

# SUGERMAN LAW OFFICE

[www.sugermanlawoffice.com](http://www.sugermanlawoffice.com)

707 SW Washington Street  
Suite 600  
Portland, OR 97205

Phone 503.228.6474  
Fax 503.228.2556

Lynn Parker Dupree, Chief FOIA Officer  
Mail Stop 0655  
Department of Homeland Security  
2707 Martin Luther King Jr. Ave. SE  
Washington, DC 20528-0655  
foia@hq.dhs.gov

September 15, 2021

**Re:      *FREEDOM OF INFORMATION REQUEST***

Dear Ms. Dupree:

Haitian Bridge Alliance and Asian Pacific American Network of Oregon (together, "Requesters"), pursuant to the provisions of the Freedom of Information Act (FOIA), as amended, and applicable agency regulations, request copies of the records identified in the numbered paragraphs below from the U.S. Department of Homeland Security (including from U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, the Office of the Secretary, the Office of the Deputy Secretary, and any other components likely to have responsive documents), and from the U.S. Department of Health and Human Services (including from the Office of Refugee Resettlement, the U.S. Centers for Disease Control and Prevention, the Office of the Secretary, the Office of the Deputy Secretary, and any other components likely to have responsive documents).

## BACKGROUND

President Biden has continued former President Trump’s policy of “Title 42” expulsions—a policy of immediately turning away asylum seekers at the U.S. southern border and expelling them to Mexico or to their home countries.<sup>1</sup> The treatment of individuals and families under Title 42 has raised serious concerns among immigration advocates.

Before the adoption of Title 42, individuals and self-identified families seeking entry to the United States at the United States–Mexico border would generally either be detained by U.S. immigration officials or would be paroled into the United States during the pendency of their immigration proceedings. Under President Trump’s Title 42 expulsion policy, all asylum seekers, including unaccompanied children and children in the company of adults, were categorically returned to Mexico or their home countries. President Biden has continued this expulsion policy since his inauguration.

Although the Government has identified no express exceptions to the Title 42 expulsion policy other than for unaccompanied children,<sup>2</sup> legal service providers and immigration advocates have reported instances in which individuals and families are paroled into the United States rather than being expelled to Mexico or their country of origin or domicile. Although advocates have identified a variety of similarities among individuals and families who have been exempted from the Title 42 expulsion policy—including the location on the U.S.-Mexico border where such immigrants first sought entry into the United States—they have been unable to confirm any factors or criteria considered by the Government when granting exceptions.<sup>3</sup> The Government has confirmed its efforts to “streamline a system for identifying and lawfully processing particularly vulnerable individuals who warrant humanitarian exceptions” to the Title 42 expulsion policy, but has failed to offer any explanation of those exceptions or the criteria it considers in granting those exceptions.<sup>4</sup>

The Requesters seek information on the Government’s application and enforcement of the Title 42 expulsion policy, including any exceptions to that policy whereby individuals or families are detained by U.S. immigration officials or are paroled into the United States during the pendency of their immigration proceedings. The disclosure of the information sought below will contribute to the “public understanding of the operations or activities of the government,” 5 U.S.C. § 552(a)(4)(A)(iii), and would be “in the public interest.” 28 C.F.R. § 16.10(k); *see also* 6 C.F.R. § 5.11(k)(1).

## DEFINITIONS

The records request below incorporates the following definitions.

“Agency” refers to the U.S. Department of Homeland Security, including U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, the Office of the Secretary, the Office of the Deputy Secretary, and any other subagencies, offices, departments or components, as well as the U.S. Department of Health and Human Services, including

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<sup>1</sup> Section 265 of Title 42 is a little-known provision of U.S. health law that ostensibly permits the Surgeon General to suspend the entry of individuals to the United States when necessary to prevent the spread of a communicable disease. Former President Trump used the COVID-19 pandemic to close the border to asylum seekers and authorize their categorical and summary expulsion under Title 42.

<sup>2</sup> President Biden exempted unaccompanied children from the Title 42 expulsion policy in January 2021. Under the current policy, unaccompanied children—a minor under 18 who has no legal immigration status in the United States and no accompanying parent or legal guardian, 6 U.S.C. § 2679(g)(2)—are taken into the custody of the Office of Refugee Resettlement within the U.S. Department of Health and Human Services upon seeking entry to the United States.

<sup>3</sup> Indeed, the Government’s approach to application of the Title 42 expulsion policy does not appear consistent even in a particular location. While some families seeking entry in Texas’s Rio Grande Valley have been paroled into the United States, others have been “moved to a different part of the border and . . . are being expelled there.” Camilo Montoya-Galvez, *Migrant Families Face Starkly Different Fortunes Under Inconsistent Border Policy*, CBS News (May 5, 2021, 10:24 AM), <https://www.cbsnews.com/news/immigration-border-policy-migrant-families/>.

<sup>4</sup> Camilo Montoya-Galvez, *Migrant Families Face Starkly Different Fortunes Under Inconsistent Border Policy*, CBS News (May 5, 2021, 10:24 AM), <https://www.cbsnews.com/news/immigration-border-policy-migrant-families/>.

the Office of Refugee Resettlement, the U.S. Centers for Disease Control and Prevention, the Office of the Secretary, the Office of the Deputy Secretary, and any other subagencies, offices, departments, or components.

“Country of origin or domicile” refers to an individual’s country of nationality or initial country of long-term habitual residence.

“Detain” refers to the act of any Agency taking an individual into the custody of the United States government.

“Expel” refers to the act of any Agency removing an individual from the United States pursuant to the authority of the United States government.

“Express a fear of return” refers to the act of any individual indicating to U.S. immigration officials that such individual fears returning to the individual’s country of origin or domicile.

“Family” refers to a group of individuals seeking entry into the United States who self-identify to U.S. immigration officials as a family unit or family group.

“Family group” refers to a family seeking entry into the United States together, who self-identify to U.S. immigration officials as being composed of at least a minor child and an adult family member other than the child’s biological parent or court-appointed legal guardian. For example, a family group may be composed of a minor child and that child’s grandparent, aunt or uncle, or adult sibling.

“Family member” refers to each individual member of a self-identified family, whether a family group or family unit.

“Family unit” refers to a family seeking entry into the United States together, who self-identify to U.S. immigration officials as being composed of at least a minor child and the child’s biological parent or court-appointed legal guardian. A family unit may also include other minor children or adult family members. For example, a family unit may be composed of a minor child and that child’s biological mother or father.

“Parole” refers to the act of any Agency releasing an individual from custody of the United States government into the United States during the pendency of such individual’s immigration proceedings.

“Records” refers to all policies, guidance, correspondence (including e-mails, electronic messages, and attachments thereto), or other documentation, whether formal or informal.

“Serious medical condition” refers to an illness, injury, impairment, or other physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

“Title 42 Order” refers to the Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists pursuant to Sections 362 and 365 of the Public Health Service Act, 42 U.S.C. §§ 265, 268, issued by the U.S. Department of Health and Human Services Centers for Disease Control and Prevention on March 20, 2020, extended on April 20, 2020, and amended on May 19, 2020; the Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists pursuant to Sections 362 and 365 of the Public Health Service Act, 42 U.S.C. §§ 265, 268, issued by the U.S. Department of Health and Human Services Centers for Disease Control and Prevention on October 13, 2020; and the Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists pursuant to Sections 362 and 365 of the Public Health Service Act, 42 U.S.C. §§ 265, 268, issued by the U.S. Department of Health and Human Services Centers for Disease Control and Prevention on August 2, 2021.

In addition, in interpreting the Requests, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa. In requesting “policies” and “guidance,” the Requesters

seek national policies and guidance, as well as policies and guidance specific to any Border Patrol Sectors, Border Patrol Stations, or Ports of Entry, in any format, including memoranda.

#### REQUESTS

- (1) All Records created since March 20, 2020, including all revisions of such Records, related to or reflecting:
  - (a) The Agency's actions or efforts to implement or enforce the Title 42 Order as to individuals and families seeking entry at the U.S.-Mexico border.
  - (b) The Agency's actions or efforts in response to "capacity constraints in Mexico," including in the State of Tamaulipas, Mexico, affecting the Agency's ability to enforce the Title 42 Order and expel individuals and families to Mexico or another country.
  - (c) The Agency's decision to move individuals and families "to a different part of the border" from where they sought entry to the United States in order to "expel[] [them] there."<sup>5</sup>
  - (d) The Agency's actions or efforts to create and maintain records for individuals and families seeking entry at the U.S.-Mexico border who were subject to the Title 42 Order and expelled to Mexico or another country, including any recordkeeping or tracking undertaken or contemplated by the Agency with respect to an individual's age; country of origin or domicile; contact information; immigration status; immigration history; criminal history; manner of entry; expressed fear of return; serious medical conditions; representation by counsel; entry or presentation as part of a family unit or family group; alleged familial relationship among family members; and other demographic information collected.
  - (e) The Agency's actions or efforts to identify, create, and apply exceptions to the enforcement of the Title 42 Order whereby individuals or families seeking entry at the U.S.-Mexico border are paroled into the United States rather than expelled to Mexico or their country of origin or domicile.
  - (f) The Agency's actions or efforts to "identif[y] and lawfully process[s] particularly vulnerable individuals" and families seeking entry at the U.S.-Mexico border "who warrant humanitarian exceptions" to the Title 42 Order whereby such individuals and families are paroled into the United States rather than expelled to Mexico or their country of origin or domicile, including any factors or criteria considered by the Agency in its efforts.<sup>6</sup>
  - (g) The Agency's understanding, interpretation, and application of the terms "particularly vulnerable" and "humanitarian exceptions" referenced by Homeland Security Secretary Mayorkas in connection with the Agency's actions whereby individuals or families are granted an exception from enforcement of the Title 42 Order and paroled into the United States rather than expelled to Mexico or their country of origin or domicile.<sup>7</sup>
  - (h) The Agency's system, process, or procedure for determining whether an individual or family should be granted an exception from enforcement of the Title 42 Order and paroled into the United States rather than expelled to Mexico or their country of origin or domicile, including determining

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<sup>5</sup> Camilo Montoya-Galvez, *Migrant Families Face Starkly Different Fortunes Under Inconsistent Border Policy*, CBS News (May 5, 2021, 10:24 AM), <https://www.cbsnews.com/news/immigration-border-policy-migrant-families/>.

<sup>6</sup> Camilo Montoya-Galvez, *Migrant Families Face Starkly Different Fortunes Under Inconsistent Border Policy*, CBS News (May 5, 2021, 10:24 AM), <https://www.cbsnews.com/news/immigration-border-policy-migrant-families/>.

<sup>7</sup> Camilo Montoya-Galvez, *Migrant Families Face Starkly Different Fortunes Under Inconsistent Border Policy*, CBS News (May 5, 2021, 10:24 AM), <https://www.cbsnews.com/news/immigration-border-policy-migrant-families/>.

whether an individual or family is “particularly vulnerable” or “warrant[s] [a] humanitarian exception[n]” to enforcement of the Title 42 Order.<sup>8</sup>

- (i) The factors or criteria considered by the Agency in determining whether an individual or family should be granted an exception to the Title 42 Order and paroled into the United States rather than expelled to Mexico or their country of origin or domicile, including the Port of Entry or Border Patrol Sector where they sought entry on the U.S.-Mexico border; the number of family members seeking entry together; the nature of familial relationships among family members seeking entry together; and any other characteristics of individuals seeking entry, including their age, country of origin or domicile, immigration status, immigration history, criminal history, manner of entry, expressed fear of return, representation by counsel, and serious medical conditions.
  - (j) The Agency’s actions or efforts to correspond and work with non-governmental organizations to identify possible individuals and families to be granted an exception to the Title 42 Order and paroled into the United States rather than expelled to Mexico or their country of origin or domicile, including any factors or criteria considered by non-governmental organizations or the Agency in identifying such individuals and families for an exception to the Title 42 Order.
  - (k) The Agency’s actions or efforts to create and maintain records with respect to individuals or families seeking entry at the U.S.-Mexico border who were paroled into the United States rather than expelled to Mexico or their country of origin or domicile pursuant to the Title 42 Order, including any recordkeeping or tracking undertaken or contemplated by the Agency with respect to the number of family members seeking entry together; the alleged nature of familial relationships among family members seeking entry together; and any other characteristics of individuals seeking entry, including their contact information, age, country of origin or domicile, immigration status, immigration history, criminal history, manner of entry, expressed fear of return, representation by counsel, and serious medical conditions.
  - (l) Any discretion conferred to or limits placed upon Agency officials in applying any policy or guidance granting exceptions to the Title 42 Order to individuals or families seeking entry at the U.S.-Mexico border, including any factors or criteria considered by Agency officials.
  - (m) Any distinctions made between family groups and family units in the Agency’s implementation of the Title 42 Order and its assessment and application of exceptions to the Title 42 Order, including any factors or criteria considered by Agency officials.
  - (n) Any non-uniform treatment of family members within a family seeking entry at the U.S.-Mexico border with respect to the Agency’s implementation of the Title 42 Order, its assessment and application of exceptions to the Title 42 Order, and any related decisions to expel, detain, or parole family members, including any factors or criteria considered by Agency officials.
- (2) All Records, including data in any database, created since March 20, 2020, showing any of the following in aggregate and by Port of Entry or by Border Patrol Sector:
- (a) The number of individuals and families expelled pursuant to the Title 42 Order after first seeking entry at the U.S.-Mexico border.

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<sup>8</sup> Camilo Montoya-Galvez, *Migrant Families Face Starkly Different Fortunes Under Inconsistent Border Policy*, CBS News (May 5, 2021, 10:24 AM), <https://www.cbsnews.com/news/immigration-border-policy-migrant-families/>.

- (b) The number of individual and families expelled pursuant to the Title 42 Order from a Port of Entry other than the Port of Entry where such individual or family first sought entry at the U.S.-Mexico border.
  - (c) The number of individuals and families expelled pursuant to the Title 42 Order from a Border Patrol Sector other than the Border Patrol Sector where such individual or family first sought entry at the U.S.-Mexico border.
  - (d) The number of individuals and families paroled into the United States after first seeking entry at the U.S.-Mexico border.
  - (e) The number of individuals and families placed in detention in the United States by U.S. immigration officials after first seeking entry at the U.S.-Mexico border.
  - (f) The number of families comprised of family members who were subject to non-uniform decisions by U.S. immigration officials to expel, detain, or parole individuals pursuant to the Title 42 Order after first seeking entry at the U.S.-Mexico border.
- (3) All Records, including data in any database, created since March 20, 2020, showing any of the following demographic information for each individual expelled pursuant to the Title 42 Order, paroled into the United States, or placed in detention after first seeking entry at the U.S.-Mexico border:
- (a) The Border Patrol Sector and Port of Entry where the individual first sought entry at the U.S.-Mexico border.
  - (b) The Border Patrol Sector and Port of Entry where the individual was expelled pursuant to the Title 42 Order.
  - (c) The date the individual first sought entry at the U.S.-Mexico border.
  - (d) The individual's country of origin or domicile.
  - (e) The date the individual and any family members were expelled pursuant to the Title 42 Order, paroled into the United States, or placed in detention (including the dates the individual and any family members were transferred between any detention facilities where they were previously held after first seeking entry at the U.S.-Mexico border).
  - (f) The Border Patrol Sector and Port of Entry where the individual and any family members were expelled and the country to which they were expelled; the city and state of the individual or family's residence in the United States; or the location of the detention facility where the individual and any family members are being held (including the location of any detention facilities where the individual and any family members were previously held after first seeking entry at the U.S.-Mexico border).
  - (g) The individual's immigration status.
  - (h) The individual's immigration history.
  - (i) The individual's criminal history.
  - (j) The individual's manner of entry.
  - (k) Whether the individual expressed a fear of return.
  - (l) Whether the individual had any serious medical conditions.

- (m) Whether the individual was represented by counsel.
  - (n) Whether the individual sought entry as part of a family.
  - (o) The age of any family members seeking entry together.
  - (p) The relationship between any family members seeking entry together.
  - (q) Any additional information about the individual and family members documented by U.S. immigration officials.
- (4) All Records, including data in any database, created since March 20, 2020, showing any of the following demographic information for families comprised of family members who were subject to non-uniform decisions by U.S. immigration officials to expel, detain, or parole individuals pursuant to the Title 42 Order after first seeking entry at the U.S.-Mexico border where one or more family members were detained or paroled but other family members were expelled:
- (a) The Border Patrol Sector and Port of Entry where the family first sought entry at the U.S.-Mexico border.
  - (b) The date the family first sought entry at the U.S.-Mexico border.
  - (c) The family's country of origin or domicile.
  - (d) The date each family member was expelled pursuant to the Title 42 Order, paroled into the United States, or placed in detention (including the dates family members were transferred between any detention facilities where they were previously held after first seeking entry at the U.S.-Mexico border).
  - (e) The Border Patrol Sector and Port of Entry where each family member was expelled and the country to which each family member was expelled, the city and state of the family's residence in the United States, or the location of the detention facility where each family member is being held (including the location of any detention facilities where family members were previously held after first seeking entry at the U.S.-Mexico border) and whether family members are being detained together or in separate facilities.
  - (f) Each family member's immigration status.
  - (g) Each family member's immigration history.
  - (h) Each family member's criminal history.
  - (i) Each family member's manner of entry.
  - (j) Whether each family member expressed a fear of return.
  - (k) Whether each family member had any serious medical conditions.
  - (l) Whether each family member was represented by counsel.
  - (m) The age of each family member.
  - (n) The relationship between each family member.
  - (o) Any additional information about each family member documented by U.S. immigration officials.

### FORMAT AND PRODUCTION REQUESTS

The Requesters request that responsive documents and materials are produced in their entirety, including all attachments, enclosures, hyperlinks and internal links, and exhibits. If it is determined that a document contains material or information that falls within a statutory exemption to mandatory disclosure under FOIA, the Requesters ask that such material or information be reviewed for possible discretionary disclosure, consistent with the presumption of openness codified in the Freedom of Information Act Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538.

The burden is on the Government to provide a determination within 20 working days. In the event the Government is unable to meet that deadline, the Requesters are willing to discuss an appropriate schedule for rolling productions. To the extent the Government has any questions after reviewing these Requests, please do not hesitate to contact the undersigned.

### FEE WAIVER REQUEST

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), the Requesters respectfully seek a fee waiver.

**Haitian Bridge Alliance** is a grassroots and community-based nonprofit organization with federal 501(c)(3) status that advocates for fair and humane immigration policies and provides migrants and immigrants with humanitarian, legal, and social services, with a particular focus on Black migrants, the Haitian community, women and girls, LGBTQIA+ individuals, and survivors of torture and other human rights abuses. HBA works to elevate the issues unique to Black migrants and build solidarity and collective movement toward policy change. Many of the individuals served by HBA present at the U.S.-Mexico border. HBA staff and volunteers regularly travel to the border to provide assistance and counsel to immigrants, many of whom have been subject to and impacted by the Title 42 Order. HBA will use the information obtained through these Requests to serve those clients and community members most directly affected by the information. HBA will also work with other non-profit and advocacy organizations serving children and families affected by Title 42 to ensure that the information obtained through these Requests is distributed to affected populations and the public at large.

**Asian Pacific American Network of Oregon (APANO)** is a nonprofit organization with a 501(c)(3) and 501(c)(4) status. APANO unites Asians and Pacific Islanders to build power, develop leaders, and advance equity through organizing, advocacy, community development, and cultural work. We envision a just world where Asians and Pacific Islanders and communities who share our aspirations and struggles have the power, resources, and voice to determine our own futures, and where we work in solidarity to drive political, social, economic, and cultural change.

APANO engages with immigrant and refugee communities to share information, through social and ethnic media, and navigate them through resources, such as Oregon Worker Relief. APANO is a member of several coalition spaces that advocate for and organize with immigrant and refugee communities about issues and campaigns that impact them directly through popular education training, leadership development and civic engagement. APANO will use these similar methods to educate the public about findings from this request.

Applicable laws and agency regulations require fees to be waived or reduced when it is determined, based upon the submission of the requester, that the information is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 5 C.F.R. § 5.11(k)(1) (permitting fee waiver when "[d]isclosure of the requested information is in the public interest" and "is not primarily in the commercial interest of the requester"); 28 C.F.R. § 16.10(k) ("[r]equester[r] may seek a waiver of fees by . . . demonstrating how disclosure of the requested 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").

The Requesters will make any information that they receive from these Requests available to the public, including the press, at no cost. The issue of how children and families are treated at the border is of significant public interest. The Requesters have undertaken this work in the public interest and not for any private commercial interest. The primary purpose of these Requests is to obtain information to further the public's understanding of federal immigration policies and practices.

Access to this information is necessary for the public to meaningfully evaluate the costs and consequences of federal immigration policies. The Government must waive or reduce any fees because the Requesters do not have a commercial interest in the requested information and, instead, request this information to educate the public regarding the Department of Homeland Security's and the Department of Health and Human Services' operations and activities. See 5 U.S.C. § 552(a)(4)(A)(iii).

The Requesters have engaged pro bono counsel who will be responsible for the reasonable cost of locating and reproducing the requested documents to the extent required by applicable regulations and not otherwise waived. If such costs will exceed \$150, please contact the Requesters and their counsel before incurring them.

Please direct all correspondence related to these Requests to:

Nadia H. Dahab, Oregon State Bar No. 125630  
Sugerman Law Office  
707 SW Washington Street Ste. 600  
Portland, OR 97205  
(503) 228-6474  
nadia@sugermanlawoffice.com

Thank you in advance for your assistance with this matter.

Sincerely,



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**Nadia H. Dahab**, OSB No. 125630  
SUGERMAN LAW OFFICE  
707 SW Washington Street Ste. 600  
Portland, OR 97205  
Tel: (503) 228-6474  
nadia@sugermanlawoffice.com

**Karen Tumlin**, CA Bar No. 234691  
**Esther Sung**, CA Bar No. 255962  
**Daniel Tully**, CA Bar No. 309240  
JUSTICE ACTION CENTER  
P.O. Box 27280  
Los Angeles, CA 90027  
Tel: (323) 316-0944

**Stephen W. Manning**, OSB No. 013373  
**Jordan Cunnings**, OSB No. 182928  
**Tess Hellgren**, OSB No. 191622  
**Kelsey Provo**, OSB No. 145107  
Innovation Law Lab  
333 SW 5th Ave. Ste. 200  
Portland, OR 97204  
Tel: (503) 922-3042