



October 6, 2021

**VIA EMAIL – FOIARequest@state.gov & FOIAStatus@state.gov**

U.S. Department of State  
Appeals Officer  
HST Room B266  
2201 C Street, NW  
Washington, D.C. 20520

**Re: Appeal and Notice of Intent to Sue, FOIA Request Number F-2021-09922**

Dear U.S. Department of State FOIA Appeals 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. Background**

On August 31, 2021, AFL submitted a Freedom of Information Act (FOIA) records request, control number F-2021-09922, related to, *inter alia*, vetting of Afghan nationals by the Biden Administration, enclosed as Exhibit 1. As of the time of submission, Department of State has yet to officially respond to this request, and has only acknowledged its submission through an automated system email and a response on September 13, 2021 from the FOIA Status resource saying it “will soon be officially acknowledged via email.” Such acknowledgment has not come and so AFL treats its request for expedited processing as denied, and appeals that denial.

Because of the compelling public interest in the Biden Administration’s retreat from Afghanistan and the pressing national security concerns associated with the Administration’s opaque vetting of Afghan evacuees, on the one hand, and apparent abandonment of America’s Afghan allies on the other, AFL requested expedited processing of Sections A, B, J, and K of our request. On the record before your agency,

AFL's Request No. F-2021-09922 is entitled to expedited processing.<sup>1</sup> Our request to the Department of Defense is enclosed as Exhibit 2, and their response granting expedited processing is enclosed as Exhibit 3. Our request to the Department of Homeland Security is enclosed as Exhibit 4, and their response granting expedited processing is enclosed as Exhibit 5.

AFL has demonstrated (1) we are primarily engaged in disseminating information to carry out our nonprofit mission,<sup>2</sup> and (2) there is a significant urgency to inform the public concerning the described Federal Government activity, for the national security consequences of inadequate vetting cannot be cured once persons are admitted to the United States.

Now is the time our citizens and our elected representatives need to know how the Biden Administration is identifying and addressing potential security risks among the tens of thousands of evacuees it has admitted. The public must know why these Afghans, most of whom are apparently ineligible for a Special Immigrant Visa for eligible Afghan translators and interpreters who worked directly with the U.S. Armed Forces or 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. The information we have requested directly pertains to a matter of a current exigency to the American public and a reasonable person might conclude that the consequences of delaying a response to a FOIA request would compromise a significant recognized interest. In this case, preclusion from timely obtaining information vital to the current and ongoing debate surrounding the legality and national security implications of high-profile government action admitting inadequately vetted individuals to the United States. Recent U.S. Department of Justice indictments illustrate the dangerous consequences of inadequate vetting.<sup>3</sup> Accordingly, we have shown "compelling need" for our expedited processing request.

22 C.F.R. § 171.11(f)(4) provides a request for expedited processing may be made at the time of the initial request for records or at any later time. "The request for expedited processing shall set forth with specificity the facts on which the request is based. A notice of the determination whether to grant expedited processing shall be

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<sup>1</sup> 5 U.S.C. § 552(a)(6)(E); 22 C.F.R. § 171.11(f); *accord Prot. Democracy Project, Inc. v. DOD*, 263 F. Supp. 3d 293, 300 (D.D.C. 2017).

<sup>2</sup> See generally [www.aflegal.org/news](http://www.aflegal.org/news); see also [www.aflegal.org/oversight](http://www.aflegal.org/oversight).

<sup>3</sup> 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) <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>.

provided to the requester within 10 calendar days of the date of the receipt of the request in the appropriate office...” It appears the Department has, in the exercise of its administrative discretion, waived the statutory certification requirement. Accordingly, AFL did not include a separate statement of need. However, to ensure the record is clear, AFL’s statement of need for expedited processing, as set forth in Request F-2021-09922 and in this appeal, is certified as being true and correct to the best of AFL’s knowledge and belief under 5 U.S.C. § 552(a)(6)(E)(vi). Please let us know if the agency requires a separate statement and AFL will provide one forthwith.

As noted, expedited processing has been granted by the U.S. Department of Defense and the U.S. Department of Homeland Security on FOIA requests for Afghan vetting information.<sup>4</sup> There is but one FOIA statute and all federal agencies are bound to apply the law to the same facts in the same way. Denying AFL expedited processing on Request F-2021-09922 would be arbitrary and capricious and violate due process.

Under 5 U.S.C. § 552(a)(6)(E)(ii) and 22 C.F.R. § 171.11(f)(4), you were supposed to determine whether to grant expedited processing and notify us within ten days after we made our request. Apparently, no such determination has been made, for no such notice has been provided to us. Thus, we are immediately entitled to judicial review, injunctive relief, and reasonable attorney fees under 5 U.S.C. § 552(a)(6)(E)(iii).<sup>5</sup> Due to the exigency of this matter, and the clarity of the record before the agency, we demand our request for expedited processing be granted within five business days and you agree to pay reasonable attorney fees associated with this appeal. If not, then suit will be filed.

Please contact the undersigned at [FOIA@aflegal.org](mailto:FOIA@aflegal.org) if you require additional clarification or information.

/S/ \_\_\_\_\_  
Reed D. Rubinstein  
America First Legal Foundation

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<sup>4</sup> See Exhibits 2-5.

<sup>5</sup> The statutory test is clear, Congress has left no gap for the agency to fill, and so agency regulations may not be cited to complicate or enlarge the deadlines or requirements of the statutory test. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-44 (1984).

# EXHIBIT 1



August 31, 2021

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

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

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

Dear FOIA Officer:

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

**I. Introduction**

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

Q. Is a Taliban takeover of Afghanistan now inevitable?

THE PRESIDENT: No, it is not.

Q. Why?

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

\* \* \* \*

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

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

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

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

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

## II. Definitions

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

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

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

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

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

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

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

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

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

### **III. Requested Records**

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

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

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

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



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

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

#### **IV. Redactions**

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

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

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

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

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

## **V. Fee Waiver Request**

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

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

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

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

Second, the Biden Administration claims more than 123,000 people, including about 6,000 American citizens, have been evacuated from Afghanistan.<sup>5</sup> However, the evacuation has been chaotic, poorly planned, and badly executed.<sup>6</sup> The Biden Administration turned over Kabul to the Taliban, giving it operational control over access to the

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<sup>3</sup> 22 C.F.R. § 171.11(f).

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

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

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

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

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

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

## VI. Production

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

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<sup>7</sup> Aaron Blake, *The Biden administration's increasingly muddy denials on giving the Taliban lists*, THE WASHINGTON POST (Aug. 30, 2021) <https://www.msn.com/en-us/news/us/the-biden-administration-e2-80-99s-increasingly-muddy-denials-on-giving-the-taliban-lists/ar-AANU3cH?ocid=uxbndlbing>; Jerry Dunleavy, *White House: Taliban Setting Up More Entry Points Beyond Perimeter to Stop ISIS-K Attacks*, THE WASHINGTON EXAMINER (Aug. 23, 2021) <https://news.yahoo.com/white-house-taliban-setting-more-170600073.html>; *Taliban Captured Key US Military Biometric Devices: Report*, The Times of India (Aug. 19, 2021), <https://timesofindia.indiatimes.com/world/us/taliban-captured-key-us-military-biometric-devices-report/articleshow/85445501.cms>.

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

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

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

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

## **VII. Conclusion**

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

Thank you,

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

# EXHIBIT 2



August 31, 2021

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

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

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

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**I. Introduction**

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

Q. Is a Taliban takeover of Afghanistan now inevitable?

THE PRESIDENT: No, it is not.

Q. Why?

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

\* \* \* \*

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

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

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

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

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

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



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

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

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

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

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

### **III. Requested Records**

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

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

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

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

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

#### IV. Redactions

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

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

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

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

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

## **V. Fee Waiver Request**

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

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

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

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

## VI. Request for Expedited Processing

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

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

Second, the Biden Administration claims more than 123,000 people, including about 6,000 American citizens, have been evacuated from Afghanistan.<sup>5</sup> However, the evacuation has been chaotic, poorly planned, and badly executed.<sup>6</sup> The Biden Administration turned over Kabul to the Taliban, giving it operational control over access to the

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<sup>3</sup> 32 C.F.R. § 286.8(e).

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

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

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

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

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

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

## VI. Production

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

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<sup>7</sup> Aaron Blake, *The Biden administration's increasingly muddy denials on giving the Taliban lists*, THE WASHINGTON POST (Aug. 30, 2021) <https://www.msn.com/en-us/news/us/the-biden-administration-e2-80-99s-increasingly-muddy-denials-on-giving-the-taliban-lists/ar-AANU3cH?ocid=uxbndlbing>; Jerry Dunleavy, *White House: Taliban Setting Up More Entry Points Beyond Perimeter to Stop ISIS-K Attacks*, THE WASHINGTON EXAMINER (Aug. 23, 2021) <https://news.yahoo.com/white-house-taliban-setting-more-170600073.html>; *Taliban Captured Key US Military Biometric Devices: Report*, The Times of India (Aug. 19, 2021), <https://timesofindia.indiatimes.com/world/us/taliban-captured-key-us-military-biometric-devices-report/articleshow/85445501.cms>.

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

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

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

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

## **VII. Conclusion**

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

Thank you,

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

# EXHIBIT 3





**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](mailto:FOIA@HQ.DHS.GOV)

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

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

Dear FOIA Officer:

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

**I. Introduction**

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

Q. Is a Taliban takeover of Afghanistan now inevitable?

THE PRESIDENT: No, it is not.

Q. Why?

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

\* \* \* \*

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

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

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

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

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

## II. Definitions

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

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

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

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

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

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

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

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

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

### **III. Requested Records**

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

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

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

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



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

#### IV. Redactions

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

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

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

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

## **V. Fee Waiver Request**

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

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

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

## VI. Request for Expedited Processing

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

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

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

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

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<sup>3</sup> 6 C.F.R. § 5.5.

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

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

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

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

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

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

## VI. Production

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

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

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

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

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

## VII. Conclusion

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

Thank you,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation

# EXHIBIT 5



Homeland  
Security

*Privacy Office, Mail Stop 0655*

September 17, 2021

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

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

Re: **2021-HQFO-01432**

Dear Mr. Rubinstein:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Your request for expedited treatment is hereby granted.



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

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

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

National Records Center, FOIA/PA Office

P. O. Box 648010

Lee's Summit, MO. 64064-8010

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

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

[USCIS Website](#)

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

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

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

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

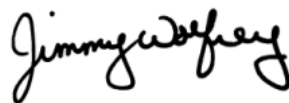
In the event that your fee waiver is denied, and you determine that you still want the records, provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS FOIA regulations as they apply to media requesters. As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

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

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

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

Sincerely,

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

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