expedited processing.* (1) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve... (ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information; (iii) The loss of substantial due process rights; or (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

As explained below, the legal standard is satisfied here.

First, our website demonstrates AFL is primarily engaged in the dissemination of information regarding the activities and operations of the federal government.⁸ We do this through a variety of means and methods, including FOIA requests and litigation, to educate American citizens regarding their Constitutional and legal rights.

Second, given the pendency of the Georgia Case, there is obviously an urgency to inform the public, the Court, and the defendants about potential political bias among career attorneys in CRT and the Voting Section. Indeed, the Georgia case seems designed to prevent the State from taking steps to ensure voter integrity and protect public faith in its elections, and to facilitate ballot harvesting and other practices rife with fraud. This puts Georgia citizen's constitutional right to vote, including the "one-person, one-vote" principle as articulated by the Supreme Court in *Reynolds v. Sims* and subsequent cases, at risk.⁹

Third, government policy is almost inevitably the product of personnel, especially when the biases and preferences of political appointees are aligned with the biases and preferences of government bureaucrats. If DOJ, CRT, and/or the Voting Section are at best something less than a fair referee, or at worst actively working with Democrat political interests and operatives to protect Democrat politicians, then the public needs to know now. The biased and illegitimate exercise of law enforcement authority by CRT and/or the Voting Section to prevent States from enacting effective and fair election integrity laws and to facilitate ballot harvesting and other forms of fraud will necessarily result in widespread due process violations in Georgia and nationwide.

⁸ See e.g., America First Legal Foundation, *Political Leadership – Department of Agriculture*, available at <https://www.aflegal.org/oversight/165a6de55737d9b9b42bab8a596ec981>; America First Legal Foundation, *Political Leadership – Department of the Interior*, available at <https://www.aflegal.org/oversight/277ab33c83a47d6428b3dce6d1154104>; America First Legal Foundation, *Critical Race Theory at the Department of Education*, available at <https://www.aflegal.org/oversight/1ad2174bfcfa5f0d6ec83ee9c533306>; America First Legal Foundation, *DHS Immigration Policy*, available at <https://www.aflegal.org/oversight/17eb4c1c84e95cc81f1016d31e12e519>.

⁹ *Reynolds v. Sims*, 337 U.S. 533 (1964).

Finally, there is widespread and exceptional interest in the possibility DOJ lacks institutional commitment to non-partisan enforcement of election laws. The public has a right to know whether the attorneys in CRT, and the Voting Section are professionals committed to the Constitution and the rule of law, or activists working to protect the Democrat Party and the Biden Administration. Frankly, it is difficult to imagine a more fundamental threat to public confidence in the federal government than a politicized DOJ, CRT, and Voting Section.

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, 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 14th Street NW, 5th 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. 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

EXHIBIT 2



U.S. Department of Justice
Civil Rights Division

21-00291-F

Freedom of Information /PA Unit- 4CON
950 Pennsylvania Ave., NW
Washington, DC 20530

Mr. Reed D. Rubinstein
600 14th Street NW, 5th Floor
Washington, DC 20005
foia@aflegal.org

Dear Mr. Rubinstein:

This is in response to your August 31, 2021 Freedom of Information Act request to the Civil Rights Division (CRT) of the Department of Justice (DOJ). As explained below, (1) CRT will begin processing those portions of your request that reasonably describe the records requested; (2) CRT will seek further clarification and narrowing of some of the requests that are exceedingly broad; (3) CRT will not provide substantive written responses to questions that are not requests for records under FOIA; (4) CRT will waive fees despite the significant expenditure of limited government resources needed to respond to this request; and (5) CRT will not expedite this request.

Records Requested:

- A. For all Voting Section attorneys, both political appointees and career, who are at the GS Grade 12 Step 1 or higher:
1. The most recent resume provided by the individual to the agency in connection with determining the appropriate salary for the individual, or if that is not available, a recent resume contained within the agency's records. AFL has no objection to the redaction of employee's contact information, such as email, address, phone numbers etc.; however, prior employment, education, and descriptions of such experiences are not exempt and should be produced.
 2. Any waivers issued to the individual pursuant to 18 U.S.C. § 208(b).
 3. Any authorizations for the individual issued pursuant to 5 C.F.R. § 2635.502.

4. Any Ethics Pledge waivers, issued pursuant to Section 3 of Executive Order 13989 and Office of Government Ethics Legal Advisory 21-04, received by the individual.
 5. Any ethics agreement executed by the individual; any Certification of Ethics Agreement Compliance; and any records relating to any violation by an individual of his or her ethics agreement.
 6. Records reflecting any recusal determination made or issued for the individual.
 7. Any mandatory public financial disclosures filed by the individual since January 1, 2017.
- B. For all attorneys employed by, detailed or assigned to, and/or supervising the Voting Section (career and political appointees), all records of, and/or referring, regarding, or relating to communications with, any of the following persons between February 1, 2016, and the present:
1. ACLU
 2. Common Cause
 3. Brennan Center for Justice
 4. FairFight
 5. Future Forward USA
 6. LCV Victory Fund
 7. Change Now PAC
 8. Take Back 2020
 9. America's Progressive Promise PAC
 10. Priorities USA Action
 11. American Bridge 21st Century
 12. Piedmont Rising
 13. NextGen Climate Action
 14. Unite the Country
 15. Forward Majority Action
 16. Black PAC
 17. Senate Majority PAC
 18. Pacronym
 19. Mark E. Elias
 20. Any person having an email address containing "perkinscoie.com"
- C. All records of, regarding, referring, or relating to expansion of the size and staff of the Voting Section, to include all communications regarding potential new hires, detailees, and/or the category or types of attorneys whom leadership will seek out to fill the new positions, and any preferred affiliations, background, or qualifications. The time frame for this request is January 20, 2021, to the present.
- D. For any attorney employed by or detailed to the Voting Section, all records of, and/or regarding, referring, or relating to communications with, any person having an email address containing eop.gov. The time frame for this request is January 21, 2021, to the present.

- E. All records sufficient to identify every person employed by or detailed to DOJ, CRT, and/or the Voting Section, who analyzed, reviewed, researched, evaluated, approved the legal sufficiency of, and/or authorized the filing of the Georgia Case. The time frame for this request is January 21, 2021, to the present.
- F. All records of, referring, regarding, or relating to communications between any person employed by or detailed to DOJ, CRT, and/or the Voting Section, and any person having an email address containing eop.gov, referring, regarding, or relating to the Georgia Case. The time frame for this request is January 21, 2021, to the present.
- G. All records sufficient to identify each person who wrote, reviewed, revised, contributed to, or approved all or part of the Policy Address.
- H. With respect to the phrase “And some jurisdictions, based on disinformation, have utilized abnormal post-election audit methodologies that may put the integrity of the voting process at risk and undermine public confidence in our democracy” used in the Policy Address, all records sufficient to identify the following:
 - 1. DOJ’s legal and/or operational definition of the word “disinformation”.
 - 2. What Attorney General Garland meant by the word “disinformation”.
 - 3. DOJ’s legal and/or operational meaning of the phrase “abnormal post- election audit methodologies”.
 - 4. What Attorney General Garland meant by the phrase “abnormal post- election audit methodologies”.
 - 5. All “jurisdictions” using “abnormal post-election audit methodologies that may put the integrity of the voting process at risk.”
 - 6. The “abnormal post-election audit methodologies that may put the integrity of the v voting process at risk”.
 - 7. How the referenced “abnormal post-election audit methodologies” “may put the integrity of the voting process at risk”.
- I. With respect to the phrase “We will also partner with other federal agencies to combat election disinformation” used in the Policy Address, all records sufficient to identify the following:
 - 1. DOJ’s legal and/or operational definition of the phrase “election disinformation.”
 - 2. What Attorney General Garland meant by the phrase “election disinformation.”
 - 3. All measures taken by DOJ to “partner with other federal agencies to combat

election disinformation.”

4. All “other federal agencies”.
 5. The identities and titles of all DOJ political appointees who decide or define what is and what is not “election disinformation.”
 6. The identities and titles of all DOJ career employees who decide or define what is and what is not “election disinformation.”
 7. The identities of all DOJ contractors and consultants who decide or define what is a and what is not “election disinformation.”
- J. With respect to the phrase “Particularly concerning in this regard are several studies showing that, in some jurisdictions, nonwhite voters must wait in line substantially longer than white voters to cast their ballots” used in the Policy Address, all records sufficient to identify the following:
1. The “several studies”.
 2. The “jurisdictions”.
 3. DOJ’s legal and/or operational definition of “nonwhite”.
 4. DOJ’s legal and/or operational definition of “white”.
 5. When the Voting Section first became aware “nonwhite voters must wait in line s substantially longer than white voters to cast their ballots.”
- K. All records of communications referencing, regarding, or pertaining to the Policy Address between DOJ and any person with an email address containing eop.gov.

In addition, you have requested that the Department waive all fees associated with this request for voluminous records on the grounds that America First Legal is a non-commercial public education and news media requester. You have also requested expedited processing.

CRT’s Initial Response to the Request:

CRT has begun reviewing and processing the portions of your request that reasonably describe the requested records, including items: A 1-7 (although some of those items will require referral to other offices or components), C, D, E, and F.

For item B, we will be communicating with you about additional specificity that will enable us to conduct a reasonable search. As written, this request is exceedingly broad and would likely result in collecting and reviewing thousands of unresponsive documents. For instance, the record search would be more likely to capture relevant records if it included specific URL or email addresses.

Regarding Item G, to the extent responsive records reside within CRT, we will conduct a search or in the alternative refer your request to the appropriate Office.

Items H, I and J regarding the Attorney General's June 11, 2021 policy address are not proper FOIA requests. Those requests do not seek records, rather they are more akin to interrogatories in civil discovery and ask CRT to research records, analyze those records, conduct legal research and provide AFL with substantive answers to its questions. Under the Freedom of Information Act, agencies are not required to satisfy a request for records proving the veracity, justification or underlying determination of a specific statement by an Official as it would require an Agency to undertake research, analysis and formulation of opinions. *Hall & Assocs. v. EPA*, No. 16-5315, 2018 WL 1896493, at *2 (D.C. Cir. Apr. 9, 2018)

Fee Waiver Request:

You have requested that all fees be waived for the significant expenditure of government time and resources required to respond to your voluminous FOIA request on the grounds that AFL is a non-commercial public education and news media requester. CRT will waive fees.

Expedited Processing Request:

Your request for expedited processing is denied. You have not demonstrated that your request meets the criteria necessary for expedited processing. Moreover, as I am sure you understand, CRT receives a high volume of requests, many from requestors who also ask for expedited processing. We have a limited number of staff dedicated to responding to FOIA requests and cannot always allow new requests to take precedence over the hundreds of previously submitted requests.

Sincerely,

Kilian Kagle

Kilian Kagle, Chief
Freedom of Information/Privacy Acts Unit
Civil Rights Division



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

October 06, 2021

foia@aflegal.org

Dear Reed Rubinstein:

This is to advise you that the Office of Information Policy (OIP) of the U.S. Department of Justice received your administrative appeal from the action of the Civil Rights Division regarding Request No. 21-00291-F on 10/06/2021.

In an attempt to afford each appellant equal and impartial treatment, OIP has adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number A-2022-00012 . Please refer to this number in any future communication with OIP regarding this matter. Please note that if you provided an email address or another electronic means of communication with your request or appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. Mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at (202) 514-3642. If you have submitted your appeal through FOIA STAR, you may also check the status of your appeal by logging into your account.

Sincerely,

Priscilla Jones

Priscilla Jones
Supervisory Administrative Specialist



AFL FOIA <foia@aflegal.org>

Appeal Expedited Determination for Appeal Number A-2022-00012

Administrator Email <oip-noreply@usdoj.gov>

Wed, Oct 27, 2021 at 10:48 AM

To: foia@aflegal.org

Cc: No-Reply.OIP.FOIASTAR@usdoj.gov

Expedited Determination decision has been made on Appeal Number A-2022-00012 with the decision of Denied.

Denied



October 19, 2021

VIA FOIA STAR

Office of Information Policy (OIP)
U.S. Department of Justice, 6th Floor
441 G St. NW
Washington, DC 20530

Re: 28 CFR § 16.8 Administrative Appeal, FOIA Request FOIA-2022-00056

To Whom it May Concern:

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

I. Procedural History

On October 7, 2021, AFL submitted Freedom of Information Act (FOIA) Request FOIA-2022-00056 to the Office of the Attorney General (through the Office of Information Policy) (OAG); the Criminal Division; the Civil Rights Division (CRT); the Office of Legal Counsel (OLC); the Executive Office of United States Attorneys (EOUSA), and the Federal Bureau of Investigation (FBI).¹

By letter from Douglas Hibbard, Chief of the Office of Information Policy's Initial Request Staff on October 14, 2021, AFL's request for expedited processing from the OAG was denied because information dissemination is not AFL's "main activity," courts grant expedited processing under 28 C.F.R. § 16.5(e)(1)(iii) only if a requestor can show grave punishment in a criminal proceeding and there is reason to believe information will be produced to aid the defense, and the Director of the Office of Public Affairs determined the Garland Memorandum of October 4, 2021,² was not "[a]

¹ Exhibit 1. All factual allegations, argument, and citations made in Request FOIA-2022-00056 are incorporated by reference into this appeal.

² 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) (the "Garland Memorandum") <https://www.justice.gov/ag/page/file/1438986/download>; see also U.S. Dep't of Justice Office of Public Affairs, *Justice Department Addresses Violent Threats Against School Officials and Teachers* (Oct. 4,

matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.”³

By letter from Paul P. Colborn, Special Counsel, OLC on October 15, 2021, AFL's request for expedited processing was denied on grounds identical to those cited by OAG. No decision was made on AFL's fee waiver request.⁴

By letter from the FOIA/PA Unit, Criminal Division on October 15, 2021, AFL was advised its request presented “special circumstances” extending the time limit for processing, no decision had been made on the requested fee waiver, and expedited processing had been denied for failure to fit within any of the four DOJ standards for such treatment.⁵

By letter from Kevin Krebs, Assistant Director, EOUSA on October 15, 2021, AFL's request for expedited processing was denied because AFL did not reasonably describe the requested records and a search would be unduly burdensome.⁶

By letter from Kilian Kagle, Chief Freedom of Information Privacy Acts Unit Civil Rights Division on October 18, 2021, AFL was advised of a processing delay due to the volume of FOIA requests, the need to search “other offices in the Civil Rights Division” and COVID-19. CRT did not adjudicate AFL's fee waiver or expedited processing requests.⁷

FBI has not responded.

AFL administratively appeals the above determinations denying expedited processing, as well as EOUSA's determination AFL failed to reasonably describe the requested records and a search would be unduly burdensome.

I. Standard of Review

The FOIA broadly requires agencies to disclose federal records freely and promptly.⁸ The department must liberally construe requests and bears the burden of proving it has made a good faith effort to search for the requested records using methods “which can be reasonably expected to produce the information requested.”⁹ At all times, the

2021) <https://www.justice.gov/opa/pr/justice-department-addresses-violent-threats-against-school-officials-and-teachers>.

³ Exhibit 2.

⁴ Exhibit 3.

⁵ Exhibit 4.

⁶ Exhibit 5.

⁷ Exhibit 6.

⁸ *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

⁹ *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).

FOIA must be construed in accord with the ordinary public meaning of its terms at the time of its enactment to carry out Congress's open government mandate.¹⁰

As the Supreme Court has observed, public awareness of the government's actions is "a structural necessity in a real democracy."¹¹ *Timely* awareness is equally necessary because "stale information is of little value."¹² When "time is necessarily of the essence," the harm in agency delay is more likely to be irreparable.¹³

The Departments of Defense, Homeland Security, and State, and the Centers for Disease Control have previously granted AFL expedited processing.¹⁴ So too it should be granted here.¹⁵

II. AFL is Entitled to Expedited Processing on this Record

As previously explained, AFL is entitled to expedited processing based on plain statutory and regulatory text. Also, AFL is entitled to expedited processing under controlling Circuit caselaw. The Circuit test weighs three main factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity.

Respecting factor one, the record shows the Garland Memorandum and the weaponization of federal law enforcement against parents protesting at school board meetings are assuredly matters of public concern and media interest and the subject matter of the requests is central to a pressing issue of the day.

Respecting factor two, if production is delayed, then both AFL and the public at large will be precluded from obtaining in a timely fashion information vital to the current and ongoing debate on these issues and, critically, the Biden Administration's unprecedented decision to use the coercive power of federal government against American citizens protecting their children by exercising core Constitutional rights of speech and assembly. Being closed off from the opportunity to debate the Garland Memorandum and DOJ's law enforcement policies and activities itself is a harm in

¹⁰ *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020).

¹¹ *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004).

¹² *Payne Enters. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988); *Am. Oversight v. U.S. Dep't of State*, 414 F. Supp. 3d 182, 186 (D.D.C. 2019).

¹³ *Elec. Privacy Info. Ctr. v. U.S. Dep't of Justice*, 416 F. Supp. 2d 30, 40-41 (D.D.C. 2006).

¹⁴ Exhibit 7.

¹⁵ The FOIA sets one standard for all federal agencies. Accordingly, it should be applied the same way by all federal agencies. The inconsistent and contradictory processing determinations made here, especially on a matter of such political sensibility and public interest, raise obvious policy and practice due process concerns. *See Citizens for Resp. & Ethics in Washington v. U.S. Dep't of Hous. & Urb. Dev.*, 415 F. Supp. 3d 215, 225 (D.D.C. 2019).

an open democracy.¹⁶ 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.¹⁷

Respecting factor three, AFL’s requests manifestly concern “federal government activity.”

DOJ’s components, though purportedly applying the same statutory and regulatory text, have handled FOIA-2022-00056 differently and raised different and inconsistent grounds for denying expedited processing. This raises significant due process concerns.

As discussed below, the departments various objections to expedited processing are unavailing.

A. *AFL’s Primary Activity is Disseminating Information*

OIP said: “The primary activity of your organization does not appear to be information dissemination, which is required for a requester to qualify for expedited processing under this standard” (internal citations omitted).¹⁸ OLC made this argument as well. They erred.

As our website demonstrates, AFL meets the “primary purpose” statutory test. We distribute our work widely, posting government records for the benefit of the public, Congress, policymakers, and scholars, and creating and disseminating distinct work on media outlets of all sorts through the exercise of our editorial skills.¹⁹ We intend

¹⁶ In *Protect Democracy Project*, the court reasoned:

But do the requests touch on ‘a matter of current exigency to the American public,’ and would ‘delaying a response...compromise a significant recognized interest,’ *Al-Fayed*, 254 F.3d at 310? Likely, the answer to both questions is yes. Regarding nationwide ‘exigency’: In its requests, submitted the day after the April 6 missile strikes against Syria, Protect Democracy explained that ‘the President’s decision to initiate military action is of the utmost importance to the public,’ and that ‘whether the President has the legal authority to launch [such] a military strike’ is similarly critical. Few would take issue with these assertions. But as evidence that they were justified, one need look no further than the widespread media attention—including by some of the nation’s most prominent news outlets—paid both to the April 6 strike and its legality, as early as the date of Protect Democracy’s requests.

Protect Democracy Project, Inc. v. U.S. Dep’t of Def., 263 F. Supp. 3d 293, 299-300 (D.D.C. 2017). If the one or two news cycles worth of attention given to one missile strike is sufficient then the Garland Memorandum and the role of federal law enforcement in policing parents protesting at school board meetings qualifies as well.

¹⁷ *Payne*, 837 F.2d at 494.

¹⁸ Exhibit 2 at 1.

¹⁹ *Brennan Center for Justice at NYU School of Law v. Department of Commerce*, 498 F. Supp. 3d 87, 98 (D.D.C. 2020); accord *Cause of Action v. FTC*, 799 F.3d 1108, 1125-26 (D.C. Cir. 2015). *Brennan Center* is instructive and suggestive:

to disseminate information and analysis about this request—and any information obtained in response—on our website and social media outlets. Our email list contains over 65,000 unique email addresses, our Twitter page has nearly 10,000 followers, the Twitter page of our Founder and President has over 83,800 followers, and we have another 18,000 followers on GETTR. Courts have found other organizations engaged in similar activities “easily” satisfy the FOIA’s “primarily engaged in disseminating information” standard with less than half the followers and subscribers AFL currently has.²⁰

B. AFL Is Entitled to Expedited Processing Under 28 C.F.R. § 16.5(e)(1)(iii)

Section 16.5(e)(1)(iii) provides, “Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve (iii) The loss of substantial due process rights....” OIP and OLC both said:

[We] have determined that your request for expedited processing under this standard should be denied [because] Courts are reluctant to grant expedited processing unless a requester can show (1) “that [he] is facing grave punishment [in a criminal proceeding], and (2) that there is reason to believe information will be produced to aid the individual’s defense.” *Freeman v. United States Department of Justice*, No. 92-0557, slip op. at 4 (D.D.C. Oct. 2, 1992). Neither of these circumstances is present here.

First, responding to FOIA-2022-00056 with form language strongly suggests AFL was not afforded the individualized consideration the law requires. A simple internet search of the citation “*Freeman v. United States Department of Justice*, No. 92-0557, slip op. at 4 (D.D.C. Oct. 2, 1992)” reveals that DOJ has been using this exact language in denial letters for at least 10 years.²¹ While the government is not obliged to reinvent the wheel for every request, it is required to at least consider each

The Brennan Center asserts that it is primarily engaged in dissemination of information as ‘a non-partisan law and public policy’ group that ‘regularly writ[es], publish[es], and disseminat[es] information’ and maintains an online library of thousands of articles, including over forty articles about the census. *Defendants do not dispute the Brennan Center’s status as an organization “primarily engaged in disseminating information,”* and other courts have found that similar organizations meet this standard.

Brennan Center, 498 F. Supp.3d at 98 (citations omitted). The FOIA sets one standard for all requestors. Treating AFL differently than others similarly situated, whether at the direction of individual political officials in OAG or in the Office of Public Affairs, or otherwise, violates AFL’s due process rights.

²⁰ *Protect Democracy Project, Inc., v. United States Dep’t of Justice*, 498 F. Supp. 3d 132, 139-40 (D.D.C. 2020) (citations omitted) (Protect Democracy had 36,000 Twitter followers and an email list of approximately 30,000 people).

²¹ Exhibit 8, *Letter from Carmen L. Mallon, U.S. Dep’t of Justice, to Katherine Gallagher, Staff Attorney, Center for Constitutional Rights* (July 11, 2011) (last visited October 19, 2021) available at <https://ccrjustice.org/sites/default/files/assets/files/2011-07-22%20DOJ%20Office%20of%20Information%20Policy%20FOIA%20Response.pdf>.

individual request in good faith. It certainly is not the case the due process regulation means that expedited processing can only be granted when an individual's *criminal* due process rights are at stake—or it would specify that—so it does not make sense OAG would adjudicate FOIA-2022-00056 using this canned form response.

Moreover, *Freeman*, to AFL's knowledge, has not been used as controlling or persuasive authority for the cited proposition and in any event is not binding here. That case, as the cited quote makes clear, involved a single requestor defending a state court prosecution. Therefore, on the facts alone, it is distinguishable. More importantly, nothing in § 16.5(e)(1)(iii) limits its application to cases involving "grave punishment" and "reason to believe the information" will aid in defense as OIP and OLC claim, and it would be manifestly inappropriate for DOJ to rewrite the regulatory text for the purpose of manufacturing such a limitation here. Rather, the test is solely whether the subject matter of the request involves "The loss of substantial due process rights". AFL's request, seeking records related to the systematic deployment of federal law enforcement to chill parents' First Amendment rights and silence political dissent easily satisfies the regulatory requirement.

C. AFL Is Entitled to Expedited Processing Under 28 C.F.R. § 16.5(e)(1)(iv)

Alternatively, even if AFL could not satisfy the criteria for expedited processing under the "compelling need" or the "due process" test, it does meet the agency promulgated media-related standard. Section 16.5(e)(1)(iv) provides "Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence." OIP and OLC said DOJ's Director of Public Affairs determined AFL failed this test but, contrary to law, offered no supporting reasoning or analysis. This determination, however, is facially absurd.²²

The Garland Memorandum has been the subject of widespread media coverage, Congressional outrage, and public debate.²³ Accordingly, it is a matter of urgent and

²² *Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice*, 436 F. Supp. 354, 361-62 (D.D.C. 2020).

²³ See, 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->

intense public interest and concern in which there are possible questions about the government's integrity that affect public confidence, and expedited processing under 28 C.F.R. § 16.5(e)(1)(iv) is appropriate.²⁴

D. EOUSA's Objection Fails

EOUSA said:

A proper Freedom of Information Act request for records must reasonably describe the records sought. *See* 5 U.S.C. § 552(a)(3)(A). After carefully reviewing your request, I have determined that you did not reasonably describe the subject of your request to allow this office to locate the records you seek with a reasonable amount of effort. Further, your request for this office to search for all records and/or all communications regarding the subject at issue would be unduly burdensome. The files and records of the United States Attorneys are maintained in over one hundred separate offices throughout the United States. Therefore, please identify the specific United States Attorney's office(s) where you believe records may be located.²⁵

First, none of the other components queried such a claim because AFL described the subject of its request with specificity. Second, the linchpin inquiry is whether the agency may determine precisely what records are being requested.²⁶ AFL did not ask EOUSA to agree or disagree with contentions, or conduct original legal research and render an opinion, or create or retain records. *See Kissinger v. Reps. Comm. for Freedom of the Press*, 445 U.S. 136, 152 (1980). Rather, AFL requested records pertaining to two documents, specifically the Garland Memorandum and the National School Boards Association letter (Items A and B); specific facts (Items C, D, E, and F); revealing the meaning of key terms in used in the Garland Memorandum but not found or defined in the Constitution, federal statutes, or applicable regulations (Item G); and communications with a narrowly defined group of persons (Items H and I).

Second, the Garland Memorandum *directed* "the Federal Bureau of Investigation, working with *each* United States Attorney, to convene meetings with federal, state,

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>.

²⁴ *American Civil Liberties Union v. U.S. Dep't of Justice*, 321 F. Supp. 24, 31 (D.D.C. 2004) (citations omitted); *see also Brennan Center*, 498 F. Supp. 3d at 98-99; *Citizens for Responsibility*, 436 F. Supp.3d at 360-61.

²⁵ Exhibit 5.

²⁶ *See Dale v. IRS*, 238 F.Supp.2d 99, 104 (D.D.C. 2002) (citation omitted).

local, Tribal, and territorial leaders in each federal judicial district within 30 days ... [to] open dedicated lines of communication for threat reporting, assessment, and response” (emphasis added). Accordingly, “each United States Attorney” must have responsive records. That this requires searching multiple locations is of no legal moment—the Garland Memorandum itself defines the lawful scope of AFL’s request.

IV. Conclusion.

Accordingly, AFL asks for this appeal to be granted and for expedited processing to be provided on FOIA Request FOIA-2022-00056 at the earliest practicable time. Please contact the undersigned at FOIA@aflegal.org if additional clarification or information is required.

28 C.F.R. § 16.5(e)(4) provides that “If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.” Given the clarity of the record and the urgency of the issue, we request a determination within five (5) business days.

/s/

Reed D. Rubinstein
America First Legal Foundation

EXHIBIT 1



October 7, 2021

Via Online Portal and Email

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
6th Floor, 441 G Street, N.W.
Washington, D.C. 20530-0001
MRUFOIA.Requests@usdoj.gov

Amanda M. Jones
Chief, FOIA/PA Unit
Criminal Division
Department of Justice
Suite 1127, Keeney Building
Washington, DC 20530-0001
crm.foia@usdoj.gov

Melissa Golden
Lead Paralegal and FOIA Specialist
Office of Legal Counsel
Department of Justice
Room 5511, 950 Pennsylvania Avenue,
N.W.
Washington, DC 20530-0001
usdoj-officeoflegalcounsel@usdoj.gov

Arla Witte-Simpson
FOIA Public Liaison
Executive Office for U.S. Attorneys
Department of Justice
175 N Street, N.E., Suite 5.400
Washington, DC 20530-0001

Kilian B. Kagle
Chief, Civil Rights Division
4CON, Room 6.153
950 Pennsylvania Ave., N.W.
Washington, DC 20530
CRT.FOIArequests@usdoj.gov

Michael G. Seidel, Section Chief
Record/Information Dissemination Sec-
tion
Records Management Division
Federal Bureau of Investigation
Department of Justice
200 Constitution Drive
Winchester, VA 22602

Freedom of Information Act Request: DOJ's Assault on America's School Parents

Dear FOIA Officers:

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.

Americans have a fundamental liberty interest in, and the Constitutional right to control and direct, the education of their own children.¹ Accordingly, parents across the nation are speaking out against Critical Race Theory and other forms of anti-religious, anti-family public school indoctrination. They want schools open and teaching children in-person without politically driven curricula and universal mask mandates.² Consequently, radical leftist teacher unions, public school administrators, school board members, and politicians have targeted them for cancellation, lawfare, and intimidation.³ As Terry McAuliffe, a political operative substantially funded by the National Education Association and American Federation of Teachers put it, “I don’t think parents should be telling [public] schools what they should teach.”⁴ Nevertheless, parents continue to exercise their right to direct the upbringing and education of their children, and to fight the idea that their children are teacher union property.⁵

On September 29, 2021, the partisan “National School Boards Association” made public a “letter” demanding federal action under the PATRIOT ACT to stop parents from

¹ *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (O’Connor, J.); *Pierce v. Society of Sisters*, 268 U.S. 510, 534 – 35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

² Jon Levine, *Powerful Teachers Union Influenced CDC on School Reopenings, Emails Show*, NEW YORK POST (May 1, 2021) <https://nypost.com/2021/05/01/teachers-union-collaborated-with-cdc-on-school-reopening-emails/>.

³ See Harold Hutchinson, *‘Expose These People Publicly’: Parents Against Critical Race Curriculum Listed By Teachers Attempting To ‘Infiltrate’ Them*, DAILY CALLER (March 17, 2021) <https://dailycaller.com/2021/03/17/virginia-parents-targeted-for-opposing-critical-race-theory/>; Luke Rosiak, *‘Let Them Die,’ Top PTA, NAACP Official Says In Tirade About Anti-Critical Race Theory Parents*, DAILY WIRE (July 16, 2021) <https://www.dailywire.com/news/pta-naacp-official-let-them-die-critical-race-theory>; Jonathan Turley, *GoFundMe Shuts Down Fundraiser Of Parents Opposing Critical Race Theory In Loudoun County*, RES IPSA LOQUITUR – THE THING ITSELF SPEAKS (Mar. 31, 2021) <https://jonathanturley.org/2021/03/31/gofundme-shuts-down-fundraiser-of-parents-opposing-critical-race-theory-in-loudoun-county/>; *Nasty Nightline Accuses Parents Protesting CRT of Enabling Racism, Whitewashing History* (July 16, 2021) <https://www.cybernistas.com/2021/07/16/nasty-nightline-accuses-parents-protesting-crt-of-enabling-racism-whitewashing-history/>; William A. Jacobson, *Union-Linked Coalition Scripts ‘Messaging’ To Counter Parental Pushback Against Critical Race Theory*, LEGAL INSURRECTION (Jul. 5, 2021) <https://legalinsurrection.com/2021/07/union-linked-coalition-scripts-messaging-to-counter-parental-pushback-against-critical-race-theory/>; Samuel Chamberlin, *Teachers Union Sues Rhode Island Mom Over Requests for CRT Curriculum Info*, NEW YORK POST (Aug. 5, 2021) <https://nypost.com/2021/08/05/teachers-union-sues-mom-over-requests-for-crt-curriculum-info/>; Emma Colton, *Kansas Math Teacher Resigns Over CRT Training and Renewed Mask Mandates, Gets Fined, Kansas School Reportedly Spends \$400,000 on Critical Race Theory Training for Teachers*, FOX NEWS (Aug. 14, 2021) <https://www.foxnews.com/us/kansas-math-teacher-resigns-crt-mask-mandate-fined>.

⁴ Michael Lee, *McAuliffe Says He Doesn’t Believe Parents Should Tell Schools What to Teach*, FOX NEWS (Sept. 28, 2021) <https://www.foxnews.com/politics/mcauliffe-says-he-doesnt-believe-parents-should-control-what-schools-teach>. In 2021, teacher unions have given McAuliffe over \$600,000 for his political campaign. Vpap.org, *Top Donors, Terry McAuliffe, Democrat* (Oct. 10, 2021) https://www.vpap.org/candidates/11897/top_donors/?start_year=2021&end_year=2021. See also Josh Gerstein, *Chinese Investors Sue McAuliffe, Rodham over Green-car Investments, The Suit is the Latest Headache for the Virginia Governor as He Mulls a Presidential Bid*, POLITICO (Nov. 8, 2017) <https://www.politico.com/story/2017/11/28/greentech-automotive-lawsuit-terry-mcauliffe-262771>.

⁵ *Pierce*, 268 U.S. at 535.

objecting to mask mandates and Critical Race Theory.⁶ Federal action was demanded because, *inter alia*, parents were engaged in First Amendment activities including “posting watchlists against school boards and spreading misinformation that boards are adopting critical race theory curriculum and working to maintain online learning by haphazardly attributing it to COVID-19.”⁷

On October 4, 2021, the Attorney General issued a Memorandum to the Federal Bureau of Investigation, the Executive Office for U.S. Attorneys, the Assistant Attorney General of the Criminal Division, and all United States Attorneys purporting to address a “disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff who participate in the vital work of running our nation's public schools.” He promised the Department would “protect all people in the United States from violence, threats of violence, and *other forms of intimidation and harassment*.”⁸

⁶ National 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) (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>. This letter repeated union-approved talking points, including the fatuous claim “critical race theory is not taught in public schools...” *Id.* at 1; William A. Jacobson, *supra* note 3; Jessica Anderson, *Reading, Writing, and Racism: the NEA’s Campaign to Gaslight Parents*, NATIONAL REVIEW ONLINE (July 10, 2021) <https://www.nationalreview.com/2021/07/reading-writing-and-racism-the-neas-campaign-to-gaslight-parents/>

⁷ National School Board Ass’n, *supra* note 6 at 5. Labeling First Amendment protected political speech “hate” the letter also claimed as grounds for federal action the following:

In Ohio, an individual mailed a letter to a school board member labeling the return address on the envelope from a local neighborhood association and then enclosing threatening hate mail from another entity. This correspondence states that, “We are coming after you and all the members on the ... BoE [Board of Education].” This hate mail continues by stating, “You are forcing them to wear mask—for no reason in this world other than control. And for that you will pay dearly.” Among other incendiaries, this same threat also calls the school board member a “filthy traitor,” implies loss of pension funds, and labels the school board as Marxist. Earlier this month, a student in Tennessee was mocked during a board meeting for advocating masks in schools after testifying that his grandmother, who was an educator, died because of COVID-19. These threats and acts of violence are affecting our nation’s democracy at the very foundational levels, causing school board members – many who are not paid – to resign immediately and/or discontinue their service after their respective terms. Further, this increasing violence is a clear and present danger to civic participation, in which other citizens who have been contemplating service as either an elected or appointed school board member have reconsidered their decision.

Citations omitted.

⁸ Memorandum from the Attorney General, October 4, 2021, to the Director of the Federal Bureau of Investigation, the Director of the Executive Office for U.S. Attorneys, the Assistant Attorney General for the Criminal Division, and the United States Attorneys, titled, “Partnership among federal, state, local, tribal, and territorial law enforcement to address threats against school administrators, board members, teachers, and staff” available at <https://www.justice.gov/ag/page/file/1438986/download>.

AFL’s mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and media, including social media platforms, to educate the public and to keep government officials accountable for their duty to faithfully execute, protect, and defend the Constitution and laws of the United States. The evidence suggests the Attorney General’s October 4 Memorandum is the byproduct of and/or a key Biden Administration “deliverable” in a collusive scheme to injure, oppress, threaten, or intimidate parents in the free exercise or enjoyment of their rights or privileges secured by the Constitution or laws of the United States. Especially in the context of the Attorney General’s promise, memorialized both in his June 11 policy address and in the Biden Administration’s “first-ever” National Strategy for Countering Domestic Terrorism,⁹ to use the Department’s criminal and other authorities to target American citizens in “combat” against domestic “misinformation” and “disinformation”, the October 4 Memorandum is of grave concern. Violent crime is exploding, and the U.S. southern border is open to criminal aliens and terrorist infiltration, but the Department, at the behest of leftist partisans, has instead chosen to threaten American parents for exercising their Constitutional rights.¹⁰

Therefore, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, AFL hereby requests the following department records. For the purposes of 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e), AFL certifies it has a compelling need for expedited processing of its requests.

I. Special Definitions

“Department” means the U.S. Department of Justice and its components.

“Garland Memorandum” means the Memorandum from the Attorney General, dated October 4, 2021, addressed to the Director of the Federal Bureau of Investigation, the Director of the Executive Office for U.S. Attorneys, the Assistant Attorney General for the Criminal Division, and the United States Attorneys, with the Subject line titled, “Partnership among federal, state, local, tribal, and territorial law enforcement

⁹ U.S. Dep’t of Justice, *Attorney General Merrick Garland Delivered a Policy Address Regarding Voting Rights* (June 11, 2021) <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivered-policy-address-regarding-voting-rights>; Nat’l Sec. Council, *National Strategy for Countering Domestic Terrorism* at 9, 18, 20, 29 (June 2021) <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>.

¹⁰ Jeff Asher, *Murder Rose by Almost 30% in 2020. It’s Rising at a Slower Rate in 2021*, NEW YORK TIMES (Sept. 22, 2021) <https://www.nytimes.com/2021/09/22/upshot/murder-rise-2020.html>; Ryan Lucas, *FBI Data Shows an Unprecedented Spike in Murders Nationwide in 2020*, NPR (Sept. 27, 2021) <https://www.npr.org/2021/09/27/1040904770/fbi-data-murder-increase-2020>; Matt Masterson, *Chicago Outpacing 2020 Shooting, Homicide Totals Through End of August*, WTTW (Sept. 1, 2021) <https://news.wttw.com/2021/09/01/chicago-outpacing-2020-shooting-homicide-totals-through-end-august>; *See generally*, Southwest Border Land Encounters, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last visited October 6, 2021).

to address threats against school administrators, board members, teachers, and staff” found at <https://www.justice.gov/ag/page/file/1438986/download>.

“NSBA” means the National School Board Association

“NSBA Letter” means the document found at <https://nsba.org/-/media/NSBA/File/nsba-letter-to-president-biden-concerning-threats-to-public-schools-and-school-board-members-92921.pdf>

“Person” means any legal or natural person.

II. Custodians

Relevant custodians include:

1. Attorney General Merrick B. Garland
2. The Attorney General’s Chief of Staff
3. The Office of the Attorney General
4. The Office of the Deputy Attorney General
5. The Office of the Associate Attorney General
6. The Department of Justice White House Liaison
7. The Office of Public Affairs
8. The Office of the Assistant Attorney General for the Criminal Division
9. The Office of the Assistant Attorney General for the Civil Rights Division
10. The Office of the Director of the FBI
11. The Executive Office for U.S. Attorneys
12. The Office of Legal Counsel

II. Requested Records

The timeframe for all requests is September 15, 2021, to the date this request is processed.

A) All records of, concerning, or regarding (1) the Garland Memorandum and/or (2) the NSBA Letter.

B) All records sufficient to show each person within the Department who reviewed (1) the Garland Memorandum and/or (2) the NSBA Letter.

C) All records created by the Department showing the “disturbing spike in harassment, intimidation, and threats of violence” referenced in the Garland Memorandum.

D) All records the Department relied upon to support the Garland Memorandum statement “there has been a disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff who participate in the vital work of running our nation's public schools.”

E) All records created by the Department showing “the rise in criminal conduct directed toward school personnel” referenced in the Garland Memorandum.

F) All records the Department relied upon to support the Garland Memorandum statement there has been “a rise in criminal conduct directed toward school personnel.”

G) All records sufficient to show the Department’s understanding and interpretation of the term “intimidation and harassment” used in the Garland Memorandum.

H) All communications from, with, or regarding any person employed by the National Education Association and/or the American Federation of Teachers.

I) All communications with any person having an email address including eop.gov regarding (1) the Garland Memorandum, (2) the NSBA, (3) the NSBA Letter, (4) the National Education Association and/or the American Federation of Teachers and/or (5) any person employed by the National Education Association and/or the American Federation of Teachers.

IV. Redactions

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.¹¹

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; a single record cannot be split into responsive and non-responsive bits. Consequently, the department should produce email attachments.

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

¹¹ 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 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 28 C.F.R. § 16.10, AFL requests a waiver of all search and duplication fees.

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. This has previously been 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.

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 disclosure of records bearing on the department's fidelity to the rule of law and the apparent use of its law enforcement authorities to chill parents from contesting critical race theory and mask mandates in their children's public schools will plainly contribute to public understanding of the federal government's activities.

VI. Expedited Processing

AFL certifies "compelling need" for expedited processing under 5 U.S.C. § 552(a)(6)(E).

First, as multiple federal agencies (including this department) have acknowledged, AFL is primarily "engaged in disseminating information." Second, the Garland Memorandum, as well as the department's plan to "protect all people" from "intimidation

and harassment” are assuredly matters of “actual or alleged Federal Government activity.” Third, 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 department obviously believes the Garland Memorandum and its subject matter require or compel speedy action and attention, as evidenced by his direction for the FBI and the U.S Attorneys to meet with school leaders in each federal judicial district within the next 30 days. Accordingly, AFL should be granted expedited processing.

In the alternative, 28 C.F.R. § 16.5(e) is the department’s expedited processing regulation. 28 C.F.R. § 16.5(e)(ii) repeats the statutory factors. Therefore, as explained above, AFL is entitled to expedited processing here as well. But as permitted by statute, the department has expanded expedited processing to include requests for records involving the loss of substantial due process rights or matters of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence. Chilling parents’ exercise of their Constitutional rights, as the Garland Memorandum arguably does, facially threatens the “loss of substantial due process rights” under 28 C.F.R. § 16.5(e)(1)(iii). Additionally, the Garland Memorandum and its subject matter are self-evidently of urgent and intense public interest and concern in which there are possible questions about the government’s integrity that affect public confidence under 28 C.F.R. § 16.5(e)(1)(iv).

Also in the alternative, the Circuit test for expedited processing requires weighing three main factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity.¹² AFL meets this test as well. Respecting factor one, as noted above, the Garland Memorandum and its subject matter are assuredly matters of public concern and media interest and central to a pressing issue of the day. Respecting factor two, if production is delayed, then both AFL and the public at large will be precluded from obtaining in a timely fashion information vital to the current and ongoing debate surrounding election integrity, voting rights, and, critically, the Biden Administration’s unprecedented decision to use the department’s massive coercive powers against American parents. Being closed off from the opportunity to debate the department’s conduct here itself is a harm in an open democracy.¹³ And the

¹² *Al-Fayed v. Central Intelligence Agency*, 254 F.3d 300, 309-10 (D.C. Cir. 2001).

¹³ In *Protect Democracy Project*, the District Court reasoned:

But do the requests touch on ‘a matter of current exigency to the American public,’ and would ‘delaying a response...compromise a significant recognized interest,’ *Al-Fayed*, 254 F.3d at 310? Likely, the answer to both questions is yes. Regarding nationwide ‘exigency’: In its requests, submitted the day after the April 6 missile strikes against Syria, Protect Democracy explained that ‘the President’s decision to initiate military action is of the utmost importance to the public,’ and that ‘whether the President has

possibility exists that extra-legal law enforcement action may be taken by the department against parents who oppose the indoctrination of their children. 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.¹⁴ Respecting factor three, AFL’s requests manifestly concern “federal government activity.”

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.

VII. 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 14th Street NW, 5th Floor, Washington, D.C. 20005.

VIII. Conclusion

Please contact me at FOIA@aflegal.org if you have questions about this request, believe additional discussion of search and processing will facilitate more efficient and timely production, or if the fee waiver and expedited processing demands are not granted in full. Thank you in advance for your cooperation.

Thank you,

Reed D. Rubinstein
America First Legal Foundation

the legal authority to launch [such] a military strike’ is similarly critical. Few would take issue with these assertions. But as evidence that they were justified, one need look no further than the widespread media attention—including by some of the nation’s most prominent news outlets—paid both to the April 6 strike and its legality, as early as the date of Protect Democracy’s requests.

Protect Democracy Project, Inc. v. U.S. Dep’t of Def., 263 F. Supp. 3d 293, 299-300 (D.D.C. 2017). If the one or two news cycles worth of attention given to one missile strike is sufficient to constitute “urgent” then certainly, then the Garland Memorandum and its subject matter are urgent as well.

¹⁴ See *Payne Enterprises, Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988).

EXHIBIT 2



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

October 14, 2021

Reed Rubinstein
America First Legal
foia@aflegal.org

Re: FOIA-2022-00056
DRH:GMG

Dear Reed Rubinstein:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request dated and received in this Office on October 7, 2021, in which you requested records of the Office of the Attorney General, Office of the Deputy Attorney General, Office of the Associate Attorney General, and Office of Public Affairs concerning the October 4, 2021 memorandum of Attorney General Merrick Garland related to violence against school administrators since September 15, 2021.

You have requested expedited processing of your request pursuant to the Department's standard permitting expedition for requests involving "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." See 28 C.F.R. § 16.5(e)(1)(ii) (2018). Courts have held that to qualify under this standard, an organization must be "primarily, and not just incidentally, engaged in information dissemination." *Landmark Legal Foundation v. EPA*, 910 F. Supp. 2d 70, 276 (D.D.C. 2012). Based on the information you have provided, I have determined that your request under this standard should be denied. The primary activity of your organization does not appear to be information dissemination, which is required for a requester to qualify for expedited processing under this standard.

You have also requested expedited processing of your request pursuant to the Department's standard involving the "loss of substantial due process rights." See 28 C.F.R. § 16.5(d)(iii). Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied. Courts are reluctant to grant expedited processing unless a requester can show (1) "that [he] is facing grave punishment [in a criminal proceeding], and (2) that there is reason to believe information will be produced to aid the individual's defense." *Freeman v. United States Department of Justice*, No. 92-0557, slip op. at 4 (D.D.C. Oct. 2, 1992). Neither of these circumstances is present here.

Lastly, you have requested expedited processing of your request pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in

which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(e)(1)(iv). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See id. § 16.5(e)(2). The Director has determined that your request for expedited processing should be denied. Please be advised that, although your request for expedited processing has been denied, it has been assigned to an analyst in this Office and our processing of it has been initiated.

To the extent that your request requires a search in another Office, consultations with other Department components or another agency, and/or involves a voluminous amount of material, your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2018). Accordingly, we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner, and the time needed to complete our work on your request will necessarily depend on a variety of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your request. At this time we have assigned your request to the complex track. In an effort to speed up our process, you may wish to narrow the scope of your request to limit the number of potentially responsive records so that it can be placed in a different processing track. You can also agree to an alternative time frame for processing, should records be located, or you may wish to await the completion of our records search to discuss either of these options. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request.

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 handing your request, Georgianna Gilbeaux, by telephone at the above number or you may write to them at the above address. You may contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your request at: Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001; telephone at 202-514-3642.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration 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, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically submitted within ninety days of the

date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



Douglas R. Hibbard
Chief, Initial Request Staff

EXHIBIT 3

**U.S. Department of Justice**

Office of Legal Counsel

Washington, D.C. 20530

October 15, 2021

Reed D. Rubinstein
America First Legal Foundation
FOIA@aflegal.org

Re: FOIA Tracking No. FY22-003

Dear Mr. Rubinstein:

This letter acknowledges receipt of your October 7, 2021 Freedom of Information Act (“FOIA”) request to the Office of Legal Counsel (“OLC”), among others, in which you sought nine categories of records regarding “(1) the [October 4, 2021] Garland Memorandum, (2) the NSBA, (3) the NSBA Letter, [and/or] (4) the National Education Association and/or the American Federation of Teachers.” We received your request on October 7, 2021, and it has been assigned tracking number **FY22-003**. For your information, consistent with 28 C.F.R. § 16.4(a), we construe your request as seeking records from September 15, 2021, to the date a search is begun. Based on our preliminary review of your request, and pursuant to 28 C.F.R. § 16.5(b), your request has been tentatively assigned to the “complex” processing track. If you would like to narrow your request so that it can be transferred to the “simple” track and processed more quickly, please contact Melissa Golden at the address and phone number provided below. We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request.

I have determined that your request for expedited processing under 28 C.F.R. § 16.5(e)(1)(ii) should be denied. While you have stated that the “AFL’s mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it,” you have not established that the AFL is “primarily engaged in disseminating information.” Courts have held that to qualify under this standard, an organization must be “primarily, and not just incidentally, engaged in information dissemination.” *Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270, 276 (D.D.C. 2012). Put another way, information dissemination must be “*the* main activity” of the requestor, and not merely “*a* main activity.” *ACLU of N. Cal. v. DOJ*, No. 04-4447, 2005 WL 588354, at *14 (N.D. Cal. Mar. 11, 2005). Accordingly, courts have upheld the denial of requests for expedited processing from such legal policy advocacy organizations as the American Civil Liberties Union of Northern California and the Landmark Legal Foundation. *See Landmark Legal Found.*, 910 F. Supp. 2d at 275-76; *ACLU of N. Cal.*, 2005 WL 588354, at *14. As described in your letter, the 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.” In addition, a review of the AFL’s public statements about its mission and work indicate that, like those other organizations, its primary activity is legal policy advocacy and not

information dissemination. *See, e.g., America First Legal, What We Do*, <https://www.aflegal.org/about> (last visited October 14, 2021) (describing the AFL as “a team of some of the nation’s best legal, political, and strategic thinkers [that will] . . . use every legal tool at [y]our disposal to defend [y]our citizens from unconstitutional executive overreach. . . . [and] will also stand up against corporations that restrict free speech and violate [y]our citizens’ civil rights”). Therefore, because information dissemination is not the AFL’s main activity, you have not satisfied this standard.

You also requested expedited treatment of your request under 28 C.F.R § 16.5(e)(1)(iii), which requires expedited processing for a request that involves the “loss of substantial due process rights.” Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied. Courts only grant expedited processing if a requester can show (1) “that [he or she] is facing grave punishment [in a criminal proceeding], and (2) that there is reason to believe information will be produced to aid the individual’s defense.” *Freedman v. DOJ*, No. 92-0557, slip op. at 4 (D.D.C. Oct. 2, 1992). You have not satisfied these requirements.

Finally, you requested expedited treatment of your request under 28 C.F.R § 16.5(e)(1)(iv). On October 7, 2021, we referred your request to the Director of the Office of Public Affairs (“OPA”), who determines whether a request pertains to “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” 28 C.F.R § 16.5(e)(1)(iv); *see id.* § 16.5(e)(2). On October 13, 2021, we were informed that OPA has denied your request for expedited processing under standard (iv) because, in the judgment of the Director of OPA, the topic of your request is not a matter “in which there exist possible questions about the government’s integrity that affect public confidence.” *Id.* § 16.5(e)(1)(iv). Accordingly, your request for expedited processing has been denied under this standard.

Because of the considerable number of FOIA requests received by OLC prior to your request, we likely will be unable to comply with the twenty-day statutory deadline for responding to your request. Please also be advised that due to necessary operational changes as a result of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak, there may be some additional delay in the processing of your request. I regret the necessity of this delay, but I assure you that your request will be processed as soon as practicable. In the meantime, if you have any questions or wish to discuss your request, you may contact Melissa Golden, OLC’s FOIA Public Liaison, at usdoj-officeoflegalcounsel@usdoj.gov, (202) 514-2053, or at Office of Legal Counsel, United States Department of Justice, 950 Pennsylvania Ave., N.W., Room 5511, Washington, DC 20530.

Additionally, you may contact the Office of Government Information Services (“OGIS”) at the National Archives and Records Administration 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, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

You have the right to an administrative appeal. You may administratively appeal by writing to the Director, Office of Information Policy (“OIP”), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP’s FOIA STAR portal by creating an account following the instructions on OIP’s website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,

A handwritten signature in black ink, appearing to read "Jacob Kaprow".

for Paul P. Colborn
Special Counsel

EXHIBIT 4



U.S. Department of Justice

Criminal Division

Office of Enforcement Operations

Washington, D.C. 20530

VIA Electronic Mail

October 15, 2021

Mr. Reed Rubinstein
American First Legal Foundation
5th Floor
600 14th Street NW
Washington, DC 20005
FOIA@aflegal.org

Request No. CRM-301677502
Subject: National School Board Association
and Garland Memorandum

Dear Mr. Rubinstein:

This acknowledges receipt of your Freedom of Information Act request dated October 7, 2021, seeking records maintained by the Criminal Division. Your request was received in this Office on October 7, 2021. The request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

- Your request has been received by the Freedom of Information Act/Privacy Act Unit and we are searching the section(s) most likely to maintain responsive records.
- Because your request presents “unusual circumstances” (See 5 U.S.C. § 552(a)(6)(B)(i)-(iii)), we are extending the time limit to respond to your request an additional ten days as provided by the statute.
- We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether the processing of your request will result in any assessable fees.
- We have not yet made a decision on your request for preferred fee status. We will do so after we determine whether the processing of your request will result in any assessable fees.
- Your request for expedited treatment has been:
 - Granted. Accordingly, your request has been assigned to a Government Information Specialist in this Office and we will respond to your request as soon as practicable.
 - Denied. You have not established that your request fits within any of the four U.S. Department of Justice standards for expedited treatment. If you are not satisfied with the

Criminal Division's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account on the following website: <https://foiastar.doj.gov>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Please be advised that due to necessary operational changes as a result of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak, there may be some delay in the processing of your request. I regret the necessity of this delay, but I assure you that your request will be processed as soon as possible. If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact me by telephone at (202) 616-0307, by email at crm.foia@usdoj.gov, or by mail at the Criminal Division, U.S. Department of Justice, Room 803, Keeney Building, NW, Washington, DC 20530-0001.

You may contact our FOIA Public Liaison at the telephone number listed above for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration 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, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

FOIA/PA Unit
Criminal Division
U.S. Department of Justice

EXHIBIT 5



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

Suite 5.400, 3CON Building
175N Street, NE
Washington, DC 20530

(202) 252-6020

October 15, 2021

Sent via email: foia@aflegal.org

Reed Rubinstein
American First Legal Foundation

Request Number: EOUSA-2022-000037
Subject of Request: Records Related to an October 4, 2021 Memo from the Attorney General

Dear Reed Rubinstein:

This is to acknowledge receipt of your Freedom of Information Act request to the Executive Office for United States Attorneys (EOUSA). The above tracking number has been assigned to the request. Please use the above tracking number in any future correspondence concerning this request.

The Executive Office for United States Attorneys (EOUSA) provides executive and administrative support for the 93 United States Attorneys located throughout the 50 states, the District of Columbia, Guam, the Marianas Islands, Puerto Rico, and the U. S. Virgin Islands. Such support includes legal education, administrative oversight, technical support, and the creation of uniform policies, among other responsibilities. Please go to <https://www.justice.gov/usao/eousa/mission-and-functions> to learn more about the mission and functions of the EOUSA.

A proper Freedom of Information Act request for records must reasonably describe the records sought. *See* 5 U.S.C. § 552(a)(3)(A). After carefully reviewing your request, I have determined that you did not reasonably describe the subject of your request to allow this office to locate the records you seek with a reasonable amount of effort. Further, your request for this office to search for all records and/or all communications regarding the subject at issue would be unduly burdensome. The files and records of the United States Attorneys are maintained in over one hundred separate offices throughout the United States. Therefore, please identify the specific United States Attorney's office(s) where you believe records may be located. This would be primarily the district(s) in which a prosecution or litigation occurred or the name and title of the person within the United States Attorney's office(s) where you believe the records you seek are located.

Once you have corrected the above deficiencies, please submit a new request for the documents. The new request should include a full description of your request and correct any deficiency. **When we have received your new, corrected request, we will open a new file for you. Please send your new, corrected request to the address above or you can submit your request at our website: <https://eousafoia.usdoj.gov>.**

This is the final action on this above-numbered request. If you are not satisfied with my response to your request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530 or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on

OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

You may contact our FOIA Public Liaison at the Executive Office for United States Attorneys (EOUSA) for any further assistance and to discuss any aspect of your request. The contact information for EOUSA is 175 N Street, NE, Suite 5.400, Washington, DC 20530; telephone at 202-252-6020. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration 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; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Kevin Krebs
Assistant Director

Enclosure

EXHIBIT 6



U.S. Department of Justice
Civil Rights Division

KK:ANF:AKL

Freedom of Information/PA Unit –4CON
950 Pennsylvania Ave., NW
Washington, DC 20530

Via Electronic Mail

Mr. Reed D. Rubinstein
America First Legal Foundation
600 14th Street NW, 5th Floor
Washington, DC 20005
foia@aflegal.org

October 18, 2021

Date Received: October 7, 2021

FOI/PA No.22-00004-F

Subject of Request: Information pertaining to: All records of, concerning, or regarding (1) the Garland Memorandum and/or (2) the NSBA Letter. B) All records sufficient to show each person within the Department who reviewed (1) the Garland Memorandum and/or (2) the NSBA Letter. C) All records created by the Department showing the “disturbing spike in harassment, intimidation, and threats of violence” referenced in the Garland Memorandum. D) All records the Department relied upon to support the Garland Memorandum statement “there has been a disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff who participate in the vital work of running our nation's public schools.” E) All records created by the Department showing “the rise in criminal conduct directed toward school personnel” referenced in the Garland Memorandum. F) All records the Department relied upon to support the Garland Memorandum statement there has been “a rise in criminal conduct directed toward school personnel.” G) All records sufficient to show the Department’s understanding and interpretation of the term “intimidation and harassment” used in the Garland Memorandum. H) All communications from, with, or regarding any person employed by the National Education Association and/or the American Federation of Teachers. I) All communications with any person having an email address including eop.gov regarding (1) the Garland Memorandum, (2) the NSBA, (3) the NSBA Letter, (4) the National Education Association and/or the American Federation of Teachers and/or (5) any person employed by the National Education Association and/or the American Federation of Teachers.

Dear Mr. Rubinstein:

This is to inform you that your request for records from the files of the Civil Rights Division was received by the Division's Freedom of Information/Privacy Acts (FOI/PA) Branch on the date indicated above. Your request has been assigned the FOI/PA number shown above.

Please refer to this number in any future correspondence concerning this request. In connection with review of your FOI/PA request, the following paragraph(s) are applicable:

_____ In searching its file for records responsive to your request, _____

_____ located records that originated with the Civil Rights Division. These records were referred to the Civil Rights Division as the originating component for review and release determination. Upon completion of our review, the releasable document(s) will be sent directly to you.

XX As a result of the large number of Freedom of Information and Privacy Acts requests received by the Civil Rights Division, some delay may be encountered in processing your request. In an attempt to treat each requester fairly, we have adopted a policy of processing requests in the approximate order of receipt. Please be assured that your request is being handled as equitably as possible. We appreciate your patience and will provide you with a response at the earliest possible date. Please note that the Civil Rights Division utilizes multi-track processing in which processing ranges from faster tracks for requests (seeking access to documents already processed for prior requests) to much slower tracks for complex requests involving voluminous amounts of responsive documents or extensive consultation. At your option, you may wish to call the number below and limit the scope of your request to enable your request to be handled in the most expeditious manner available to fulfill your interests.

_____ Since your letter did not include authorization or a certification of identity, we will close your file for now. We will re-open your request on receipt of the required authorization forms. The Privacy Act, and the Department of Justice Privacy Act regulation, 28 C.F.R. §16.41, require each person requesting records indexed or maintained under his or her name or another person's name, to furnish the Department with proof of identity/consent to disclosure. Please complete the enclosed form and return it directly to the Freedom of Information/Privacy Acts Branch, Civil Rights Division, US Department of Justice, Washington, D.C. 20530.

XX We have to consult with other offices in the Civil Rights Division to conduct a search and locate records which may be responsive to your request. Because of the need to examine a voluminous amount of records, we can respond only after consulting with the other offices. Thus, there may be some delay in the processing of your request as a result. Accordingly, your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii). Because of these unusual circumstances, we are extending the time limit to respond to your request **beyond the ten additional days provided by the statute**. The time needed to process your request will necessarily depend on the volume and complexity of the records located. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same track. Simple requests usually receive a response in approximately **one month**, whereas complex requests necessarily take longer. To allow us to respond more quickly to you, you may wish to narrow the scope of your request to limit the number of potentially responsive records or agree to an alternative time frame for processing.

XX Please be advised that due to necessary operational changes as a result of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak, there may be some delay in the processing of your request.

If you are not satisfied with the Civil Rights Division's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account on the following website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you have any further questions, contact this office by calling (202) 514-4210.

Sincerely,

April N. Freeman

for

Kilian Kagle, Chief
Freedom of Information/Privacy Acts Unit
Civil Rights Division

EXHIBIT 7



August 31, 2021

VIA DHS PAL & ELECTRONIC MAIL – 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.¹

These assurances were false.²

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/>

¹ 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/>.

² 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-;](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.”³ 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.”⁴ 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.⁵ However, the evacuation has been chaotic, poorly planned, and badly executed.⁶ 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.⁷ Generally speaking, only individuals the Taliban allowed to leave Afghanistan were able to do so.

³ 6 C.F.R. § 5.5.

⁴ *Id.*

⁵ *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>

⁶ 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.”).

⁷ 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,⁸ 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.⁹

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 14th Street NW, 5th Floor, Washington, D.C. 20005.

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>.

⁸ 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>

⁹ 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. 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

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

[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.

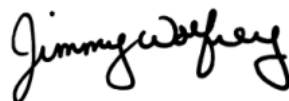
In the event that your fee waiver is denied, and you determine that you still want the records, provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS FOIA regulations as they apply to media requesters. As 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

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.¹

These assurances were false.²

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/>

¹ 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/>.

² 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

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

Your regulations provide that you will grant expedited processing requests that demonstrate a “compelling need.”³ 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.”⁴ 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.⁵ However, the evacuation has been chaotic, poorly planned, and badly executed.⁶ The Biden Administration turned over Kabul to the Taliban, giving it operational control over access to the

³ 32 C.F.R. § 286.8(e).

⁴ *Id.*

⁵ *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>

⁶ 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.”).

Kabul airport and lists of U.S. Citizens and Afghan human assets.⁷ Generally speaking, only individuals the Taliban allowed to leave Afghanistan were able to do so.

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,⁸ 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.⁹

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.

⁷ 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 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>.

⁸ 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>

⁹ 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>.

Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14th Street NW, 5th 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. 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



July 16, 2021

VIA FOIA Online & Email - 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.”¹ 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

¹ 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 (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.”² 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.”³

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

² 45 C.F.R. § 5.27.

³ 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.⁴

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 14th Street NW, 5th 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. 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

⁴ *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).



Centers for Disease Control
and Prevention (CDC)
Atlanta GA 30333

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; 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

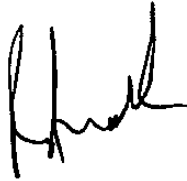
Because you are considered an “Other requester” you are entitled to two hours of free search time, and up to 100 pages of duplication (or the cost equivalent of other media) without charge, and you will not be charged for review time. We may charge for search time beyond the first two hours and for duplication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

Sincerely,

A handwritten signature in black ink, appearing to read 'Roger 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

EXHIBIT 8



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

JUL 22 2011

Ms. Katherine Gallagher
Staff Attorney
Center for Constitutional Rights
666 Broadway, 6th Floor
New York, NY 10012

Re: AG/11-00958 (F)
DAG/11-00959 (F)
ASG/11-00960 (F)
CLM:LAD:JBG

Dear Ms. Gallagher:

This is to acknowledge receipt of your letter dated June 30, 2010, in which you requested various records concerning a six-boat flotilla headed to the Gaza Strip which was intercepted by the Israeli Defense Forces in the Mediterranean Sea in May 2010. Although your letter indicates that it was directed to the Mail Referral Unit, Justice Management Division, it was provided directly to this Office through the Department's counsel in Center for Constitutional Rights, Inc. v. Department of Defense et al., No. 11-3533 (S.D.N.Y.) As such, your request was not deemed received by this Office until July 12, 2011. This response is made on behalf of the Offices of the Attorney General, Deputy Attorney General, and Associate Attorney General.

You have requested expedited processing of your request pursuant to the Department's standard permitting expedition for requests involving "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." See 28 C.F.R. § 16.5(d)(ii) (2010). Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied. The primary activity of your organization does not appear to be information dissemination, which is required for a requester to qualify for expedited processing under this standard. Additionally, you have requested expedited processing of your request pursuant to the Department's standard involving the "loss of substantial due process rights." See id. § 16.5(d)(iii). Based on the information you have provided, I have determined that your request for expedited processing under this standard also should be denied. Courts are reluctant to grant expedited processing unless a requester can show (1) "that [he] is facing grave punishment [in a criminal proceeding], and (2) that there is reason to believe information will be produced to aid the individual's defense." Freedman v. United States Department of Justice, No. 92-0557, slip op. at 4 (D.D.C. Oct. 2, 1992). Neither of these circumstances are present here. Please be advised that although your request for expedited processing has been denied, it has been assigned to a FOIA Specialist in this Office, and records searches have been initiated in the Offices of the Attorney General, Deputy Attorney General, and Associate Attorney General.

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request.

-2-

I understand your request has also been forwarded by Department counsel to the Criminal Division and the Federal Bureau of Investigation for processing and direct response to you.

I regret the necessity of this delay, but I assure you that your request will be processed as soon as possible. Although I am aware that your request is the subject of ongoing litigation and that appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carmen L. Mallon', followed by a horizontal line extending to the right.

Carmen L. Mallon
Chief of Staff



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

October 19, 2021

foia@aflegal.org

Dear Reed Rubinstein:

This is to advise you that the Office of Information Policy (OIP) of the U.S. Department of Justice received your administrative appeal from the action of the OIP regarding Request No. FOIA-2022-00056 on 10/19/2021.

In an attempt to afford each appellant equal and impartial treatment, OIP has adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number A-2022-00127 . Please refer to this number in any future communication with OIP regarding this matter. Please note that if you provided an email address or another electronic means of communication with your request or appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. Mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at (202) 514-3642. If you have submitted your appeal through FOIA STAR, you may also check the status of your appeal by logging into your account.

Sincerely,
Priscilla Jones

Priscilla Jones
Supervisory Administrative Specialist



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Reed Rubinstein

foia@aflegal.org

Re: Appeal No. A-2022-00127
Request No. FOIA-2022-00056
CDT:EAH

VIA: online portal - 10/27/2021

Dear Reed Rubinstein:

This is to advise you that your administrative appeal from the action of the Initial Request Staff (IR Staff) of the Office of Information Policy was received in this Office on October 19, 2021. You appealed from the IR Staff's denial of your request for expedited treatment of your Freedom of Information Act request.

In your appeal letter, you assert that your request is entitled to expedited treatment pursuant to the second, third, and fourth standards enumerated in the Department of Justice's regulations. Expedited treatment pursuant to the first standard will be granted where not doing so "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." 5 U.S.C. § 552(a)(6)(E)(v)(I). See also 28 C.F.R. § 16.5(e)(1)(i) (2020). Under the second standard, you must show that there is "[a]n urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II). See also 28 C.F.R. § 16.5(e)(1)(ii) (2020). Under the third standard, you must show that the request involves "[t]he loss of substantial due process rights." 28 C.F.R. § 16.5(e)(1)(iii) (2020). Under the fourth standard, you must show that the subject matter of your request is a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence." Id. at § 16.5(e)(1)(iv). This Office makes determinations regarding the first three standards, while the Department's Director of Public Affairs makes determinations regarding the fourth standard. See id. at § 16.5(e)(2).

After carefully considering your appeal, I am affirming the IR Staff's action in denying your request for expedited treatment. In deciding whether you have demonstrated that there is an "urgency to inform the public" under 28 C.F.R. § 16.5(e)(1)(ii) (2020), I considered three factors: "(1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity." Al-Fayed v. CIA, 254 F.3d 300, 310 (D.C. Cir. 2001). Although your request concerns a federal

government activity, you have not established that the requested records are a matter of current exigency to the American public, nor that delaying a response would compromise a significant recognized interest. Furthermore, although you may well engage in the dissemination of information, you have not demonstrated that you are "primarily engaged" in disseminating information. See Landmark Legal Found. v. EPA, 910 F. Supp. 2d 270 (D.D.C. 2012) (noting that plaintiff must be "primarily, and not just incidentally, engaged in information dissemination"); ACLU of N. Cal. v. DOJ, No. 04-4447, 2005 WL 588354, at *14 (N.D. Cal. Mar. 11, 2005) (holding that information dissemination must be "*the* main activity" rather than merely "*a* main activity" of plaintiff to satisfy expedition standard). Without such a showing, expedited processing pursuant to the second standard is not warranted.

Regarding the third standard, courts have held that requests for expedited treatment for due process reasons generally should not be granted unless requesters show that they are "facing grave punishment" in a pending criminal proceeding and that "there is a reason to believe that the information produced will aid in the individual's defense." Aguilera v. FBI, 941 F. Supp. 144, 150 (D.D.C. 1996). Based on the information that you have provided, I have determined that you do not meet this test because you have not demonstrated that the information sought will aid in any criminal defense, or that you are facing grave punishment. Without such a showing, expedited treatment pursuant to the third standard is not warranted. Accordingly, the IR Staff properly denied your request for expedited treatment under the third standard.

The Director of Public Affairs considered your request for expedited processing under the fourth standard and determined that your request should be denied. I agree with the determination of the Director of Public Affairs that expedited treatment of your request is not warranted under this standard because you have failed to sufficiently demonstrate that the subject of your request is "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(e)(1)(iv) (2020). It was determined that your request did not involve possible questions about the government's integrity which affect public confidence. Accordingly, the Director of Public Affairs properly determined that you failed to meet your burden under the fourth standard for expedited processing.

Finally, I note that you are also seeking expedited processing of your appeal. For the same reason noted above, expedited treatment of your appeal is not warranted.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of the IR Staff in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,



X

Christina D. Troiani,
Associate Chief, for Matthew Hurd, Chief,
Administrative Appeals Staff



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

October 28, 2021

foia@aflegal.org

Dear Reed Rubinstein:

This is to advise you that the Office of Information Policy (OIP) of the U.S. Department of Justice received your administrative appeal from the action of the OLC regarding Request No. FY22-003 on 10/19/2021.

In an attempt to afford each appellant equal and impartial treatment, OIP has adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number A-2022-00180 . Please refer to this number in any future communication with OIP regarding this matter. Please note that if you provided an email address or another electronic means of communication with your request or appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. Mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at (202) 514-3642. If you have submitted your appeal through FOIA STAR, you may also check the status of your appeal by logging into your account.

Sincerely,

Priscilla Jones

Priscilla Jones
Supervisory Administrative Specialist



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Reed Rubinstein

foia@aflegal.org

October 28, 2021

Re: Appeal No. A-2022-00180
Request No. FY22-003
CDT:EAH

VIA: online portal

Dear Reed Rubinstein:

This is to advise you that your administrative appeal from the action of Office of Legal Counsel was received in this Office on October 19, 2021. You appealed from OLC's denial of your request for expedited treatment of your Freedom of Information Act request. You also requested expedited processing of your appeal.

In your appeal letter, you assert that your request is entitled to expedited treatment pursuant to the second, third, and fourth standards enumerated in the Department of Justice's regulations. Expedited treatment pursuant to the first standard will be granted where not doing so "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." 5 U.S.C. § 552(a)(6)(E)(v)(I). See also 28 C.F.R. § 16.5(e)(1)(i) (2020). Under the second standard, you must show that there is "[a]n urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II). See also 28 C.F.R. § 16.5(e)(1)(ii) (2020). Under the third standard, you must show that the request involves "[t]he loss of substantial due process rights." 28 C.F.R. § 16.5(e)(1)(iii) (2020). Under the fourth standard, you must show that the subject matter of your request is a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence." Id. at § 16.5(e)(1)(iv). This Office makes determinations regarding the first three standards, while the Department's Director of Public Affairs makes determinations regarding the fourth standard. See id. at § 16.5(e)(2).

After carefully considering your appeal, I am affirming OLC's action in denying your request for expedited treatment. In deciding whether you have demonstrated that there is an "urgency to inform the public" under 28 C.F.R. § 16.5(e)(1)(ii) (2020), I considered three factors: "(1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity." Al-Fayed v. CIA, 254 F.3d 300, 310 (D.C. Cir. 2001). Although your request concerns a federal

government activity, you have not established that the requested records are a matter of current exigency to the American public, nor that delaying a response would compromise a significant recognized interest. Furthermore, although you may well engage in the dissemination of information, you have not demonstrated that you are "primarily engaged" in disseminating information. See Landmark Legal Found. v. EPA, 910 F. Supp. 2d 270 (D.D.C. 2012) (noting that plaintiff must be "primarily, and not just incidentally, engaged in information dissemination"); ACLU of N. Cal. v. DOJ, No. 04-4447, 2005 WL 588354, at *14 (N.D. Cal. Mar. 11, 2005) (holding that information dissemination must be "*the* main activity" rather than merely "*a* main activity" of plaintiff to satisfy expedition standard). Without such a showing, expedited processing pursuant to the second standard is not warranted.

Regarding the third standard, courts have held that requests for expedited treatment for due process reasons generally should not be granted unless requesters show that they are "facing grave punishment" in a pending criminal proceeding and that "there is a reason to believe that the information produced will aid in the individual's defense." Aguilera v. FBI, 941 F. Supp. 144, 150 (D.D.C. 1996). Based on the information that you have provided, I have determined that you do not meet this test because you have not demonstrated that the information sought will aid in any criminal defense, or that you are facing grave punishment. Without such a showing, expedited treatment pursuant to the third standard is not warranted. Accordingly, OLC properly denied your request for expedited treatment under the third standard.

The Director of Public Affairs considered your request for expedited processing under the fourth standard and determined that your request should be denied. I agree with the determination of the Director of Public Affairs that expedited treatment of your request is not warranted under this standard because you have failed to sufficiently demonstrate that the subject of your request is "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(e)(1)(iv) (2020). PAO has determined that the topic is not a matter "in which there exists possible questions about the government's integrity which affect public confidence." Accordingly, the Director of Public Affairs properly determined that you failed to meet your burden under the fourth standard for expedited processing.

I note that you are also seeking expedited processing of your appeal. For the same reason noted above, expedited treatment of your appeal is not warranted.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of OLC in response to your request.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,



X _____

Matthew Hurd,
Chief, Administrative Appeals Staff



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

October 28, 2021

foia@aflegal.org

Dear Reed Rubinstein:

This is to advise you that the Office of Information Policy (OIP) of the U.S. Department of Justice received your administrative appeal from the action of the Criminal Division regarding Request No. CRM-301677502 on 10/19/2021.

In an attempt to afford each appellant equal and impartial treatment, OIP has adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number A-2022-00181 . Please refer to this number in any future communication with OIP regarding this matter. Please note that if you provided an email address or another electronic means of communication with your request or appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. Mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at (202) 514-3642. If you have submitted your appeal through FOIA STAR, you may also check the status of your appeal by logging into your account.

Sincerely,
Priscilla Jones

Priscilla Jones
Supervisory Administrative Specialist



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Reed Rubinstein

foia@aflegal.org

Re: Appeal No. A-2022-00181
Request No. CRM-301677502
CDT:EAH

VIA: online portal - 10/29/2021

Dear Reed Rubinstein:

This is to advise you that your administrative appeal from the action of the Criminal Division of the United States Department of Justice was received in this Office on October 19, 2021. You appealed from the Criminal Divisions's denial of your request for expedited treatment of your Freedom of Information Act request. You also requested expedited processing of your appeal.

In your appeal letter, you assert that your request is entitled to expedited treatment pursuant to the second, third, and fourth standards enumerated in the Department of Justice's regulations. Expedited treatment pursuant to the first standard will be granted where not doing so "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual." 5 U.S.C. § 552(a)(6)(E)(v)(I). See also 28 C.F.R. § 16.5(e)(1)(i) (2020). Under the second standard, you must show that there is "[a]n urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II). See also 28 C.F.R. § 16.5(e)(1)(ii) (2020). Under the third standard, you must show that the request involves "[t]he loss of substantial due process rights." 28 C.F.R. § 16.5(e)(1)(iii) (2020). Under the fourth standard, you must show that the subject matter of your request is a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence." Id. at § 16.5(e)(1)(iv). This Office makes determinations regarding the first three standards, while the Department's Director of Public Affairs makes determinations regarding the fourth standard. See id. at § 16.5(e)(2).

After carefully considering your appeal, I am affirming the Criminal Division's action in denying your request for expedited treatment. In deciding whether you have demonstrated that there is an "urgency to inform the public" under 28 C.F.R. § 16.5(e)(1)(ii) (2020), I considered three factors: "(1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity." Al-

Fayed v. CIA, 254 F.3d 300, 310 (D.C. Cir. 2001). Although your request concerns a federal government activity, you have not established that the requested records are a matter of current exigency to the American public, nor that delaying a response would compromise a significant recognized interest. Furthermore, although you may well engage in the dissemination of information, you have not demonstrated that you are "primarily engaged" in disseminating information. See Landmark Legal Found. v. EPA, 910 F. Supp. 2d 270 (D.D.C. 2012) (noting that plaintiff must be "primarily, and not just incidentally, engaged in information dissemination"); ACLU of N. Cal. v. DOJ, No. 04-4447, 2005 WL 588354, at *14 (N.D. Cal. Mar. 11, 2005) (holding that information dissemination must be "*the* main activity" rather than merely "*a* main activity" of plaintiff to satisfy expedition standard). Without such a showing, expedited processing pursuant to the second standard is not warranted.

Regarding the third standard, courts have held that requests for expedited treatment for due process reasons generally should not be granted unless requesters show that they are "facing grave punishment" in a pending criminal proceeding and that "there is a reason to believe that the information produced will aid in the individual's defense." Aguilera v. FBI, 941 F. Supp. 144, 150 (D.D.C. 1996). Based on the information that you have provided, I have determined that you do not meet this test because you have not demonstrated that the information sought will aid in any criminal defense, or that you are facing grave punishment. Without such a showing, expedited treatment pursuant to the third standard is not warranted. Accordingly, the Criminal Division properly denied your request for expedited treatment under the third standard.

The Director of Public Affairs considered your request for expedited processing under the fourth standard and determined that your request should be denied. I agree with the determination of the Director of Public Affairs that expedited treatment of your request is not warranted under this standard because you have failed to sufficiently demonstrate that the subject of your request is "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(e)(1)(iv) (2020). PAO has determined that the topic is not a matter "in which there exists possible questions about the government's integrity which affect public confidence." Accordingly, the Director of Public Affairs properly determined that you failed to meet your burden under the fourth standard for expedited processing.

I note that you are also seeking expedited processing of your appeal. For the same reason noted above, expedited treatment of your appeal is not warranted.

If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue

litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,



X

Christina D. Troiani,
Associate Chief, for Matthew Hurd,
Chief, Administrative Appeals Staff



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

October 28, 2021

foia@aflegal.org

Dear Reed Rubinstein:

This is to advise you that the Office of Information Policy (OIP) of the U.S. Department of Justice received your administrative appeal from the action of the EOUSA regarding Request No. EOUSA-2022-000037 on 10/19/2021.

In an attempt to afford each appellant equal and impartial treatment, OIP has adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number A-2022-00182 . Please refer to this number in any future communication with OIP regarding this matter. Please note that if you provided an email address or another electronic means of communication with your request or appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. Mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at (202) 514-3642. If you have submitted your appeal through FOIA STAR, you may also check the status of your appeal by logging into your account.

Sincerely,

Priscilla Jones

Priscilla Jones
Supervisory Administrative Specialist



Appeal Expedited Determination for Appeal Number A-2022-00182

1 message

Administrator Email <oip-noreply@usdoj.gov>

Thu, Oct 28, 2021 at 4:33 PM

To: foia@aflegal.org

Cc: No-Reply.OIP.FOIASTAR@usdoj.gov

Expedited Determination decision has been made on Appeal Number A-2022-00182 with the decision of Denied.

This is to advise you that your administrative appeal from the action of Executive Office for U.S. Attorneys (EOUSA) was received in this Office on October 19, 2021. Your appeal has been assigned number A-2022-00182. Please mention this number in any future correspondence with this Office regarding this appeal. You assert that your appeal is entitled to expedited treatment pursuant to the second standard enumerated in the Department of Justice's regulations. Expedited treatment pursuant to the second standard will be granted where the requester shows that there is "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." 28 C.F.R. § 16.5(e)(1)(ii) (2020). I have determined that you have not met your burden under the second standard because you have not shown an "urgency to inform the public" about an actual or alleged federal government activity and because you have failed to demonstrate that you are "primarily engaged in disseminating information." *Id.* at § 16.5(e)(1)(ii). In deciding whether you have demonstrated that there is an "urgency to inform the public" under 28 C.F.R. § 16.5(e)(1)(ii), I considered three factors: "(1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity." *Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001). Although your request concerns a federal government activity, you have not established that the requested records are a matter of current exigency to the American public, nor that delaying a response would compromise a significant recognized interest. Further, you have not provided any evidence that you are "primarily engaged in disseminating information." See *Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270 (D.D.C. 2012) (noting that plaintiff must be "primarily, and not just incidentally, engaged in information dissemination"); *ACLU of N. Cal. v. DOJ*, No. 04-4447, 2005 WL 588354, at *14 (N.D. Cal. Mar. 11, 2005) (holding that information dissemination must be "the main activity" rather than merely "a main activity" of plaintiff to satisfy expedition standard). In addition, you assert that your appeal is entitled to expedited treatment pursuant to the third standard enumerated in the Department of Justice's regulations. Under the third standard, you must show that the request involves "[t]he loss of substantial due process rights." 28 C.F.R. § 16.5(e)(1)(iii) (2020). Courts have held that requests for expedited treatment for due process reasons generally should not be granted unless a requester shows that they are "facing grave punishment" in a pending criminal proceeding and that "there is a reason to believe that the information produced will aid in the individual's defense." *Aguilera v. FBI*, 941 F. Supp. 144, 150 (D.D.C. 1996). Based on the information that you have provided, I have determined that you do not meet this test because you have not demonstrated that you are facing grave punishment, that the information sought will aid in any defense, or that your request relates to a pending criminal proceeding. Accordingly, I am denying your request for expedited treatment of your appeal. Finally, the Director of Public Affairs considered your request for expedited processing under the fourth standard and determined that your request for expedition should be denied. I agree with the determination of the Director of Public Affairs that expedited treatment of your appeal is not warranted under this standard because you have failed to sufficiently demonstrate that the subject of your request is "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence." 28 C.F.R. § 16.5(e)(1)(iv) (2020). Accordingly, the Director of Public Affairs properly determined that you failed to meet your burden under the fourth standard for expedited processing. Please be advised that the other portions of your appeal will be responded to separately by this Office. Please also be advised that because EOUSA responded to your request within 10 days, any challenge to its failure to adjudicate your request for expedited processing on the request is moot. As a result of the denial, your appeal will be placed into chronological order with the other pending appeals and will be addressed in turn. Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the action of EOUSA in response to your request. If you are dissatisfied with my action on your appeal, the FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B). For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, [Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001](#); email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

October 28, 2021

foia@aflegal.org

Dear Reed Rubinstein:

This is to advise you that the Office of Information Policy (OIP) of the U.S. Department of Justice received your administrative appeal from the action of the Civil Rights Division regarding Request No. 22-00004-F on 10/19/2021.

In an attempt to afford each appellant equal and impartial treatment, OIP has adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number A-2022-00183 . Please refer to this number in any future communication with OIP regarding this matter. Please note that if you provided an email address or another electronic means of communication with your request or appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. Mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at (202) 514-3642. If you have submitted your appeal through FOIA STAR, you may also check the status of your appeal by logging into your account.

Sincerely,

Priscilla Jones

Priscilla Jones
Supervisory Administrative Specialist



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

Reed Rubinstein

foia@aflegal.org

October 28, 2021

Re: Appeal No. A-2022-00183
Request No. 22-00004-F
MWH:EAH

VIA: Online Portal

Dear Reed Rubinstein:

You attempted to appeal from the failure of Civil Rights Division to respond to your request for expedited processing of your Freedom of Information Act request for access to records concerning the Attorney General's memorandum; the National School Board Association; and various communications from September 15, 2021 to the processing of the request.

Department of Justice regulations provide for an administrative appeal to the Office of Information Policy only after there has been an adverse determination by a component. See 28 C.F.R. § 16.8(a) (2020). As no adverse determination has yet been made by the Civil Rights Division, there is no action for this Office to consider on appeal. Because the Civil Rights Division has not assessed any fees in connection with the processing of your request, there is no adverse fee determination for this Office to consider on appeal.

I note that you requested expedited treatment of your appeal. Because I am closing your underlying appeal within ten calendar days, your request for expedited treatment of this appeal is moot.

If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

A handwritten signature in blue ink, appearing to read "M.H. - M".

X _____

Matthew Hurd, Chief, Administrative Appeals
Staff