

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

YOUNG CENTER FOR IMMIGRANT
CHILDREN’S RIGHTS
2245 S. Michigan Avenue, Suite 301
Chicago, IL 60616, and

IMMIGRANT DEFENDERS LAW CENTER
634 S. Spring Street, 10th Floor
Los Angeles, CA 90014,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY,
2707 Martin Luther King Jr. Avenue, SE
Washington, DC 20528

UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT
500 12th Street, SW
Washington, DC 20536, and

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY OFFICE FOR
CIVIL RIGHTS AND CIVIL LIBERTIES
2707 Martin Luther King, Jr. Avenue, SE
Mail Stop #0190
Washington, DC 20528,

Defendants.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. On August 21, 2023, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Plaintiffs requested records from the United States Department of Homeland Security (DHS) and the United States Immigration and Customs Enforcement (ICE) pertaining to ICE’s Young Adult Case Management Program (YACMP). Federal law requires the government to issue

a determination on a FOIA request within 20 days and then promptly produce requested documents. Despite the passage of nearly 11 months, Plaintiffs have not received a determination or any documents. Through this lawsuit, Plaintiffs ask this Court to compel the Defendants to comply with FOIA and promptly produce the requested documents.

I

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA jurisdiction provision) and 28 U.S.C. § 1331 (federal question jurisdiction). The District of Columbia is a proper venue. *See* 5 U.S.C. § 552(a)(4)(B) (District of Columbia a proper venue in a FOIA case).

II

PARTIES

3. Plaintiff Young Center for Immigrant Children’s Rights (“Young Center”) is a nonprofit organization that protects and advances the rights and best interests of immigrant children and youth. It is the only organization federally appointed¹ to serve as independent Child Advocate for child trafficking victims and other vulnerable unaccompanied immigrant children in federal government custody, as authorized by the Trafficking Victims Protection Reauthorization Act. Among the categories of children that ORR has designated as particularly vulnerable are youth who will turn 18 in less than six months of placement and for whom no sponsor has been identified. In the role of Child Advocate, Young Center advocates for children’s best interests

¹ Young Center is appointed as Child Advocate by the Office of Refugee Resettlement (ORR) of the United States Department of Health and Human Services. Among other things, ORR is responsible for the care and placement of immigrant children designated as “unaccompanied” by DHS immigration officials.

regarding children's care, custody, release, legal representation, and repatriation. Young Center also advocates for children's best interests in immigration proceedings.

4. Plaintiff Immigrant Defenders Law Center ("ImmDef") is a nonprofit law firm that provides deportation defense, legal representation, legal education, and social services to detained and non-detained children and adults. ImmDef is the designated² Legal Service Provider for eighteen ORR facilities throughout Southern California. Since its founding in 2015, ImmDef's Children's Representation Project has provided free legal services to over 21,000 unaccompanied children.

5. Defendant DHS is a federal executive department with responsibility for immigration-related matters. It is headquartered in the District of Columbia. On information and belief, DHS, or one of its components, has possession or control over some or all of the requested records.

6. Defendant ICE is a component of DHS that is charged with issues related to enforcement of immigration laws. It is headquartered in the District of Columbia. On information and belief, ICE has possession of and control over some or all of the requested records.

7. As described below, DHS referred part of Plaintiffs' request to the DHS Office for Civil Rights and Civil Liberties (CRCL). Defendant CRCL is a component of DHS that is charged with addressing issues related to civil rights and civil liberties within DHS. It is headquartered in the District of Columbia. CRCL may have possession of and control over some of the requested records.

² This designation is made by Acacia Center for Justice, a non-profit organization that contracts with both ImmDef and ORR.

III

FACTS

A. THE YOUNG ADULT CASE MANAGEMENT PROGRAM

8. In January 2023, ICE Enforcement and Removal Operations (ERO) established YACMP. On information and belief, YACMP subjects certain youth and families, who are the subject of immigration proceedings, to monitoring during the pendency of their immigration proceedings. ICE categorizes YACMP as one of its “Alternatives to Detention” (ATD) programs.

9. As part of the justification for establishing YACMP, ICE explained that youth “may not know when they are to appear in court, their legal rights and obligations, and may not be aware of possible community services that are available to them,” that they are “vulnerable to trafficking when there is no continued verification or confirmation of their safety,” and that YACMP aims to “reduce friction with the immigration process and provide and/or facilitate referrals and access to services in the community.”

10. Details related to YACMP, including details related to the criteria for referral and enrollment in YACMP, the monitoring that takes place pursuant to YACMP, the reporting obligations on the youth enrolled in the program, and the consequences for violating those obligations, are unknown to the public and attorneys and other advocates for these youth.

11. Young Center and ImmDef work with youth who have been automatically enrolled in YACMP. Plaintiffs have been deeply concerned about the impact of this program on the youth with whom they work and the lack of public transparency regarding this program and therefore sought information about YACMP’s monitoring and mandatory reporting requirements, the consequences for non-compliance, and the youth and families that have been enrolled in the program.

12. Plaintiffs recently learned that DHS plans to terminate YACMP as of July 31, 2024. Regardless, Plaintiffs remain concerned about the impact of ATD programs, such as YACMP, on youth. Plaintiffs expect that the requested records will further their understanding of how such programs operate, the needs of youth with pending immigration cases, and how best to meet those needs.

B. PLAINTIFFS' FOIA REQUEST, CORRESPONDENCE WITH DEFENDANTS, AND THEIR ADMINISTRATIVE APPEAL

1. Plaintiffs' August 21, 2023 FOIA Request Directed to DHS and ICE

13. On August 21, 2023, Plaintiffs submitted a FOIA request to DHS and ICE through the Secure Release Portal pursuant to 5 U.S.C. § 552(a)(3):³

1. All guidance, policies, procedures, forms, and training materials pertaining to YACMP implementation, including but not limited to:

- a. The criteria and procedures by which youth and families are determined to be eligible for enrollment in YACMP;
- b. The criteria and procedures by which YACMP-eligible youth and families are referred for enrollment in YACMP;
- c. The criteria and procedures by which YACMP-eligible youth and families are enrolled in YACMP;
- d. How YACMP staff are to coordinate care or services for YACMP-enrolled youth and families with the referring/releasing entity;
- e. The procedures by which YACMP-enrolled youth and families can “opt-out” of participation in YACMP;
- f. How the YACMP Contractor^[4] is to conduct “screening for human trafficking and other vulnerabilities” of youth and families enrolled in YACMP, including any standardized assessment tools,

³ The request refers to certain items based upon information from ICE and DHS statements and other sources. The footnoted citations to ICE and DHS documents that were included in the request have been omitted from the quotation below.

⁴ The requests explain that “YACMP Contractor” refers to Acuity International, Inc., LLC, and any other entity with whom DHS or ICE contracts to implement YACMP.

and copies of all human trafficking awareness materials that are provided to YACMP-enrolled youth and families;

g. How the YACMP Contractor is to develop a network of community resources;

h. How the YACMP Contractor is to develop service plans for youth and families and make individualized referrals and to facilitate access to community resources and services;

i. How the YACMP Contractor is to modify office visit and check-in schedules for “participants who are high risk due to age, special needs/disabilities, or other vulnerabilities”;

j. Information-sharing between the YACMP Contractor and DHS or ICE, including the scope of such information-sharing and any protocols or procedures related to limits on information-sharing or privacy controls;

k. YACMP contractors’ obligations to report noncompliance to ICE [Enforcement and Removal Operations] ERO;

l. The consequences to enrollees of noncompliance with YACMP requirements.

2. All informational materials, forms, notices, instructions, or directives, in all available languages, provided by YACMP Contractor to youth and families enrolled in YACMP, including but not limited to:

a. Program orientation information;

b. Directives or instructions regarding reporting and other program compliance;

c. The “release form” by which YACMP staff “[o]btain written confirmation of program understanding and compliance requirements” from YACMP-enrolled youth and families.

3. All inter-agency written communications, directives, and guidance pertaining to YACMP to agencies that release or refer youth and/or families to YACMP, including the Office of Refugee Resettlement (ORR), Office of Trafficking in Persons (OTIP), or Executive Office for Immigration Review (EOIR), including but not limited to:

a. All communications regarding the criteria and procedures by which YACMP-eligible youth and families are referred for enrollment in YACMP;

- b. All communications on how YACMP staff are to coordinate care or services for YACMP-enrolled youth and families with the referring/releasing entity.
- 4. All reports and memoranda reporting on appropriations-related decisions pertaining to YACMP to/from DHS officials, Members of Congress, and/or the White House.
- 5. Contracts and/or agreements between DHS and any third party with whom DHS has contracted to implement YACMP, including but not limited to Acuity International, LLC (“Acuity”).
- 6. All documents, reports, notes, referrals, and/or agendas used in the weekly, quarterly, and Ad Hoc “progress meetings” and produced for program reporting purposes between DHS and YACMP Contractor, including but not limited to Acuity International, LLC (“Acuity”).
- 7. All documents relied upon by DHS to support its finding in its Performance Work Statement regarding the YACMP that youth aged 18-19 years old “may not know when they are to appear in court, their legal rights and obligations, and may not be aware of possible community services that are available to them,” including:
 - a. Any data on the rates of court appearances for youth aged 18-19 years old;
 - b. Any reports, data, or research on the need for or availability of community services for youth aged 18-19 years old.
- 8. All records indicating or reflecting the total number of youth and families enrolled in YACMP nationwide, as collected by the Young Adult Resource Data System (“YARDs”) or other record collection system for YACMP:
 - a. Broken down by month, from January 1, 2023, to the present;
 - b. Broken down by enrollee’s city/state of residence;
 - c. Broken down by referring/releasing entity, including but not limited to ICE, CBP [U.S. Customs and Border Protection], and ORR;
 - d. Broken down by enrollee’s country of origin;
 - e. Broken down by enrollee’s age;
 - f. Broken down by enrollee’s race/ethnicity;
 - g. Broken down by enrollee’s gender;

- h. Broken down by enrollee's identified disabilities, if any;
- i. Broken down by enrollee's preferred language;
- j. Broken down by enrollee's date of entry into the United States;
- k. Broken down by enrollee's date of release from ORR custody, if applicable.

If this information is not compiled, please respond specifically stating that this information is not tracked. If this information is not compiled, please also provide the files from individual cases that reflect the above-requested data points.

9. All records indicating or reflecting the total number of youth aged 18-21 years old nationwide that have been or are currently enrolled in any other ICE ATD program other than YACMP since January 1, 2022:

- a. Broken down by month, from January 1, 2022, to the present;
- b. Broken down by program type;
- c. Broken down by the enrollee's state of residence;
- d. Broken down by referring/releasing entity, including but not limited to ICE, CBP, and ORR;
- e. Broken down by enrollee's country of origin;
- f. Broken down by enrollee's age;
- g. Broken down by enrollee's race/ethnicity;
- h. Broken down by enrollee's gender;
- i. Broken down by enrollee's identified disabilities, if any;
- j. Broken down by enrollee's preferred language;
- k. Broken down by enrollee's date of entry into the United States;
- l. Broken down by enrollee's date of release from ORR custody, if applicable.

If this information is not compiled, please respond specifically stating that this information is not tracked. If this information is not compiled, please also provide the files from individual cases that reflect the above-requested data points.

10. All records indicating or reflecting the total number of youth aged 18-21 years old nationwide that have been excluded from enrollment in YACMP or any other ICE ATD program due to criminal and/or delinquency history (i.e., have been detained in an ICE detention center pending immigration proceedings), since January 1, 2022:

- a. Broken down by month, from January 1, 2022, to the present;
- b. Broken down by enrollee's country of origin;
- c. Broken down by enrollee's age;
- d. Broken down by enrollee's race/ethnicity;
- e. Broken down by enrollee's gender;
- f. Broken down by enrollee's identified disabilities, if any;
- g. Broken down by enrollee's preferred language;
- h. Broken down by enrollee's date of entry into the United States;
- i. Broken down by enrollee's date of release from ORR custody, if applicable.

If this information is not compiled, please respond specifically stating that this information is not tracked. If this information is not compiled, please also provide the files from individual cases that reflect the above-requested data points.

11. All records indicating or reflecting data regarding implementation of specific programmatic components of YACMP, including but not limited to:

- a. All documents reflecting the total number of youth and families transferred from other ICE ATD programs to YACMP;
- b. All documents reflecting the total number of youth and families transferred from YACMP to other ICE ATD programs;
- c. All documents reflecting the total number of youth and families enrolled simultaneously in more than one ICE ATD program, including YACMP;
- d. All documents reflecting the total number of YACMP-enrolled youth and families who have undergone YACMP trafficking screenings and the number of those youth and families who have received positive screenings (i.e., trafficking was indicated);

- e. All documents reflecting the YACMP Contractor's performance of its obligation to develop a network of community resources and the names of the organizations that are included in this network;
- f. All documents reflecting the total number of individualized referrals for community services and resources made by YACMP contractor staff and the number of services used by YACMP enrollees;
- g. All documents reflecting the total number of office visits and telephonic check-ins with YACMP contractor staff that have been completed by YACMP-enrolled youth and families;
- h. All documents reflecting the total number of youth and families enrolled in YACMP who had legal representation at the time of their initial YACMP office visit;
- i. All documents reflecting the total number of youth and families who have requested to "opt-out," disenroll, or otherwise decline participation in YACMP;
- j. All documents reflecting the consequences to youth and families who "opt-out," disenroll, or otherwise decline participation in YACMP.

If this information is not compiled, please respond specifically stating that this information is not tracked. If this information is not compiled, please also provide the files from individual cases that reflect the above-requested data points.

12. All records indicating or reflecting the total number of YACMP-enrolled youth and families reported to ICE ERO for noncompliance with YACMP requirements:

- a. Broken down by month, from January 1, 2023, to present;
- b. Broken down by enrollee's city/state of residence;
- c. Broken down by enrollee's country of origin;
- d. Broken down by enrollee's age;
- e. Broken down by enrollee's race/ethnicity;
- f. Broken down by enrollee's gender;
- g. Broken down by enrollee's identified disabilities, if any;

- h. Broken down by enrollee's preferred language;
- i. Broken down by enrollee's date of entry into the United States;
- j. Broken down by enrollee's date of release from ORR custody, if applicable.

If this information is not compiled, please respond specifically stating that this information is not tracked. If this information is not compiled, please also provide the files from individual cases that reflect the above-requested data points.

13. All records reflecting the cost of implementation of YACMP.

- a. Broken down by month, from June 1, 2022, to present;
- b. Broken down by city/state of implementation;
- c. Broken down by services provided.

If this information is not compiled, please respond specifically stating that this information is not tracked. If this information is not compiled, please also provide the files from YACMP Contractor records that reflect the above requested data points.

14. Plaintiffs requested a FOIA fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k).

15. Plaintiffs made clear that they sought no personally identifiable information and requested that documents be produced in a workable format (addressing issues related to native format, text searchability, and glossaries for any undefined terms or codes).

2. Follow-Up Communications with DHS

16. On November 7, 2023, DHS sent Plaintiffs a letter that confirmed receipt of the FOIA request and assigned it tracking number 2023-HQFO-02164. The letter requested a narrowing of the scope for item 4 and stated that DHS was referring all of the other requests (numbers 1-3 and 5-13) to ICE.

17. On December 19, 2023, Plaintiffs revised item 4 as follows:

We request all reports and memoranda reporting on appropriations-related decisions pertaining to YACMP to/from DHS officials in the Management Directorate component of DHS, Members of Congress, and/or the White House, during the time period between the date of January 1, 2022, and the date of this request.

18. On December 28, 2023, DHS responded by “transferring this request to the FOIA Officer for U.S. Immigrations & Customs Enforcement (ICE) AND the Office for Civil Rights and Civil Liberties (CRCL) for processing under the FOIA and direct response to you.”

19. On December 29, 2023, CRCL confirmed receipt of the request and assigned it tracking number 2024-CRFO-00100.

20. As stated in revised item 4, Plaintiffs expect that the documents that are the subject of revised item 4 are with the Management Directorate component of DHS or with ICE. The Management Directorate component of DHS is responsible for appropriations. Plaintiffs do not expect those documents to be with CRCL.

3. Follow-Up Communications with ICE

21. On August 25, 2023, ICE confirmed receipt of the FOIA request by email and assigned it tracking number 2023-ICFO-39614. The email from ICE further stated:

Although ICE’s goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. §552(a)(6)(B).

22. On December 19, 2023, Plaintiffs requested a status update from ICE and confirmation that ICE received the FOIA referral from DHS per DHS’s November 7, 2023 letter.

ICE responded on December 20, 2023, as follows:

In regard to 2023-ICFO-39614, we have queried the appropriate component of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. We will process your request as expeditiously as possible. Upon completion of the processing, all documents that can be released will be made available to you as soon as possible.

We sincerely apologize for the delay you are experiencing and appreciate your continued patience.

4. Administrative Appeal to ICE and Communication with CRCL

23. By February 2024, more than six months had passed since Plaintiffs submitted their requests. Plaintiffs had not received any determination or documents despite FOIA's requirements for prompt disclosure. Accordingly, on February 7, 2024, Plaintiffs submitted an administrative appeal to ICE. On March 7, 2024, ICE responded as follows:

You have appealed the constructive denial of your FOIA request based upon the ICE FOIA Office not responding to your request within either the twenty (20) days provided by statute, or the additional ten (10) day extension invoked by the ICE FOIA Office. In many instances, an agency cannot meet these time limits due to a high volume of requests and resource limitations.

The Department of Homeland Security (DHS) referred portions of a FOIA request it received under case number 2023-HQFO-02164 to ICE on November 7, 2023. This referral was attached to 2023-ICFO-39614 on November 16, 2023. In the future, any request for information on 2023-HQFO-02164 should be submitted with the FOIA case number 2023-ICFO-39614. ICE has begun processing your request on a "first-in, first-out basis" and is currently still in the process of responding to your request. This office is therefore remanding your appeal to the ICE FOIA Office for the completion of processing, including tasking to the appropriate program office(s) to obtain responsive records, if any exist. The ICE FOIA Office will provide a direct response to you.

24. On March 20, 2024, the ICE FOIA Office sent Plaintiffs a letter stating that it had "administratively closed" Plaintiffs' appeal.

25. On February 7, 2024, Plaintiffs also requested that CRCL provide an update on the status of revised item 4, which had been referred to it and ICE. Later that day, CRCL responded that it would "process [Plaintiffs'] request as expeditiously as possible."

C. DEFENDANTS HAVE FAILED TO ISSUE A TIMELY DETERMINATION AND PRODUCE THE REQUESTED DOCUMENTS

26. FOIA requires agencies to "determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of [a FOIA] request whether to comply with

such [a] request[,] . . . immediately notify the person making such request of such determination and the reasons therefor[,]” and provide information regarding the right to seek assistance from the FOIA Public Liaison and the right to appeal an adverse decision. 5 U.S.C. § 552(a)(6)(A)(i); *see also* 6 C.F.R. § 5.5 (regarding timing of responses to requests to DHS). After a determination is made, the agency must “make the records promptly available.” 5 U.S.C. § 552(a)(3)(A).

27. An agency is permitted a ten-day extension if statutorily defined “unusual circumstances” apply and written notice is made to the requestor setting forth those unusual circumstances. 5 U.S.C. § 552(a)(6)(B); *see also* 6 C.F.R. § 5.5(c) (DHS regulation regarding application of the unusual circumstances exception).

28. A DHS FOIA Office in receipt of a FOIA request may refer the responsibility to respond to that FOIA request to another component of DHS if the receiving component is not in possession of the requested records or the other component is best able to determine whether to disclose the relevant records. 6 C.F.R. §§ 5.4(c), (d)(3).

29. On August 25, 2023, ICE informed Plaintiffs that it was invoking a ten-day extension pursuant to 5 U.S.C. § 552(a)(6)(B). It did not notify Plaintiffs of “the date on which a determination is expected to be dispatched.” 5 U.S.C. § 552(a)(6)(B)(i); *see also* 6 C.F.R. § 5.5(c) (government shall “notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed”).

30. ICE’s August 25, 2023, email to Plaintiffs states that they would be charged for the records, but it is not apparent from this communication whether this is a standard form, or whether Plaintiffs’ request for a fee waiver has not yet been considered. There is no reference therein to Plaintiffs’ request for a fee waiver. On information and belief, Defendants have not yet considered and decided upon Plaintiffs’ request for a fee waiver.

31. As of the filing of this Complaint, nearly 11 months have passed without a determination or receipt of any documents.

32. Plaintiffs have exhausted their administrative remedies. *See* 5 U.S.C. 552(a)(6)(C)(i) (“Any person making a [FOIA] request to any agency for records . . . shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of [FOIA].”).

IV

CLAIM FOR FAILURE TO PRODUCE DOCUMENTS IN VIOLATION OF FOIA AND ITS IMPLEMENTING REGULATIONS

33. FOIA and its implementing regulations require Defendants to issue their determinations on Plaintiffs’ requests and produce the documents pursuant to the timelines described above. *See* 5 U.S.C. § 552(a)(6)(A)(i), (a)(3)(A); 6 C.F.R. § 5.4-5.6. Defendants have violated FOIA and its implementing regulations by failing to issue a determination and produce the requested documents pursuant to that timeline or to date.

V

REMEDY

Plaintiffs hereby request that the Court:

- (1) Declare that Defendants’ failure to issue a timely determination and produce the records requested by Plaintiffs is unlawful;
- (2) Order Defendants to issue a prompt determination and produce their records to Plaintiffs;
- (3) Award Plaintiffs’ reasonable attorneys’ fees and other litigation costs reasonably incurred in this action, as provided in 5 U.S.C. § 552(a)(4)(E); and
- (4) Grant such other and further relief the Court may deem just and proper.

Respectfully submitted,

/s/ Jane M. Liu

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July 17, 2024

/s/ Todd A. Gluckman

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