

OVERSIGHT OF THE TRUMP ADMINISTRATION'S
FAMILY SEPARATION POLICY

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTEENTH CONGRESS
FIRST SESSION

FEBRUARY 26, 2019

Serial No. 116–4

Printed for the use of the Committee on the Judiciary



Available on: <http://www.judiciary.house.gov> or www.govinfo.gov

OVERSIGHT OF THE TRUMP ADMINISTRATION'S FAMILY SEPARATION POLICY

OVERSIGHT OF THE TRUMP ADMINISTRATION'S FAMILY SEPARATION POLICY

HEARING BEFORE THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTEENTH CONGRESS FIRST SESSION

FEBRUARY 26, 2019

Serial No. 116–4

Printed for the use of the Committee on the Judiciary



Available on: <http://www.judiciary.house.gov> or www.govinfo.gov

U.S. GOVERNMENT PUBLISHING OFFICE

38–041

WASHINGTON : 2019

COMMITTEE ON THE JUDICIARY

JERROLD NADLER, New York, *Chairman*

ZOE LOFGREN, California	DOUG COLLINS, Georgia,
SHEILA JACKSON LEE, Texas	<i>Ranking Member</i>
STEVE COHEN, Tennessee	F. JAMES SENSENBRENNER, JR.,
HENRY C. "HANK" JOHNSON, JR., Georgia	Wisconsin
THEODORE E. DEUTCH, Florida	STEVE CHABOT, Ohio
KAREN BASS, California	LOUIE GOHMERT, Texas
CEDRIC L. RICHMOND, Louisiana	JIM JORDAN, Ohio
HAKEEM S. JEFFRIES, New York	KEN BUCK, Colorado
DAVID N. CICILLINE, Rhode Island	JOHN RATCLIFFE, Texas
ERIC SWALWELL, California	MARTHA ROBY, Alabama
TED LIEU, California	MATT GAETZ, Florida
JAMIE RASKIN, Maryland	MIKE JOHNSON, Louisiana
PRAMILA JAYAPAL, Washington	ANDY BIGGS, Arizona
VAL BUTLER DEMINGS, Florida	TOM McCLINTOCK, California
J. LUIS CORREA, California	DEBBIE LESKO, Arizona
MARY GAY SCANLON, Pennsylvania,	GUY RESCHENTHALER, Pennsylvania
<i>Vice-Chair</i>	BEN CLINE, Virginia
SYLVIA R. GARCIA, Texas	KELLY ARMSTRONG, North Dakota
JOE NEGUSE, Colorado	W. GREGORY STEUBE, Florida
LUCY McBATH, Georgia	
GREG STANTON, Arizona	
MADELEINE DEAN, Pennsylvania	
DEBBIE MUCARSEL-POWELL, Florida	
VERONICA ESCOBAR, Texas	

PERRY APELBAUM, *Majority Staff Director & Chief Counsel*
BRENDAN BELAIR, *Minority Staff Director*

CONTENTS

FEBRUARY 26, 2019

OPENING STATEMENTS

	Page
The Honorable Jerrold Nadler, New York, Chairman, House Committee on the Judiciary	1
The Honorable Doug Collins, Georgia, Ranking Member, House Committee on the Judiciary	3
The Honorable Zoe Lofgren, California, Chair, Subcommittee on Immigration and Citizenship, House Committee on the Judiciary	6
The Honorable Ken Buck, Colorado, Ranking Member, Subcommittee on Immigration and Citizenship, House Committee on the Judiciary	7

WITNESSES

Chief Carla Provost, Chief of Border Patrol, U.S. Customs and Border Protection	
Oral Testimony	10
Prepared Statement	13
Ms. Nathalie R. Asher, Acting Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement	
Oral Testimony	19
Prepared Statement	21
Mr. Scott Lloyd, Senior Advisor, Center for Faith and Opportunity Initiatives, U.S. Department of Health and Human Services	
Oral Testimony	27
Prepared Statement	29
Commander Jonathan White, U.S. Public Health Service Commissioned Corps, U.S. Department of Health and Human Services	
Oral Testimony	36
Prepared Statement	39
Mr. James McHenry, Director, Executive Office for Immigration Review, U.S. Department of Justice	
Oral Testimony	46
Prepared Statement	48

LETTERS, STATEMENTS, ETC. SUBMITTED FOR THE HEARING

Prepared Statements of Amnesty International, American College of Physicians, the Center for Victims of Torture, the United States Conference of Catholic Bishops, Church World Service, the Episcopal Church, Sojourners, and the Friends Committee on National Legislation; Submitted by the Honorable Sheila Jackson Lee	61
Letter from Chairman Jerrold Nadler to the U.S. Department of Health and Human Services, dated January 11, 2019; Submitted by the Honorable Ted Deutch	104
Document produced to the Committee by the U.S. Department of Health and Human Services regarding the Office of Refugee Resettlement's policy on sexual abuse; Submitted by the Honorable Ted Deutch	108
Document produced to the Committee by the U.S. Department of Health and Human Services regarding allegations of sexual abuse reported to the U.S. Department of Justice in fiscal years 2015 through 2018; Submitted by the Honorable Ted Deutch	111

IV

	Page
Document produced to the Committee by the U.S. Department of Health and Human Services regarding incidents of sexual abuse in the Office of Refugee Resettlement's Unaccompanied Alien Children Program; Submitted by the Honorable Ted Deutch	116
Document produced to the Committee by the U.S. Department of Health and Human Services regarding incidents of sexual abuse from fiscal years 2017 and 2018; Submitted by the Honorable Ted Deutch	119
New York Times article entitled, "Why Are Parents Bringing Their Children on Treacherous Treks to the U.S. Border?"; Submitted by the Honorable Matt Gaetz	125
Washington Post article entitled, "For Central Americans, children open a path to the U.S.—and bring a discount"; Submitted by the Honorable Matt Gaetz	135
Washington Times article entitled, "Eye-popping surge of illegal immigrants abducting children"; Submitted by the Honorable Matt Gaetz	143
ProPublica report entitled, "Families Are Still Being Separated at the Border, Months After 'Zero Tolerance' Was Reversed"; USA Today article entitled, "Families still being separated at border—months after Trump's 'zero tolerance' policy reversed"; Washington Post article entitled, "7 questions about the family-separation policy, answered"; Vox article entitled, "The Trump administration's separation of families at the border, explained"; BuzzFeed News article entitled, "The Trump Administration Is Slowing The Asylum Process To Discourage Applicants, An Official Told Congress"; NPR report entitled, "After Traveling 2,000 Miles for Asylum, This Family's Journey Halts At A Bridge"; NPR report entitled, "Trump Administration Begins 'Remain In Mexico' Policy, Sending Asylum-Seekers Back"; Project on Government Oversight report entitled, "Asylum Seekers Being Turned Away No Matter Where They Cross the Border"; Submitted by the Honorable David N. Cicilline	154
Vox article entitled, "Hundreds of families are still being separated at the border"; Submitted by the Honorable Mary Gay Scanlon	227
Texas Civil Rights Project report entitled, "The Real National Emergency: Zero Tolerance & the Continuing Horrors of Family Separation at the Border"; Submitted by the Honorable Veronica Escobar	248
NBC News article entitled, "Trump admin weighed targeting migrant families, speeding up deportation of children"; Submitted by the Honorable Veronica Escobar	275
Letters from the Honorable Lou Correa to Acting Inspector General John Kelly, The Honorable Scott Perry, Department of Homeland Security Secretary Kirstjen Nielsen, the Honorable Michael McCaul, and Inspectors General John Kelly and Daniel Levinson; Submitted by the Honorable Lou Correa	290

APPENDIX

Statement of Tahirih Justice Center; Submitted by the Honorable Zoe Lofgren	309
U.S. Immigration and Customs Enforcement Detention Management information and Separated Families guidance; Submitted by the Honorable Doug Collins	311
Questions for the Record for Chief Carla Provost, Ms. Nathalie Asher, Mr. Scott Lloyd, Commander Jonathan White, and Mr. James McHenry; Submitted by the Honorable Jerrold Nadler, the Honorable Zoe Lofgren, the Honorable Sylvia Garcia, the Honorable Veronica Escobar, and the Honorable Greg Stanton	314
Responses to Questions for the Record from Customs and Border Protection ...	317
Responses to Questions for the Record from Immigration and Customs Enforcement	331
Responses to Questions for the Record from the Department of Health and Human Services	338
Responses to Questions for the Record from the Department of Justice	340

OVERSIGHT OF THE TRUMP ADMINISTRATION'S FAMILY SEPARATION POLICY

TUESDAY, FEBRUARY 26, 2019

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Washington, DC

The committee met, pursuant to call, at 10:07 a.m., in Room 2141, Rayburn House Office Building, Hon. Jerrold Nadler [chairman of the committee] presiding.

Present: Representatives Nadler, Lofgren, Jackson Lee, Johnson of Georgia, Deutch, Bass, Jeffries, Cicilline, Lieu, Raskin, Jayapal, Demings, Correa, Scanlon, Garcia, Neguse, McBath, Stanton, Dean, Mucarsel-Powell, Escobar, Collins, Sensenbrenner, Chabot, Gohmert, Jordan, Buck, Roby, Gaetz, Johnson of Louisiana, Biggs, McClintock, Lesko, Reschenthaler, Cline, Armstrong, and Steube.

Staff Present: Joshua Breisblatt, Counsel; Rachel Calanni, Professional Staff; Madeline Strasser, Chief Clerk; David Greengrass, Senior Counsel; Susan Jensen, Parliamentarian and Senior Counsel; Lisette Morton, Director of Policy, Planning, and Member Services; Andrea Loving, Minority Chief Counsel, Subcommittee on Immigration and Citizenship; Jon Ferro, Minority Parliamentarian; and Erica Barker, Minority Chief Legislative Clerk.

Chairman NADLER. The Judiciary Committee will come to order.

Without objection, the chair is authorized to declare recesses of the committee at any time.

We welcome everyone to this morning's hearing on Oversight of the Trump Administration's Family Separation Policy. I will now recognize myself for an opening statement.

Two years into the Trump administration's wide array of dramatic and damaging immigration policy changes, it is unbelievable that so much harm has occurred to so many people with so little congressional oversight. That ends with this new Congress.

In our first immigration-related hearing this Congress, the Judiciary Committee will finally seek to hold the administration accountable for its indefensible and repugnant family separation policy and for the injuries it has inflicted on thousands of children and families. Even now, months after the height of the crisis created by the administration's implementation of its cruel and inhumane anti-immigrant policies, basic questions remain unanswered.

In part, that is because the Department of Justice and the Department of Homeland Security until last night stonewalled the legitimate requests for information by this committee that were made over 6 weeks ago. Although we have received several docu-

ment productions by the Department of Health and Human Services, we only received our first document productions of under 100 pages each last night from DOJ and DHS. That is absolutely inexcusable. These requests were made 6 weeks ago.

I expect these agencies to comply with our requests in the future and I expect the witnesses to be prepared to answer all of our questions today, starting with four fundamental ones.

First, why did the administration think that seizing children from the arms of their parents was acceptable policy? Second, who was responsible for developing and implementing the family separation policy? Third, what are you doing to reunify all of the families you separated? And fourth, what plans are in place to repair the traumatizing damage to children and families caused by their actions?

As part of this policy, the Department of Homeland Security apprehended thousands of families crossing our Southern border, many of them fleeing for their lives, and tore children away from their parents seemingly for no reason other than to deter people from seeking the protection our country has historically provided to those seeking asylum. And the Department did so in such a reckless and callous way that it failed even to capture sufficient information to identify which child belonged to which parent.

When a stranger rips a child from a parent's arms without any plan to reunify them, it is called kidnapping. This administration is responsible for the harm suffered by thousands of children and their parents, and it must be held accountable after, after all the children are reunified. That is why we must have a full accounting of which officials were responsible for directing and planning this shameful policy of kidnapping.

Not only was the family separation policy abhorrent, the administration was either incompetent or grossly negligent in its implementation, which only compounded the trauma inflicted on these innocent children. It is now apparent that none of the agencies present here today were ready to implement this policy. According to reports from the DHS Inspector General, the Department of Health and Human Services Inspector General, and the Government Accountability Office, the agencies failed to take the basic and necessary steps to prepare for and implement the family separation policy.

For example, the DHS Inspector General found that the Department "struggled to identify, track, and reunite families" and caused confusion by providing "inconsistent information" to separated families. The GAO reported that DHS and HHS frontline staff were not aware of their roles in family separation until then-Attorney General Sessions announced the policy in an April 2018 speech.

This utter lack of preparation is indefensible on its own, but it is particularly appalling, given the fact that DHS and the Justice Department had already conducted a 5-month pilot program involving family separation in the El Paso sector.

How is it remotely possible that after quietly conducting this family separation program for 5 months, the agencies at this hearing did not recognize the obvious need for critical officer training, for a system for tracking families, or a plan for eventual reunification? The failure to take these steps as the program was expanded

demonstrates an utter indifference to human suffering that shocks the conscience.

Lastly, I expect our witnesses to tell us what they are currently doing to repair the untold harm their agencies inflicted on these children and their parents—and their families. The American Association of Pediatrics has stated that, “Highly stressful experiences like family separation can cause irreparable harm, disrupting a child’s brain architecture and affecting his or her short- and long-term health and can carry lifelong consequences for the children.”

So I must ask, who in your respective agencies are now monitoring and addressing the medical and psychological needs of separated children both during custody and after being reunified with their parents, with their families?

Incredibly, the Human and Human Services Inspector General reported last January—that is to say last month—that thousands more children may have been forcibly separated from their parents or legal guardians than the administration had previously acknowledged. In fact, the actual number is still unknown. Even worse, the Government has neither attempted nor intends to reunify these unaccounted-for children with their parents because, they say, it would just be too complicated and burdensome.

While there may be some logistical challenges and jurisdictional questions as to how that should happen, there is absolutely no justification to not even try to reunify a child with his or her parent. It is simply unacceptable to allow anyone who inflicted such traumatic damage to these families to sidestep responsibility for the consequences of their actions.

We as a nation can and must do better. I expect that the witnesses will all be prepared to answer fully and clearly how this disastrous and unconscionable policy was developed and implemented, how their agencies intend to locate and reunify every child with every parent for every family that was separated, whether as part of the zero-tolerance policy or prior to the zero-tolerance policy being announced, including reunifying children with parents who were unconscionably deported without their children, if the parents want that, and how the agencies intend to repair the damage they caused.

I look forward to discussing these issues and more with our panel, and I now yield to the distinguished ranking member of the committee, the gentleman from Georgia, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

And I appreciate the opportunity today to discuss the human cost of the current immigration law and what happens when for decades the law is ignored both by Republican and Democrat administrations and abused by those seeking to enter the United States at almost any cost. Together, these factors have undercut American sovereignty and the integrity of our generous immigration system.

Unfortunately, actions can have damaging consequences, and now caravans of thousands of Central Americans are endangering themselves and others as they pursue entry, very often illegal entry to the U.S. Fraud and abuse now is rampant in our asylum system, which is supposed to protect the vulnerable from persecution. Adults are delivering children into the hands of human traf-

fickers while gangs of aliens violently assault the Border Patrol agents simply trying to keep Americans and migrants safe.

The President once noted we have seen a significant rise in apprehensions and processing of children and individuals from Central America who are crossing into the United States in the Rio Grande Valley areas of the Southwest border. These individuals who embark upon this journey are subject to violent crime, abuse, and extortion as they rely on dangerous human smuggling networks to transport them through Central America and Mexico.

This was true when President Obama wrote this in a letter to Congress in June of 2014, and it remains true today. That summer, President Obama asked Congress for \$3.7 billion in emergency supplemental appropriations to help address the border crisis, and the House Republicans passed such a bill.

During that crisis, the Obama administration was doing the same things that is happening today. They were apprehending illegal border crossers in the same way the Trump administration does today. They were detaining and processing the illegal entrants in the same facilities, with the same chain link partitions where the Trump administration detains and processes them today. They were providing the same humanitarian relief—diapers, food, mylar blankets—as the Trump administration provides today.

Of course, none of that stops illegal border crossings because the perverse incentives to come to the U.S. illegally and to falsely claim asylum remain strong. To make the situation worse, a 2015 Federal court ruling incorrectly interpreted the Flores settlement agreement. That ruling provided more incentive for aliens to come to the U.S. illegally since word got out that adults who bring a child with them across the border are guaranteed release into America's interior within a matter of days.

The Obama administration rightly appealed the ruling but lost, leaving Congress with a duty to act on what should be a bipartisan humanitarian policy correcting the errant Flores ruling. So here we are 5 years later. Misguided policies, inconsistent enforcement, and limited resources have further fueled the humanitarian border crisis.

Family unit apprehensions are up 280 percent over the same time last year, and overall apprehensions by Border Patrol are up 81 percent. Agents routinely see groups of 300 or more aliens entering together illegally as Central American caravans filled with family units, unaccompanied minors, and single adults have become the norm.

My colleagues across the aisle have offered no solutions to secure the border and end the perverse incentives that cause children to be trafficked and abused on the journey north or honor legal immigrants by fighting the widespread abuse of the current system. Instead, we have seen advocacy for mass legalization of illegal aliens, to abolish the entire law enforcement agency of ICE, and for legislation that would further hamstring any efforts to deter illegal entry and abuse of the immigration system and existing laws.

Even today, hostility to the rule of law is on display. My colleagues have the opportunity to hold their first immigration-related hearing on a topic that would curb incentives for illegal immigration and remove incentives for parents to endanger their own chil-

dren by paying murderous cartels to smuggle children across the U.S.-Mexico border. Instead, we have decided that the first immigration-related hearing would ignore every opportunity to protect Americans and our neighbors in favor of a political spectacle.

None of that is helpful, and none of it represents a serious attempt to protect our sovereign borders, our citizens, and our neighbors to the south, and the rule of law. When he took office, President Trump applied the current law in a good faith effort to deter illegal border crossings. His January 25, 2017, immigration enforcement executive order directed the Attorney General to prioritize prosecution of offenses having a nexus to the Southern border.

The Attorney General and the DHS Secretary then implemented the zero-tolerance policy under which DHS would refer any alien who entered the country illegally along our Southwest to DOJ for prosecution. Under the Code 1325(a), DOJ would prosecute those aliens. The children accompanying those aliens who were being prosecuted became, by law, unaccompanied alien children and were placed in the custody of the Office of Refugee Resettlement at the Department of HHS.

Now I am going to say personally we must be fair. When we look back on this in hindsight, it is clear the system was not ready to handle the large number of children arriving at the border and separated from their parents. It was not handled in a way that could be fitting, and that was a mistake in the system.

Agents involved here made some mistakes. The administration could have and should have done a better job reuniting families for adult prosecution. Today, we will hear from agencies involved in the zero-tolerance policy about what they have done to ensure going forward every child separated from their parent at the border is tracked and, if appropriate, reunited with that parent. But we should also talk about how Congress can stop incentivizing illegal entry. We should hear from the witnesses, especially Border Patrol and ICE, what resources and legislative changes they believe are necessary to end the humanitarian crisis at our Southern border and make interior safer for citizens and legal immigrants.

We help no one here today by upholding the status quo. We cannot simply say and have a hearing on what is now without looking to the future, without saying what got us here, how do we get it fixed, and how do we have honest interpretations of who is held and who is not?

When we do that, then we do a service to the American public, not only those who are seeking a better life as they come here, doing it legally, but also to make sure that our border is safe in those doings.

Well, Mr. Chairman, before I yield back my time, I want to recognize some members of our audience here today. We are going to hear a lot about separation and other things, and those are things that we do need to hear about. But with us in this room today are Mary Ann Mendoza, a son, Police Sergeant Brandon Mendoza, who was killed by a criminal illegal alien who was driving while intoxicated. Steve Ronnebeck, whose son Grant Ronnebeck was killed by an illegal alien while working at a convenience store that the alien had decided to rob. And Marla Wolff, whose husband, FBI agent

Carlos Wolff, was killed by a criminal illegal alien while he was standing next to his vehicle on the side of the road.

Our immigration system, for those who have heard me speak before, is broken. It needs to be fixed. We cannot continue the perverse incentive to come illegally across our borders, and we need to fix the legal ways that we can make the country the greatest it is in the world with open doors to those who want to do and come here to participate legally.

This is our problem. This is what we should be dealing with today, and that is my hope, Mr. Chairman, as I yield back.

Chairman NADLER. Thank you, Mr. Collins.

It is now my pleasure to recognize the chair of the Subcommittee on Immigration and Citizenship, the distinguished gentlewoman from California, Ms. Lofgren, for her opening statement.

Ms. LOFGREN. Thank you, Chairman Nadler.

I have served in Congress for almost 25 years, and I have participated in hundreds of hearings, but I have rarely been confronted with overseeing policy choices so dreadful and grave that they fundamentally undermine our standing as a nation. We are here today to document and hold this administration accountable for using children, including babies and toddlers, as pawns in its ongoing war on immigrants.

I take no pleasure in holding this hearing, and there will be no winners at the end of it. Family separation policy has stained the Nation and hurt our people, leaving families in pain and our Government in shame. But the hearing is critical because there are many questions that remain unanswered. Today, we expect the witnesses to be prepared to provide detailed, thorough, and concrete answers to those questions. At the outset, here is what we already know.

We know that when Democrats criticized the proposal to separate families as a deterrent to unauthorized immigration in early 2017, former Secretary of DHS John Kelly publicly said he would abandon the idea, and that is what we originally thought had happened. But in the summer of 2017, we were hearing many reports from the field of family separations.

Our staffs reached out to DHS, but the Department denied that family separations were taking place. We have since learned that despite these denials, the Department had quietly implemented a family separation pilot program in the El Paso sector. We know that despite the pilot program, DHS was entirely unprepared to expand that pilot across the Southern border.

After announcing its zero-tolerance policy, DHS began to separate families without recording data that could be tracked through the detention system. So the Department effectively lost mothers and children. Think about that. DHS snatched screaming children from their parents' arms without bothering to make sure they captured sufficient data to reunite them in the future.

Beside protestations to the contrary by Secretary Nielsen, we know that separating families was a specific intent of the zero-tolerance policy. At least 2,816 families, and maybe thousands more, were subjected to it. Leaked internal memos, including one signed by the Secretary herself, made clear that the goal was to create fear and chaos so that future asylum-seeking families would be de-

terred from coming. It is a terrible irony that so many of these families undertook a perilous journey to protect their children only to see their children ripped from their arms by those who were supposed to provide refuge.

Finally, responding to intense outrage within the Congress and really across the country, we know that President Trump ostensibly ordered the cessation of family separations on September 27, 2018. Yet we continue to receive reports that families are being torn apart at the border. That is what we know. Here is what we don't know.

We don't know why the administration prioritized the separation of families as its go-to deterrence strategy. Every administration grapples with the challenge of unlawful border crosses, but not one has resorted to the cruelty of systematically separating children from their mothers and fathers.

We even know that the Obama administration briefly studied the idea but quickly abandoned it as irreconcilable with American values. Why did this administration fervently pursue this heartless approach? We don't know what criteria DHS used to separate families, what information its officers gathered before shoving parents and kids in different directions, or what its plans were to reunite them. Indeed, reports conclude that the Department appears to have made no plans at all.

We don't know why HHS received no forewarning that thousands of traumatized children would quickly be turned over to its custody or why so many children arrived without the vital data needed to facilitate eventual reunion. And we don't know if DHS is separating families now in violation of the President's order, or if it has dreamed up a new justification to accomplish the same result. We don't even know how many families were separated because apparently nobody kept count.

Eight months after a Federal court ordered all families reunited, some remain apart, and thousands more families may be separated and entirely unaccounted for. We don't know when or if these families will ever see each other again.

As a mother and grandmother, my heart aches for all of them. As a member of this committee, I have a duty to get to the bottom of what happened, and I intend to do that. And let me be clear. We will continue to bring the administration before this committee until every one of these children is home with their families.

I yield back, Mr. Chairman.

Chairman NADLER. I thank the gentlelady.

I am now pleased to recognize the ranking member of the Immigration Subcommittee, the gentleman from Colorado, Mr. Buck, for his opening statement.

Mr. BUCK. Thank you, Mr. Chairman.

No one on this committee wants to see families separated, but to avoid this, we need to take an honest look at the incentives that drive illegal immigration, the loopholes in our laws that encourage bad actors to exploit and expose children to the dangerous journey through Central America and Mexico to our Southern border and the crisis at our Southern border.

Mr. Chairman, make no mistake, there is a crisis on our Southern border, one created by Congress' unwillingness to act and per-

petrated by Democrats' open borders policy that allows drugs, guns, gangs, and human and child trafficking operations to spill across our border. Drug cartels and human traffickers that control the smuggling routes along the border are bringing unprecedented amounts of heroin and fentanyl into our country, which is driving the growing opioid crisis. In fact, we just saw the largest fentanyl bust in history just a few weeks ago, where authorities seized 254 pounds of fentanyl, enough to kill hundreds, if not thousands, of American citizens.

On top of the drug crisis that these policies are perpetrating, these open border policies are exposing children to horrendous conditions. Coyotes and child smugglers expose children to drug trafficking, assaults, sexual abuse, and other criminal activity. In fact, one in three females who are trafficked are subject to sexual exploitation during the dangerous trip to the border.

This is not to mention the spike in MS-13 and other gang activity in the country. In fact, in 2017, the U.S. Border Patrol Acting Chief Carla Provost testified before the Senate Judiciary Committee that MS-13 took full advantage of flows of foreign nationals into the United States by hiding in the populations of young individuals entering our country illegally.

Many of these individuals came across the borders as unaccompanied alien children, or UACs, during President Obama's time and continue to enter our country now. As of last summer, Health and Human Services estimated that 83 percent of individuals crossing the border came as UACs. Law enforcement has been working hard to catch these criminals and curtail gang activity, but these open borders policies that Democrats have continued to push are forcing our domestic law enforcement officers to deal with a problem that should have stopped at the border.

We are also seeing unprecedented numbers of family units with children crossing the border every month. Before 2011, more than 90 percent of illegal border crossers were single adult males. Not anymore. Now we are seeing record number of families and children making the dangerous journey here.

In October, there were over 23,000 family apprehensions. In November, 25,000. In December, 27,000. These are historically high numbers.

Unfortunately, years of ineffective enforcement and misguided laws created loopholes that incentivized people to break our laws, exploit children and families, and continue running drugs into our country. Simply put, many adults who illegally cross our border believe that if they come with a child, they will not be detained and will instead be released into the interior of the United States.

We must work to address these loopholes and solve these problems. We cannot continue pushing our border policies and wondering why there is gang activity, drug running, gang violence, and illegal immigration in our interior. When President Trump signed an executive order on June 20, 2018, ending the zero-tolerance initiative that led to an increase in family separation, he aptly titled the order Affording Congress an Opportunity to Address Family Separation. It is time Congress do so.

I look forward to hearing from the witnesses today about their work enforcing the law while protecting vulnerable populations on

the border. I look forward to hearing how Congress can act to address the root causes of exploitation of children on our Southern border and how Congress can act to protect those truly seeking refuge while eliminating frivolous claims that clog our immigration courts.

I yield back.

Chairman NADLER. I thank the gentleman.

I will now introduce today's witnesses. Carla Provost is the Chief of the U.S. Border Patrol at U.S. Customs and Border Protection in the Department of Homeland Security. She earned a Bachelor of Science degree in sociology and criminal justice from Kansas State University and a Master of Science degree in national resource strategy from the Industrial College of the Armed Forces at the National Defense University in Washington, D.C.

Nathalie Asher is the Acting Executive Associate Director for Enforcement and Removal Operations at U.S. Immigration and Customs Enforcement in the Department of Homeland Security. She graduated from Cedarville University with a Bachelor of Arts in Spanish and business.

Scott Lloyd is a senior adviser at the Center for Faith and Opportunity Initiatives in the Department of Health and Human Services and the former Director of the Office of Refugee Resettlement, also at HHS. He received his undergraduate education at James Madison University and earned his J.D. at Catholic University of America, Columbus School of Law.

Jonathan White is a commander in the U.S. Public Health Service Commissioned Corps at the Department of Health and Human Services. He is currently a senior adviser in the Office of Emergency Management and Medical Operations, and he was the Federal health coordinating official for unaccompanied alien children reunification. He received a Bachelor of Arts in British and American literature at New College of Florida, a Ph.D. in American literature from George Washington University, and a Master of Social Work from Catholic University of America.

James McHenry is Director of the Executive Office of Immigration Review at the Department of Justice. He earned a Bachelor of Science from Georgetown University School of Foreign Service, a Master of Arts in political science from Vanderbilt University Graduate School, and a Juris Doctorate from the Vanderbilt University Law School.

We welcome all of our distinguished witnesses and thank them for participating in today's hearing.

Now if you would please rise, I would begin by swearing you in. Raise your right hands, please.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

[Response.]

Chairman NADLER. Let the record show the witnesses answered in the affirmative. Thank you, and please be seated.

Please note that each of your written statements will be entered into the entirety—I am sorry. Each of your written statements will be entered into the record in its entirety, not the other way around. Accordingly, I ask that you summarize your testimony in 5 min-

utes. To help you stay within that time, there is a timing light on your table. When the light switches from green to yellow, you have 1 minute to conclude your testimony. When the light turns red, it signals your 5 minutes have expired.

Before I call on Chief Provost to begin, I want to make one comment, and that is that regardless of the intelligence or lack of intelligence of our immigration policy, regardless of the efficiency or lack of efficiency of our enforcement of that policy, regardless of anything else, deliberate separation of families is immoral and is not justified and cannot be justified by good or bad policies, good or bad intentions.

There are no good intentions about dragging children away from their parents, and there are no excuses. And the purpose of this hearing is to find out why it happened and how we are going to set it right.

I will now recognize our first witness. Chief Provost, you may begin.

TESTIMONY OF CARLA PROVOST, CHIEF, U.S. BORDER PATROL, CUSTOMS AND BORDER PROTECTION; NATHALIE R. ASHER, ACTING EXECUTIVE ASSOCIATE DIRECTOR, ENFORCEMENT AND REMOVAL OPERATIONS, IMMIGRATION AND CUSTOMS ENFORCEMENT; SCOTT LLOYD, SENIOR ADVISER, CENTER FOR FAITH AND OPPORTUNITY INITIATIVES, DEPARTMENT OF HEALTH AND HUMAN SERVICES; JONATHAN WHITE, COMMANDER, U.S. PUBLIC HEALTH SERVICE COMMISSIONED CORPS, DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND JAMES MCHENRY, DIRECTOR, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, DEPARTMENT OF JUSTICE

TESTIMONY OF CARLA PROVOST

Chief PROVOST. Good morning, Chairman Nadler, Ranking Member Collins, and members of the committee.

It is my honor to appear before you today on behalf of U.S. Customs and Border Protection. As the Chief of the United States Border Patrol, I could not be more proud to represent the men and women who dedicate their lives to our border security mission. I am honored to work alongside these well-trained, experienced, and compassionate law enforcement professionals.

You have asked me to speak today about the zero-tolerance prosecution initiative. Since June 20, 2018, zero-tolerance has focused on single adults who violate the law by crossing the border illegally. It no longer applies to parents or legal guardians who cross the border with children.

With no consequences to crossing the border illegally, the flow of family units across our Southwest border is unprecedented. In the first 4 months of fiscal year 2019, family unit apprehensions along the Southwest border are 290 percent higher than the same period last year. For the first time in our history, family units and unaccompanied alien children make up 60 percent of Southwest border apprehensions.

We are also seeing a dangerous new trend. Families and unaccompanied children are crossing in large groups, ranging from 100

to nearly 350 people, 68 groups so far this year compared to only 13 last year and 2 the year before. The gaps created by layers of outdated laws and judicial rulings related to the treatment of minors are a significant pull factor for this population.

Would-be border crossers know that under our current system, adults with children will neither be detained during their immigration proceedings nor prosecuted for illegal entry. As word of mouth and social media spread news of their release into the United States, more migrants are emboldened to make this dangerous journey. Unless Congress addresses Flores and TVPRA, we expect this influx to not only continue but escalate.

Chairman NADLER. Sorry. Unless Congress adopts? You said two things.

Chief PROVOST. I am sorry. Unless Congress addresses Flores and TVPRA, we expect this influx to not only continue but escalate. Every agency represented here today is affected by this phenomenon. Border Patrol is uniquely impacted, as we are the only part of the system with no ability to control who comes our way and when or where they do it.

Ports of entry have hours of operation. ICE and HHS arrange placement before individuals enter their custody, and immigration courts schedule dockets. Not only are my agents apprehending over 2,000 people every day, but our ability to transfer people out of our custody is dependent upon the capacity of our partners.

Our temporary holding facilities were simply not set up to process and care for a population of this size and demographic. This situation is unsustainable both for our operations and for those in our care and custody.

Each day, nearly 25 percent of my agents are diverted away from our border security mission to care for, transport, and process family members and unaccompanied children. As more migrants arrive with medical needs, agents are transporting and escorting an average of 55 people a day to medical facilities.

We are committed to addressing this humanitarian need, but we know that when agents are occupied, narcotics smugglers, criminal aliens, gang members, and others use the opportunity to violate our borders and our laws. There is an ongoing debate about whether this constitutes a border security crisis or a humanitarian crisis. Let me be clear. It is both.

I have been asked many times how the current situation can be a crisis compared to years when we surpassed 1 million apprehensions. To understand the numbers, you have to look at what is happening on the ground. In the 1990s, a time when Mexican nationals represented up to 90 percent of apprehensions, an agent might have apprehended and returned the same individual multiple times within one shift. Today, nearly 80 percent of those apprehended are from countries other than Mexico. The vast majority are Central American family units and unaccompanied children that require significant care in Border Patrol custody and then enter a backlogged immigration system.

What the numbers don't show is how my men and women care for these vulnerable populations with the limited resources that they have. As I have said before, we do not leave our humanity behind when we report for duty.

This humanitarian and border security crisis demands whole-of-government solutions. Within Border Patrol's mission, we know that a combination of barriers, technology, and personnel will improve our operational control of the border. I thank Congress for the down payments on these investments and for addressing the humanitarian costs that have depleted our operational funds at the expense of fuel, gear, and equipment my agents need to do their jobs.

However, to achieve lasting change, Congress must address vulnerabilities in our legal framework that encourage parents to bring or send their children on a very dangerous journey to our border. Reducing the humanitarian demands on our resources lets us focus on the critical border security mission the Nation has entrusted us to fulfill.

Thank you for the opportunity to appear before you today, and I look forward to your questions.

[The statement of Chief Provost follows:]



TESTIMONY OF

Carla L. Provost
Chief
U.S. Border Patrol
U.S. Customs and Border Protection

BEFORE

U.S. House of Representatives
Committee on the Judiciary

ON

"Oversight of Trump Administration's Family Separation Policy"

February 26, 2019
Washington, DC

Chairman Nadler, Ranking Member Collins, and Members of the Committee, it is my honor to appear before you today to discuss U.S. Customs and Border Protection's (CBP) role in the Administration's Zero Tolerance prosecution initiative as part of our immigration enforcement efforts.

Timeline of Zero Tolerance Initiative

On April 6, 2018, the U.S. Department of Justice (DOJ) instituted Zero Tolerance, a policy to prosecute all referred violations of 8 U.S.C. § 1325(a), which prohibits both improper entry and *attempted* improper entry by an alien.

Subsequently, on May 4, 2018, the Secretary of Homeland Security, Kirstjen Nielsen, directed officers and agents to ensure that all adults deemed prosecutable for improper entry in violation of 8 U.S.C. § 1325(a) are referred to the Department of Justice for criminal prosecution. On May 5, 2018, acting at the Secretary's direction, the U.S. Border Patrol (USBP) began referring greater numbers of violators of 8 U.S.C. § 1325(a) for prosecution. The Zero Tolerance initiative applied to all amenable adults (including parents or legal guardians traveling with minor children).

Consequently, when a parent or legal guardian traveling with a child was accepted for prosecution by DOJ under Zero Tolerance, and was thus transferred to U.S. Marshals Service custody for the duration of their criminal proceedings, the child could not remain with the parent or legal guardian during criminal proceedings or subsequent incarceration. That child was referred to the custody and care of the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR).

On June 20, 2018, President Trump issued Executive Order 13841, *Affording Congress the Opportunity to Address Family Separation*, which directed DHS to detain families together for the pendency of any criminal improper entry or immigration proceedings, to the extent permitted by law and subject to the availability of resources. Within hours of issuance of the Executive Order, CBP leadership issued guidance to the field directing that parents or legal guardians who entered with children were no longer to be referred for prosecution for 8 U.S.C. § 1325(a). Following issuance of the Executive Order, CBP reunified more than 500 children in our custody with their parents or legal guardians.

In compliance with the Executive Order and the preliminary injunction in *Ms. L v. ICE* and all other appropriate legal authorities, CBP may separate an alien child from his or her parent or legal guardian when they enter the United States if that parent or guardian poses a danger to the child, or is otherwise unfit to care for the child, has a criminal history, has a communicable disease, or is transferred to a criminal detention setting for prosecution for a crime other than improper entry. CBP may also separate an alien child from an individual purporting to be a parent or legal guardian in certain circumstances, such as where CBP is unable to confirm that the adult is actually the parent or legal guardian, or if the child's safety is at risk. However, outside of these circumstances, CBP generally keeps family units together in its short-term holding facilities.

CBP's prosecution priorities under the Zero Tolerance initiative have continued to focus on achieving 100 percent prosecution of single adult aliens who illegally enter along the southwest

border. Delivery of consequences is an essential tool needed to enforce the law and stem the flow of illegal immigration.

Current Trends in CBP Apprehensions

After the decreases in illegal immigration seen in Fiscal Year (FY) 2017, trends in FY 2018 and now in FY 2019 are worrying. On average, the U.S. Border Patrol is apprehending over 1,600 people each day between our ports of entry on the southwest border. Between the beginning of FY 2019 through January 31, 2019, Border Patrol apprehended 200,832 individuals along the southwest border. That is a staggering 83 percent increase compared to the same timeframe last year. This means that in just four months the number of apprehensions is more than halfway to the 396,579 southwest border apprehensions we made in all of FY 2018.

I specifically call your attention to family units because we are currently experiencing an unprecedented influx of family units at our southwest border. Up until this decade, most of those crossing the border illegally were single adult males. Today, family units and unaccompanied alien children (UAC) make up 60 percent of illegal border crossings along the southwest border. These family units and UAC are predominantly from Central America, namely Guatemala, Honduras, and El Salvador.

December 2018 marked the third time in Border Patrol history that family unit apprehensions exceeded single adult apprehensions. This number reflects the continuation of a trend from the past several years; from FY 2013 to FY 2018, family unit apprehensions increased 621 percent. UAC apprehensions increased 105 percent from FY 2012 to FY 2018. From the beginning of this current fiscal year to December 31, 2018, family unit apprehensions increased 280 percent when compared to the same time period in FY 2018.

In addition, we are seeing an increase in situations in which family units and UAC come across the border in large groups of 100 people or more. From the beginning of this fiscal year through January 31, 2019, Border Patrol Agents apprehended 58 large groups along the southwest border attempting to enter the United States, totaling 9,725 individuals. These large groups require intensive resources to transport, process, and transfer them to our partners, which requires pulling Agents away from our law enforcement mission to perform those tasks. Additionally, our intelligence indicates that human smugglers use the timing and location for these mass crossings strategically for other purposes: large groups disrupt normal border security operations and thereby create a diversion for narcotics smugglers, criminal aliens, and single adult aliens—who would be referred for prosecution under Zero Tolerance if apprehended—to sneak across the border unimpeded.

Operational Impact of the Crisis on the Southwest Border

What the men and the women of CBP are seeing every day at and between our ports of entry is nothing short of a border security and humanitarian crisis. Many Border Patrol stations and CBP ports of entry were built decades ago. They were designed to temporarily detain single adults, who were usually men. Our facilities were not designed for the short- or long-term holding of family units and UAC. In the El Paso Sector alone, we have seen a 434 percent increase in apprehensions this fiscal year. Many of these are family units and UAC arriving in large groups, exacerbating capacity constraints in our facilities.

Our priority is to transfer these vulnerable populations to our partners as quickly as possible, but we are now stocking CBP facilities with items such as diapers, meals appropriate for children, and medical support. Our resources are limited, and we are doing more with less.

The current crisis at our southwest border requires us to increase our capacity to process and facilitate appropriate treatment for the aliens we encounter. This redirection of our resources comes at a cost, as it decreases the number of agents available to perform our law enforcement mission and increases risks along the border.

The rise in migration is, in part, a consequence of the gaps created by layers of laws, judicial rulings, and policies related to the treatment of minors. However well-intentioned, they hinder CBP's ability to fulfill its mission.

Flores Settlement Agreement

The 1997 *Flores* Settlement Agreement, as interpreted by the courts, provides certain standards governing the treatment of all alien minors in U.S. Government custody. The Agreement requires the government to release alien minors from detention without unnecessary delay, or, if detention is required, to transfer them to non-secure, licensed programs "as expeditiously as possible." *Flores* also sets certain standards for the holding and detention of minors, and requires that minors be treated with dignity, respect, and special concern for their particular vulnerability. CBP complies with the *Flores* Settlement Agreement and treats all minors in its custody in accordance with its terms.

In 2014, in response to the surge of alien families crossing the border, DHS increased the number of family detention facilities. Soon after, the U.S. District Court for the Central District of California interpreted *Flores* as applying not only to minors who arrive in the United States unaccompanied, but also to those children who arrive with their parents or legal guardians. The court also ruled that ICE's family detention facilities are not licensed and are secure facilities. These rulings limited DHS's ability to detain family units for the duration of their immigration proceedings. Pursuant to this and other court decisions interpreting the *Flores* Settlement Agreement, DHS rarely detains accompanied children and their parents or legal guardians for longer than approximately twenty days.

As a consequence of the limitations on time-in-custody mandated by *Flores* and court decisions interpreting it, custody arrangements for adults who arrive in this country alone are treated differently from adults who are parents or legal guardians who arrive with a child.

UAC Provision of Trafficking Victims Protection Reauthorization Act of 2008

There are similar treatment differences associated with the provision enacted in the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457, providing certain protections to UAC. Specifically, the TVPRA requires that, once a child is determined to be a UAC, the child must be transferred to HHS ORR within 72 hours, absent exceptional circumstances, unless the UAC is a national or habitual resident of a contiguous country and is determined to be eligible to withdraw his or her application for admission (i.e., not a trafficking victim and does not have a fear of return), and able to be repatriated to that contiguous country. UAC from countries other than Canada and Mexico are exempt from being expeditiously returned pursuant to the TVPRA, which further encumbers the already overburdened immigration courts. Currently, more than 80 percent of UAC encountered by Border Patrol are

from the non-contiguous countries of Guatemala, Honduras, and El Salvador; therefore, they fall outside the TVPRA expeditious return framework.

Asylum Claims

CBP carries out its mission of border security while adhering to legal obligations for the protection of vulnerable and persecuted persons. The laws of the United States, which are consistent with international treaties to which we are a party allow people to seek asylum on the grounds that they fear being persecuted in their country of origin because of their race, religion, nationality, membership in a particular social group, or political opinion. CBP understands the importance of complying with the law and takes its legal obligations seriously.

CBP has designed policies and procedures based on these legal standards to protect vulnerable and persecuted persons in accordance with these legal obligations.

If a CBP officer or agent encounters an alien who is subject to expedited removal at or between ports of entry, and the person expresses fear of being returned to his or her home country, CBP processes that individual for a credible or reasonable fear screening with an asylum officer from U.S. Citizenship and Immigration Services for adjudication of that claim. CBP officers and agents neither make credible or reasonable fear determinations, nor weigh the validity of any claim of fear.

Addressing the Crisis

There are solutions to this crisis, and many of them have broad, bipartisan support. We need to continue to work with governments in Central America to improve economic opportunities, address poverty and hunger, and improve governance and security. We must continue to work with the new administration in Mexico to address the transnational criminal organizations that prey on migrants.

To help address the influx in the El Paso Sector, CBP is currently taking steps to establish a Centralized Processing Center (CPC). This will help us protect the health and safety of those in custody while streamlining operations and reducing time-in-custody. The El Paso CPC, modeled in part after the CPC established in 2015 in the Rio Grande Valley Sector, will provide a centralized location for processing family units and UAC in an appropriate environment and will facilitate consistent medical assessments in one location.

We must invest in border security, including a modern border wall system. Since the first barriers were constructed in San Diego Sector in 1991, U.S. Border Patrol field commanders have continued to advocate for border wall because of the enduring capability it creates to impede and/or deny attempted illegal entries and because it gives us additional time to carry out successful law enforcement resolutions. CBP and its legacy agencies have invested in border barriers throughout the last three decades, and these historic investments—most significantly the bipartisan passage of the Secure Fence Act in 2006—have received broad support. Today, CBP is constructing a border wall system that includes a combination of various types of infrastructure such as an internally hardened steel bollard wall, all-weather roads, lighting, enforcement cameras and other related technology. While anchored by the border wall and the impedance and denial capability it brings, the wall system's complementary investments in roads, lighting, and technology address domain awareness, access, and mobility needs as well.

Ultimately, we must confront and address the vulnerabilities in our legal framework in order to achieve lasting change at the border. Each action taken by lawmakers, the judiciary, policymakers, and operators—while made in good faith by people grappling with complex issues—can have unintended effects on our immigration system and our national security. I look forward to continuing to work with this Committee to address antiquated laws that allow individual aliens and dangerous transnational criminal organizations to exploit our immigration system.

Thank you for the opportunity to appear before you today. I look forward to your questions.

Chairman NADLER. Thank you.
Ms. Asher.

TESTIMONY OF NATHALIE R. ASHER

Ms. ASHER. Good morning, Chairman Nadler, Ranking Member Collins, and distinguished members of the committee.

I am Nathalie Asher, Acting Executive Associate Director for U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations. As a career law enforcement officer with more than two decades of experience, I appreciate the opportunity to appear before you today to discuss ICE's role in supporting the administration's family reunification efforts, as well as its critical mission of protecting the homeland and ensuring the integrity of our Nation's immigration system through the enforcement of our country's intricate immigration laws.

When the zero-tolerance policy was announced, ICE was called upon to assist CBP by arranging transportation for children to HHS custody and providing adult detention beds for the parents. Subsequently, the dedicated men and women of ICE ERO tirelessly assisted with the effort to reunify families by identifying separated parents in its custody, establishing communication between parents and their children, transporting parents to designated ICE facilities to be reunified with their children, and housing a limited number of families together in its family residential centers, FRCs.

As they already do on a daily basis, these law enforcement and support personnel of ERO carried out this unprecedented mission with the utmost professionalism and compassion, and I stand proud of their accomplishment in this endeavor.

In February 2018, the ACLU filed a lawsuit, *Ms. L. v. ICE*, alleging the separation of parents and children violated the aliens' constitutional right to maintain family unity during immigration proceedings. The court later certified a class of plaintiffs consisting of parents in DHS custody whose children were separated from them at the border. The court excluded from the class parents with a criminal history or communicable diseases or those apprehended in the interior.

Despite a host of logistical challenges, ICE and its partners have done everything possible to comply with these findings. These efforts have been praised by the court, which noted the Government deserved great credit for its efforts.

To be clear, throughout the reunification process, the Government's primary goal has been the protection and care of the children involved, and ICE has carried out its supporting role with this goal in mind. During the reunification process, ICE's primary role consisted of ensuring that separated parents in ICE custody were identified, could communicate with their children in HHS custody, and could be transported to a designated center for reunification.

Due to the volume of separations under the zero-tolerance policy, ICE developed a process for coordinating closely with partner agencies and for sharing relevant data in real time. ERO worked closely with Border Patrol and HHS to identify these parents, a challenging process, which involved manual comparison of information across agencies.

Additionally, to ensure that parents could communicate with their children in HHS custody, ERO officers and HHS staff worked together to facilitate communications via telephone, Skype, and Facetime. ICE also displayed posters in multiple languages throughout the adult detention facilities to explain how parents could request an opportunity to communicate with their children who were in HHS custody.

To streamline the reunification process, ERO San Antonio, El Paso, and Phoenix were designated as centers of reunification for children ages 5 to 17 whose parents were eligible to be reunified based on an HHS evaluation. ICE then transported parents to these designated locations for reunification while closely coordinating with local NGOs to ensure that necessary services such as food, shelter, clothing, and travel were available for the families as they continued to their intended final destination.

Despite President Trump's June 20, 2018, executive order, which clarified that the administration would seek to enforce the law while maintaining family unity, our country still faces numerous challenges with regard to the ever-increasing numbers of family units and UACs who, since the initial surge seen in fiscal year 2014, continue to arrive at our Southwest border. In fact, since December 21, 2018, ICE has released over 72,000 family members directly into the United States, as current laws and court rulings essentially mandate the immediate release of these family members, ostensibly never to be heard from again.

These family units and UACs place unparalleled strain on our already overburdened immigration system and contribute to the growing immigration court backlog, which has now surpassed 800,000 cases.

In conclusion, our Nation continues to experience a staggering influx at our Southwest border that is driven by loopholes created by Federal law and various court decisions that prevent the detention of illegal alien minors and family units during the pendency of their removal proceedings and inhibit the removal of those who receive final orders from an immigration judge. As a result, legislative changes of outdated laws are needed to ensure that DHS and ICE have the necessary authorities to ensure the safe and successful repatriation of persons who have had their day in court and been ordered removed in accordance with our laws.

Thank you again for the opportunity to appear before you today, and I would be pleased to answer your questions.

[The statement of Ms. Asher follows:]



U.S. Immigration and Customs Enforcement

STATEMENT

OF

NATHALIE R. ASHER

ACTING EXECUTIVE ASSOCIATE DIRECTOR
ENFORCEMENT AND REMOVAL OPERATIONS
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"Oversight of the Trump Administration's Family Separation Policy"

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY

Tuesday, February 26, 2019
2141 Rayburn House Office Building

Introduction

Chairman Nadler, Ranking Member Collins, and distinguished members of the Committee, my name is Nathalie Asher and I am the Acting Executive Associate Director for U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO). As a career law enforcement officer with more than two decades of experience, I appreciate the opportunity to appear before you today to discuss ICE's role in supporting the Administration's family reunification efforts, as well as its critical mission of protecting the homeland and ensuring the integrity of our nation's immigration system through the enforcement of our country's immigration laws.

Pursuant to its statutory responsibilities, ICE is one of several agencies involved in the processing of unaccompanied alien children (UAC) and family units. ICE plays a critical role by quickly and safely transporting UAC from U.S. Customs and Border Protection (CBP) custody to the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), and supports HHS vetting of potential UAC sponsors. The agency is also charged with housing alien families together at family residential centers (FRCs),¹ and with effectuating removal orders at the conclusion of immigration proceedings. From the time the "Zero Tolerance" Policy was announced in April 2018, until the President issued an Executive Order with regard to maintaining family unity in June 2018, ICE was called upon to assist CBP by providing transportation for children who had been separated at the border to HHS, as well as detention beds for adults who had been referred for prosecution and were later transferred to ICE custody. Subsequently, ICE assisted with the effort to reunify families by identifying separated parents in its custody, establishing communication between parents and their children in HHS custody, transporting parents to designated ICE facilities where they were reunified with their children, and housing a limited number of families together in its FRCs.

Zero Tolerance Policy and Family Separation

On April 6, 2018, the Attorney General announced a "Zero Tolerance" policy, in which United States Attorney's Offices along the Southwest Border would prosecute, to the extent practicable, all offenses referred for prosecution under 8 U.S.C. § 1325(a). Subsequently, on May 4, 2018, the Secretary of Homeland Security directed DHS law enforcement officers and agents to ensure that all adults amenable to prosecution for improper entry in violation of 8 U.S.C. § 1325(a) be referred to the Department of Justice (DOJ) for criminal prosecution. On May 5, 2018, CBP began implementing this policy, resulting in the transfer of adults who had entered illegally to U.S. Marshals Service (USMS) custody and their referral for pending prosecution. In many cases, when adults are transferred to the USMS for prosecution, their children become UAC as defined in Section 279(g)(2) of Title 6 of the U.S. Code. Pursuant to the *Trafficking Victims Protection Reauthorization Act of 2008* (TVPRA), DHS generally must transfer any UAC in its custody to HHS for care and custody within 72 hours of determining the child to be a UAC, absent exceptional circumstances. As a result, approximately 2,700 children who were separated

¹ As a result of the *Flores* Settlement Agreement (FSA), and judicial orders interpreting the FSA, ICE is generally only able to detain accompanied minors for approximately 20 days. As a result, most family units are only detained by ICE for a very limited period.

from their parents or legal guardians at the border were transferred to HHS, while their parents were transferred to USMS custody, and subsequently ICE custody.

On June 20, 2018, President Trump signed an Executive Order entitled, *Affording Congress an Opportunity to Address Family Separation*. This Order clarified that it is the Administration's policy to rigorously enforce our immigration laws, including by pursuing criminal prosecutions for illegal entry under 8 U.S.C. § 1325(a), until and unless Congress directs otherwise. At the same time, the Administration will maintain family unity, including by detaining alien families together during the pendency of legal proceedings, where appropriate and consistent with law and available resources.

Family Reunification Efforts and Associated Challenges

On February 26, 2018, the American Civil Liberties Union (ACLU) filed a lawsuit in the U.S. District Court for the Southern District of California, *Ms. L. v. ICE*, alleging that the separation of parents and children who were apprehended at or between ports of entry violated the parents' constitutional right to maintain family unity during immigration proceedings. The lawsuit asked the court for an order prohibiting such separations. On June 6, 2018, the court denied the Government's motion to dismiss, finding that the plaintiffs had alleged sufficient facts and a plausible claim for relief.

On June 26, 2018, the court certified a class of plaintiffs consisting of parents who have been, are, or will be transferred to DHS custody, and whose children were separated from them at the border and are or will be detained in HHS custody. The court excluded parents with criminal histories or communicable diseases, and those apprehended in the interior, from the class. The court also ordered DHS and HHS to reunify eligible parents with their minor children under the age of five within 14 days (Phase One) and to reunify eligible parents with their minor children age five and older within 30 days (Phase Two).

Despite significant logistical challenges, ICE and its partners have done everything possible to comply with these orders—an effort that had personnel working 24 hours a day and has been praised by the Court, which noted during the July 27, 2018 status conference that the Government deserved “great credit” for its efforts. To be clear, throughout the reunification process, the Government's primary goal has been the protection and care of the children involved, and ICE has carried out its supporting role in the reunification effort with this in mind.

Phase One of this process, reunifying eligible parents with their minor children under the age of five, was completed on July 12, 2018. On August 16, 2018, the parties to the litigation in the case of *Ms. L. v. ICE* filed a reunification plan regarding removed parents. In compliance with *Ms. L. v. ICE*, the government continues to provide regular updates to the Court on the status of reunification efforts. These updates are available on the public docket for *Ms. L. v. ICE*, No. 18-428 (S.D. Cal. Filed Feb. 26, 2018).

While ICE has longstanding procedures which dictate family separations, reunifications, and the transfer of UAC to HHS custody, separations occurring in ICE custody are infrequent, and are typically conducted based on concerns for a child's welfare. Such factors could include

the adult's criminal or immigration history, observed behaviors or actions that cause DHS to become concerned for the welfare of the child, concern about false parental or familial relationship, or a suspicion of smuggling. Because such occurrences are rare for ICE, the agency was previously able to handle them individually, taking into account all relevant factors to ensure that each case was managed appropriately. However, due to the volume of separations that occurred after the Zero Tolerance policy went into effect, and the fact that such separations occurred prior to ICE's involvement, ICE has had to develop a process for coordinating closely with partner agencies, and for sharing relevant data.

During the reunification process, ICE ERO's primary role consisted of ensuring that separated parents in ICE custody were identified, parents could communicate with their children in HHS custody, and parents could be transported to a designated center for reunification. ICE worked closely with CBP and HHS to identify parents in its custody whose children had been transferred to HHS—a challenging process which involved manual comparison of information across agencies. While all three agencies have now implemented data sharing processes, prior to August 2, 2018, the manual process to identify parents who had been separated from a minor child was highly resource-intensive. Additionally, to ensure that parents could communicate with their children in HHS custody, ICE officers and HHS staff worked together to facilitate communications via telephone, Skype, and FaceTime. ICE also produced posters in multiple languages to explain how parents could request an opportunity to communicate with their children who were in HHS custody.

In order to support the reunification of parents in ICE custody with their children, ICE ERO's Areas of Responsibility (AORs) in San Antonio, El Paso, and Phoenix were designated as centers of reunification for children, ages five to seventeen, whose parents were in DHS custody, and were eligible to be reunified based on an HHS evaluation of parentage, fitness, and safety considerations. ICE then worked to transport parents who were in custody elsewhere to the designated AORs for reunification. During release, ICE closely coordinated with local non-governmental organizations to effectuate a safe release plan, and to ensure that necessary services such as food, shelter, clothing, and travel were available.

In addition to current reunification efforts, ICE and its federal partners continue to coordinate to ensure that any separations of parents and children are recorded and tracked appropriately when they do occur. As a result of this effort, CBP, HHS, and ICE have enhanced their data sharing, with both CBP and ICE now able to access HHS's UAC Portal directly and to enter relevant information into the system. Additionally, on August 2, 2018, USBP updated its system to refine the process by which it tracks family units to include when family members are separated from each other, and ICE also updated its system, the ENFORCE Alien Removal Module, to reflect the new information entered by CBP. As a result, all members of family units encountered after this date are now clearly identified in ICE's system, a significant improvement that will help address the information challenges that occurred during the court-ordered reunification process.

Challenges and Legislative Fixes

Beginning with the initial surge in fiscal year (FY) 2014, there has been a significant increase in the arrival of both family units and UAC across the Southwest Border, a trend which

continues despite the Administration's enhanced enforcement efforts. In FY 2018, approximately 59,000 UAC and 161,000 members of family units were apprehended or determined to be inadmissible at the Southwest Border, an increase from FY 2017, when approximately 49,000 UAC and 105,000 members of family units were apprehended or determined to be inadmissible. These numbers place further strain on our already overburdened immigration system, and DHS and ICE are faced with the challenging task of upholding our immigration system and the laws passed by Congress, while maintaining family unity and protecting those in custody.

It is important to note that current laws and court rulings that favor the release of family units and UAC often require the federal government to release members of these populations into communities across the United States. This practice not only leads to legitimate family units failing to appear for court hearings and failing to comply with removal orders, but also incentivizes smugglers to place children into the hands of adult strangers, so that they can pose as families and be released from immigration custody. In fact, between April 19, 2018 and September 30, 2018, DHS identified 336 claimed family unit members who were separated due to the lack of a family relationship, an obvious safety issue. While the data does not show nor does DHS assert that all or most apprehended family units are illegitimate, it does indicate that there is a significant problem, and DHS must have the ability to protect the best interest and welfare of minors involved in potential smuggling or trafficking situations.

One of the major challenges ICE faces with regard to family units is the *Flores* Settlement Agreement (FSA), and judicial orders interpreting it. Courts have interpreted the FSA as not only applying to UAC, but also to minors who are accompanied by their parents. Pursuant to such orders (and court orders regarding the licensure of family residential centers), DHS is generally precluded from detaining family units beyond approximately 20 days in order to allow for a decision by an asylum officer on whether the parent and/or child has a credible fear of returning to their home country. Because most cases take much longer to conclude, family units are often not in ICE custody when a final removal order is issued, and ICE lacks the resources to locate, arrest, and remove the thousands of family unit members who fail to appear or depart as ordered.

While the DOJ's Executive Office for Immigration Review (EOIR) Accelerated Family Unit Docket issued 2,542 final orders of removal, the vast majority of these family unit members failed to show up for their court hearing, and 2,460 of these final orders—96.7%—were issued *in absentia*.² Between the continuing influx of family units, the growing immigration court backlog of more than 800,000 cases, and the fact that there are often no consequences for those who fail to depart as ordered, very few members of family units will be removed unless the push and pull factors that incentivize families to make the dangerous journey to this country are addressed. As a result of these issues, of the family units from Central America who were apprehended at the Southwest Border in FY 2017, more than 98% remain in the country today.

Because ICE does not have sufficient family detention beds in its three designated FRCs to address the numbers of family units and can generally only hold them for approximately 20

² EOIR has reported that it issued more than 45,000 removal orders *in absentia* in FY 2018.

days due to the FSA and judicial decisions interpreting it, most members of this population remain non-detained with little or no oversight. Although ICE has sought to deal with the rapid increase in this population through additional strategies, such as Alternatives to Detention (ATD), this has proven ineffective in the management of arriving aliens. While ICE is currently utilizing ATD for certain qualified family units, there are significant challenges with using the program to manage members of this population, and absconder rates are much higher for this group because most have no existing ties to the community and may not know their final geographic destination. In FY 2018, the absconder rate for traditional ATD participants was 16%, while it was 27.4% for family units. Ultimately, without the necessary authority to enable ICE to detain family units for the duration of legal proceedings, to hold those accountable who fail to comply with ATD or release conditions, and without sufficient resources to apprehend those who abscond, this situation will result in virtual impunity for those who violate our immigration laws and the flow of aliens into the United States will continue, if not increase.

Conclusion

Our nation continues to experience an unprecedented crisis on our Southern Border that is the result of outdated laws—created by federal law and various court decisions—that prevent the detention of illegal alien minors and family units during the pendency of their removal proceedings, and that inhibit the government from effectively removing those who receive final orders from an immigration judge. As a result, legislative changes are needed to ensure that DHS and ICE have the necessary authorities to ensure the safe and successful repatriation of persons ordered removed by an immigration judge, in addition to ensuring that ICE has adequate resources to continue to execute its mission. Without the necessary funding and legislative changes, the integrity of our immigration system will continue to be undermined.

Thank you again for the opportunity to appear before you today, and for your continued support of ICE. I would be pleased to answer any questions.

Chairman NADLER. Thank you.
Mr. Lloyd is recognized for 5 minutes.

TESTIMONY OF SCOTT LLOYD

Mr. LLOYD. Chairman Nadler and Ranking Member Collins, thank you for the opportunity to speak to you today regarding my past efforts as Director of the Office of Refugee Resettlement. It is an honor to appear before you today.

ORR is a program office within the Administration for Children and Families within the U.S. Department of Health and Human Services. While I was Director of ORR, I coordinated refugee resettlement efforts for HHS and oversaw the Unaccompanied Alien Children's Program.

I left ORR in December of 2018 to take a position with the HHS Center for Faith and Opportunity Initiatives as a senior adviser. My testimony today focuses on how ORR cares for UAC and places them with sponsors, as well as how ORR reunifies children separated from their parents.

The UAC program provides care, food, shelter, and services to alien children who are in ORR custody before release to a suitable sponsor, usually a parent or close relative. ORR does not enforce the immigration laws or apprehend families or children who cross the border illegally. Rather, ORR assumes care and custody of alien children who are referred to ORR care by other Federal agencies.

HHS does not separate alien children from their adult parents. HHS makes no recommendations and is not consulted by DHS as it makes decisions to enforce the law. ORR did not under my direction separate a child from his or her adult parent for any purpose.

ORR can receive referrals of alien children from DHS and other Federal agencies under a variety of circumstances, but most alien children referred to ORR were encountered by DHS when entering the country illegally without a parent. DHS may separate a child from a parent who is too ill to care for that child. DHS may also separate a parent and a child if the parent has criminal history, or if there is evidence that the parent is unfit or dangerous.

A child who enters the United States illegally with an adult may be referred to ORR if DHS doubts that the adult is the parent. A child may also be referred to ORR care if the U.S. Department of Justice prosecutes the parent for violating immigration laws.

In cases where an alien child is separated from his or her parent, knowing the identity of that parent may be important for case planning purposes, especially since the parent may be unavailable or unable to take custody. Moreover, the facts of the separation may be important factors in determining the child's individual needs, which are then incorporated into service planning for the child. In fact, the child's best interest in some cases is placement with another relative who is not the parent.

DHS's Border Patrol and U.S. Immigration and Customs Enforcement are responsible for the majority of UAC referrals to ORR. In the summer of 2018, ORR added a checkbox to the referral page to indicate whether a child has been separated from his or her parent. This checkbox offers a consistent format for DHS to provide information on the status, separated or nonseparated, of each referral case.

The referral page also has a “notes” section where Border Patrol and ICE can type in the name and other information of the separated family member, including their alien number. Additionally, Border Patrol and ICE can enter this information into the “parent/relative information” section of the referral. HHS can also learn of a parent’s separation after the child’s admission to an ORR care provider facility.

Prior to the summer of 2018, there was no automated means for aggregating the indicators of separation records for the children through the ORR portal. This is not the same as saying there is no information about separations in UAC case files. This is just to say that, before the summer of 2018, in order to create a comprehensive record of cases where a separation occurred, it was necessary to go into each case file and retrieve that information case by case.

ORR treats all alien children referred to its care, including children separated from their parents, in accordance with its policies and procedures. This includes placing a child in the least restrictive setting and finding a suitable sponsor to whom ORR could safely release the child.

On April 6, 2018, DOJ announced a zero-tolerance policy for the crime of improper entry. At the direction of the Secretary of Homeland Security, the U.S. Border Patrol referred parents who entered the country illegally to DOJ for prosecution, and the parents were incarcerated during their criminal proceedings. DHS transferred their children to HHS.

On June 20, 2018, President Trump issued an executive order, and that and the decision in the case of *Ms. L. v. ICE* changed the operational picture for HHS considerably. HHS Secretary Azar tasked the Incident Management Team from the Office of the Assistant Secretary for Preparedness and Response and ORR to focus on reunifying the children of *Ms. L.* class members.

I supported the Incident Management Team while managing the rest of ORR’s programs, including the more than 10,000 other alien children who were not separated from parents. ORR has now reunified nearly all of the children of potential *Ms. L.* class members.

I am aware that ORR has taken additional steps to enhance this process, but I am no longer involved in ORR’s operations, and so I am not able to discuss current ORR processes in further detail. However, I do have great confidence in the ability of Assistant Secretary Johnson, Acting ORR Director Jonathan Hayes, and the ORR career staff to serve the UAC population compassionately.

Thank you for this opportunity to discuss the UAC program and for your commitment to the safety and well-being of alien children. I will be happy to answer any questions.

[The statement of Mr. Lloyd follows:]



Statement of
Scott Lloyd
U.S. Department of Health and Human Services

Before the

Committee on the Judiciary
United States House of Representatives
February 12, 2019

Chairman Nadler and Ranking Member Collins, thank you for the opportunity to speak to you today regarding my past efforts as Director of the Office of Refugee Resettlement (ORR). It is an honor to appear before you today. ORR is a program office within the Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services (HHS). While I was Director of ORR, I coordinated refugee resettlement efforts for HHS and oversaw the Unaccompanied Alien Children's (UAC) Program. I left ORR in December 2018 to take a position with the HHS Center for Faith and Opportunity Initiatives as a Senior Advisor. My testimony today focuses on how ORR cares for UAC and places them with sponsors, as well as how ORR reunifies children separated from their parents by DHS.

Referrals of UAC to ORR--Historically

The UAC Program operated by ORR provides care, food, shelter, and services to alien children who are in ORR custody before release to a suitable sponsor, usually a parent or close relative. ORR does not enforce the immigration laws or apprehend families or children who cross the border illegally. Rather, ORR assumes care and custody of alien children who are referred to ORR care by other federal agencies. Most referrals of alien children to ORR are made by the U.S. Department of Homeland Security (DHS). To be clear, HHS typically does not separate alien children from their adult parents. HHS makes no recommendations and is not consulted by DHS as it makes decisions to separate children. ORR did not under my direction separate a child from his or her adult parent for any purpose, law enforcement or otherwise.

ORR can receive referrals of alien children from DHS and other federal agencies under a variety of different circumstances, but a majority of alien children referred to ORR were encountered by

DHS when entering the country at or between a port-of-entry without a parent. Children entering the United States illegally with a parent who is too ill to care for that child have been separated from that parent by DHS and referred to ORR. DHS may also separate a parent and child who have entered illegally if the parent has criminal history, or there is evidence that the parent is unfit or dangerous. A child who enters the United States illegally with an adult who claims to be the parent may be referred to ORR if DHS doubts that the adult is in fact the parent. In addition, a child may be referred to ORR care if the U.S. Department of Justice (DOJ) prosecutes the parent for violating the immigration laws. Referrals can happen under other circumstances, and these examples are merely representative of what ORR has seen in the UAC program.

In cases where an alien child is separated from his or her parent after apprehension by DHS officials – for example due to parents needing to be hospitalized indefinitely or when the parent clearly presents a risk of abuse, maltreatment, or neglect – knowing the identity of that parent may be part of proper case management. The facts behind the separation may be important to know for case planning purposes, especially since they may mean the parent is unavailable or unable to take custody. Moreover, the facts of the separation may be important factors in determining the child's individual needs, which are then incorporated into service planning that ORR develops for and provides to the child. With regard to ORR's responsibility to determine the suitability of potential sponsors, the TVPRA specifically requires that a sponsor is capable of providing for the child's physical and mental well-being. In fact, the child's best interest in some cases is placement with another relative who is not the parent based on child welfare concerns.

The best way for HHS to determine whether a child was separated at the time of referral is if DHS provides this information. Historically, DHS has sometimes included indicators of the separation in the referral notes that are put into the ORR online case management portal along with the child's biographic and apprehension information. However, because DHS had not consistently adhered to this practice, we have worked with DHS to simplify the process.

DHS's U.S. Border Patrol (USBP) and U.S. Immigration Customs Enforcement (ICE) are responsible for the majority of UAC referrals to ORR. Electronic changes have recently been made so that USBP's database can transfer UAC biographic, apprehension, and other referral information into the ORR portal's referral page. ICE has access to this referral page, and directly enters information related to a UAC into ORR's system. In the summer of 2018, ORR added a checkbox to the referral page to indicate whether a child has been separated from his or her parent. This checkbox is a significant addition, as it offers a consistent format for DHS to provide information on the status (separated or non-separated) of each referral case. The referral page also has a "notes" section where USBP and ICE can type in the name and other information of the separated family member, including their alien number. Additionally, USBP and ICE can enter this information into the "parent/relative information" section of the referral.

HHS can learn of a child's separation after a child's admission into an ORR care provider facility. Shortly after admission, a case manager interviews the child. The interview includes questions about whether a child travelled alone or was apprehended with a parent. In both circumstances, ORR records any information uncovered regarding a separation into the child's case management record on the ORR portal.

Prior to the summer of 2018, there was no automated means for aggregating the individualized indicators of potential separation in the case management records for the children through the ORR portal. To be clear: this is not the same as saying there is no information about separations in UAC case files. This is just to say that, before the summer of 2018, in order to create a comprehensive record of cases where a separation occurred, it was necessary to go into each of the thousands of case files and manually retrieve that information case file by case file.

ORR treats all alien children referred to its care, including children separated from their parents, in accordance with its policies and procedures. This includes placing a child in the least restrictive setting and finding a suitable sponsor to whom ORR could safely release the child.¹ In a limited number of cases, ORR worked directly with DHS to release a child to a parent detained at an ICE family residential center if the parent became available to provide care (for instance, parents with a medical issue that is subsequently resolved or alleviated).

Zero Tolerance Policy

On April 6, 2018, DOJ announced a zero tolerance policy (ZTP) for the crime of improper entry, which applied to all adults crossing the border illegally, including parents who crossed illegally with their children.² At the subsequent direction of the Secretary of Homeland Security, the U.S. Border Patrol referred both individual adults and parents who entered the country illegally to DOJ for prosecution for improper entry into the United States. The parents were transferred to custody of the U.S. Marshals Service, and incarcerated during their criminal proceedings. Per the

¹ See, 6 U.S.C. §279; 8 U.S.C. §1232.

² Department of Justice, Office of Public Affairs, April 6, 2018.

TVPPRA's requirement that unaccompanied children be transferred to HHS custody within 72 hours absent exceptional circumstances, DHS transferred these children to HHS.

On June 20, 2018, President Trump issued an Executive Order directing the Secretary of Homeland Security to maintain custody of alien families during the pendency of any criminal illegal entry or immigration proceedings involving their family members, to the extent permitted by law and subject to the availability of appropriations, unless there was a concern that detention of the alien child with the child's alien parent would pose a risk to the child's welfare.³ This Order meant that parents and children would no longer be separated during prosecution for unauthorized entry.

In *Ms. L. v U.S. Immigration and Customs Enforcement*⁴, U.S. District Judge Dana Sabraw certified a class of adult parents who enter the U.S. at or between designated ports of entry who have been, are, or will be detained in immigration custody by DHS and whose minor child who is or will be separated from them by DHS and detained in ORR custody, ORR foster care, or DHS custody absent a determination that the parent is unfit or presents a danger to the child. Judge Sabraw ordered the federal government to reunify those class member parents with their children who had been separated from them by DHS. HHS took a leading role in creating an interagency plan for such reunification. To accomplish this rapid reunification, HHS Secretary Azar created an Incident Management Team and tasked personnel from the office of the Assistant Secretary for Preparedness and Response and ORR to focus on the children of *Ms. L* class members. I supported the Incident Management Team while managing the rest of ORR's programs.

⁴ *Ms. L. v U.S. Immigration and Customs Enforcement*, Case 3:18-cv-00428 (S.D. Cal. 2018).

including the operations of the UAC Program, which continued to care for more than 10,000 other alien children who were not separated from parents by DHS, and who were then residing in ORR shelters.

I am grateful for the efforts of the HHS staff to identify the children in ORR care who were separated from their parents by DHS, and to reunify those children with their parents. Their efforts were nothing short of herculean. My understanding is that ORR has now reunified nearly all of the children of potential *Ms. L.* class members.

I am aware that ORR has taken additional steps to enhance its processes for complying with Judge Sabraw's orders and going forward. Those steps are described by Lynn Johnson, the Assistant Secretary for Children and Families at HHS, in response to the report on separated children issued by the HHS-OIG. I am no longer involved in ORR operations, and so I am not able to discuss current ORR processes in further detail. However, I do have great confidence in the ability of Assistant Secretary Johnson, Acting ORR Director Jonathan Hayes, and the ORR career staff to serve the UAC population compassionately.

Closing

Thank you for this opportunity to discuss the UAC program, and for your commitment to the safety and well-being of alien children. I will be happy to answer any questions.

Chairman NADLER. Thank you.
 Commander White is recognized for 5 minutes.

TESTIMONY OF JONATHAN WHITE

Mr. WHITE. Good morning. Chairman Nadler, Ranking Member Collins, and members of the committee, it is my honor to appear before you today on behalf of the U.S. Department of Health and Human Services.

My name is Jonathan White. I am a career officer in the United States Public Health Service Commissioned Corps. I am a clinical social worker and an emergency manager. I am presently assigned to the Office of the Assistant Secretary for Preparedness and Response, and I previously served as the Deputy Director of the Office of Refugee Resettlement, the senior career official over the Unaccompanied Alien Children's Program.

More recently, I served as the Federal health coordinating official, or that is HHS's operational lead, for the interagency mission to reunify children who were in ORR care on the 26th of June 2018, who had been separated from their parents at the border by the Department of Homeland Security, and that is what I will be talking about for the next couple moments.

The President issued Executive Order 13841 on June 20th of 2018, and on June 22nd, the Secretary of HHS directed the Office of the Assistant Secretary for Preparedness and Response to help ORR comply with that executive order. To execute this direction from the Secretary, we formed an Incident Management Team, an IMT, which at its largest included more than 60 staff working at the HHS headquarters in Washington and more than 250 field response personnel from ACF and ASPR, including the National Disaster Medical System Disaster Medical Assistance Teams, the United States Public Health Service Commissioned Corps, and contractors. We were joined by partners from ICE, CBP, and the U.S. Coast Guard to assist us.

The U.S. District Court for the Southern District of California in the Ms. L. v. ICE case issued its preliminary injunction and class certification orders 4 days later on June 26, 2018, and the Secretary directed HHS, and those of us on the IMT in particular, to take all reasonable actions to comply with that injunction. The orders required the reunification of children in ORR care as of June 26th, who had parents who might potentially be Ms. L. class members.

And as a result, our first task was to identify and develop a list of the children in ORR care who were the possible children of Ms. L. class members. To do that, we worked closely with DHS, including both CBP and ICE, to try to identify all the parents of children in ORR care who potentially met the court's criteria for class membership. We formed an interagency data team that analyzed more than 60 sets of aggregated data from CBP and ICE, as well as the individualized case management records for children in our ORR UAC portal. That is our IT system of records.

Collectively, hundreds of HHS personnel manually reviewed the case management records for every child in ORR care as of the 26th of June, looking for any indication anywhere in their record that they were possibly separated. And ORR also required every

one of its more than approximately 110 residential shelter programs to provide a certified list, under penalty of perjury, of the children in that program's care that shelter staff believed were potentially separated.

So going forward, ORR continued to amass new information about the children in ORR care through the case management process, and we recategorized children where appropriate based on that information. As a result, we have fully accounted for such children who were in ORR care on the 26th of June 2018. To be clear, as I have said before, the count of 2,816 children does not include children who were discharged by ORR before June 26th, and it doesn't include children referred to ORR care after that date.

Working in close partnership with colleagues in ICE, DOJ, and the Department of State, we first worked to reunify children with parents in ICE custody. This was an unprecedented effort, requiring a novel process that we developed together and which the Ms. L. court approved.

Under the compressed schedule required by court order of 15 days for children under the age of 5 and 30 days for children between the ages of 5 and 17, we reunified 1,441 children with parents in ICE custody, all of the children of eligible and available Ms. L. class members in ICE custody. And absent specific doubts about parentage or about child safety, adults in ICE custody were transported to reunification locations run by ICE, where deployed field teams from HHS interviewed them. And during the interviews, we sought verbal confirmation of parentage and the desire to reunify. And after that, HHS transported the child to the parent in ICE custody.

For children whose parents had been released to the interior of the United States, we implemented an expedited reunification process. For parents who had departed the United States, we developed a different operational plan, also approved by the Ms. L. court.

First, HHS identified and resolved any doubts about parentage or child safety and well-being. ORR case managers established contact with the parents in their home countries and provided contact information for all the parents to the ACLU, which is legal counsel for the Ms. L. class. The ACLU counseled parents about their options and their rights and obtained from the parents their wishes, whether they wanted the child to come to them or to remain in ORR care.

So of the 2,816 children reported to the Ms. L. court, as of this week, we have reunified 2,155 of them with the parent from whom they were separated. Another 580 children have left ORR care through other appropriate discharges, in most cases released to a family sponsor, such as the other parent, a sibling, an aunt or uncle, a grandparent, a more distant relative, or a family friend.

There are 18 children still in ORR care who were separated, but we can't reunify them with their parent because we have made a final determination that doing so would be unsafe for the child based on the criminal history of the parent being dangerous to the child or credible allegations of abuse the child made against the parent.

There are 39 children still in ORR care whose parents are outside the U.S., and they have waived reunification, conveying that

to us through the ACLU. And their children are on a pathway to sponsorship in this country. There are 14 children still in ORR care of that 2,816 we later learned through investigation hadn't been separated after all.

There are 5—there are 5 children of the 2,816 still in care where parents have waived reunification, and 5 who might one day still be reunified with a parent if there is a change in the status of the parent or the parent conveys their wishes to us through the ACLU. Those are the only five who might still be reunified. They are the only outstanding children.

Our program's mission is a child welfare mission, and we seek to serve the best interests of each individual child. And that also guided us every day on the IMT and in ORR in our work to get each separated child back into his or her parent's arms or discharged safely to another sponsor where that was the parent's wish or where the parent posed a danger to the child.

We, too, look forward to the day where every single separated child is back in their parent's arms. That is the focus of our effort in HHS.

Thank you. I am glad to answer any questions you might have for me.

[The statement of Mr. White follows:]



Statement of
Jonathan White
Commander
United States Public Health Service Commissioned Corps
U.S. Department of Health and Human Services

Before the
Judiciary Committee
United States House of Representatives
February 12, 2019

Chairman Nadler, Ranking Member Collins, and members of the Committee, it is my honor to appear on behalf of the Department of Health and Human Services (HHS).

My name is Jonathan White. I am a career officer in the U.S. Public Health Service Commissioned Corps, a clinical social worker and emergency manager, and I have served in the Department of Health and Human Services in three administrations. I am presently assigned to the Office of the Assistant Secretary for Preparedness and Response (ASPR), and previously served as the Deputy Director of the Office of Refugee Resettlement (ORR) for the Unaccompanied Alien Children's (UAC) Program.

In my testimony today, I will discuss aspects of the ORR program's policies and administration that I have been involved in since February 2016.

In my time at HHS, I have had the privilege of helping to oversee and support the grantees that provide the actual care for children, as well as the process of placing children with sponsors.

More recently, I served as the Federal Health Coordinating Official (that is, the HHS operational lead) for the interagency mission to reunify children in ORR care as of June 26, 2018 who were separated from their parents at the border by the U.S. Department of Homeland Security (DHS).

I am proud of the work of our team on the reunification mission, and of the care provided every day in the UAC Program to unaccompanied alien children, who are some of the most vulnerable children in our hemisphere.

About the Program

ORR is responsible for the care and temporary custody of UAC who are referred to ORR by other federal agencies. ORR does not apprehend migrants at the border or enforce the immigration laws. Those functions are performed by DHS and the U.S. Department of Justice (DOJ).

The Homeland Security Act of 2002 (HSA) and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), as amended, govern the ORR program. So do certain provisions of the *Flores* Settlement Agreement (FSA).

As defined by the Homeland Security Act, if a child under the age of 18 with no lawful immigration status is apprehended by another federal agency, and no parent or legal guardian is available in the United States to provide care and custody of the child, he or she is considered a UAC and is transferred to ORR for care and custody.

UAC shelters provide housing, nutrition, routine medical care, mental health services, educational services, and recreational activities such as arts and sports. They provide an environment on par with facilities in the child welfare system that house U.S. citizen children. The facilities are operated by nonprofit grantees, which are licensed to provide care to children by state licensing authorities responsible for regulating such facilities housing children.

The exception is ORR's temporary hard sided influx care facility in Homestead, Florida, which is not required to obtain state licensure because it is located on federally owned property. However, children who reside at this location generally receive the same level of care and services to UAC as a state-licensed facility.

The UAC program bed capacity has expanded and contracted over the years, driven by fluctuations in the number of children referred and the average time children remain in ORR care. To respond to these fluctuations, HHS has developed processes for bringing both permanent and temporary UAC housing capacity online as needed. HHS has a bed capacity framework with grant and contract mechanisms that provide standard permanent bed capacity, with the ability to quickly add temporary beds, which provides the capability to accommodate changing flows.

The fluctuations in the numbers of children in care are significant. Currently, HHS maintains about 13,000 beds. This is up from 6,500 beds on October 1, 2017, but down from more than 15,800 beds on November 15, 2018. HHS continues to update its bed capacity planning to account for the most recently available data, including information from interagency partners, to leverage available funds to be prepared for changing needs.

HHS cares for all UAC until they are released to a suitable sponsor, almost always a parent or close relative, while they await immigration proceedings. These children also leave HHS care if they return to their home countries, turn 18 years of age, or gain legal immigration status.

Current State of the Program

In fiscal year (FY) 2018, 49,100 children were referred to ORR by DHS. From October through December of this past year, ORR received approximately 13,948 referrals.

In FY 2018, 92% percent of ORR's referred children came from Honduras, Guatemala, and El Salvador. Children who migrate to the United States from these three countries and Mexico are particularly vulnerable to exploitation, such as forced labor or sex trafficking by human traffickers en route to the United States. Teenagers made up 85% percent of referrals in FY 2018.

In FY 2018, children typically stayed in ORR custody for 60 days; so far, in FY 2019, the average length of care has been 89 days, although we expect this average to decline throughout the remainder of the fiscal year. In FY 2018, ORR released 86% percent of children to a sponsor: 42% percent were parents; 47% percent were close relatives such as an aunt, uncle, grandparent, or adult sibling; and 11% percent were more distant relatives or non-relatives such as a family friend. In FY 2019, of those children discharged from ORR custody, 89% percent of children were released to individual sponsors and of those sponsors: 46% percent were parents, 45% percent were close relatives, and 9% percent were more distant relatives or non-relatives.

Operational Implementation of Executive Order (EO) 13841 and the *Ms. L.* Court Orders

The President issued EO 13841 on June 20, 2018, and the U.S. District Court for the Southern District of California in *Ms. L. v. ICE*, No. 18-cv-428 (S.D. Cal.) issued its preliminary injunction and class certification orders on June 26, 2018.

On June 22, 2018, the Secretary of HHS directed the Office of the Assistant Secretary for Preparedness and Response (ASPR), to help ORR comply with EO 13841. To execute this direction from the Secretary, we formed an Incident Management Team (IMT), which at its largest included more than 60 staff working at HHS headquarters in Washington DC, and more than 250 field response personnel from ACF, ASPR (including its National Disaster Medical System Disaster Medical Assistance Teams), the U.S. Public Health Service Commissioned Corps, and contractors.

Shortly after the *Ms. L.* Court issued its orders, the Secretary directed HHS—and the IMT in particular—to take all reasonable actions to comply. The orders require the reunification of children in ORR care as of June 26, 2018, with parents who are *Ms. L.* class members. In general, *Ms. L.* class members are parents who were separated from their children at the border by DHS, and who do not meet the criteria for exclusion from the class. For example, parents who have a communicable disease or a criminal history, or who are unfit or present a danger to the child, are excluded from the class.

The IMT faced a formidable challenge at the start of this mission. On the one hand, ORR knew the identity and location of every one of the more than 11,800 children in ORR care as of June 26, 2018, and could access individualized biographical and clinical information regarding any one of those children at any time by logging onto the ORR UAC portal and pulling up the child's case management record. ORR sometimes received information from DHS regarding any separation of the individual child through the ORR UAC portal, on an *ad hoc* basis, for use in ordinary program operations.

On the other hand, ORR had never conducted a forensic data analysis to satisfy the new requirements set forth in the Court's orders, much less aggregated such rigorous, individualized data analyses into a unified list. As a result, our first task was to identify and develop a list of the children in ORR care who were possible children of potential *Ms. L.* class members.

Identification of possible children of potential Ms. L. class members

HHS worked closely with DHS, including U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), to try to identify all parents of children in ORR care who potentially met the Court's criteria for class membership. The determination of class membership involves inter-agency collection and analysis of facts and data to verify parentage, assess the health of the parent, determine the location of DHS apprehension and separation, determine parental fitness, and evaluate whether reunification would present a danger to the child. Moreover, class membership is dynamic and can change with the facts on the ground (for example, a parent who is excluded from the class based on a communicable disease could be cured after receiving medical treatment).

The interagency data team analyzed more than 60 sets of aggregated data from CBP and ICE, as well as the individualized case management records for children on the ORR UAC Portal. Collectively, hundreds of HHS personnel reviewed the case management records for every child in ORR care as of June 26, 2018, looking for any indication of possible separation. ORR also required every one of its approximately 110 residential shelter programs to provide a certified list, under penalty of perjury, of the children in that program's care that shelter staff had identified as potentially separated. The reconciliation of those three data sources by the interagency data team resulted in the identification and compilation of a list of 2,654 children in ORR care who were potentially separated from a parent at the border by DHS.

The data analysis that yielded the initial list of 2,654 possible children of potential class members was dependent on the information that was available at the time of the analysis.

Going forward, ORR continued to amass new information about the children in ORR care through the case management process. The new information that ORR amassed between July and December 2018 led us to conclude that 79 of the possible children of potential class members were not, in fact, separated from a parent at the border by DHS.

Similarly, the new case management information that ORR amassed between July and December 2018 led us to conclude that a total of 162 other children who were in ORR care as of June 26, 2018—but who we did not initially identify as potentially separated—should be re-categorized and added to the list of possible children of potential class members reported to the *Ms. L.* Court.

As a result of the addition of 162 total children through re-categorization, the current reporting of 2,816 possible children of potential *Ms. L.* class members to the *Ms. L.* Court is accurate. That is, we have fully accounted for such children who were in ORR care as of June 26, 2018. To be clear, the count of 2,816 children does not include children who were discharged by ORR before June 26, 2018. Nor does it include children referred to ORR care after that date.

It is important to understand that ORR knew the identity, location, and clinical condition of all 162 recategorized children at all times during their stays with ORR. The re-categorizations were for the *Ms. L.* litigation, not clinical reasons. They did not affect the care the children received from ORR.

Indeed, HHS did not “lose” any children at all. The HHS Inspector General found no evidence to the contrary. ORR can determine the location of every child in care at any moment by accessing the UAC Portal case management system. We always know where every child in the care of ORR is.

Reunification of Ms. L. class members with their children

Generally, ORR has a process for releasing UAC to parents or other sponsors that is designed to comply with the HSA, the TVPRA, and the FSA. This process ensures the care and safety of UAC referred to ORR by DHS. Notably, HHS modified and expedited its ordinary process for *Ms. L.* class members and their children as required by the *Ms. L.* Court.

Working in close partnership with colleagues in ICE, DOJ, and the Department of State, we first worked to reunify children with parents in ICE custody. This was an unprecedented effort, requiring a novel process which we developed and which the *Ms. L.* Court approved. Under the compressed schedule required by court order of 15 days for children under the age of 5, and 30 days for children between the ages of 5 and 17, we reunified 1,441 children with parents in ICE custody—all of the children of eligible and available *Ms. L.* class members in ICE custody.

Absent red flags that would lead to specific doubts about parentage or about child safety, adults in ICE custody were transported to reunification locations run by ICE, where deployed field teams from HHS interviewed them. During the interviews, HHS sought verbal confirmation of parentage and the desire to reunify, and after that, HHS transported the child for physical reunification with the parent in ICE custody. Some reunified family units remained in ICE family detention, while others were released by ICE to the community, after connecting them with nonprofits serving immigrant families.

For children whose parents had been in ICE custody but had been released to the interior of the United States, we implemented an expedited reunification process, confirming parental relationship in any case where we had doubts about parentage, addressing any “red flags” for child safety, and then transporting the child for physical reunification with the parent.

For parents who had departed the United States, we developed a different operational plan, which was also approved by the *Ms. L.* Court. First, HHS identified and resolved any “red flags” or—doubts about parentage or child safety and well-being. ORR case managers established contact with the parents in

their home countries, and provided contact information for all the parents to the American Civil Liberties Union (ACLU), which is legal counsel for the *Ms. L.* class. The ACLU counseled parents about their options and their rights, and then obtained from the parents their desire for either reunification in their home country, or waiving reunification for the child to undergo standard ORR sponsorship processes. Once we received a parent's desire for reunification, we worked with DOJ and ICE to expeditiously resolve the children's immigration cases, and worked with the consulates and embassies of the child's home country to prepare their return. HHS and ICE coordinated with the ACLU's steering committee for the *Ms. L.* litigation, the government of the home country, and the child's family to ensure safe physical reunification, and then transported the child to his/her country and into the care of his/her parents.

Of the 2,816 children reported to the *Ms. L.* Court, as of this morning we have reunified 2,155 with the parent from whom they were separated. Another 568 children have left ORR care through other appropriate discharges—in most cases, release to a family sponsor such as the other parent, a sibling, an aunt or uncle, a grandparent, a more distant relative, or a family friend.

Of the 2,816 children reported to the *Ms. L.* Court, there are 21 children still in ORR care who were separated but cannot be reunified with their parent, because ORR has made a final determination that the parent meets the criteria for exclusion from the class or is not eligible for reunification. That is, the parent has a criminal history, or the parent is otherwise unfit or poses an unacceptable risk to the safety and well-being of the child, such as when a case file review shows that the child has made credible allegations of abuse by the parent. There are 44 children still in ORR care whose parents are outside the U.S. who have waived reunification, and chosen for their children to remain in the U.S. and go to a sponsor in this country under the ordinary TVPRA process. There are 16 children in care where further review determined that the child was not a separation. There are six children in care where parents are in the U.S. and have waived reunification.

As of this morning, of the 2,816 children reported to the *Ms. L.* Court, there are six children who HHS cannot reunify unless there is either a change in the parent's status, or the parent conveys to us their wishes through ACLU. Specifically, one child has a parent who is in the custody of the U.S. Marshals, and therefore potentially cannot be reunified until the parent exits Marshals' custody. The other five children have parents outside the United States, and the ACLU has not yet advised us as to whether the parents have chosen reunification. In four of those five cases, the ACLU has advised that the resolution of the parent's wishes will be delayed. We cannot reunify those children until their parent's legal counsel allows us to do so.

Like everyone on the team that worked for months to identify and then reunify the separated children, I look forward to the day when we can say that all of those children are back with their families.

As I indicated earlier in my testimony, the 2,816 children reported to the *Ms. L.* Court do not include all children who have ever been separated at the border by DHS and referred to ORR. It is only the number of possible children of potential class members who were in ORR care as of June 26, 2018. It is based on how the *Ms. L.* Court defined the *Ms. L.* class.

There were, without any doubt, other children who were separated from their parent(s) at the border by DHS and referred to ORR, and who were discharged to a sponsor pursuant to the TVPRA process before June 26, 2018. Based on ORR's statistics for the UAC program, the vast majority of the sponsors were

probably parents or close relatives. To the extent it is even possible to count such children, HHS has not tried to do so because HHS has only limited resources and such a count would not help HHS fulfill any current UAC program requirements. Moreover, HHS has no jurisdiction over the children once they are discharged to sponsors, and, except in very limited circumstances, intervention by HHS after discharge would not serve a child welfare interest.

In Closing

ORR's UAC Program provides care and services to UAC every day. At HHS, we are proud of the work we do to provide that care to children consistent with laws and court decisions, and consistent with the values of Americans about how we take care of children in crisis. In the case of this distinct population of children separated from their parents following DHS apprehension, and prior to placement at ORR, we in HHS have been working hard on an unprecedented mission to expedite safe reunifications of children with their parents wherever possible.

Our program's mission is a child welfare mission, and we seek to serve the best interest of each individual child. This has guided us also in our work to get each separated child back in his or her parent's arms, or discharged safely to another sponsor where that is the parent's wish or where the parent poses a danger to the child. We have done our best as a department to achieve that goal.

Thank you, and I will be happy to answer any questions you may have.

Chairman NADLER. Thank you, Commander.
 Director McHenry is now recognized for 5 minutes.

TESTIMONY OF JAMES MCHENRY

Mr. MCHENRY. Mr. Chairman, Ranking Member Collins, and other distinguished members of the committee, thank you for the opportunity to speak with you today regarding the Department of Justice's role in the zero-tolerance prosecution initiative. I welcome the opportunity to address this matter from the Department's perspective.

The Department's mission is to enforce the law and defend the interests of the United States according to the law, to ensure public safety against threats foreign and domestic, to provide Federal leadership in preventing and controlling crime, to seek just punishment for those who commit crimes, and to ensure fair and impartial administration of justice for all Americans. In following this mission and in carrying out specific authorities defined by Congress, the Department plays a key role in enforcing this Nation's immigration laws.

First and foremost, the Department enforces the criminal laws enacted by Congress and seeks punishment for those guilty of unlawful behavior. The Department's law enforcement role applies no less to immigration crimes than it does to other categories of crimes, and it is clear that Congress passed criminal immigration laws with the expectation that they would be enforced.

Section 13 of the President's Executive Order 13767 directed the Attorney General to establish guidelines and allocate resources to ensure that Federal prosecutors accord a high priority to prosecutions of offenses having a nexus to the Southern border. In fulfillment of that order, on April 11, 2017, then-Attorney General Sessions issued a memorandum to all Federal prosecutors outlining certain immigration-related offenses as high priorities for prosecution, including improper entry under 8 U.S.C. Section 1325.

On April 6, 2018, Attorney General Sessions issued a memorandum entitled Zero Tolerance for Offenses under 8 U.S.C. Section 1325(a). That memo directed Federal prosecutors along the Southern border to adopt a zero-tolerance policy for all offenses referred for prosecution by the Department of Homeland Security under Section 1325(a).

That memorandum remains in force today. An illegal or improper entry, among other criminal immigration offenses, remains a prosecution priority for the Department. Furthermore, the President restated the prioritization of prosecuting illegal entry crimes in Executive Order 13841, which also reiterated that the current policy is to enforce the immigration laws passed by Congress. Neither Executive Order 13767 nor the April 2017 memorandum, nor the April 2018 memorandum, created a policy of family separation. The zero-tolerance prosecution initiative is simple. It makes clear that those who violate our criminal immigration laws are referred for prosecution by DHS should, in fact, be prosecuted, consistent with the will of Congress.

The Department does not dictate which cases are referred by DHS for prosecution, nor does it maintain a general exemption from prosecution for criminal law violations committed by parents.

The Department also has no operational or logistical role in the apprehension, care, or processing of aliens for removal, regardless of whether they are adults or minors.

Criminal proceedings are separate from administrative immigration proceedings, and prosecution for illegal entry does not foreclose an alien's ability to seek asylum or other protection in the United States. Consequently, depending on the particular circumstances of the adult, he or she may seek protection or relief from removal or, alternatively, may not contest removal from or voluntarily depart the United States.

If an adult alien seeks protection in the United States, that claim generally is considered by DHS in the first instance. If the claim progresses, it may eventually be reviewed by an immigration judge. As applicable law and the facts of the case warrant, an immigration judge will determine an alien's removability and adjudicate any claim to remain in the United States. Unaccompanied alien children placed in immigration proceedings will also have their cases heard by an immigration judge.

As the issues of family separation and reunification have reached the Federal courts, the Department continues to provide representation to those agencies that do provide care for aliens subject to removal. Consequently, I may be limited in my ability to speak to certain issues today, either because they are currently in litigation or because they are more properly directed to another agency. Nevertheless, the Department recognizes the seriousness of the situation and is appropriately advising both DHS and the Department of Health and Human Services as they continue to abide by any orders issued by Federal courts on these matters.

The current immigration system faces numerous legal and logistical challenges. Nationwide enforcement of immigration laws is being dictated by court orders rather than by sound policy choices or congressional action. Nevertheless, as the formal title of Executive Order 13841, which is Affording Congress an Opportunity to Address Family Separation, indicates, the Department stands ready to work with Congress to respond to these challenges and to improve existing laws to avoid a reoccurrence of the present situation.

Thank you again for this opportunity to speak before you today, and I look forward to other discussions or additional discussion on these issues.

Thank you.

[The statement of Mr. McHenry follows:]



Department of Justice

STATEMENT OF

**JAMES MCHENRY
DIRECTOR
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

FOR A HEARING ENTITLED

**"OVERSIGHT OF TRUMP ADMINISTRATION'S FAMILY SEPARATION
POLICY"**

PRESENTED ON

FEBRUARY 26, 2019

Statement of
James McHenry
Director
Executive Office for Immigration Review
Department of Justice

Before the
House of Representatives Committee on the Judiciary

Entitled
Oversight of Trump Administration's Family Separation Policy
February 26, 2019

Mr. Chairman, Ranking Member Collins, and other distinguished Members of the Committee, thank you for the opportunity to speak with you today regarding the Department of Justice's ("Department") role in the Zero Tolerance Prosecution Initiative and the federal government's activities along the southern border during the Spring and Summer of 2018. I welcome the opportunity to address this matter from the Department's perspective.

The Department's mission is: "[t]o enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those who commit crimes; and to ensure fair and impartial administration of justice for all Americans." In following this mission, and in carrying out specific authorities defined by Congress, the Department plays a key role in enforcing this nation's immigration laws.

First and foremost, through the U.S. Attorneys' offices, in conjunction with the U.S. Marshals Service ("USMS") and the Bureau of Prisons, the Department enforces the criminal laws enacted by Congress and seeks punishment for those guilty of unlawful behavior. Congress has provided that certain violations of the nation's immigration laws be subject to criminal sanction. The Department's law enforcement role applies no less to these immigration crimes than it does to other categories of offenses. It is clear that Congress created criminal immigration offenses with the expectation that they would be enforced. Congress made it a crime to cross the border illegally—seeking to deter that dangerous behavior and direct those seeking refuge in the United States to ports of entry. When individuals with children are in federal criminal custody for any offense, there will necessarily be a separation from their children during that custody—and indeed the court in the *Ms. L* litigation specifically acknowledged that to be entirely appropriate.

Section 13 of the President's Executive Order 13767 directs the Attorney General to establish guidelines and allocate resources to ensure that federal prosecutors accord a high priority to prosecutions of offenses having a nexus to the southern border. The Order did not create a so-called family separation policy. In fulfillment of that Order, on April 11, 2017, then Attorney General Sessions issued a memorandum to all federal prosecutors outlining certain

immigration-related offenses, including improper entry under 8 U.S.C. §1325, as high priorities for prosecution. Additionally, the Attorney General directed each district to designate a Border Security Coordinator to be responsible for, among other activities, overseeing the investigation and prosecution of these offenses.

On April 6, 2018, Attorney General Sessions issued a memorandum entitled “Zero-Tolerance for Offenses under 8 U.S.C. §1325(a).” That memo directed federal prosecutors along the southern border to adopt a “zero-tolerance policy for all offenses referred for prosecution under section 1325(a)” by the Department of Homeland Security (“DHS”). That memorandum remains in force today, and illegal or improper entry, among other criminal immigration offenses, remains a prosecution priority for the Department. Furthermore, the President restated the prioritization of prosecuting illegal entry crimes in Executive Order 13841, which also reiterated that the current policy is to enforce the immigration laws passed by Congress. The April 6 memorandum did not create a so-called policy of family separation.

The Zero-Tolerance Prosecution initiative is simple—it makes clear that those who violate our criminal immigration laws and are referred for prosecution by DHS should in fact be prosecuted.

The Department does not dictate which cases are referred by the DHS for prosecution, nor does it maintain a general exemption from prosecution for parents accompanied by their minor children. Indeed, doing so would create a terrible incentive encouraging adults to bring young children on the dangerous journey to illegally cross the border to avoid prosecution and immigration detention. The Department also has no operational or logistical role in the apprehension, care, or processing of aliens, regardless of whether they are adults or minors. Accordingly, the Department does not have an operational or a logistical role in the separation of alien children from their parents nor in the reunification process.

Upon apprehension and initial processing by U.S. Customs and Border Protection, a component agency of the DHS, adults referred for prosecution under 8 U.S.C. §1325 generally are transferred to the custody of the USMS for the pendency of their criminal matters.

While the vast majority of aliens prosecuted under 8 U.S.C. §1325 are adults who entered alone, many adults have illegally entered the United States with minors and were prosecuted for the crimes of illegal entry or reentry. Prior to President Trump’s Executive Order 13841 of June 20, 2018—and because the USMS does not and cannot house minors with adults charged with criminal offenses—alien minors without a parent or legal guardian available to provide care and physical custody were transferred by the DHS to the Department of Health and Human Services (“HHS”) in accordance with the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”). Once the USMS took custody of the parents, pursuant to statute, minors remaining in DHS custody would, by definition, become unaccompanied alien children and were treated accordingly.

At the conclusion of the criminal proceeding and any sentence of imprisonment, the DHS generally assumes custody of the adult alien for whatever action it deems appropriate, consistent with applicable law. Criminal proceedings are separate from administrative immigration

proceedings, and prosecution for illegal entry under the auspices of the Zero Tolerance Prosecution initiative does not foreclose an alien's ability to seek asylum or other protection in the United States. Consequently, depending on the particular circumstances of the adult, he or she may seek protection or relief from removal or, alternatively, may not contest removal from, or voluntarily depart, the United States.

If the adult alien seeks protection in the United States, that claim generally is considered by the DHS in the first instance. As the claim progresses, it may eventually be reviewed by an immigration judge in the Executive Office for Immigration Review, which is a component of the Department of Justice. As the facts of a case warrant, an immigration judge will determine an adult alien's removability and adjudicate any claim to remain in the United States. Unaccompanied alien children placed in immigration proceedings pursuant to law will also have their cases heard by an immigration judge.

As the issue of family separation and reunification has reached the federal courts, however, the Department continues to provide representation to those agencies that do provide care for aliens subject to removal. Consequently, I may be limited in my ability to speak to certain issues today, either because they are currently in litigation or because they are more properly directed to another agency. Nevertheless, the Department recognizes the seriousness of the situation and is appropriately advising both the DHS and HHS as they continue to abide by any orders issued by federal courts on these matters.

The current immigration system faces numerous legal and logistical challenges. Nationwide immigration enforcement is being dictated by court orders, rather than by sound policy choices via rulemaking allowing public comment or Congressional action. Operationally, space and resource constraints inhibit flexibility in responding appropriately to sudden influxes of illegal aliens, particularly family units.

Nevertheless, as the formal title of Executive Order 13841, "Affording Congress an Opportunity to Address Family Separation," indicates, the Department stands ready to work with Congress to respond to these challenges and to improve existing laws to avoid a reoccurrence of the present situation.

Thank you for this opportunity to speak before you today, I look forward to further discussions on these issues.

Chairman NADLER. Thank you.

We will now proceed under the 5-minute rule with questions. I will begin by recognizing myself for 5 minutes.

Let us put aside all the issues of morality and legality for a second and just talk about the administration's zero-tolerance policy.

Chief Provost, I know you are a career civil servant and are implementing political decisions that are made above you.

I'm also sure that most Border Patrol officers do not want to be ripping children away from their parents, but the issue I cannot get past is how the department moved forward without a system or process for adequately tracking which child belonged to which parent.

We heard about ORR's efforts to reconstruct the information to match after the fact separated parents up with their children, but how did CBP not ensure it had an adequate system to track and reunify families before separating them?

Chief PROVOST. Yes, Mr. Chairman. So as Commander White stated, we had the ability to track. We have always had the ability to track. We did not have a searchable field prior to that time frame focused on specifically separated members of families.

Every separation, though, that we have done back at during that time and since has had alien registration numbers tied with the parent to the child, thus—

Chairman NADLER. Why have they had trouble finding the kids?

Chief PROVOST [continuing]. They have had searches. We had to do manual searches because we did not have a searchable field prior to that time.

Since then, we have updated that, as Commander White stated, as well, with a searchable field to make it much easier to pull that information from our system.

Chairman NADLER. So, in other words, you're saying the Border Patrol was not prepared to implement the zero-tolerance policy when it went into effect in April of 2018 because you didn't have a searchable field, among other things?

Chief PROVOST. The prosecution initiative was exactly that. It was focused on prosecuting every amenable adult and we did have—

Chairman NADLER. I understand that, but one of the—

Chief PROVOST [continuing]. The ability to track those prosecutions.

Chairman NADLER [continuing]. Effects of that was that you took kids away from their parents when you didn't have a searchable field and were not prepared to reunify them and to have the information to reunify them, is that correct?

Chief PROVOST. We had the information. We had the ability to provide the information. It was—took a manual poll at that point in time for it.

Since then, lessons learned, we have updated the system with a searchable field—

Chairman NADLER. We have just found out in court that there were perhaps thousands of kids taken away from their parents prior to the initiation of the zero-tolerance policy.

Do we know the names of the kids, the names of the parents, the location of both, so that they can be reunified quickly? If not, why not?

Chief PROVOST. We have throughout my career always had cases where we have separated family members. That is something that has gone on throughout numerous administrations.

Chairman NADLER. And when you did that, you had adequate information to reunify them quickly?

Chief PROVOST. The information is within the system. It was not easily searchable.

Chairman NADLER. So you separated thousands of kids under a system in which you could not readily reunify them if a court ordered or someone else ordered?

Chief PROVOST. We provided—we provide the information within the Alien Registration Number of the child to any family member. It was with the numbers that we deal with not an easily-searchable as——

Chairman NADLER. And therefore not——

Chief PROVOST [continuing]. Since——

Chairman NADLER. And therefore not easily reunifiable, is that correct?

Chief PROVOST. Since then, we have updated the system to make——

Chairman NADLER. I understand, but at that point, it wasn't—you weren't prepared, in effect?

Chief PROVOST. I would not say we were not prepared. I would say it was not as easily searchable as——

Chairman NADLER. The DHS Inspector General and the GAO concluded that DHS was inadequately prepared to implement this policy in an organized and efficient manner. The IG of DHS specifically noted, for example, that DHS was not fully prepared to implement the Administration's zero-tolerance policy or to deal with some of its after effects.

Do you agree with the DHS IG and GAO assessments?

Chief PROVOST. On whether or not we were prepared? I would say speak to Border Patrol and Border Patrol was prepared for a prosecution initiative.

Chairman NADLER. Yes, you were prepared for prosecution. Were you prepared for the consequences of separating the kids? In other words, to reunify them quickly?

Chief PROVOST. As I stated before, the information was present. We have had lessons learned since then and I——

Chairman NADLER. So, in other words,——

Chief PROVOST [continuing]. Think there's more for us to do.

Chairman NADLER [continuing]. You were not prepared to reunify them quickly? The information was present but not easily accessible, correct?

Chief PROVOST. Reunification is not something that Border Patrol handles. We handle the apprehension and the transfer. Since then,——

Chairman NADLER. You were prepared to apprehend and transfer and separate without proper—without adequate ability to reunify quickly?

Chief PROVOST. The reunification process is part of what ICE and HHS have done. That information has been provided to them, as Commander White stated. There was not a searchable field——

Chairman NADLER. Okay.

Chief PROVOST [continuing]. At the time——

Chairman NADLER. What are you doing now to identify and track all separated children, including those separated before the zero-tolerance policy that we found out in court recently there may have been thousands of kids separated before the zero-tolerance policy was initiated? Do you have a number of such kids? Do you need more resources to enable the rapid reunification of these families?

Chief PROVOST. We track, as we always have tracked, but now with the searchable fields, since zero-tolerance, we have tracked every separation that we have had in Border Patrol custody. We provide that information on the HHS referral form to our partners at HHS whenever we do do a separation.

Chairman NADLER. Okay. Finally, what's even more confounding to me is that the agents appear to care quite a bit about tracking other things under zero-tolerance. According to documents recently obtained through FOIA by Democracy Forward, Border Patrol agents were instructed to meticulously track the number of cases referred for prosecution.

We have various e-mails, for example, including e-mails in which you are copied, with a form to be used by agents to track prosecutions so that CBP could show “progress toward hundred percent prosecutions and to acquire additional assets,” including ICE detention beds.

Based on these e-mails, you clearly spend time thinking about how to track prosecutions so you can please the President and justify additional—obtain additional resources, but you did not spend time thinking about tracking separated family members. Is that a correct conclusion?

Chief PROVOST. As I stated before, it was a prosecution initiative and therefore focus was on tracking the prosecution numbers under that specific initiative.

Chairman NADLER. So your focus was on tracking the prosecution numbers but not the separation of kids' numbers?

Chief PROVOST. Our focus was on the prosecutions.

Chairman NADLER. Thank you very much.

I now recognize the Ranking Member, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

And I think in one of the statements, as I said in my opening statement, I think it's been said there was lessons, as you said, lessons learned. I think there's a lot of things that should have been handled, you know, I think differently. I think you're experiencing something along the border, especially from your side, that we've really not experienced before, thousands coming in caravans. They're a threat. That's not something you would have the equipment really to handle either. That's not a situation you have, correct?

Chief PROVOST. Yes, sir. As I stated in my opening statement, we have a humanitarian and a border security crisis going on right now.

Mr. COLLINS. Well, let's get into that because I think this is—and we're going to discuss a lot of this today as far as what had happened. Let's also look forward to what can we do to stop this in the future and how can we look at that and I think this could possibly be something we could definitely do bipartisanly.

Can you explain how a low credible fear standard and the Flores Settlement Agreement interpretation and the, as you said earlier, Trafficking Victims Protection Act, all act as incentives for aliens to exploit children and take dangerous journey to the U.S.-Mexico border and what can we do to address that in legislation?

Chief PROVOST. Well, specifically when it comes to Flores, it creates a pull factor since 2015 when a court decision made a determination to treat all children the same as unaccompanied alien children where they cannot be detained longer than 20 days. That's the pull factor that comes with if you bring a child with you, the expectation of being released into the country.

When it comes to TVPRA, it is the differences in how children are treated, whether they come from a contiguous country, Canada or Mexico, versus if they come from a non-contiguous country, and those issues need to be addressed to stop those pull factors.

Mr. COLLINS. And, Ms. Asher, I want you to answer this question, but I want to go back to this in general, but also isn't it in some ways, especially under the—I believe it's the—they're released into custody many times of a family member who is here probably illegal in many cases who possibly actually initiated the trip across the border with a coyote or something to get them across the border. In some ways because of the policy we have, we're finishing the contract in some ways. Would that be a fair statement?

Chief PROVOST. Yes, sir, there are—all of those things are pushed toward pull factors. I guess I shouldn't say pushed. Create those pull factors for them to come.

The smugglers take advantage of those individuals, as well. It's a dangerous journey for all of them to be coming. We don't want them making that dangerous trip, certainly don't want them crossing illegally between the ports of entry if they do make that journey because the smugglers take advantage of them, but there are several factors that play into the continued increased numbers and just to speak of those numbers, in June of 2018, we had 9,000 family units cross the border. This month, in February, the shortest month in the year, we are already over 30,000.

Mr. COLLINS. Wow. Ms. Asher, to go back to the Flores, there is no question Flores and others have had an effect?

Ms. ASHER. Yes, sir. Thank you for the question. So to reiterate the Chief's point, you know, clearly without the ability to detain families and that is what the Flores Act does prevent us from doing, as you well know, we cannot detain families beyond 20 days. Clearly, we cannot get any proceedings started. We're lucky if we get the credible fear process done. It's essentially a throughput as current family residential centers exist today.

So, again, the smuggling organizations play well to our vulnerabilities. It is highly marketable clearly for families, for individuals to make unlawful entry into the United States as a family unit versus a single adult, knowing that those—the opportunity to

detain these individuals for the pendency of their immigration proceedings is virtually impossible.

Mr. COLLINS. Look. In Congress, many times it is—I know it's amazing that we make blanket statements that cover everything, never this, never that, but one of the things that is often said is they talk about fraud and many times it's blown off as, well, it doesn't happen.

Between April 19, 2018, and September 30, 2018, DHS identified 336 claimed family unit members who were separated due to a lack of family relationship. That's an interesting example from the Border Patrol side. It does show that there is what we just talked about, an issue of fraud and others that is happening because of the way the system is set up now. Would that be a fair statement?

Ms. ASHER. Yes, sir, that is correct. Majority of those identifiers of false familial relationships do come from our colleagues in CBP, but then there's that second layer of individuals who have since come to us, say in a family residential center, and on the occasion we learn in that setting that the familial relationship is a fraudulent claim.

Mr. COLLINS. And I think this is—and my time is running out, but, look, this needs to, you know, going forward needs to be fixed. There's problems in the past. We're going to have plenty of hearing that today and I understand the concern. I have those same concerns about, you know, the process that was implemented with, as you said, searchable fields, things like that that happened.

Also, as we go forward, though, we've got to put into play things that actually will help this, find a better way to do this for people who want to come here legally instead of using the incentives and as we've seen in some cases fraud but other things to fix this as we move forward.

This needs to be both not only a hearing of what happened but it needs to be a proactive hearing on what we possibly can do to support what your efforts are, which is many times unthanked. I am thanking you.

Thank you for what you do, and with that I yield back.

Chairman NADLER. I now recognize the gentle lady from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

Commander White, you are a career professional. You didn't make the decision on whether children should be separated, but you had to deal with it once that decision was made.

You recently testified before the Committee on Energy and Commerce that you raised concerns about the family separations multiple times, both before and during the zero policy, and you specifically identified then ORR Director Lloyd as one of the individuals you raised concerns to.

When did you specifically raise these concerns to Mr. Lloyd and what were those concerns?

Mr. WHITE. I first raised concerns about an ongoing policy proposal discussion. This actually preceded Mr. Lloyd's arrival at the ORR. I raised it with HHS beginning in February of—beginning on the 17th of February 2017, following the first meeting I attended at which a policy which would have the effect of resulting in family separation was discussed.

I raised concerns about that both as regards the effect on children and also the effect on the capacity of the program to serve children and particularly very young children.

I raised those issues on a number of occasions primarily prior to Mr. Lloyd's arrival and also at his arrival. Subsequently, the issues were resurfaced in late summer as we began to see indications that increased separations were occurring, although it was our understanding there was no policy to effect separation.

I raised concerns with the Director of ORR and HHS leadership at that time, as well, and subsequently again over the ensuing months into January of 2018.

Ms. LOFGREN. Were those concerns in writing?

Mr. WHITE. I identified these concerns primarily in meetings, also in writing.

Ms. LOFGREN. If there are documents, would you please provide them to the committee?

Mr. WHITE. I'm confident that HHS will provide all of those documents.

Ms. LOFGREN. Very good. Now what response did you receive from ORR and Mr. Lloyd and others when you raised these concerns?

Mr. WHITE. From the Director of ORR and the Acting Assistant Secretary of ACF and the Secretary's Counselor for Human Services, I was advised that there was no policy which would result in family separation.

Ms. LOFGREN. All right. You know, I appreciate your comments as to the children in custody on a particular date, but we now have a report from the Office of the Inspector General that there were thousands of children that were, you know, not included in that, potentially thousands of additional separations, and I'm just looking at, you know, the OIG report.

It says, "Border Patrol agents do not appear to take measures to ensure that pre-verbal children separated from their parents can be correctly identified. For instance, based on OIG's observations, Border Patrol does not provide pre-verbal children with wrist bracelets or other means of identification nor does the Border Patrol fingerprint or photograph most children during the processing to ensure that they can be linked with the proper file."

That looks like a recipe for catastrophe to me. I mean, if you've got, you know, a 10-month-old, they're not going to be able to speak up for themselves obviously.

You know, recently, we went back into court, the DOJ, and the DOJ argued that reuniting these additional children would be too onerous and that these agencies would fight any ruling to force them to act.

Commander White and Ms. Asher, is that the position of your agencies, that you would fight a ruling to identify and reunite these additional children? Commander?

Mr. WHITE. So as to what position we would take in court, I could not speak to that. I can certainly clarify anything I have said in declarations, which is that in ORR, our legal authority over children ends when we discharge them. Those children who were discharged to other family members are outside our sphere of—

Ms. LOFGREN. Right.

Mr. WHITE [continuing]. Control——

Ms. LOFGREN. I understand that.

Mr. WHITE [continuing]. And that is the fact.

Ms. LOFGREN. Ms. Asher.

Ms. ASHER. So, ma'am, as it relates specifically to ICE, if I'm understanding your question,——

Ms. LOFGREN. I'm just saying what was said in court, that it would be too onerous for the Government to go and try to reunite these children with their parents. Is that your position?

Ms. ASHER. While it's a challenge, there's evidence that we did accomplish under the Ms. L. in a timely fashion, granted it was deadlines that were given to us in the court, but we did accomplish that.

We've all learned post the situation that crossing of our information is imperative so that we have better track so that we can respond in a more timely fashion in the event that we are to do something other differently than we currently do on ICE and that is, we reunify at time of removal.

The difference for us in this process was that we had to reunify while the adults were still in process.

Ms. LOFGREN. Well, the Inspector General actually found contrary to that, that if children were separated and the parents went to court and they almost all got sentenced for time served, I mean, you know, it's a misdemeanor, that they could be reunited with their children back at CBP. So then ICE and the courts sent them to ICE to prevent the reunification. That's what the Inspector General found.

There are many questions. My time expired, Mr. Chairman, and perhaps we can direct additional questions in writing to the witnesses later.

Chairman NADLER. Thank you.

Mr. Sensenbrenner is recognized for five minutes.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I think everything we have heard today, both in the testimony as well as in answers to the questions, boil down to two things.

You know, Number 1, the agencies are overwhelmed by the vast increase in numbers and, Number 2, there is a real problem in delayed processing and one of the issues in the processing is to determine whether there are false claims of familial relationship.

I'd like to ask a couple of questions to Commander White and Mr. Lloyd. In the last Congress, I authored the bipartisan/bicamera Rapid DNA Act, which the President signed into law.

The Rapid DNA Act allows law enforcement agencies under standards and guidelines established by the FBI to perform real-time DNA testing at the time of an arrest and with their own booking procedures. This technology is readily available, provides for rapid and accurate testing, and is already used by the Department of Homeland Security to confirm biological relationships of refugee applicants. These refugee applicants, these are not people who cross the border and claim asylum.

Now my questions are what role, if any, do you see rapid DNA technology playing in family reunification efforts, particularly in answer to the concerns that I raised at the beginning, and the second, are there any statutory or other barriers that exist, such as

privacy and security requirements, in implementing such a program? If so, what are they so that we can fix them and you can get a quick DNA answer to solve many of the questions that have been testified to this morning?

So either Mr. Lloyd or Commander White, you choose who can be first.

Mr. WHITE. Yes, sir. So per the orders of the Ms. L. Court, in the context of the Ms. L. reunification matter, we are not permitted to use DNA unless we have very specific reason to doubt parentage. So let me set that one aside for a second and talk about in the steady state program.

Among the things that in the vetting of family member sponsors is always required is verification of identity, verification of relationship. Our standard method for verification of family relationship is birth certificates for both the sponsor and the child that are verified by the government that issued them, so the consular authority of the home government.

In cases where documents are unavailable, we do use DNA testing as a second line method. It is the program's position that the document method, which is sufficiently timely for our case management process, is the best because, first of all, it is cheapest to the American taxpayer and, second, because it is often a better indicator of actual family relationship than DNA, particularly given the number of sponsors that we have who are, for example, aunts, uncles, and grandparents.

But as to the benefits of a particular DNA method, we'd need to get back to you about that, but I did want to contextualize those relatively limited circumstances where we use DNA to test.

Mr. SENSENBRENNER. Well, you know, let me ask the question. You know, I know the documents are real good if the person presenting the document is the person who is described in the document, but how are you able to sort out if somebody comes in and hands you a document and the child, for example, you know, is not the person who is described in the document?

Children's pictures can change pretty quickly from the time the document is issued and the time it's handed over to be examined.

Mr. WHITE. So the case management process is fairly robust and has a number of ways that we work, our case managers work to verify identity and to verify relationship, and we follow up on red flags.

At present, it is not our practice to use DNA in all cases nor do I believe that we're appropriated to do so. The cost differential between DNA testing, which currently costs \$525 per incident, and the much lower cost of documents on the 40 to 60,000 children we receive each year makes consular-verified documents our preferred method, but we're very open to learning more about DNA testing.

Mr. SENSENBRENNER. When you do use DNA, do you ever use rapid DNA?

Mr. WHITE. The standard—the provider we use does not. We don't commonly use rapid DNA and the reason is because our time frame for all the other things that we have to check is longer than the time frame for the standard for one-week turnaround process, including mailing, on paternity/maternity verification by DNA.

Mr. SENSENBRENNER. Okay. And I think it would be a good idea to give it a try.

Mr. WHITE. We're certainly open to learning more. I just wanted to be responsive to your question.

Mr. SENSENBRENNER. Thank you.

Chairman NADLER. Thank the gentleman.

Let me just say that I hope you will take a look at it. The committee will take a hard look at that rapid DNA proposal from last year and with some others.

Gentle lady from Texas, Ms. Jackson Lee, is recognized for five minutes.

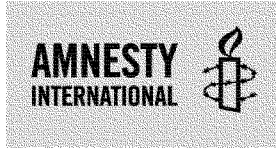
Ms. JACKSON LEE. Chairman, I'd like to introduce into the record the following documents from Amnesty International, American College of Physicians, the Center for Victims of Torture, U.S. Conference of Catholic Bishops, Migration, and Refugee Services, Church World Services, the Episcopal Church, Sojourners, and the Friends Committee on National Legislation.

I ask unanimous consent to submit these into the record.

Chairman NADLER. Without objection.

[The information follows:]

REP. JACKSON LEE FOR THE RECORD



February 7, 2019

Rep. Jerrold Nadler
Chair
 House Judiciary Committee

Rep. Doug Collins
Ranking Member
 House Judiciary Committee

Re: Oversight Hearing on Family Separation Policy

Dear Chairman Nadler, Ranking Member Collins, and Members of the Committee:

On behalf of Amnesty International¹ and our more than two million members and supporters in the United States, we hereby submit this statement for the record. Amnesty International is an international human rights organization with national and regional offices in more than 70 countries, including in the U.S. and Mexico. One of Amnesty International's top global priorities for the past several years has been the protection of the human rights of refugees and asylum seekers.

Amnesty International welcomes the ongoing oversight efforts by Congress, including efforts to publicly investigate and establish an exhaustive record of family separations by U.S. authorities in 2017 and 2018. We hope Congress follows these efforts with concrete measures to pass legislation prohibiting the separation and indefinite detention of children and families.

I. In October 2018, Amnesty International found that DHS separated thousands more families than previously disclosed.

Based on over a year of in-depth research on the US-Mexico border, Amnesty International published a report in October 2018 titled "You Don't Have Any Rights Here": Illegal Pushbacks, Arbitrary Detention, and Ill-Treatment of Asylum seekers in the United States. This was the first publication to report on how the U.S. Department of Homeland Security (DHS) apparently undercounted by thousands the true number

¹ Amnesty International was awarded the Nobel Peace Prize in 1977.

Page 2

of family separations conducted in 2017 and 2018, before, during and after the announcement of its so-called “zero-tolerance” policy. (*See id.* Chapter 3.4 at 42.)

Alongside its October 2018 report, Amnesty International released a [Facts & Figures](#) overview of new U.S. Customs and Border Protection (CBP) statistics it obtained, which appeared to demonstrate a mass undercounting of family separations. Also in October 2018, Amnesty International responded in an [open letter](#) to DHS Secretary Nielsen to false claims made by a DHS spokesperson that all family separations had been reported in the government’s submissions in the *Ms. L.* class action lawsuit in 2018.

In January 2019, the Office of the Inspector General (OIG) of the Department of Health and Human Services (HHS) issued a [report](#) confirming Amnesty International’s earlier findings: HHS’s Office of Refugee Resettlement (ORR) apparently took custody of thousands more separated children than previously disclosed, who were never included in the *Ms. L.* class action lawsuit because they did not meet the definition of the class.

Amnesty International’s report demonstrated that DHS did not include in its official statistics thousands of additional families separated for reasons of so-called “fraud,” safety, security, or medical considerations. Moreover, DHS appeared to apply arbitrarily and *en masse* those vague grounds for family separations, including to separate immediate family members who had full documentation of their family relationships and who had requested asylum at official ports of entry, even prior to the zero-tolerance policy.

The Intergovernmental Public Liaison (IPL) in the CBP Commissioner’s office informed Amnesty International that the U.S. Border Patrol had separated at least 6,022 “family units”² between April 19, 2018 (prior to which it claimed not to have

² DHS agencies use several conflicting definitions of the term “family units.” Yet even adopting a conservative interpretation that this figure refers to individual family members and not groups of family members, CBP still appears to have separated thousands more children from their families

Page 3

been recording family separations) and August 15, 2018. In contrast, CBP informed Amnesty International that it had only separated 36 families at official Ports of Entry from October 2017 through July 2018.

CBP informed Amnesty International those numbers entirely excluded the apparently thousands of other families separated for fraud or other arbitrary designations – separations which, in a statement issued the day after the June 20 executive order supposedly ending the family separation policy, CBP suggested it would continue to conduct.³ News media reported in late November 2018 that the frequency of family

than included in the *Ms. L.* class action lawsuit, as was confirmed in HHS's January 2019 report. For instance, the DHS and HHS draft regulations titled "Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children" define "family units" as the whole family group: "'Family unit' means a group of two or more aliens consisting of a minor or minors accompanied by his/her/their adult parent(s) or legal guardian(s)." *Id.* (7 Sept. 2018), available at: <https://www.gpo.gov/fdsys/pkg/FR-2018-09-07/pdf/2018-19052.pdf>. Likewise, CBP's "National Standards on Transport, Escort, Detention, and Search" also define "family units" as whole family groups: "Family Unit: A group of detainees that includes one or more non-United States citizen juvenile(s) accompanied by his/her/their parent(s) or legal guardian(s), whom the agency will evaluate for safety purposes to protect juveniles from sexual abuse and violence." *Id.*, available at: <https://www.cbp.gov/sites/default/files/assets/documents/2017-Sep/CBP%20TEDS%20Policy%20Oct2015.pdf>. In contrast, CBP uses the term differently in its periodically updated public Southwest Border Migration statistics, in which it defines "family units" as the total number of individuals in families, rather than the whole family group: "Family Unit represents the number of individuals (either a child under 18 years old, parent or legal guardian) apprehended with a family member by the U.S. Border Patrol." See "Southwest Border Migration FY2019," available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration>.) The use of "family units" to mean each individual arriving in a family, rather than their whole family group, conflicts with the definition of the term under DHS policies, and may be intended to inflate the apparent number of families seeking to cross the US-Mexico border for political purposes. According to Internet Archive, CBP added this definition to its statistics on September 20, 2018.

³ "[A]s was the case prior to implementation of the zero-tolerance policy on May 5, family units may be separated due to humanitarian, health and safety, or criminal history in addition to illegally

separations by CBP for “fraud” or other reasons has increased dramatically since the termination of the zero-tolerance policy.

Despite repeated requests, CBP has declined to clarify how many of the “family units” separated were children versus adults, and in what months those separations occurred (including since some appeared to have been separated after President Trump’s executive order). When Amnesty International expressed alarm that the figures provided by CBP appear to conflict with previous numbers that CBP’s Legislative Affairs Office had shared with the Congressional Research Service for its July 2018 report, CBP suggested that its previous statistical accounts were flawed and that its “data team” had updated its statistics considerably.

This suggests that the numbers CBP provided previously to the DHS OIG may also have been flawed and have still not been updated. This would be consistent with the OIG’s findings in its damning October 2018 report about family separations that “the data DHS eventually supplied was incomplete and inconsistent, raising questions about its reliability.”

Despite its supposedly improved data, in August and September 2018, CBP informed Amnesty International that it still did not have accurate numbers of family separations conducted by U.S. authorities. For the period prior to 19 April 2018, CBP claimed it did not yet have “an official count” of family separations. For the period after 19 April 2018, CBP also claimed it had not yet been able “to reconcile a complete and accurate list for separations that may have occurred during the zero-tolerance prosecution period.” In September 2018, CBP informed Amnesty International that it did not have “a full tally” of families it separated for reasons of so-called “fraud” (including non-parental relationships, such as grandparents; or subjective doubts about the validity of the relationship).

crossing the border.” CBP’s Statement on Implementing the President’s Executive Order Affording Congress the Opportunity to Address Family Separation” (21 June 2018), available at: <https://www.cbp.gov/newsroom/speeches-and-statements/cbps-statement-implementing-presidents-executive-order-affording>.

Page 5

On October 10, the day before Amnesty International released its report, the chief of staff of CBP's Intergovernmental Public Liaison informed its author: "Perhaps after your report comes out, we may be able to release additional statistics." The implication was that more statistics would only be forthcoming if there was adequate public pressure to release them. On November 20, CBP again declined to provide further data, instead stating that any new data would be posted on CBP's website.

Until now, DHS has weathered the scandalous fallout of its family separations policy – including irreparable harm caused to thousands of children and their families – without a full accounting or a proper reckoning of the full scale of abuses under the zero-tolerance policy.

DHS must reveal to Congress its full statistics on family separations and expose them to public scrutiny to ensure that all those families are reunited and to guarantee this never happens again.

II. The policy and practice of family separations constituted torture in some cases, imposing extreme anguish on members of separated families—many of whom continue to be detained.

In 2018, Amnesty International interviewed 15 adults whom DHS agencies separated from their children both before and after the introduction of the so-called zero-tolerance policy. The separations happened in all four U.S. states along the U.S.-Mexico border (California, Arizona, New Mexico, and Texas), at the hands of both CBP and Immigration and Customs Enforcement (ICE) personnel. In all of those cases, prior to being separated, the families had requested asylum and expressed their fear of return to their countries of origin. According to the adults, in none of these cases did DHS personnel explain to the families the reasons for the separations at the time that they happened or allow them to defend their custodial right to family unity. DHS personnel simply separated the families – in some cases through the use or threat of physical force.

Based on its research in 2018, Amnesty International found that the Trump administration's deliberate and punitive practice of forced family separations in some cases constituted torture under both US and international law. To meet the definition of torture, an act must be: (1) intentional; (2) carried out or condoned by a government official; (3) inflicting severe pain or suffering, whether physical or mental; and (4) carried out for a specific purpose such as punishment, coercion, intimidation, or for a discriminatory reason.

The Trump administration's deliberate policy and practice of forcible family separations satisfies all of these criteria. Based on public statements and internal memoranda by U.S. government officials, both the policy and practice of family separations were indisputably intended to deter asylum seekers from requesting protection in the United States as well as to punish and compel those who did seek protection to give up their asylum claims. Amnesty International researchers witnessed the extreme mental anguish these family separations caused and documented instances of family separation being leveraged to compel a family to abandon their asylum claim.

In January 2019, an [internal DHS memo](#) from December 2017 that was published by a member of Congress showed that DHS deliberately imposed the family separations policy as a means to deter and deport children and their families. Contrary to U.S. and international legal obligations, DHS never considered the best interests of the children in its cruel and unlawful family separation policy.

More than a year after being forcibly separated by DHS, several families informed Amnesty International that they remain in dire need of psychological support to address the deep and lasting scars and extreme trauma of the forced family separations perpetrated against them.

- “I believe that because of all of this I’m going through – the fear of going back to Brazil, the fear of being separated from my grandchild, all of this together, I can’t stop thinking about it – that it’s making me really sick,” said Maria (55), who was separated from her grandson with disabilities, Matheus (17), after they

requested asylum in New Mexico in August 2017. “I might need to go look for a psychologist. I don’t remember things and can’t sleep . . . I start to talk about something and forget what I was saying. I am crying a lot also because I am still separated from Matheus.”

The title of the Amnesty International report, *“You Don’t Have Any Rights Here,”* directly quotes the words of CBP officials as spoken to a Salvadoran father in California in November 2017 and to a Brazilian mother in Texas in March 2018 as they summarily separated the two parents from their children.

Both of those parents had presented themselves lawfully at official ports of entry and were in possession of documentation proving their relationships to their children. In neither case did the CBP officers give the parents any reason for the separations or a chance to defend their custody of their children. Amnesty International visited and interviewed each of the parents in detention about six weeks after they were separated from their respective children. In both interviews, the parents broke down into tears, revealing the extreme anguish and suffering they experienced because of the lawless conduct of DHS authorities.

Amnesty International interviewed the Brazilian mother, Valquiria, while she was in detention on her 39th birthday on May 10, 2018, three days before Mother’s Day. Nine months later, she remains in detention at the El Paso Processing Center. On March 17, it will be one year since Valquiria was separated from her 8-year-old son, Abel (pseudonym). Abel has stared blankly for months at the door where he lives, waiting for his mother to return.

- “They told me, ‘you don’t have any rights here, and you don’t have any rights to stay with your son.’” Valquiria described to Amnesty International. “For me I died at that moment. They ripped my heart out of me. . . . For me, it would have been better if I had dropped dead. For me, the world ended at that pointHow can a mother not have the right to be with her son?”

Page 8

Valquiria is one of thousands of parents who were separated from their children by DHS but whose children were released to sponsors prior to the *Ms. L* class action lawsuit – thereby excluding her from class membership in the case and confining her to indefinite and arbitrary detention in a detention facility. She never would have been detained there in the first place had DHS followed its binding internal policies and maintained her family’s unity. Valquiria’s case is also emblematic of DHS’s use of family separations to penalize individuals seeking asylum: she was one of countless families separated by authorities after requesting asylum at official ports of entry.

On January 31, 2019, Amnesty International visited Valquiria in detention at the El Paso Processing Center, nearly a year after she was separated from her son. Though she exhibited signs of extreme mental anguish, crying inconsolably during the interview, Valquiria still does not have access to psychological health care in a language she understands.

Based on government filings in the ongoing multistate lawsuit against the Trump administration for its family separations policy, Amnesty International has also found that some of the children separated from their families by DHS under the zero-tolerance policy turned 18 while in ORR custody and thus “aged out” of children’s shelters; they are now being held in Immigration and Customs Enforcement (ICE) detention facilities. They have yet to be reunited with their families and remain in detention – where they never would have been in the first place had DHS not unlawfully separated their families.

III. Amnesty International’s policy recommendations

To Congress:

- Pass legislation banning the separation and detention of families with children.
- Demand full and unimpeded access to asylum data held by DHS, HHS, and in any interdepartmental information-sharing platforms to allow scrutiny of the true numbers of family separations prior to, during, and following the announcement of the zero-tolerance policy in 2018.

- Demand DHS provide exhaustive data (disaggregated by month, and Field Offices and/or sectors) on the numbers of families separated by DHS agencies (including CBP-OFO, Border Patrol, and ICE respectively), and the numbers of children and parents among those disaggregated and total numbers of separated families.
- Demand DHS provide a full and similar reckoning of the numbers of supposedly “unaccompanied children” (UACs) who were separated from adults with whom they arrived at ports of entry, or who were apprehended between ports of entry, including based on alleged “fraud,” safety, security, and/or medical reasons – as those numbers have not been included in previous official statistics provided by DHS.
- Require DHS to elaborate upon how and in what circumstances officials (1) request and approve the separation of children from the adults with whom they arrive at ports of entry or are apprehended; (2) record such separations; (3) ensure any such family separations are conducted only in the best interests of the child; and (4) facilitate reunifications of those families and accountability for officials, in any cases found to have not been in the best interests of the child.

To the Department of Homeland Security:

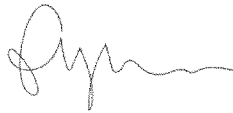
- Immediately account for all asylum seekers whom DHS agencies separated from their family members from January 2017 to present, at a minimum.
- Reunify, unconditionally, as quickly as possible and sparing no costs, any and all children who remain separated from their parents or guardians.
- Release all separated parents and guardians from U.S. immigration detention facilities who have still not yet been reunited with their children, even if the children were released to sponsors or were otherwise not *Ms. L* class members.
- Halt family separations in all circumstances, except following a rigorous determination of best interests of the child, which DHS officials must articulate to family members, providing them an effective opportunity to contest and recording that contestation in the case files of those affected.
- Strengthen mechanisms and procedures to ensure that the separation of children of asylum seekers and migrants occurs only when it is in their best interest, including improved safeguards for the determination of those best interests.

Page 10

- Identify all individuals who were separated from their families as children, but who have since “aged out” of ORR shelters and who are now in the custody of ICE detention facilities.

For more information, please contact Charanya Krishnaswami at +1-202-675-8766 or ckrishna@aiusa.org.

Sincerely,



Charanya Krishnaswami
Advocacy Director
The Americas
Amnesty International USA

Brian Griffey
Regional Researcher/Advisor
Americas Regional Office
Amnesty International



ACP Statement for the Record
U.S. House Committee on the Judiciary
Hearing: Oversight of the Trump Administration's Family Separation Policy
February 26, 2019

On behalf of the American College of Physicians (ACP), I would like to express our appreciation to the House Committee on the Judiciary for conducting a hearing on the Trump Administration's Family Separation Policy at the border. **ACP strongly opposes any effort by the Administration to separate families at our border because of the immediate and long-term negative health impacts on children and their parents. We urge this Committee to enact policies to ensure that this does not happen again. In every immigration policy decision affecting children and families, government decision-makers should prioritize the best health interests of the child and of the entire family.**

ACP is the largest medical specialty organization and the second largest physician group in the United States. ACP members include 154,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

The Administration's Action of Separating Children from Parents

In January of 2017, ACP approved a series of policies concerning immigration, including our opposition to separating children at the border, in response to several proposals to curb immigration that were under consideration or implemented by the Administration.

In May of 2018, the Department of Homeland Security (DHS) issued a zero tolerance policy that required all unlawful border crossers to be referred to the Department of Justice for

prosecution as a misdemeanor for illegal entry, including parents seeking asylum from persecution who enter the U.S. with their children. The Department of Homeland Security (DHS) ordered that children be forcibly separated from their parents and sent to holding facilities administered by the federal government. ACP expressed our strong opposition to this policy in a [statement](#) about immigration policies that would split up families.

Separating children from their families creates childhood trauma and adverse childhood experiences that result in [negative health consequences](#) that will last an individual's entire lifespan. Separating a child from his or her parents triggers a level of stress consistent with trauma. Families seeking refuge in the U.S. already endure emotional and physical stress and separating family members from each other only serves to exacerbate that stress.

- **ACP supports the passage of H.R. 541 - the Keep Families Together Act:** We are pleased to support legislation that has been introduced by Congressman Jerry Nadler, the Keep Families Together Act, which would help ensure that children are not separated from their parents when families unlawfully cross over the border into the United States. This legislation would ensure that the Department of Homeland Security would not be able to implement the zero tolerance policy that separated families at the border last summer. We look forward to working with Chairman Nadler to pass this measure through the Judiciary Committee and onward to passage in the House and Senate.

In June of last year, ACP sent a [letter](#) of support for the Keep Families Together Act, which was introduced by Senator Feinstein and Representative Nadler in the last Congress. We intend to draft a similar letter of support for the bill this year.

ACP Opposes Family Detention in Immigration Cases

Although the Administration eventually reversed the policy of separating children from their parents through an executive order, the order also called for children and parents to be detained together through the pendency of criminal proceedings. ACP released a [policy](#) in direct opposition to the forced detention of families in immigration cases. We believe that forced family detention—indeinitely holding children and their parents, or children and their other primary adult family caregivers, in government detention centers until the adults'

immigration status is resolved—can be expected to result in considerable adverse harm to the detained children and other family members, including physical and mental health, that may follow them through their entire lives, and accordingly should not be implemented by the U.S. government. The health impact of detaining families is consistent with experiences known as Adverse Childhood Experiences which result in emotional and physical illness and chronic disease.

ACP's policy is consistent with a policy paper released by the American Academy of Pediatrics which reviewed the evidence on the health impact associated with detention of immigrant children. It found that “studies of detained immigrants, primarily from abroad, have found negative physical and emotional symptoms among detained children, and post-traumatic symptoms do not always appear at the time of release. ACP concurs with the position of the American Academy of Pediatrics that separation of a parent or primary caregiver from his or her children should never occur, unless there are concerns for the safety of the child at the hand of the parent, primary family caregiver, or other adults accompanying them. Efforts should always be made to ensure that children separated from their parents or other relatives are able to maintain contact with them during detention and community-based alternatives to detention should be implemented to offer opportunities to respond to families' needs in the community as their immigration cases proceed.

ACP also condemns the Administration's detention policy since we believe that it violates a federal court ruling in the case of Flores vs. Sessions that states that DHS cannot detain children and their parents together for more than brief periods (generally no more than 20 days).

ACP Calls for Increased Congressional Oversight of Family Detention

We strongly endorse the House Judiciary Committee's effort to increase oversight on the policies of separating children from families at the border and holding families in detention centers. We issued a statement in July of last year that endorses the need for congressional oversight of this issue as called for in a letter to the Senate Whistleblowing Caucus drafted by physicians Dr. Scott Allen and Dr. Pamela McPherson, who serve as medical and psychiatric subject matter experts for the Department of Homeland Security.

Dr. Allen and Dr. McPherson have attested that their call for oversight is based on 10 investigations they conducted of several detention facilities, where they documented practices harmful to the health of children. The harmful practices that they cite occurred in facilities operated by both the Obama and Trump Administrations. The risk of harm to children is compounded by policies of the current Administration to expand greatly the number of children, and families, being detained for entering the border outside of legal entry points.

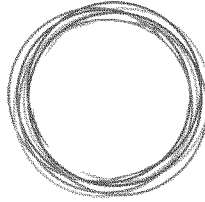
ACP agrees with their observation that “the problem with family detention is not the failure of the many good people who have labored tirelessly to make the existing centers better, with improvements in access to health and mental health services, educational and social programs. The fundamental flaw of family detention is not just the risk posed by the conditions of confinement—it’s the incarceration of innocent children itself.” We concur that “there is no amount of programming that can ameliorate the harms created by the very act of confining children to detention centers.”

As physicians, Dr. Allen, a fellow of the American College of Physicians, and Dr. McPherson are acting in accord with their ethical obligation to speak out on issues affecting the health of these children and their families, a responsibility supported by the ACP’s Ethics Manual. [ACP’s Ethics Manual](#) states that physicians have a “...collective responsibility to advocate for the health, human rights, and well-being of the public.”

ACP urges congressional leaders to conduct oversight hearings on the impact family detention has on the health of the children and families who are being detained, including the impact of detention over an affected child’s lifetime, how they are being treated and cared for in the existing detention centers, and the implications for health of the Administration’s planned expansion of family detention. Congress and the Administration should focus on how to reunite families, how to keep them out of detention, and how to ensure their health and well-being, while still exercising appropriate and necessary control over who enters U.S. borders in accordance with current law.

We appreciate the opportunity to submit our statement to the House Judiciary Committee on this topic and remain committed to an immigration policy that keeps families together. Please

do not hesitate to contact Brian Buckley on our staff at bbuckley@acponline.org if you have any questions regarding our statement. We look forward to working with you.



The
CENTER for
VICTIMS of
TORTURE

**Statement for the Record by the Center for Victims of Torture
U.S. House of Representatives Committee on the Judiciary
“Oversight of the Trump Administration’s Family Separation Policy”
February 26, 2019**

The Center for Victims of Torture (CVT) commends the House Judiciary Committee for holding an oversight hearing on the Trump Administration’s family separation policy, which created an *actual* crisis at the U.S. southern border. We appreciate the opportunity to submit this statement for the record.¹

Founded in 1985 as an independent non-governmental organization, the Center for Victims of Torture is the oldest and largest torture survivor rehabilitation center in the United States and one of the two largest in the world. Through programs operating in the U.S., the Middle East, and Africa—involving psychologists, social workers, physical therapists, physicians, psychiatrists, and nurses—CVT annually rebuilds the lives of nearly 25,000 primary and secondary survivors, including children. CVT also conducts research, training, and advocacy, with each of those programs rooted in CVT’s healing services. The organization’s policy advocacy leverages the expertise of five stakeholder groups: survivors, clinicians, human rights lawyers, operational / humanitarian aid providers, and foreign policy experts. The vast majority of CVT’s clients in the United States are asylum seekers. Indeed, according to the Department of Health and Human Services Office of Refugee Resettlement, research indicates that 44% of asylum seekers, asylees and refugees now living in the United States are torture survivors.²

CVT’s extensive experience providing mental health services to asylum seekers and refugees in the United States and around the globe uniquely positions us to speak to the adverse effects

¹ For questions or for more information about CVT’s work in this area and on related issues, please contact Andrea Carcamo, Senior Policy Counsel at the Center for Victims of Torture at acarcamo@cvt.org.

² Office of Refugee Resettlement. *Survivors of Torture Program*. Retrieved from <https://www.acf.hhs.gov/orr/programs/survivors-of-torture>

family separation has on the mental health of children and adults fleeing persecution, as well as the United States' dwindling reputation as a global leader in human rights.

Family Separation Exacerbates the Trauma faced by Families fleeing Persecution

A significant number of the Central American families who come to the United States are survivors of torture,³ and many more are fleeing persecution. Because of the nature of trauma, oftentimes children who accompany traumatized parents experience symptoms as secondary survivors (even if they have not been directly harmed previously). These highly-traumatized populations are particularly vulnerable to the adverse effects of detention and separation from their loved ones.

According to Susan Jasko MSW, LICSW, a CVT therapist with over 20 years of clinical experience working with children and families:

“When children are young, they are bonding with their parents, and good bonding leads to positive relationships with other people in adolescence and adulthood. Breaking that bond can have consequences in the child’s ability to socialize with others. When children come from an area where they experienced violence, it teaches them that the world is not safe. Then, when they are separated from their parent, this idea is solidified, which can have a profound effect on the development of the child. If a child lives in a state of trauma, as children fleeing conflict areas that are separated from their families do, it can affect their brain development at a biological level as well.”

Many of the children Ms. Jasko has treated over the years were struggling with separation from or loss of parents, and all presented severe symptoms, including nightmares, fears, anxiety and depression.

Ms. Jasko’s experience is far from unique. Indeed, over 20,000 medical and mental health professionals and researchers working in the United States (including Andrea Northwood, CVT director of client services), have previously made clear—directly to the DHS—that “[t]he relationship of parents and children is the strongest social tie most people experience, and a threat to that tie is among the most traumatic events people can experience.”⁴ They further explained that separating a child from a parent causes an effect known as adverse childhood experience (ACE), which can lead to multiple forms of impairment and increased risk of serious mental health conditions including post-traumatic stress disorder (PTSD).

³ Meyer and Pachico (Feb 1, 2018). Washington Office on Latin America. *Fact Sheet: U.S. Immigration and Central American Asylum Seekers*. Retrieved from <https://www.wola.org/analysis/fact-sheet-united-states-immigration-central-american-asylum-seekers/>.

⁴ Physicians for Human Rights (June 14, 2018). *Letter to Secretary Nielsen and Attorney General Sessions*. Retrieved from https://s3.amazonaws.com/PHR_other/Separation_Letter_FINAL.pdf.

Disturbingly, this information was not new to officials from the Trump administration: on July 31, 2018, Commander Jonathan White, formerly of the Department of Health and Human Services, testified that he raised the very real concern that separating families could cause long-term emotional and psychological effects on children when the policy was presented to him before its implementation.⁵

While the damage to children must be central to this hearing, we urge Members also to appreciate the harm family separation has caused, and continues to cause, to affected parents. At CVT, 67 percent of U.S. based clients—refugees and asylum seekers from around the world—have been separated from their families, sometimes by force and other times by necessity when clients must flee without warning to escape imminent danger. During her time at CVT, in addition to her work with children, Ms. Jasko has also treated adult clients seeking asylum who had no option but to leave their country without their children. “The uncertainty of not knowing when they will next see their children makes me worry about my clients,” she says, “as they express feelings of hopelessness and suicidal thoughts.”

Family Separation is a Technique Utilized by Tyrants and Other Oppressors That the United States Has Long Condemned

CVT has served hundreds of children, some of whom were subjected to separation as a tool to coerce their parents. For example, Jana, a 10-year-old Syrian girl, endured forced separation from her family and imprisonment before crossing the Syrian-Jordanian border seeking safety. She had been detained—along with other children—for nearly a month in an attempt to force her father to turn himself in. He did, and he was murdered. Saad’s brother, a young boy, was held for two weeks in prison and tortured. The militia sent pictures of his abuse to Saad’s family with a message warning them to leave Iraq. When his little brother was returned to them, Saad and his family fled to Jordan.

This is what tyrants, dictators, and other oppressors do. It is not how democracies are supposed to behave. And yet, the Trump Administration embraced the practice of separating children from their parents admittedly as a deterrent: to dissuade vulnerable people from seeking safe haven in the United States at all, and for those it did not entirely deter then to coerce them into forgoing their right to seek asylum and to sign a deportation order, which for many would return them to countries and circumstances where they face significant risk of further persecution, violence, or even death.⁶

⁵ C-Span (July 13, 2018). *Public Health Service Commander Warned Against Family Separation*. Retrieved from <https://www.c-span.org/video/?c4742969/public-health-service-commander-warned-family-separations>.

⁶ Van Schaak, Beth (Nov 27, 2018). *Just Security. New Proof Surfaces that Family Separation was About Deterrence and Punishment*. Retrieved from <https://www.justsecurity.org/61621/proof-surfaces-family-separation-deterrence-punishment/>; Bernal, Rafael (June 19, 2018). *The Hill. HHS Official Says Family Separation Policy will*

Family separation of this kind is not only immoral, it is also unlawful. Most directly, Article 31 of the Refugee Convention prohibits contracting states from “impos[ing] penalties” on the basis of how a refugee arrived to the U.S.—whether through illegal entry, presence, or without authorization. Indeed, the international community has recognized the importance of a child’s bond with a parent, for example through Article 9 of the United Nations Conventions on the Rights of the Child (CRC), 196 countries have agreed that they “shall ensure that *a child shall not be separated from his or her parents against their will*, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”⁷ Although the U.S. has not ratified this treaty (the only country in the world not to have done so), as a signatory the U.S. is bound to not engage in actions that “defeat” the CRC’s “object and purpose.”⁸

The United States must not underestimate how its actions reverberate globally; in particular the implicit permission that U.S. practice might give other nations to act the same. The United States cannot maintain a credible global leadership role in the human rights sphere if separating families to deter asylum seekers is the kind of example the executive branch is going to set.

Conclusion and Recommendations

The separation of families is an actual crisis at our Southern border, one that has had a profound impact on the lives of some of the world’s most vulnerable people, torture survivors among them. The practice must be stopped, those responsible should be held accountable, victims deserve redress, and preventive mechanisms need to be adopted. More specifically, we urge the executive branch and Congress to take the following actions, respectively:

Executive branch:

- Immediately reunify all families.

‘have Deterrence Effect.’ Retrieved from <https://thehill.com/latino/393000-hhs-official-says-family-separation-policy-will-have-deterrence-effect>.

⁷ United Nations Human Rights, Office of the High Commissioner (Sept 2, 1990). *Convention on the Rights of the Child*. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

⁸ United Nations Treaty Collection, Chapter XXIII (May 23, 1969). *Vienna Convention on the Law of Treaties*, Article 18. Retrieved from https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII1&chapter=23&Temp=mtdsg3&clang=en. Although the United States is not a party to the Vienna Convention, “many commentators claim that Article 18 reflects customary international law that is binding on nations that have not joined the Convention, a claim that the United States has not denied.” Curtis A. Bradley, *Unratified Treaties, Domestic Politics, and the U.S. Constitution*, 48 Harv. Int’l L. J. 307, 307-308 & n.1 (2007); see also *Roper v. Simmons*, 543 U.S. 551 (2005) (acknowledging “the overwhelming weight of international opinion against the juvenile death penalty,” including the direct prohibition in Article 37 of the CRC).

- End the practice of separating families to deter individuals from coming to the United States and seeking refuge.
- Ensure family separation determinations are not arbitrary, but instead made by child welfare professionals where the child's safety is the primary consideration.
- Whenever there is an appropriate determination to separate a child from a parent for the child's safety, ensure there is an adequate system to track the family and their relationship to each other.
- ICE and CBP must facilitate communications between a child and a parent who have been separated.

Congress

- Conduct rigorous, ongoing oversight of family separation and its consequences, with an immediate focus on ensuring the executive branch reunifies families and discontinues the practice of arbitrary family separation.
- Support the REUNITE Act.



Written Statement of
William Canny,
Executive Director
U.S. Conference of Catholic Bishops Migration and Refugee Services

For a Hearing of the
House Committee on the Judiciary

“Oversight of the Trump Administration’s Family Separation Policy”

Tuesday, February 26, 2019
Rayburn House Office Building 2141

My name is Bill Canny. I am the Executive Director of the Department of Migration and Refugee Services (MRS) within the U.S. Conference of Catholic Bishops (USCCB). On behalf of USCCB/MRS, I would like to thank the House Judiciary Committee, as well as the Committee Chair Representative, Jerrold Nadler (D-NJ), and the Ranking Member, Representative Doug Collins (R-GA), for the opportunity to submit this written statement for the record.

The treatment of immigrants and protection of family unity are of profound importance to the Catholic Church. USCCB/MRS has long supported and served unaccompanied children and immigrant families. And, in the wake of the Department of Justice's (DOJ) April 6, 2018 "Zero Tolerance" memorandum, USCCB/MRS had the opportunity to assist the federal government in its effort to comply to reunify separated families. Through this effort, USCCB/MRS worked on a charitable basis to reunify and serve nearly 900 of the separated and reunified families. With this experience, USCCB/MRS, through the national Catholic Charities network, is the single largest service-provider for this vulnerable population. While USCCB/MRS appreciated the opportunity to assist and reunify these families, the Church has been and continues to be a vocal opponent of forcible family separation. As Cardinal DiNardo, President of the USCCB, and Bishop Vasquez, Chairman of the USCCB Committee on Migration noted: separating babies from their mothers is immoral.

In this statement, I provide a brief overview of USCCB/MRS' experience serving separated children and reunified families and then share recommendations to promote their humane and just treatment by the U.S. government.

I. USCCB's History of Serving Immigrant Children and Families

USCCB/MRS has operated programs, working in a public/private partnership with the U.S. government, to help protect unaccompanied children from all over the world for nearly 40 years. Since 1994, USCCB/MRS has operated the "Safe Passages" program. This program serves undocumented immigrant children apprehended by the Department of Homeland Security (DHS) and placed in the custody and care of the Department of Health and Human Services' Office of Refugee Resettlement (ORR). Through cooperative agreements with ORR, and in collaboration with community-based social service agencies, the Safe Passages program provides community-based residential care (foster care and small-scale shelter placements) to unaccompanied children in ORR custody, as well as family reunification services (pre-release placement screening and post-release social services for families). In fiscal year 2018, the USCCB/MRS Safe Passages program served 1,125 youth who arrived as unaccompanied children—907 through the family reunification program and 218 children through the residential care programs.

Additionally, the Catholic Church in the United States has long worked to support immigrant families, providing them with legal assistance, pastoral accompaniment, and visitation within immigrant detention facilities, as well as social and integration assistance upon release.

II. Experience Serving Separated Children and Reunified Families

Serving Separated Children

As a long-time service provider for unaccompanied children, I note that separation of families at the U.S./Mexico border has been occurring for years in instances in which child protection concerns exist. Beginning in August 2017, however, our program began to receive a notable increase in referrals of separated children. Our staff and partners saw firsthand the terrible trauma

that these children suffered after being torn away from their parents. Many of these children suffered terrible anxiety and, in some cases, developmental delays.

The President signed an Executive Order on June 20th, calling for end of family separations. Unfortunately, we are seeing that these unjust separations have not entirely halted. Take for example, the following case that USCCB/MRS learned of through our Safe Passages program:

Gloria was forced to flee Central America with her two sons, Marco, age 14, and Juan, age 9.¹ The family had been the target of extortion in their home country. After Gloria reported the extortion, the police retaliated – not only did they beat her, breaking her arm, but they also claimed she was gang affiliated. After receiving a death threat shortly thereafter, Gloria took her sons and headed to the U.S. in search of protection. She was apprehended by Border Patrol officers on June 20, 2018 and taken into custody, where she and Juan were separated from Marco. Although Juan fell ill and began to vomit, he received no medical attention. After five days in custody, she and Juan were transferred to a family detention center while Marco was deemed unaccompanied and sent into ORR care. After a brief stint in family detention, she was told that she would be separated from Juan due to her “criminal history” (the false gang affiliation claimed by the police in her home country). Despite Gloria’s attempts to explain her asylum claim and lack of criminal history, including sharing the police report she filed against the corrupt police officers, she and Juan were separated. She was given five minutes to say goodbye to her son on July 1, 2018 before he was dragged away screaming to be deemed by the U.S. government an unaccompanied child. The trauma Juan faced was compounded by the fact that he has autism, ADHD, disruptive behavior disorder, and language delays. And while the family eventually was able to reunite, it was nearly three months before they were all together again.

While the magnitude of the family separation crisis significantly lessened after the June 20th Executive Order and June 26th preliminary injunction in *Ms. L., et al. v. U.S. Immigration and Customs Enforcement, et al.*, the problem has not been solved – families like Gloria’s continue to be ripped apart unnecessarily.

Serving Separated and Reunited Families

In addition to serving unaccompanied and separated children through the Safe Passages program, from July 2nd through July 30th, USCCB/MRS worked in partnership with Lutheran Immigration and Refugee Service (LIRS) to assist both DHS and the Department of Health and Human Services (HHS) in their work reunifying separated families. Besides providing initial humanitarian and reunification assistance, USCCB/MRS provided access to social and legal service and case management. USCCB/MRS provided these charitable services because of our belief that such services would help support the separated families, reduce their ongoing trauma, and help ensure positive compliance outcomes.

As detailed in our joint report, “Serving Separated and Reunited Families: Lessons Learned and the Way Forward to Promote Family Unity,”² HHS had initially contacted USCCB/MRS on July 2nd about possible engagement with the soon to be reunited families. HHS expressed concern about the well-being of the families upon release and noted a desire to ensure that the families

¹ Names and identifying information changed to protect client confidentiality.

² U.S. CONFERENCE OF CATHOLIC BISHOPS AND LUTHERAN IMMIGRATION AND REFUGEE SERVICE, SERVING SEPARATED AND REUNITED FAMILIES: LESSONS LEARNED AND THE WAY FORWARD TO PROMOTE FAMILY UNITY (2018), available at https://justiceforimmigrants.org/2018site/wp-content/uploads/2018/10/Serving-Separated-and-Reunited-Families_Final-Report-10.16.18-updated-2.pdf.

would have access to social services. Subsequently, on July 5th, DHS contacted both USCCB/MRS and LIRS to similarly discuss reunification operations. While neither DHS nor HHS had a clearly developed plan for reunification at the time, both departments wanted to ensure that families had support upon release.

During the reunifications, USCCB/MRS partners provided released families with immediate shelter, a hot meal, change of clothes, shower, and assistance with making travel arrangements to the reunified family's intended destination in the United States. The two agencies served a combined 1,112 families, with USCCB/MRS and its on-the-ground partners serving 897 of these families. While serving these families was an incredibly rewarding experience, the process was not without its challenges. As an initial matter, many families were dropped off at reception sites well into the night – placing a strain not only on the staff at the sites but also adding to the families' confusion and stress.

Coordination, both intra- and inter-agency, also appeared tenuous or lacking in many instances. For example, USCCB/MRS documented instances in which DHS's Transportation Security Administration officers at certain airports refused to accept the families' identification documents provided by DHS's Immigration and Customs Enforcement (ICE) officials. This lack of coordination resulted in newly reunited families experiencing long delays, missed flights, and additional hurdles as they sought to reach their final destinations.

Another major challenge faced by all of the USCCB/MRS reception sites was that many of the newly reunified and released families arrived at the reception centers with their immigration paperwork, such as the Notice to Appear (NTA) and the ICE check-in information, completed with the wrong address. Rather than listing their final destination, the documents would list the address of the particular reception site or the immigrant detention facility itself. Upon elevating this issue, ICE attempted to change the addresses of those families who were to be reunified and released prospectively. Some of the reception centers, however, continued to receive NTAs for families that had already moved on to their final destinations in other cities. Further, USCCB/MRS partners reported that many families faced challenges with timely filing their change of address forms and change of venue requests with the Executive Office for Immigration Review (EOIR).

The biggest challenge, however, has been addressing the families ongoing needs. USCCB/MRS and LIRS made the commitment to provide to each of the reunified families they served with up to three months of post-release services in their final destination cities. These services included social services, a legal orientation, and a referral to a qualified and trustworthy low or pro bono legal services provider. While not all families desired post-release services, USCCB/MRS was able to provide further assistance to nearly 700 families. Through this process, USCCB/MRS found that many of the reunited families are experiencing symptoms of trauma, including separation anxiety. Further, longer-term post-release services are clearly needed. The three months of services provided by the agencies could typically only address the families' immediate needs in their new communities. Often, it is only at the point in which these immediate needs are addressed that families are ready to start tackling the trauma and stress from which they suffer.

III. Recommendations

In light of our experience serving separated children and families, and in recognition of their ongoing trauma and vulnerabilities, we would like to share the following recommendations for the

Administration and Congress.³

- **Rescind the Zero-Tolerance Policy.** DOJ should formally rescind its April 6th memorandum on “Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a).” This is not to suggest that prosecutions could never be brought for such offenses, but it would restore federal prosecutors’ ability to utilize their discretion and balance various factors when determining whether it is appropriate to bring such a case forward. At a minimum, exceptions should be explicitly made to the memorandum to address families seeking protection.
- **Absent reasonable child protection concerns, the U.S. government should not separate children from their parents.** While there are times when separation is appropriate due to abuse or trafficking concerns, unnecessarily separating families is in direct conflict with basic child welfare principles, causes children life-long harm, and is ineffective to the goals of deterrence and safety. Separating families will not cure the pervasive root causes of migration existing in the Northern Triangle of Central America today. Factors such as community or state-sanctioned violence, poverty, lack of educational opportunity, forcible gang recruitment, and domestic abuse are compelling children and families to take the enormous risks of migration, including the possible additional risk of family separation at the border.
- **Institute Clear Criteria for “Good Cause” Separations and Require Detailed Documentation for Separations.** In consultation with HHS and NGOs with relevant expertise, DHS should develop and make publicly available detailed criteria it uses to determine when it is in the best interest of a child to be separated from his or her parent or legal guardian (“good cause separations”). Further, every incidence of family separation should be clearly recorded and the explanation for separation, including *specific* criminal charges, should also be documented. This information needs to be readily shared and accessible to all component agencies of DHS, as well as ORR. In particular, the location of the separated family member needs to be shared with ORR at the time of the child’s referral in order to ensure prompt communication between child and parent, if appropriate. Additionally, DHS policy guidance should denote that even if family relationships are questioned, the alleged relationship must be documented.
- **Delineate Administrative Responsibility on Family Unity and Separations.** An official “Family Unity” Ombudsman should be appointed to monitor future incidences of family separation. This position should be within DHS as it is the agency with the greatest visibility at the point of separation.
- **Create a Standing Interagency Task Force.** The Family Unity Ombudsman should lead the creation of an interagency task force on family separation that meets quarterly with NGO and government stakeholders. The task force should be required to provide DHS-OIG, DHS-CRCL, and Congress with annual reports on family separation that include, in part, aggregate data on family separations broken out by reason for separation, including specific category of “criminal history.” It should

³ Please find a full list of recommendations available in our report, “Serving Separated and Reunited Families: Lessons Learned and the Way Forward to Promote Family Unity.” *Id.*

also be responsible for monitoring monthly reports by DHS and ORR on family separation rates and cases. In the event that the monthly number of family separation cases increases by more than 20% from the previous month, the Family Unity Ombudsman should be required to issue a report to Congress, as well as a corresponding public press release, within 30 days. This report and press release should discuss the increase in separated families, suspected causes, and any remedial actions being taken. Finally, the task force should issue a one-time report to Congress on: (i) the number of children separated from parents or legal guardians by DHS during FY 2017 and FY 2018 prior to the court's preliminary injunction during; (ii) the percent of such children released by ORR to category one, two, and three sponsors, respectively; and (iii) the percent of these children that received government-funded post-release services.

- **Ensure Immigration Paperwork Reflects Families' Final Destination Cities.** As a general practice, DHS should issue NTAs and other discharging immigration paperwork with a family's final destination address, rather than the address of the reception site or the site of the immigration detention facility court. Failing to put the correct address on immigration paperwork makes it difficult for families to attempt to comply with their proceedings. In the family detention context, ICE already lists the final destination address of the individual that they release. We urge ICE to ensure that the appropriate address is listed for all arriving families.
- **Streamline Change of Address and Venue Procedure.** DOJ should streamline the process for non-citizens to change their address and move to change their venue for immigration hearings. EOIR should collaborate with DHS to formulate a single unified change of address form (available in Spanish and other languages) that, when submitted physically or electronically to EOIR or any ICE office or contractor, would automatically trigger an update of a noncitizens address with all relevant immigration agencies and EOIR. This unified form would streamline the process, reducing the burden for not only the noncitizen but also for DHS and EOIR.
- **Support Robust Funding for Post-Release Services.** Congress should ensure, through the appropriations process, that all separated children released to parents or guardians receive post-release services from ORR to address their trauma. Further, given their ongoing needs, Congress should also ensure that federal funding is dedicated to providing additional support services to the reunified and released families.
- **Support Additional Trafficking and Trauma-Informed Training of CBP Officers.** Congress should ensure, through the appropriations process, that DHS has resources to institute additional training for its Customs and Border Protection officers. These trainings should engage NGOs with relevant expertise in identification of human trafficking and in trauma-informed and child-friendly interviewing techniques.
- **Maintain Existing Protections for Unaccompanied and Accompanied Children.** Congress should ensure that it maintains critical protections for all immigrant children; it should reject any legislation that seeks to alter existing safeguards relating to detention of children in unlicensed facilities and processing of

unaccompanied children at the border. Immigrant children should be viewed as children first and foremost.

IV. Conclusion

Immigration policies implemented by our government must be humane and uphold human dignity. While our nation will never be able to rectify the life-long trauma it has inflicted upon separated families, we can and must ensure that no child or parent ever has to face unjustifiable separation again. As always, USCCB/MRS stands ready to work with the Administration and Congress to help develop policies that uphold family unity and the best interest of the child.



**CWS Statement to the U.S. House Committee on the Judiciary Committee, pertaining to its hearing
"Oversight of the Trump Administration's Family Separation Policy" on Tuesday, February 26, 2019**

As a 73-year old humanitarian organization representing 37 Protestant, Anglican and Orthodox communions and 22 refugee resettlement offices across the United States, Church World Service urges the Committee to exercise its oversight responsibility by holding the administration accountable to humanitarian principles regarding family separation and family reunification. We are calling on Congress to do everything in its power to see the administration end family separation, protect immigrant children, and uphold protections for asylum seekers and unaccompanied children. CWS affirms the right of individuals to seek safety, enshrined in U.S. and international law, and calls on Congress to recognize the importance of access to protection.

CWS condemns the administration's policies that have caused family separation at ports of entry and between ports of entry, including of asylum seekers, as well as "zero tolerance" policies that detain and prosecute parents for migration-related offenses. Reports have surfaced that despite court intervention, family separations persist. Border agents have used vague allegations, such as illegal re-entry, to justify separating parents from their children, and have threatened separation as a method of discipline. Children have experienced psychological and physical trauma due to such separation. Similar policies of detaining asylum-seeking families to deter migration have been found to violate the law by a U.S. court. CWS also unequivocally opposes the administration's repeated attempts to block access to asylum and condemns U.S. Border Patrol agents firing tear gas at asylum seekers, including mothers and small children. CWS urges Congress to hold the administration accountable to allowing all families and individuals who arrive at our borders to seek protection so that none is returned to harm.

CWS urges the administration to rescind its April 2018 information-sharing agreement between the Department of Health and Human Services (HHS) and the Department of Homeland Security (DHS) that turns HHS into an immigration enforcement agency and prolongs family separation. The agreement "requires HHS to share the immigration status of potential sponsors and other adults in their households with DHS to facilitate HHS's background checks." An administration memo indicated an awareness that initiating these background checks would deter sponsors from coming forward, resulting in unaccompanied children remaining in HHS custody for longer periods. That indeed occurred, and the population of detained unaccompanied children ballooned. On December 18, 2018, HHS announced that it would stop requiring fingerprints from all household members of sponsors. However, fingerprinting continues to be requested and required in many cases and ORR continues to share information about all potential sponsors with DHS, needlessly prolonging child detention. It is critical that Congress see this agreement is rescinded.

Equally troubling is the expansion of family incarceration, which is plagued with systemic abuse and inadequate access to medical care. These conditions are unacceptable, especially for children, pregnant and nursing mothers, and individuals with serious medical conditions. The American Association of Pediatrics has found that family detention facilities do not meet basic standards for the care of children and "no child should be in detention centers or separated from parents." CWS urges Members of Congress to reject any proposal that would expand family incarceration or violate the long-standing child welfare consensus that children should not be detained for longer than 20 days.

CWS is strongly opposed to any proposal that would weaken or eliminate provisions in the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA), which provides important procedural protections for unaccompanied children in order to accurately determine if they are eligible for relief as victims of trafficking or persecution. Unaccompanied children and asylum seekers have the legal right to seek protection from persecution and violence.¹ Weakening existing legal protections for these children would undermine the U.S. government's moral authority as a leader in combating human trafficking, and would increase vulnerabilities for trafficking victims by curtailing access to due process, legal representation, and child-appropriate services. ORR is in the best position to provide post-release case management services and a full continuum of care to unaccompanied children, and to release them to suitable caregivers. CWS urges the administration and Congress to see that post-release services are provided to children and families, to affirm the right of all people to seek protection, and to ensure that individuals seeking safety are not returned to their traffickers who seek to exploit them.

Families are the foundations of our communities. We implore the Trump administration to protect unaccompanied children, asylum seekers, and all families at the border, and we urge Congress to hold the administration accountable to meeting their legal obligations to that end.

¹ Article 14, The Universal Declaration of Human Rights. <www.un.org/en/documents/udhr/index.shtml#a14>; U.S. Code Title 8: Aliens and Nationality, Chapter 12: Immigration and Nationality, Section 1158: Asylum. <<http://uscode.house.gov>>.



**The Episcopal Church statement to House Judiciary Committee, pertaining to its hearing
Oversight of the Trump Administration's Family Separation Policy**

Tuesday, February 26, 2019

The Episcopal Church stands in opposition to the “zero-tolerance” policy that has led to the separation of thousands of children from their parents. This policy has caused immediate harm and will likely have long-term emotional and psychological effects on those impacted. Episcopalians, churches, and dioceses around the country have collectively spoken out on the practice of family separation through holding vigils, offering direct support to impacted families, and issuing public statements.

In a statement responding to this issue, Rebecca Linder Blachly, the Director of the Episcopal Church Office of Government Relations, said “We deplore the separation of families at the border as an instrument of U.S. policy, and our hearts cry out for the unnecessary anguish we are putting young children through in an effort to deter border crossings. Separating children from their parents is both inhumane and ineffective, and is at odds with the priority of families within the Christian tradition. Many of those who present themselves at our borders are fleeing violence and seeking asylum in the U.S. We have an obligation under international law to uphold due process for those claiming asylum. The Episcopal Church strongly believes that U.S. policies must provide dignity and respect to all children of God and we urge Congress and the Administration to reverse these harmful policies that separate families and endanger children.”

Remarking on the policies leading to family separations, Presiding Bishop Michael Curry wrote, “What is the Christian way to manage borders? Strength does not require cruelty. Indeed, cruelty is a response rooted in weakness. Jesus was clear about what true strength is and it always is driven by love. There may be many policy prescriptions, but the prism through which we view them should be the same: does the policy treat people with love, acknowledging our common humanity? If the answer is no, it is not a Christian solution.”

Thus, The Episcopal Church urges members of Congress to support humane policies such as community-based alternatives to detention (ATD) that do not further detain families seeking asylum, commit to passing bipartisan, comprehensive immigration reform that offers a meaningful pathway to citizenship for undocumented persons living in our communities, and prioritize investments in addressing violence and instability forcing families to flee from Central America and elsewhere.



Statement for the Record to the U.S. House Committee on the Judiciary
Hearing on
"Oversight of the Trump Administration's Family Separation Policy"
Tuesday, February 26, 2019

Sojourners is an ecumenical Christian organization that seeks to inspire hope and move churches to action around issues of human dignity. Our immigration advocacy centers around honoring the God-given dignity of every person, protecting family unity, and promoting thriving communities.

Sojourners urges the Committee to exercise its oversight authority to hold the administration accountable to ethical and humane practices regarding family separation and family reunification. We ask Congress to do everything in its power to see that the administration stops separating families unjustly, protects immigrant children and honors the rights of asylum seekers as outlined in the US Immigration and Nationality Act and the Universal Declaration of Human Rights.

Family separation is still being administered. Sojourners opposes this cruel practice and urges Congress to see that it ends. Though the zero tolerance policy ended last June, reports show that children of asylum seekers and border crossers are still being separated from their parents. Often, authorities cite broad law enforcement purposes as the reason for this practice. Separation has damaging effects on children and parents alike including: damaged relationships and emotional trauma in the long-term. Children should be protected in the safety of their families. In the rare occasion where family separation is the best protection, exhaustive reasoning and investigation should be the norm. People should be afforded an opportunity to a hearing before being detained to avoid these atrocious practices.

Families remain separated. Sojourners affirms the value of family unity and asks that those who remain separated are reunited immediately. Lacking tracking systems, limited tracking periods, and not counting children separated from other relatives contribute to an uncertain number of separated families. Resources should be allocated to remedy the ruthless data mismanagement that keeps families apart to this day. Particular attention should be given to parents that have been deported without their children. Sojourners implores Congress to build mechanisms to reunite these families in fast and dignifying ways. We are eager to mobilize our base to help in this endeavor.

Fair asylum practices would help keep families together. Sojourners urges Congress to see that the right of people to seek asylum is not interrupted or discouraged. US and international law protect asylum and people who seek it should be given prompt access to the process without obstacles.

1 of 2 — 2/25/2019



Families are the core of our communities. Children should be afforded the right to enjoy a family and a healthy environment. As Christians, we believe our lives will be measured by how we treat those who are in the most vulnerable circumstances: children taken from their parents, asylum seekers without access to due process, and those fleeing violence are among them. We implore Congress to protect the lives of migrant children and their families by holding the administration accountable to conscientious principles as it pertains to family separation and family reunification.



Friends Committee on
National Legislation
A Quaker Lobby in the Public Interest

FCNL Statement to the U.S. House Judiciary Committee, pertaining to its hearing: *Oversight of the Trump Administration's Family Separation Policy*

Tuesday, February 26, 2019

The Friends Committee on National Legislation (FCNL) applauds the House Judiciary Committee effort to increase oversight of and condemn the cruel policy of forcible family separation. This policy's intent and impact violates the core of FCNL's foundational Quaker beliefs to respect the Divine in every person and protect the rights of migrants. Families should neither be separated, nor incarcerated. **We urge the Committee to end the equally devastating practice of family detention and curtail the use of adult immigrant detention that results in family separation.**

The Trump administration's practice of family separation caused irreparable harm to vulnerable migrant families. This policy – designed to deter migration – was an illegal, ineffective, and inhumane tactic. The true extent of damage caused by this unimaginable decision could last for generations.¹ It is among the darkest points in our nation's history. We urge the Committee to hold administrative officials accountable to reunifying families at every juncture. **A humanitarian crisis requires a humanitarian solution.** Migration is not a crime. It is essential that individuals, families, and children fleeing violence and instability in their home countries are given a full and fair opportunity to seek asylum or other forms of humanitarian protection as they arrive. If our nation does not afford this protection and due process, we set a dangerous precedent to violate international human rights law and our most basic responsibilities to one another.

This practice exposed our nation's deep entrenchment in a costly and unjust detention system. The family separation policy was born out of a decades-long practice and belief asserting criminalization and detention is the appropriate – and only – response to migration. That children must either be separated from their parents or incarcerated is a false choice. We urge the Committee to recognize the harm prolonged incarceration perpetuates for children, families, and individuals alike. Family detention centers are detrimental to physical, mental, and family health² and compound³ the traumas that individuals experience prior to arrival. Conditions in ICE detention centers and CBP facilities remain unaccountable⁴, inhumane⁵, and increasingly fatal⁶. This Committee can and must help reverse course.

We urge the Committee to pursue legislation to end over-reliance on immigrant detention. The Dignity for Detained Immigrants Act (115th Congress)⁷ would end the administration's authority to detain parents, children, asylum seekers and other vulnerable migrants. It would establish accountability standards for existing facilities and expand non-restrictive, community-based alternatives to detention⁸. **Congress must fully embrace community-based alternatives to detention as the solution to family separation.** Effective and cost-beneficial models exist but are severely underused. The 2016 Family Case Management Program (FCMP)⁹ never saw more than 1,600 immigrants enrolled compared to the more than 350,000 held in ICE detention in just 2016. It was 99% effective in ensuring participants attended court appearances and ICE check ins and cost less than 7% of family detention but was ended with little explanation not even halfway through its pilot program.

Communities of faith have always been, and will continue to be, at the forefront of providing care to the most vulnerable in our society. **We are ready to be partners in investing in and strengthening the efficacy and lifespan of community-based alternatives to immigrant detention.** We urge Congress to partner with us in this effort by engaging in robust oversight over current family separation and detention practices and rejecting their expansion through standalone legislation and reduced funding.

1 of 2 — 2/25/2019

FRIENDS COMMITTEE ON NATIONAL LEGISLATION
245 2ND STREET NE • WASHINGTON, DC 20002 • (800) 630-1330 • FCNL.ORG

-
- ⁱ <https://www.washingtonpost.com/news/retropolis/wp/2018/05/31/barbaric-americas-cruel-history-of-separating-children-from-their-parents/>
- ⁱⁱ <https://www.womensrefugeecommission.org/rights/resources/1651-the-harm-of-family-detention>
- ⁱⁱⁱ <http://pediatrics.aappublications.org/content/139/5/e20170483>
- ^{iv} <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>
- ^v <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-20-Feb19.pdf>
- ^{vi} <https://www.nbcnews.com/politics/immigration/22-immigrants-died-ice-detention-centers-during-past-2-years-n954781>
- ^{vii} <https://www.fcnl.org/documents/748>
- ^{viii} <https://justiceforimmigrants.org/2016site/wp-content/uploads/2017/07/The-Real-Alternatives-to-Detention-FINAL-06.27.17.pdf>
- ^{ix} <https://www.womensrefugeecommission.org/images/zdocs/Backgrounder-FCMP.pdf>

Ms. JACKSON LEE. Thank you so very much.

Let me, first of all, thank each and every one of you for your service. As a member of the Homeland Security Committee since 9/11, I know the importance of the work you do, understand the importance of the work we do to try to improve systems and processes that reflect the values of this nation.

Let me also indicate that anyone who does harm to any citizen killed or injured, I want everyone in this room to know that they should be immediately brought to justice. None of us on this panel, Democrats or Republicans, would deny that responsibility of bringing of people to justice.

Let me comment and indicate that the April 6th, 2018, zero-tolerance initiative of the Trump Administration was ill-timed, ill-considered, and inappropriate. According to the GAO report that was given, DHS, we interviewed agencies and they indicated that they did not plan for the potential increase in the number of children separated from their parents, legal guardian, or results of the Attorney General's April 28th zero policy. So they did not plan for the high numbers of those that were being separated from legal parents.

And then, of course, the Inspector General said that the DHS was not fully prepared to implement the zero-tolerance policy or to deal with certain effects of the policy following implementation, which meant that we were going to—the Government was simply going to fail and they did fail in doing the job that should be done.

So I have a series of questions that I'd like to indicate, but I'd also like to just reflect on these are children, none of whom I think in this particular picture under 12 maybe could be a threat to anybody here in the United States of America. None of these are a threat to anyone here in the United States, but they were children younger than this, and as a member of the Women's Working Group of Immigration, the United States Members of Congress Working Group on Immigration, I held Baby Roger in my hands. I'll always remember Roger because he was nine months old, snatched from his natural guardians. He had no ability to talk. He was not identified. He had no band, no ID, nothing, and so one wonders where Roger is today.

I frankly believe that there are much more, Commander, than you have indicated. That is my fear and that is my concern.

Let me quickly raise these questions. Mr. Lloyd, picking up on the lack of tracking, when HHS was made aware of the zero-tolerance policy was going into effect, how long did it take for you and ORR to notice that there were no tracking of which parents were separated from what children?

Mr. LLOYD. Congresswoman, the tracking that occurred, I wouldn't agree with your characterization that there was no tracking. The tracking that occurred, occurred within our normal case management system as part of—

Ms. JACKSON LEE. So how long was that, sir?

Mr. LLOYD. I'm sorry?

Ms. JACKSON LEE. How long did it take for you and ORR to notice that there was no tracking of which parents were separated from their children?

Mr. LLOYD. Sure. Again, I would disagree with your characterization. The tracking——

Ms. JACKSON LEE. Can you tell me when you decided to take note of that?

Mr. LLOYD. The tracking that occurred was in our——

Ms. JACKSON LEE. How long after April 2018?

Mr. LLOYD. Our tracking of the circumstances under which kids come into our care is ongoing. It never stopped and never——

Ms. JACKSON LEE. Did you approach CBP about tracking separated parents? If so, when did this occur?

Mr. LLOYD. I missed the first part of your statement.

Ms. JACKSON LEE. Did you approach CBP about tracking separated parents? If so, when did this occur?

Mr. LLOYD. We interact with CBP on a daily basis in our work at the field level.

Ms. JACKSON LEE. But I'm speaking specifically about tracking.

Mr. LLOYD. Tracking of?

Ms. JACKSON LEE. When did you approach CBP about tracking separated parents?

Mr. LLOYD. As part of the case management process, that would be one of the things that the case manager does on a——

Ms. JACKSON LEE. Can you affirm that, sir? You can document that that was going on? I listened to CBP. I've visited their facilities. I think they were doing the best that they could and they had no process for tracking.

Are you telling me that you contacted them about tracking?

Mr. LLOYD. The——

Ms. JACKSON LEE. Let me continue my question. It's been reported that you have little interest in reuniting children with their parents. In fact, it had been reported in the press that during an internal HHS review of the family separation policy, a top HHS official found that you instructed your staff to stop keeping a spreadsheet tracking separated families.

Did you make this decision and, if so, why? Why in the world would you choose to make a decision like this? As a father yourself, can you explain to us how this possibly could have happened?

Mr. LLOYD. Thank you, Congresswoman. That was incorrect reporting. I did not make that order.

Ms. JACKSON LEE. I have a facility in my district called Southwest Keys. It is under investigation by the Federal Government. I do not want that facility to open, and there is another facility by the name of Shiloh that has been accused of abusing children. I'd like to get a report from you about that, and I'd like a further report on your reunification efforts and whether you track. I need specific dates and times. I would appreciate that greatly.

Chairman NADLER. The time of the gentle lady has expired.

Ms. JACKSON LEE. I yield back.

Chairman NADLER. The gentleman may answer. The witness may answer the question.

Mr. LLOYD. Thank you, Congressman. The last question?

Chairman NADLER. Yes.

Mr. LLOYD. And what was that?

Ms. JACKSON LEE. The last question, sir, was dealing with Southwest Keys in my district. I do not want it to open because its facili-

ties are under investigation. They have about 12,000 unaccompanied children. By the way, those separated from their families are not unaccompanied.

Chairman NADLER. The witness may answer.

Ms. JACKSON LEE. Closing Shiloh, that has been accused of abusing children, these are immigrants, as well.

Mr. LLOYD. We cooperate with any ongoing investigations. We're happy to cooperate with those investigations and provide any information that comes out of them.

As far as new facilities, that's guided by the state licensing authorities and that's something—

Ms. JACKSON LEE. They get federal funds. Thank you.

Chairman NADLER. The time of the gentle lady has expired.

Mr. Chabot is recognized for five minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

First of all, I don't favor separating children from their families and I don't think most of the people in this room do, and it's my belief that, to the extent that such separations are required by existing law, it's our responsibility as representatives of the American people as the Congress of the United States to work on legislation to provide a fix to that situation because we ought not to be separating children from their parents.

However, part of the problem, of course, is that there's a backlog of pending cases before the immigration courts nationwide. It's been reported that back in 2008, immigration courts had a backlog of some 200,000 cases.

Ms. Asher, let me ask you this. In your written testimony, I believe you reported that the backlog has grown fourfold, so four times since back in 2008, to more than 800,000 cases today, is that correct?

Ms. ASHER. Yes, sir, that is correct.

Mr. CHABOT. Thank you.

Mr. McHenry, let me ask you. One of your chief functions as Director of the Office of Immigration Review at the Department of Justice is to conduct immigration court proceedings. That's correct, isn't it?

Mr. MCHENRY. Yes, Congressman, it is.

Mr. CHABOT. In the face of the immigration backlog described by Ms. Asher, what steps is your office taking to reduce the backlog of pending cases and what should we be providing for you to do a better job doing your job? Is it more money for immigration judges or what do you need?

Mr. MCHENRY. Thank you for the question.

Backlog, the growth of it has sort of been two phases. The first phase, from roughly 2008 until about 2016–2017, was driven by a combination of factors, one of which was reduced productivity, more continuances, lack of immigration judge hiring, things that we were largely responsible for.

We've been able to solve a lot of those problems. We've hired more judges. We have approximately 430 right now onboard. We've been able to complete more cases than at any time since FY 2011 and we're on pace to complete more cases since FY 2006.

But since about 2016–17, the backlog has increased for factors that sort of extend beyond us. There's been an increase, as some

of the other witnesses have testified to, increased numbers of aliens coming to the United States that are leading to more cases. More cases have been filed. There's been an increased emphasis on enforcement over the last couple of years. That's caused the backlog to go up for those reasons.

Mr. CHABOT. You need additional resources and we need to provide them.

Let me move on because I've got kind of limited time. Let me ask you this. Isn't it true that it is a federal crime under 8 USC 1325(a) to illegally enter the United States, is that correct?

Mr. MCHENRY. That's correct.

Mr. CHABOT. They didn't actually commit a crime. All they did was come into the United States illegally. That's illegal, right?

Mr. MCHENRY. It is.

Mr. CHABOT. Okay. And isn't it also true that currently parents traveling with children are not being referred for prosecution for violating that law? So there's, in essence, an incentive to bring a child across the border. It's kind of get out of jail free card to some degree. Would you agree with that?

Mr. MCHENRY. I'd defer a little bit to my operational colleagues, but it is my understanding that DHS is not referring any family units, any parents who are traveling with children right now, so they wouldn't be prosecuted.

Mr. CHABOT. Okay. Thank you.

Chief Provost, let me ask you this. Let me make sure I have this straight.

In the past, most of the people that were coming to our southern border and trying to enter illegally were males, principally from Mexico, and nowadays that's no longer the case. Now it's people coming from Central America with children who know that they cannot be separated now. They maybe were, now they can't be, and that we don't have the facilities available to house or take care of these folks.

So instead of detaining them, for the most part they're now given a court date down the road and a court date for which the vast majority no longer show up and they essentially then disappear into the population and they then basically successfully cut in line in front of people from all over the world that are trying to do it the right way, who are trying to follow the law, become American citizens, bring their families here the correct way, which is far less dangerous than dragging your kids through the desert or hundreds of miles at the whim of these coyotes and drug cartels and all the rest. Is that about right?

Chief PROVOST. Yes, sir. When it comes to the demographic shift, you are correct on the changes that have happened. I'm sure Ms. Asher wants to weigh in, as well, but this is where I stated before the Flores decision and the inability to detain these family units because of the children longer than 20 days to await an immigration hearing is causing that pull factor.

Mr. CHABOT. Thank you. Ms. Asher, for any time that I might have left.

Ms. ASHER. Yes, sir. Thank you.

What I would like to add is even when individuals, particularly family units, do have their day in court, so to speak, we know

through a recent exercise with EOIR, there were just over 2,600 cases heard before the immigration judge in a non-detained setting of family units. Of those 2,600 approximate, there were just over 2,500 in absentia orders issued, meaning the individuals failed to appear for the hearing.

So now you have the additional challenge as it relates to my resources in ICE that now we have individuals who are throughout the country with final orders of removal. I don't have the resources necessarily to prioritize to now go and find these family units to facilitate the removal.

So this is an ongoing and growing problem that we continue to work collectively that proves great challenges.

Mr. CHABOT. Thank you.

Chairman NADLER. The time of the gentleman has expired.

Mr. JOHNSON of Georgia. Thank you, Mr. Chairman, and thank you all for being here today.

This examination of President Trump's barbaric policy of separating families, tearing little children away from the arms of their parents is long overdue, and I'd like to get to the bottom of why anyone in this Administration thought that they could get away with this.

Now this is what former Chief of Staff and Department of Homeland Security Director John Kelly said. "Jeff Sessions was the one that instituted the zero-tolerance process on the border that resulted in both people being detained and the family separation. He surprised us."

Mr. McHenry, was the zero-tolerance policy just alluded to, was that a policy developed by the Justice Department?

Mr. MCHENRY. Yes, sir, it was. It was issued by the Attorney General on April 6th, 2018, following a memorandum he issued in April 2017,—

Mr. JOHNSON of Georgia. All right.

Mr. MCHENRY. Following the Executive Order.

Mr. JOHNSON of Georgia. Does the Department of Justice usually do initiatives without consulting the White House first?

Mr. MCHENRY. I can't speak to what consultation is done.

Mr. JOHNSON of Georgia. All right. On April 23rd, there was a memo signed by Department of Homeland Security Secretary Nielsen approving family separation mentions and that this was an analysis that has not been provided to this committee.

Attorney General Jeff Sessions said on May 7th, 2018, as it relates to the family separation policy, "If you cross the border unlawfully, then we will prosecute you. If you don't want your child separated, then don't bring them across the border illegally."

Subsequently, District Judge Dana Sabraw found that the way DHS carried out separations was not lawful.

Did the Department of Justice provide any legal analysis and justification for the zero-tolerance policy, Director McHenry?

Mr. MCHENRY. To the extent it's an issue in litigation, I couldn't speak to it. We also—

Mr. JOHNSON of Georgia. The question is, did the Department of Justice provide a legal analysis, yes or no?

Mr. MCHENRY. Again, any guidance or—

Mr. JOHNSON of Georgia. So you refuse to answer the question. All right. Thank you.

Was any legal research or analysis done by the Department of Justice on this policy?

Mr. MCHENRY. I'm sorry. I don't follow the question.

Mr. JOHNSON of Georgia. Was any legal research or analysis done by the Department of Justice on the zero-tolerance family separations policy?

Mr. MCHENRY. I can't speak specifically to the deliberations.

Mr. JOHNSON of Georgia. Why is that, sir? You are with the Department of Justice and you're here to testify this morning.

Mr. MCHENRY. I am——

Mr. JOHNSON of Georgia. Would you answer that question?

Mr. MCHENRY. We don't typically discuss sort of internal policy deliberations.

Mr. JOHNSON of Georgia. I'm not asking about internal policy deliberations. I'm simply asking whether or not your department did any legal research or analysis on this issue.

Mr. MCHENRY. Well, any analysis or research would go toward those internal deliberations.

Mr. JOHNSON of Georgia. All right. Let me move on to Chief Provost since you're just not going to answer my questions, Director McHenry.

Chief Provost, you don't have enough Border Patrol agents, isn't that correct? You have a shortage?

Chief PROVOST. That is correct, sir. I could use more agents.

Mr. JOHNSON of Georgia. And in November, I believe it was, of 2017, Trump issued an Executive Order and it mandated that 5,000 additional Border Patrol agents be hired, isn't that correct?

Chief PROVOST. That is correct.

Mr. JOHNSON of Georgia. And you were already down by about 1,815 agents at that particular time, correct?

Chief PROVOST. That sounds about correct.

Mr. JOHNSON of Georgia. And so to address the Border Patrol's officer shortage, your agency signed a five-year contract, a \$297 million contract with Accenture Federal Services to recruit and hire Border Patrol agents, correct?

Chief PROVOST. I believe it goes up to that amount.

Mr. JOHNSON of Georgia. Yes, ma'am, and the Office of Inspector General reported that as of October 1st of 2018, the first 10 months of the program, Accenture had received \$13.6 million of that contract but had only processed two accepted job offers, isn't that correct?

Chief PROVOST. I do not know, sir.

Mr. JOHNSON of Georgia. You don't know?

Chief PROVOST. That's Human Resource Management's side of the house.

Mr. JOHNSON of Georgia. You don't know about this gross mismanagement, fraud, waste, and abuse that's taken place in your agency that was found to be true by the Office of Inspector General?

Chief PROVOST. I can't speak to——

Chairman NADLER. The time of the gentleman has expired.

Chief PROVOST [continuing]. That at this time, but I know that we have the contract.

Mr. JOHNSON of Georgia. That is ridiculous that you, the head of the agency, don't know of this issue of waste, fraud, and abuse that is rampant within your agency.

Chief PROVOST. That's a CBP contract, sir. I'm the head of the Border Patrol.

Mr. JOHNSON of Georgia. Well, you're the Office of Border Patrol. It's the law enforcement arm of the Office of Border Protection, which you——

Chief PROVOST. Within CBP, yes.

Chairman NADLER. The time of the gentlemen has expired.

The gentleman from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you. Thank you, Mr. Chairman. Appreciate the witnesses being here.

Director McHenry, isn't it true that every day in cities all across America, every Administration going back to the beginning of the Department of Justice has separated parents suspected of committing crimes from their children?

Mr. MCHENRY. What I can say is that any individual——

Mr. GOHMERT. You can say yes or no. It's not a hard question. If you don't know the answer, then you don't need to be in your position. It goes on every day. All of us that have been involved in the justice system know it goes on every day, is that correct or not, in your opinion?

Mr. MCHENRY. Individuals who are parents who are prosecuted for crimes, there is the potential that they may be separated during——

Mr. GOHMERT. Oh, so you're saying there are chances where you may put children in jail with the parents that are suspects in a crime. No more questions for you. Obviously you're not aware. We don't put children in jail with suspects just because they're children of the adults.

Chief Provost, you had mentioned before about this issue of separation and apparently, like under the Clinton Administration, the Bush Administration, the Obama Administration, children were being separated from parents that were illegally coming into the country, isn't that correct?

Chief PROVOST. Yes, sir. I've worked throughout all four Administrations and I myself have experienced it in the field, on the ground,——

Mr. GOHMERT. And that's because we don't want to put children in detention with parents who are suspected of committing an offense, correct?

Chief PROVOST. That is correct.

Mr. GOHMERT. It's not a mean-spirited idea. It's just a notion that's been true in this country that children should not have to pay for the sins of the parents and we don't hold the children accountable for coming in illegally because they are not of majority age and therefore they don't have the intent to violate the law. That is what our law has been, correct?

Chief PROVOST. That is correct.

Mr. GOHMERT. Now you've talked about the system that was a manual system. You have a number for the parent, you have a

number for the children, and you have said you manually have to go back and find those so you can match back the children with the parents, correct?

Chief PROVOST. If I may clarify just briefly—

Mr. GOHMERT. Yes.

Chief PROVOST [continuing]. The system is not manual. We have, within CBP, our system and the system did not speak automatically to the system at HHS.

Actually, in April, before the May 5th date, was when we added the searchable field to help us be able to pull the data more easily—I guess easier.

Mr. GOHMERT. Okay. But would you say that the Clinton Administration, the Bush Administration, or the Obama Administration was callous and immoral because they didn't do something to make it an easier fix to match up the parents and the children?

Chief PROVOST. No, sir.

Mr. GOHMERT. And so if we were going to be fair and we were not going to say that about the Clinton, Bush, or Obama Administration, really the only difference is that when the zero-tolerance policy was put in place, it accentuated the lack of the fix from those prior Administrations, correct?

Chief PROVOST. Yes, sir, and there's always lessons learned and we always improve on our data integrity.

Mr. GOHMERT. Right. Now you've also—really, it's mind-boggling but very critical. As my friend Mr. Chabot brought up, was it 90 percent at one time were males coming across from Mexico? That was who were illegally coming in?

Chief PROVOST. 90 percent were Mexican Nationals and now 80 percent of whom we apprehend are other than Mexican Nationals. The vast majority of those Mexican Nationals were adult single males. For the first time in our history, in October, family units surpassed single adult apprehensions.

Mr. GOHMERT. And that happens to have coincided with the outrage about parents being separated from children.

Now you dealt with the drug cartels and their work as a result of what you do. You know, as Mr. Chabot and I were told, in Colombia, the reason they send most of the drugs across through Mexico and our U.S. southern border is because they're business people and when they see a way they can manipulate our system, that's what they do. Isn't that why you're seeing the huge increase of families and children coming into this country?

Chief PROVOST. It is true that the transnational criminal organizations utilize them as a tactic when they know our resources are focused on the family units that it takes our resources away from the border security side of the house, and they do utilize that to their advantage.

Mr. GOHMERT. My time has expired. I appreciate you all being here.

Chairman NADLER. Thank you.

The gentleman from Florida, Mr. Deutch, is recognized.

Mr. DEUTCH. Thank you, Mr. Chairman.

Mr. Chairman, the Trump Administration's forced child separation policy will forever be a dark time in our nation's history. The policy undermines our country's moral standing in the world that

generations of Americans have worked so hard and in some cases have given their lives to build.

I am deeply concerned with documents that have been turned over by HHS that record a high number of sexual assaults on unaccompanied children in the custody of the Office of Refugee and Resettlements. Together, these documents detail an environment of systemic sexual assaults by staff on unaccompanied children.

Mr. Chairman, I ask unanimous consent to submit for the record a document request submitted by the committee today to the Secretary of HHS on the development and execution of the administration's zero-tolerance policy.

Chairman NADLER. Without objection
[The information follows:]

REP. DEUTCH FOR THE RECORD

GERALD NAJLIL, New York
CHAIRMAN

DEBRA KOLBART, Chicago
RANKING MEMBER

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Sixteenth Congress

January 11, 2019

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Azar:

There remain many unanswered questions about the development and execution of the Trump Administration's family separation or "zero tolerance" policy. The latest tragic deaths in custody of young children underscore the need for oversight of Administration's policies. Members of this Committee have written repeatedly to the Department to request briefings, information, and document preservation on matters related to family separation, migrant detention, deaths in custody, and related policies on the border. The existence of any family separation pilot program, the health and safety of children in your facilities, the lack of a proper reunification strategy prior to implementation, and the legal justifications for these policies remain key issues this Committee must better understand.

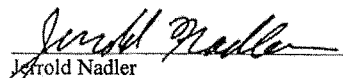
To that end, I respectfully ask that you provide complete responses and produce the relevant documents and communications requested below by no later than January 25, 2019.

1. Documents and communications dated from January 20, 2017 to April 23, 2018 relating to the implementation of a "zero tolerance" policy or any other family separation policy, including any pilot program resulting in family separation along the southwest border. Please include a list of any steps taken by the Administration to separate families at the southwest border, either at ports of entry or otherwise, prior to June 17, 2018;
2. Total number of separated or unaccompanied children who reported physical or sexual abuse in the custody of Health and Human Services or the Department of Homeland Security. Please include a list of the facilities where the incidents occurred and a description of actions taken for each incident;
3. Documents and communications relating to the policy of the forced administration of medication—including, but not limited to, anti-psychotics, anti-depressants, and mood stabilizers—to individuals under the age of 18 in the custody of Health and Human Services or the Department of Homeland Security;

4. Documents or communications relating to the policies, processes, or resources needed to identify, track, and reunify family members separated between January 20, 2017 and April 23, 2018;
5. Documents or communications relating to the creation of procedures or the allocation of resources to support the reunification of families separated between April 23, 2018 and June 20, 2018;
6. Documents and communications between the Department of Homeland Security and its components, Health & Human Services, and the Department of Defense, referring or relating to the use of Department of Defense personnel or facilities to support the detention of unaccompanied minors or children separated from families under the zero tolerance or other family separation policy.

Thank you for your prompt attention on this matter. I look forward to working more closely with your office in the 116th Congress.

Sincerely,


Jerrold Nadler
Chairman
House Committee on the Judiciary

cc: Honorable Doug Collins, Ranking Member, House Committee on the Judiciary

Mr. DEUTCH. And untitled document that describes ORR's zero-tolerance policy for all forms of sexual abuse.
Chairman NADLER. Without objection.
[The information follows:]

REP. DEUTCH FOR THE RECORD

The Office of Refugee Resettlement (ORR) has a zero-tolerance policy for all forms of sexual abuse, sexual harassment, and inappropriate sexual behavior at all care provider that house unaccompanied alien children (UAC). ORR's Interim Final Rule (IFR)¹ sets forth standards to prevent, detect, and respond to sexual abuse and sexual harassment in ORR care providers.² The IFR was published on December 24, 2014 with an implementation date of June 24, 2015.

ORR began collecting data specific to sexual abuse in ORR custody in October 2014. Prior to the IFR, care providers generally reported allegations of sexual abuse according to state licensing requirements and mandatory reporting laws. With the publication of the IFR, care providers, regardless of their state of operation, began using one standardized definition for sexual abuse and sexual harassment to ensure consistent reporting. In addition, ORR ensured that allegations of sexual abuse that occurs in ORR custody, as defined by the federal reporting statute (34 U.S.C. § 20341), were reported to the U.S. Department of Justice (DOJ) beginning in late 2014.

Care providers must report allegations of sexual abuse, sexual harassment, inappropriate sexual behavior; retaliation related to such allegations; and staff neglect or violation of responsibilities immediately but no later than 4 hours after learning of the allegation. Care providers must report these allegations to the state licensing agency, child protective services, and/or local law enforcement in accordance with mandatory reporting laws, state licensing requirements, federal laws and regulations, and ORR policies and procedures.

Additionally, care providers report to the U.S. Department of Justice's Federal Bureau of Investigations (FBI) and the U.S. Department of Health and Human Services' Office of the Inspector General (OIG) any allegations of sexual abuse that are subject to federal reporting laws or could constitute violations of federal law. Sexual abuse is defined at 34 U.S.C. § 20341 and in ORR regulations at 45 C.F.R. § 411.6. Sexual abuse can include allegations such as touching of the buttocks or allegations of sexual assault, whether it was minor on minor or staff on minor allegation. ORR policy requires care providers to notify local law enforcement when an allegation of sexual abuse involves an adult.

If a sexual abuse allegation involves a staff member, the care provider is required by ORR's IFR to immediately suspend the staff member from all duties that would provide the staff member with access to UAC, pending an investigation. Care providers must take disciplinary action up to and including termination for violating ORR's or the care provider's sexual abuse related policies and procedures. Termination must be the presumptive disciplinary sanction for staff who engage in sexual abuse or sexual harassment.

¹ See 45 C.F.R. Part 411.

² Section 1101(c) of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113-4) directs the Secretary of the Department of Health and Human Services to adopt national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in facilities that maintain custody of unaccompanied children.

Mr. DEUTCH. Charts for each fiscal year from FY 2015 through FY 2018 on allegations of sexual abuse reported to DOJ.
Chairman NADLER. Without objection.
[The information follows:]

REP. DEUTCH FOR THE RECORD

Table 1: Allegations of sexual abuse reported to DOJ, by type of incident, FY 2015

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total
Allegations Reported to ORR*	N/A	33	38	40	59	70	81	126	123	155	116	162	1000
Allegations Reported to DOJ**	10	7	17	19	17	10	26	26	27	38	30	52	279
Staff-on-Minor	3	2	3	0	0	0	5	1	3	1	2	4	24
Non-staff Adult-on-Minor	0	0	1	1	1	0	0	0	0	0	1	0	4

Table 2: Allegations of sexual abuse reported to DOJ, by type of incident, FY 2016

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total
Allegations Reported to ORR*	124	108	91	97	75	85	81	85	120	107	120	134	1226
Allegations Reported to DOJ**	46	39	29	37	22	26	27	28	22	26	27	19	348
Unknown Perpetrator	0	0	0	0	0	1	0	0	0	2	0	0	3
UAC-on-UAC	35	32	24	28	13	20	20	27	17	21	23	16	276
Non-UAC Minor-on-UAC†	3	0	1	2	0	0	0	0	0	1	0	0	7
Allegations with an Adult Reported to DOJ	8	7	4	7	9	5	7	1	5	2	4	3	62
Staff-on-Minor	8	7	3	6	8	5	7	1	4	2	3	2	56
Non-staff Adult-on-Minor	0	0	1	1	1	0	0	0	0	0	1	1	5

Table 2: Allegations of sexual abuse reported to DOJ, by type of incident, FY 2017

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total
Allegations Reported to ORR	135	140	142	172	106	76	41	36	45	40	58	69	1169
Allegations Reported to DOJ	40	39	55	45	18	21	13	6	11	11	10	15	264
Unknown Perpetrator	0	0	0	0	0	0	0	0	0	0	0	0	0
UAC-on-UAC	32	34	33	37	13	16	5	4	7	7	7	13	208
Non-UAC Minor-on-UAC†	2	0	0	0	0	0	0	0	1	0	0	0	3
Allegations with an Adult Reported to DOJ	6	5	2	8	5	5	8	2	3	4	3	2	53
Staff-on-Minor	6	5	2	7	5	5	8	2	1	4	2	2	49
Non-staff Adult-on-Minor	0	0	0	1	0	0	0	0	2	0	1	0	4

Table 2: Allegations of sexual abuse reported to DOJ, by type of incident, FY 2018

	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total
Allegations Reported to ORR	41	70	90	117	84	109	145	161	208	236	--	--	1261
Allegations Reported to DOJ	7	9	11	58	25	34	65	77	86	60	--	--	412
Unknown Perpetrator	0	0	0	0	0	0	0	0	0	0	--	--	0
UAC-on-UAC	6	5	9	34	20	29	59	63	76	48	--	--	349
Non-UAC Minor-on-UAC†	0	1	0	0	2	1	2	1	1	0	--	--	8
Allegations with an Adult Reported to DOJ	1	3	2	4	3	4	4	13	9	12	--	--	55
Staff-on-Minor	1	2	2	4	2	4	4	10	8	12	--	--	49
Non-staff Adult-on-Minor	0	1	0	0	1	0	0	3	1	0	--	--	6

Notes: ORR policy requires that care providers submit a "significant incident report" for each child involved in an allegation, including the perpetrator, victim, reporter, or witnesses. However, the number of reports does not represent the number of incidents. Therefore, ORR tracks sexual abuse, sexual harassment, and inappropriate sexual behavior by the number of allegations. All allegations referred to DOJ are also referred to HHS/OIG.

* This includes all allegations of sexual abuse, sexual harassment, and inappropriate sexual behavior that occurred in ORR custody and that were reported to ORR.

** This includes only incidents of sexual abuse, as defined at 34 U.S.C. § 20341 and in ORR regulations at 45 C.F.R. 411.6.

† A non-UAC minor can include another child or youth residing at the same care provider facility, a participant in the Unaccompanied Refugee Minors (URM) program, or a child or youth with whom a UAC may have contact (e.g., a classmate at school).

¹ Prior to April 8, 2017, allegations of sexual abuse were referred to DOJ/EQUISA. If the allegation involved an adult, the allegation was referred to DOJ/EQUISA and the DOJ/FBI. After April 8, 2017, care providers directly reported all allegations of sexual abuse to DOJ/FBI, including both minor and adult on minor incidents.

² This number is unavailable. ORR did not begin collecting the number of allegations until November 2014.

Mr. DEUTCH. Charts detailing incidents of sexual abuse reported to DOJ that occurred in ORR's Unaccompanied Alien Children Program.

Chairman NADLER. And without objection.

[The information follows:]

<https://docs.house.gov/meetings/JU/JU00/20190226/108872/HHRG-116-JU00-20190226-SD003.pdf>

Mr. DEUTCH. And, finally, Mr. Chairman, charts from FY 2017 and 2018 listing incidents of sexual abuse, dates when the incident was reported to ORR, the FBI, and the care provider.

Chairman NADLER. Without objection, the documents will be entered into the record.

[The information follows:]

REP. DEUTCH FOR THE RECORD

OFFICE OF REFUGEE RESETTLEMENT Unaccompanied Alien Children Program Sexual Abuse Allegations Reported to DOJ Fiscal Year 2017					
Incident No.	Date Reported to ORR	Reported to FBI?	Date Reported to FBI	Care Provider	Care Provider Where Incident Occurred (if Different)
1	10/1/2016	Yes	10/1/2016	IES Los Fresnos	N/A
2	10/4/2016	Yes	10/6/2016	CC Houston	N/A
3	10/11/2016	Yes	10/11/2016	Catholic Charities Boystown	Homestead
4	10/14/2016	Yes	12/6/2016	Southwest Key Casa Blanca	N/A
5	10/15/2016	Yes	12/6/2016	Southwest Key Casa Montezuma	N/A
6	10/27/2016	Yes	10/27/2016	BCFS Fairfield	N/A
7	11/2/2016	Yes	11/3/2016	Homestead	N/A
8	11/10/2016	Yes	11/10/2016	Cayuga Centers	N/A
9	11/14/2016	Yes	11/15/2016	IES Casa Norma Linda	N/A
10	11/14/2016	Yes	11/14/2016	Southwest Key Nueva Espera	N/A
11	11/18/2016	Yes	11/18/2016	Childrens Village Shelter	N/A
12	12/8/2016	Yes	12/8/2016	Bethany USCCB	N/A
13	12/22/2016	Yes	12/22/2016	Bethany Christian Services TFC	N/A
14	1/3/2017	Yes	1/9/2017	Fort Bliss- Dona Ana	N/A
15	1/8/2017	Yes	1/9/2017	Southwest Key Sol	N/A
16	1/13/2017	Yes	1/13/2017	Childrens Village Shelter	N/A
17	1/17/2017	Yes	1/18/2017	LSS of New York TFC	N/A
18	1/26/2017	Yes	1/28/2017	Southwest Key Antigua	N/A
19	1/28/2017	Yes	1/28/2017	Homestead	N/A
20	1/29/2017	Yes	1/29/2017	IES Los Fresnos	N/A
21	2/3/2017	Yes	2/3/2017	IES Los Fresnos	N/A
22	2/17/2017	Yes	2/22/2017	Southwest Key Campbell	N/A
23	2/18/2017	Yes	2/20/2017	Selma Carson Home	Yolo County Juvenile Detention
24	2/21/2017	Yes	2/21/2017	Southwest Key Casa Quetzal	N/A
25	2/22/2017	Yes	2/23/2017	BCFS San Antonio Staff Secure	N/A
26	3/5/2017	Yes	3/5/2017	BCFS Harlingen	N/A

27	3/4/2017	Yes	3/4/2017	SWK Nueva Esperanza Staff Secure	N/A
28	3/10/2017	Yes	3/11/2017	BCFS Baytown	N/A
29	3/12/2017	Yes	3/12/2017	Southwest Key Estrella	N/A
30	3/22/2017	Yes	3/22/2017	Southwest Key Combes	N/A
31	4/4/2017	Yes	4/12/2017	Shiloh Treatment Center	N/A
32	4/5/2017	Yes	4/4/2017	Youth for Tomorrow	Homestead
33	4/6/2017	Yes	4/16/2017	Southwest Key Casa Kokopelli	N/A
34	4/8/2017	Yes	4/8/2017	Southwest Key Combes	N/A
35	4/10/2017	Yes	4/11/2017	Southwest Key Estrella	N/A
36	4/24/2017	Yes	4/25/2017	Southwest Key Estrella	N/A
37	4/24/2017	Yes	4/25/2017	Southwest Key Estrella	N/A
38	4/24/2017	Yes	4/25/2017	Southwest Key Estrella	N/A
39	5/17/2017	Yes	5/17/2017	MercyFirst	N/A
40	5/25/2017	Yes	5/25/2017	IES Los Fresnos	N/A
41	6/23/2017	Yes	6/26/2017	Catholic Charities Boystown	N/A
42	7/3/2017	Yes	7/4/2017	MercyFirst	N/A
43	7/24/2017	Yes	7/24/2017	Southwest Key Casa Kokopelli	N/A
44	7/26/2017	Yes	7/25/2017	Southwest Key Casa Kokopelli	N/A
45	7/29/2017	Yes	8/14/2017	Southwest Key Casa Kokopelli	N/A
46	8/9/2017	Yes	8/11/2017	Southwest Key Casa Padre	N/A
47	8/22/2017	Yes	8/23/2017	Southwest Key Casa Lighthouse	N/A
48	9/19/2017	Yes	9/19/2017	Southwest Key Casa Blanca	N/A
49	9/22/2017	Yes	9/22/2017	IES Casa Norma Linda	N/A
Total Number of New Incidents Reported to DOI Involving Staff: 49					

NOTES:

1. This includes all allegations of sexual abuse, as defined at 34 U.S.C. § 20341, involving staff that occurred in ORR custody and that were reported to ORR.
2. All allegations referred to DOI are also referred to HHS/OIG.

OFFICE OF REFUGEE RESETTLEMENT Unaccompanied Alien Children Program Sexual Abuse Allegations Reported to DOJ Fiscal Year 2018: October - July					
Incident No.	Date Reported to ORR	Reported to FBI?	Date Reported to FBI	Care Provider	Care Provider Where Incident Occurred (if Different)
1	10/18/2017	Yes	11/21/2017	BCFS Fairfield	Southwest Key Casa Kokopelli
2	11/2/2017	Yes	12/8/2017	VisionQuest National	N/A
3	11/23/2017	Yes	11/23/2017	IES Casa Norma Linda	N/A
4	12/6/2017	Yes	12/7/2017	BCFS Harlingen	N/A
5	12/18/2017	Yes	12/18/2017	Southwest Key Estrella	N/A
6	1/1/2018	Yes	1/1/2018	Southwest Key Nueva Esperanza	N/A
7	1/15/2018	Yes	1/15/2018	IES Casa Norma Linda	N/A
8	1/25/2018	Yes	1/25/2018	Southwest Key Casa Padre	N/A
9	1/24/2018	Yes	1/24/2018	Southwest Key Estrella	N/A
10	2/8/2018	Yes	2/8/2018	KidsPeace	N/A
12	2/26/2018	Yes	3/15/2018	Southwest Key Mesa	N/A
13	3/15/2018	Yes	3/15/2018	Southwest Key Casa Padre	N/A
14	3/22/2018	Yes	3/23/2018	A New Leaf- Dorothy Mitchell	N/A
15	3/30/2018	Yes	4/2/2018	Cayuga Centers	N/A
16	3/31/2018	Yes	3/31/2018	Southwest Key Casa Padre	N/A
17	4/12/2018	Yes	5/2/2018	Yolo County Juvenile Detention	N/A
18	4/13/2018	Yes	4/13/2018	Southwest Key Casa Kokopelli	N/A
19	4/19/2018	Yes	7/12/2018	Southwest Key Antigua	N/A
20	4/27/2018	Yes	4/27/2018	Center for Family Services Shelter	N/A
21	5/3/2018	Yes	5/3/2018	BCFS San Antonio LTFC	N/A
22	5/4/2018	Yes	5/4/2018	Bokenkamp TFC	N/A
23	5/2/2018	Yes	4/6/2018	Southwest Key Campbell	N/A
24	5/8/2018	Yes	5/8/2018	Morrison Paso	N/A
25	5/10/2018	Yes	5/11/2018	Southwest Key Glendale	Southwest Key Kokopelli
26	5/11/2018	Yes	5/11/2018	Southwest Key Conroe	N/A
27	5/12/2018	Yes	5/13/2018	Southwest Key Casa Quetzal	N/A
28	5/18/2018	Yes	5/18/2018	Southwest Key Casa Blanca	N/A

29	5/18/2018	Yes	5/18/2018	Mercy First RTC	N/A
30	5/23/2018	Yes	5/23/2018	Catholic Guardian Services Crotona	N/A
31	6/1/2018	Yes	6/1/2018	LSS of New York	N/A
32	6/4/2018	Yes	6/4/2018	Heartland SCJY	N/A
33	6/15/2018	Yes	6/19/2018	BCFS San Antonio Staff Secure	N/A
34	6/12/2018	Yes	6/12/2018	Leake and Watts	N/A
35	6/14/2018	Yes	8/10/2018	Homestead	N/A
36	6/24/2018	Yes	6/24/2018	Morrisson Paso	Homestead
37	6/26/2018	Yes	8/6/2018	Bokenkamp	N/A
38	6/26/2018	Yes	6/26/2018	Cayuga Centers	N/A
39	7/2/2018	Yes	8/10/2018	SWK Processing Center	N/A
40	7/2/2018	Yes	7/3/2018	BCFS Tornillo	N/A
41	7/6/2018	Yes	8/14/2018	Southwest Key Antigua	N/A
42	7/3/2018	Yes	7/3/2018	The Villages	N/A
43	7/8/2018	Yes	7/9/2018	Southwest Key Casa Padre	N/A
44	7/9/2018	Yes	8/1/2018	Bokenkamp	N/A
45	7/12/2018	Yes	8/2/2018	Homestead	N/A
46	7/13/2018	Yes	7/13/2018	Southwest Key Estrella	N/A
47	7/19/2018	Yes	7/19/2018	Lincoln Hall Boys Haven	N/A
48	7/24/2018	Yes	7/24/2018	Yolo County Juvenile Detention	N/A
49	7/25/2018	Yes	7/25/2018	Southwest Key Campbell	N/A
50	7/31/2018	Yes	7/31/2018	BCFS Harlingen	N/A
Total Number of New Incidents Reported to DOJ Involving Staff: 49					

NOTES:

1. This includes all allegations of sexual abuse, as defined at 34 U.S.C. § 20341, involving staff that occurred in ORR custody and that were reported to ORR.

2. All allegations referred to DOJ are also referred to HHS/OIG.

Mr. DEUTCH. Thank you, Mr. Chairman.

Commander White, these documents demonstrate over the past three years there have been 154 staff-on-unaccompanied minor, let me repeat that, staff-on-unaccompanied minor allegations of sexual assault. This works out on average to one sexual assault by HHS staff on an unaccompanied minor per week. These documents tell us that there is a problem with adults, employees of HHS sexually abusing children.

When you carried out the zero-tolerance policy, for you, Mr. Lloyd, when you carried out the policy, you knew that putting thousands of kids, you knew that putting thousands of kids into a situation where they were at risk of sexual abuse was going to be the result.

Did you discuss this issue before going forward? Did you discuss the threat of sexual abuse to these kids among each other? Were there discussions with staff?

Mr. WHITE. Representative, let me first correct an error. Those are not HHS staff in any of those allegations. That statement is false. Those are—no, no.

Mr. DEUTCH. Let me—

Mr. WHITE. Those are not HHS—

Mr. DEUTCH. Commander White,—

Mr. WHITE. We're speaking of allegations—

Mr. DEUTCH. Commander White, I'm going to reclaim my time, Commander White. I don't have a lot of time and you know what I've seen in these reports that were delivered to us buried in stacks of documents this thick without any notation? I saw thousands of cases of sexual abuse, if not by HHS staff, then by the people that HHS staff oversees. I will make that clarification. It doesn't make what happened anything less horrific, any less horrific.

Let me just continue. Hold on one second, Mr. White, please, Commander White.

The question is when you went forward with this policy, did anyone discuss this? Was this a hesitation, given that you had this history, did anyone worry about what was going to happen to these kids? Was the Secretary aware of the numbers in these charts?

Mr. WHITE. You're speaking of the numbers of our PREA reports and those 154 are allegations and this is a longer conversation.

Mr. DEUTCH. Well, it is a longer conversation, Commander White.

Mr. WHITE. Every conversation that we had about separation, we opposed separation.

Mr. DEUTCH. I appreciate that.

Mr. WHITE. That was based on actual—

Mr. DEUTCH. And was the Secretary aware of these numbers? Was the Secretary aware that in moving forward and doing the work that you do—and for everyone on the panel, did people consider that when you went forward on the zero-tolerance policy, that we're moving forward on a policy that would put these kids at risk of sexual assaults? That's the question. And if the answer is you don't know, I would ask staff to deliver to you these two charts, in particular the one that, you're right, does contain the allegations.

It also contains the results of investigations, those employees who were reassigned, those who were terminated, those who con-

tinued to be employed. There are a thousand questions that we have, but I would ask that you deliver these to the Secretary so that we can have a full exploration of them.

The details of these sexual abuse allegations are shocking.

Mr. Chairman and Chairperson Lofgren I know will join me in continuing to press the Administration on these issues. It was our obligation, the Administration's obligation to help keep these kids safe, the child's best interests, safety, and well-being of alien children. That's what we heard this morning.

Mr. Chairman, we failed and this is just the start of what I believe to be a very important series of questions that this Administration must answer, and I yield back.

Chairman NADLER. The gentleman yields back.

Mr. Gaetz.

Mr. GAETZ. Thank you, Mr. Chairman.

Commander White, are people more likely to be sexually abused on their way into our country through the cartel and human trafficking routes or are they more likely to be sexually abused—if every allegation made against every U.S. Government official were true, which would be the greater propensity of sexual violence?

Mr. WHITE. Obviously in transit but that's not the point. We are committed to keep an environment safe for children. We don't set ourselves the standard of just doing better than smugglers and traffickers.

Mr. GAETZ. No, I understand and I hear that, but what's troubling to me is that we all on this committee, all human beings, want to decrease the frequency of family separation and decrease the frequency of anyone being the victim of sexual violence.

The question we have to answer is whether or not the policies of open borders or the policies of a secure border would greater facilitate those policy objectives.

I wanted to ask Ms. Asher. Ms. Asher, what impact does it have on your colleagues when members of Congress talk about abolishing ICE? Does it impact morale, recruitment, or operational capability?

Ms. ASHER. Thank you for the question, sir. There's no doubt that in the last year-year and a half, even up to two years, my 6,500 or so officers in the field who do interior enforcement, which we don't talk about that too much these days, are facing much scrutiny, unfair allegations made by media and various organizations. Assaults on my officers while conducting interior enforcement has gone up well over a 160 percent.

There's no question that it is a very chilling environment for my officers as they conduct their mission and promoting public safety and, quite frankly, upholding the laws that Congress has passed.

Mr. GAETZ. And have any of the people you've worked with shared their views with you regarding the impact on their job performance when members of Congress demonize the work done by ICE?

Ms. ASHER. We have on a regular basis—my field office directors, our leaders in the field do regular town halls with our officers. Our first- and second-line supervisors take very seriously the repercussions of these allegations, etcetera, on our officers and so morale, yes, has gone down.

Mr. GAETZ. Thank you for that. I have limited time.

I wanted to recount the story of Guillermo Motee. This is the only way we know him. He's a 57-year-old construction worker and he would have come to the United States without a child but because we treat people differently if they bring kids, he brought his 16-year-old daughter to the country and he said this. I'm quoting. "This is the reason I brought a minor child with me. She was my passport."

Chief Provost, is it becoming more and more typical that people who want to come to our country illegally are viewing children as their passport or their mechanism of entry?

Chief PROVOST. As I stated before, our numbers of family units are increasing dramatically. Also, the increase that we are seeing is—just a couple of years ago, the ratio of male parent with child was a 1:5 ratio. It's now almost 50/50 with female parents that are coming here. This is a tactic that we have through interviews. It is something that is being utilized.

Mr. GAETZ. And so it's not—as I hear your testimony, correct me if I'm wrong, it's not a function of a greater desire to have the children in the country for the sake of having the children in the country. At least with some of these individuals, the child is viewed as a mechanism of transit. Is that consistent with your understanding?

Chief PROVOST. As I stated in my opening statement, that is a trend that we are seeing and as social media and other news spreads that that will impact your ability to be released into the country, I believe that it is part of the pull factor.

Mr. GAETZ. And I appreciate and I take with all sincerity the concern my colleagues have about children being separated from their families once they reach the United States, but it's deeply troubling to me that I don't seem to be hearing any Democrats referencing the challenge that occurs when a family is separated south of our border to facilitate smuggling or transit or a child literally functioning as a passport.

The Mayor of Chiquimula, Guatemala, Mayor Juan Jose Rivera, chronicled what he called illegitimate adoptions for cash where in his town, people would go and buy and sell kids like they would buy and sell passports, so that the kids could get people better treatment when they came to our country illegally. He said, and I quote, "This is the most serious problem we have."

And so I'm wondering if you could share with us the feedback you've received from people in other countries about the impact of the United States' policies on family separation that occurs south of our border.

Chief PROVOST. Well, what I can easily speak to is the fact that those numbers are increasing, the fraudulent cases. We've identified at least 1,700 cases so far since April of this past year, definite fraud cases. Those are the ones we've been able to identify of individuals that are coming with a child that they are not a parent or guardian to.

Mr. GAETZ. Mr. Chairman, may I be recognized for unanimous consent, please?

Chairman NADLER. The gentleman is recognized.

Mr. GAETZ. Thank you, Mr. Chairman.

I see my time has expired, but I seek unanimous consent to enter into the record a June 22nd, 2018, New York Times article entitled Why Are Parents Bringing Their Children on Treacherous Treks to the U.S. Border?

Chairman NADLER. Without objection, the article from the New York Times, sometimes referred to as the “fake news,” is entered into the record.

[The information follows:]

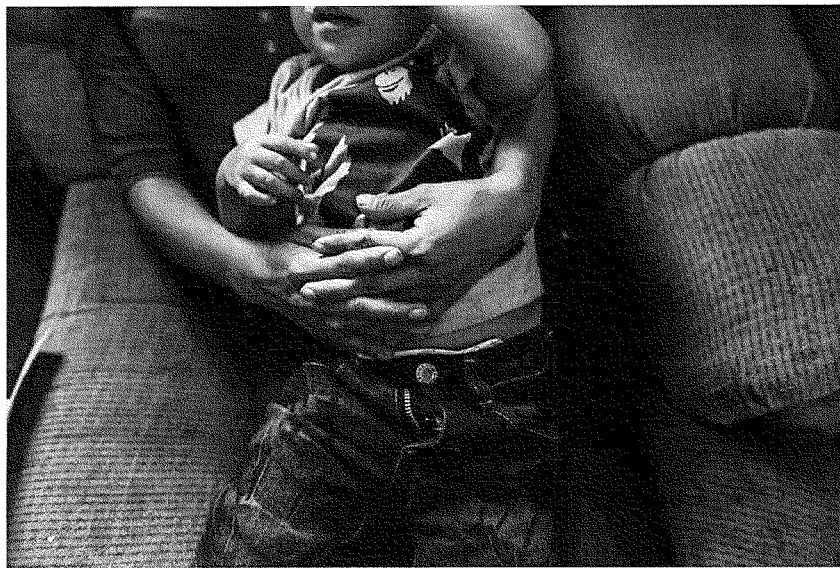
REP. GAETZ FOR THE RECORD

Why Are Parents Bringing Their Children on Treacherous Treks to the U.S. Border?

President Trump hopes to deter the flow of migrants into the United States, but near the busy border crossing in Arizona, some said that the threat of separation from their children would not deter them.

By Julie Turkewitz and Jose A. Del Real Photographs by Ryan Christopher Jones

June 22, 2018



Miriam, a Guatemalan asylum seeker with her son Franco at Casa Alitas, a private shelter that provides temporary housing in Tucson, Ariz.

TUCSON, Ariz. — When Luis Cruz left behind his wife, four of their children and the house he'd built himself, he'd heard that American officials might split him from his son, the one child he took with him. But earlier this month, the two of them set out from Guatemala anyway.

The truth, he said this week, moments after they arrived at a cream-colored migrant shelter in Tucson, was that he would rather be apart from his child than face what they had left behind. "If they separate us, they separate us," said Mr. Cruz, 41. "But return to Guatemala? This is something my son cannot do."

For years, children and parents caught crossing the nation's southern border have been released into the United States while their immigration cases were processed, the result of a hard-fought legal settlement designed to keep children from spending long months in federal detention. In the eyes of the Trump administration, this practice has served as an open invitation for people like Luis Cruz, and

has played a major role in driving thousands of families across the border with Mexico.

Mr. Trump's newest immigration policies — first an effort to separate families crossing the border, and now an effort to change the legal settlement on migrant family detention — represent an aggressive effort to rescind that invitation, one that has plunged the nation into a debate about the limits of its generosity.

But interviews at shelters and passage points along both sides of the border this week, as well as an examination of recent immigration numbers, suggest that even with tightened restrictions on families, it's going to be difficult for the president to stanch the flow.



An asylum seeker laced his shoes after immigration agents removed them as a security measure.



Ankle bracelets allow immigration agents to monitor asylum seekers' whereabouts.



A child from Guatemala at Casa Alitas in Tucson.

Though it's impossible to know yet whether the Trump administration's "zero tolerance" crackdown on illegal border crossers will have a significant deterrent effect, one thing was clear this week at the Arizona-Mexico border: Many families — especially those from countries in Central America plagued by gang violence and ruined economies — are making the calculation that even separation or detention in the United States is better than the situation at home.

"Why would you undertake such a dangerous journey?" said Magdalena Escobedo, 32, who works at the migrant shelter here in Tucson, called Casa Alitas. "When you've got a gun to your head, people threatening to rape your daughter, extort your business, force your son to work for the cartels. What would you do?"

Attorney General Jeff Sessions in April announced a policy of prosecuting all illegal border crossers, yet federal agents caught nearly 52,000 people at the border in May, marking a steady rise in illegal entries after a sharp decline during the first year of Mr. Trump's administration. More than 250,000 migrants had been arrested this year as of late May, according to data by United States Customs and Border Protection; that number is close to the total number arrested in all of 2017, about 311,000.

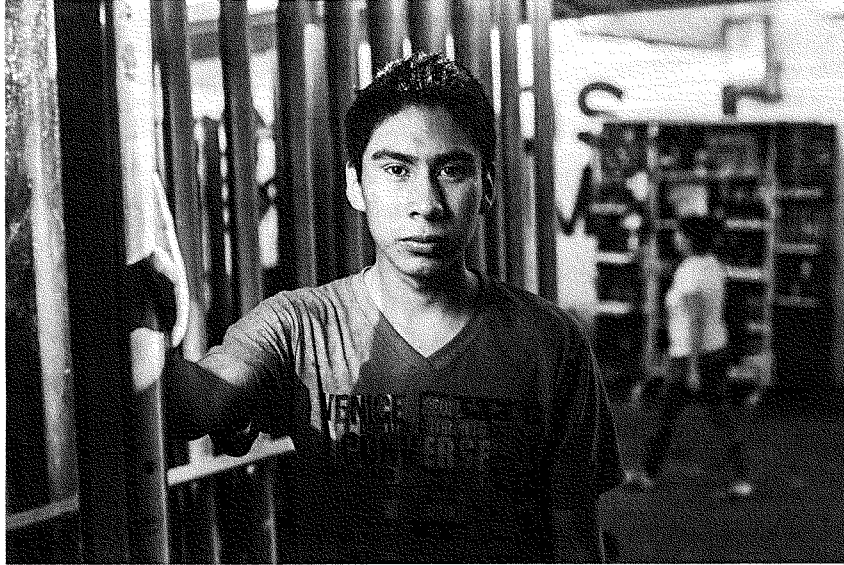
Casa Alitas, a low-slung building down a dusty street in Tucson, takes in families who've presented themselves to border officials to ask for asylum. Once they're processed at immigration facilities, authorities drop them off here for a meal and a shower before they head off to stay with friends or relatives and wait for their day in court.

On Thursday, men like René Pérez, 40, who made it into the United States with his son this week, said he was well aware that they might have been separated or placed in custody. "If it happens, it happens," said Mr. Pérez.

Across the border in the Mexican town of Nogales, many parents preparing to cross the border said temporary separation from their children in the United States would be better than facing the violence back home.



A group of Central American asylum seekers were taken to a shelter in Nogales, Mexico.



Brayan Vicente, 16, felt he had little choice but to leave his home country of Guatemala because of the gang violence there.



Pancho Olachea Martin, a medic, took a group of Central American asylum seekers to a shelter in Nogales.

"I'd rather accept that, to know that my son is safe," said Lisbeth de la Rosa, 24, who was waiting in line to enter the United States with her 4-year-old son.

"It's worth it," said Lidia Rodriguez-Barrientos, 36, standing with her 9-year-old daughter. "Why? Because we're afraid to go back."

What has guided much of border detention policy in recent years is a 1997 agreement in the case *Flores v. Reno*, in which the federal government was barred from detaining migrant children, save for a short period and under certain conditions. The agreement was interpreted later to include children traveling with their families.

Unwilling to separate young migrants from the parents traveling with them, both the George W. Bush and Obama administrations arrived at the policy of releasing families while they awaited immigration proceedings—though Obama administration officials did so only after having been successfully sued over their policy of holding families together in detention.

Critics, including Mr. Trump, have long said that allowing migrants to go free while their immigration cases are pending encourages parents to enter the United States with children, and some conversations bear that out.

"This is the reason I brought a minor with me," said Guillermo T., 57, a construction worker who recently arrived in Arizona. Facing unemployment at home in Guatemala, he decided to head north; he had been told that bringing his 16-year-old daughter would assure passage. He asked that only his first name be used to avoid consequences with his immigration case.

"She was my passport," he said of his daughter.

The Trump administration is asking for changes to the Flores settlement that would allow officials to detain children with their families for longer than the short period allowed under the agreement. Lawyers for the Obama administration already asked for changes to that settlement and were denied. In any case, it's unclear if that will stop people from coming.

Guadalupe Correa-Cabrera, a global fellow at the Wilson Center who has interviewed hundreds of Central American migrants in the field, said that they are primarily motivated to leave their countries by violence and lack of economic opportunities, phenomena which she described as closely connected.



Miriam and her son Franco at Casa Alitas.

She said these migrant families choose the United States because they often have networks in the country already and know that there are many job opportunities. “There are push and pull factors. The push factors are the lack of economic opportunities and the security problems in their countries. It’s a mix of these conditions. The pull factors are of course the jobs and the families.”

Even with steep drops in the number of recorded murders in the past year, El Salvador and Honduras, the home countries of many migrants, are still among the most dangerous countries in the world. Poverty is hammering away at livelihoods in much of Central America, and for some, the decision to leave is a gamble on a better life.

For others, it’s a matter of saving the one they have.

On Thursday, federal officials dropped Mr. Cruz and his 16-year-old son, also named Luis, at Casa Alitas. Both wore black, despite the southwestern heat, and inside, they sat at a table covered with a cloth of bright sunflowers.

They eagerly consumed big bowls of soup before explaining why they had come.

The elder Mr. Cruz, a lemon and orange grove worker, had hoped to live his life in his home state of Suchitepéquez. Then in late May, his son was approached twice by a gang who demanded he join them, flashing a gun and urging him to commit his first extortion. “They kill you if you don’t obey,” said Mr. Cruz.

On June 3, the pair left for the United States, and then presented themselves at the border to ask for asylum. After lunch at the shelter, the younger Mr. Cruz pulled a piece of paper from his pocket, unfolding it to reveal a letter his school director had written before he left — a note they hoped would be the evidence they needed to win asylum in the United States.

“The student had to withdraw himself from school due to violence and gang persecution,” she wrote. “He decided to move to save his life.”

Julie Turkewitz reported from Tucson and Jose A. Del Real reported from Nogales, Mexico. Miriam Jordan contributed reporting from Los Angeles and Frances Robles from Miami.


Mr. GAETZ. Yes, or the “failing New York Times.”

Mr. Chairman, for further unanimous consent request, from the Washington Post, for Central Americans, Children Open a Path to the U.S. and Bring a Discount, November 23rd, 2018, seek unanimous consent to enter into the record.

Chairman NADLER. Washington Post, too, without objection.

[The information follows:]

REP. GAETZ FOR THE RECORD

 The Washington Post

National Security

For Central Americans, children open a path to the U.S. — and bring a discount

By Joshua Partlow and
Nick Miroff
November 23, 2018

CHANMAGUA, Guatemala — To mark attendance in Diana Melisa Contreras's kindergarten classroom, students place tongue depressors into little white cups painted with their names.

There were 29 cups at the start of the school year. Then Contreras's students and their parents began leaving their small village in the coffee-growing hills of southern Guatemala, joining the torrent of migration to the United States. With more families preparing to depart in the coming weeks, Contreras has been told her class will only have five students next term, and she will be transferred to teach at a different school.

"They're all going to the United States," she said. "I'm being left without kids."

More than ever before, if you look at the current surge of Central American migrants to the United States, you will see the face of a child. The past five years have rewritten the story of who crosses America's southern border: It is no longer just the young man traveling alone looking for work. Now that man, or woman, will often be holding the hand of a young boy or girl.

Last month, 23,121 members of "family units" were arrested along the U.S. southern border, the highest number on record and a 150 percent increase since July. With the number of single adults attempting to sneak into the United States declining, families and underage minors now account for more than half of those taken into custody by U.S. border agents.

Thousands more children are coming in the migrant caravans President Trump has likened to "an invasion," carrying toys and stuffed animals and collapsing, at times, from exhaustion.

This is happening because Central Americans know they will have a better chance of avoiding deportation, at least temporarily, if they are processed along with children.

The economics of the journey reinforces the decision to bring a child: Smugglers in Central America charge less than half the price if a minor is part of the cargo because less work is required of them.

Unlike single adult migrants, who would need to be guided on a dangerous march through the deserts of Texas or Arizona, smugglers deliver families only to the U.S. border crossing and the waiting arms of U.S. immigration authorities. The smuggler does not have to enter the United States and risk arrest.

The Trump administration tried to deter parents this spring when it imposed a “zero tolerance” family-separation policy at the border. But the controversy it generated and the president’s decision to halt the practice six weeks later cemented the widely held impression that parents who bring children can avoid deportation.

In villages such as Chanmagua, where years of depressed coffee prices have pushed families to the breaking point, young children and teenagers are seen as boarding passes to the flight for economic survival. Their absence is evident on soccer teams with too few players and coffee farms with thinner staffs at harvest time. Just this year, 100 adults and children have left, including 17 from the town’s only kindergarten class, local officials said.

Within this exodus, a small number of cases have particularly troubled the town. Some parents have given up their children to other adults — sometimes for cash — to help the adult enter the United States, according to town officials, charity workers and residents. These transactions sometimes involve a minor traveling with a relative or godparent; in other cases, they say, the adult has no relation to the child.

Such arrangements are referred to, euphemistically, as “adoptions.”

“This is the most serious problem that we have,” said Juan Jose Arita Rivera, the town’s mayor.

U.S. border security officials say they, too, are concerned by the growing number of adults showing up with children who are not their own, a symptom of what they call a worsening humanitarian crisis that puts families and children in the hands of predatory smuggling networks.

Between April 19, when U.S. Customs and Border Protection began tracking the increase in suspected cases of fraudulent parentage, and Sept. 30, the end of the 2018 fiscal year, CBP agents had separated 170 families after determining the child and the adult traveling together were unrelated.

In Guatemalan villages, community leaders fear more children will be exploited. “This is a crime. This is human trafficking,” said Marleni Villeda, 46, who helps run a school for at-risk children, one of whom, she contends, recently left for the United States with a man who may not be a relative. “What is happening here is a tragedy.”

Often, these cases can be more complicated than they first appear. The families involved face hunger and threats of violence. There are disagreements about paternity and allegations of abuse. Far from a common practice, illicit “adoptions” seem to brand the participants with a scarlet letter in their own community.

‘I don’t have any support here’

For three months, Denys Adelmo Mejia lived like a fugitive. Gang members wanted to recruit the 23-year-old auto mechanic. He hardly ventured outside.

“One night, he told me, ‘Mom, I can’t take it anymore. I’m going to talk to the girl’s mother, and if she wants to give her to me, then I’m going to go,’” said his mother, Teresa de Jesus Luna.

The girl’s mother was Gilda López, a 33-year-old maid who lived a few doors down, in a dirt-floor shack, the walls a patchwork of burlap bags and boards with exposed nails. Her five children, including the eldest, Elizabeth Dayana, 9, slept alongside her on a ratty slab of foam.

López, a single mother, left each morning at dawn to clean houses and came home 12 hours later. A month of this would bring in \$60. In her home, there was rarely enough food.

When Mejia came asking for a child, López was willing to let her daughter go.

“I don’t have any support here,” she said, tears in her eyes. “And so I made the decision that my girl should leave.”

That decision has shaken this village of some 3,000 people, where gossip travels quickly. Town leaders, such as the mayor, and the head of the Catholic charity foundation, say Mejia, who left earlier this year, has no relation to Elizabeth Dayana, and they are concerned for her welfare.

“As an organization, what worries us most is: What’s going to happen to those kids over there?” said Josue Villeda, who runs the foundation in honor of Sister Maria Caridad, an American nun who spent much of her life in Chantagua. “If someone isn’t a relative or anything, who is going to watch over the child’s education in the United States? Their health? Their basic needs?”

López, the mother, and Mejia both say Mejia is the girl’s father. López said Mejia, who would have been about 14 years old when Elizabeth Dayana was born, for years denied he was the father but now says that he is.

Reached by phone in Kansas City, Mejia said he saved thousands of dollars by traveling with a child. His smuggler would have charged \$10,000 if he had been traveling alone, he said; with Elizabeth Dayana, it cost \$4,500 for both of them. He has three years to pay this off — in monthly installments — or his mother could lose her house.

“When you come with a child, [the smuggler] only delivers you to the Border Patrol,” said Mejia. “When you’re coming alone, they have to take you all the way across the desert.”

He and the girl now share a duplex with Mejia’s brother and his brother’s wife. Mejia wears an ankle bracelet as he waits for his asylum case to move through immigration courts. Because he cannot work legally or get a driver’s license, he said he cannot enroll Elizabeth Dayana in school.

“Since she had never lived with me, at first she was rebellious,” he said. “But I told her that I’m the father — and it wasn’t that her mom had just given her to me — I was her real father. And now she has been behaving well.”

'A humanitarian crisis'

A federal judge in California this week blocked the Trump administration's attempt to deny asylum to migrants who enter the United States illegally, including those traveling with children, saying the measures were a violation of U.S. immigration laws allowing anyone who reaches U.S. soil to seek humanitarian protection.

Infuriated by that ruling and other legal setbacks to his immigration crackdown, Trump threatened Thursday to close the entire Mexico border. U.S. immigration authorities are instead moving forward with a plan to require asylum seekers to remain in Mexico while their claims are processed, a move that could leave families waiting in dangerous border cities for months or longer.

Over the past year, U.S. agents arrested more than 107,000 members of migrant "family units" along the Mexico border, up from 15,000 in 2013, according to Homeland Security data.

The Trump administration blames "loopholes" that incentivize parents to bring children north, referring to laws and court rulings intended to protect underage migrants.

The 2008 Trafficking Victims Protection Reauthorization Act shields minors who are not from Mexico or Canada from rapid deportation and orders the government to transfer them to shelters run by Health and Human Services as quickly as possible to reunite them with relatives.

Then there is the Flores Settlement Agreement, part of a 1980s class-action suit over the treatment of minors in immigration custody. A 2016 federal appeals court ruling in the case upheld a 20-day limit on their detention by Immigration and Customs and Enforcement.

"Our nation's legal framework for immigration has created a border security and humanitarian crisis," said CBP Commissioner Kevin McAleenan, the country's top border security official. "One tragic consequence is the tens of thousands of families that put their lives in the hands of smugglers and make the dangerous journey from Central America to the United States."

Since the surge began this spring, U.S. border agents have been scrutinizing purported family relationships through "enhanced interviewing" to detect potential fraud, according to two senior CBP officials. Agents look for warning signs such as birth certificates or other notarized documents that appear to be brand new.

When agents suspect potential fraud, CBP refers the case to specialized investigative units, and if it is determined an adult and a child traveling together are not related, the child is transferred to Health and Human Services.

In 90 of the 170 suspected fraud cases, CBP referred the adult for criminal prosecution. But officials also acknowledge they are unable to detect every instance of deception. Agents may only have a few minutes to

assess whether a purported family may be fake, they say. CBP does not use DNA testing at the border, citing the lack of an established system for conducting tests expeditiously.

Under the Flores settlement, CBP holds children in Border Patrol stations for no longer than 72 hours.

“Seventy-two hours is such a short amount of time to interview, and in places such as the [Rio Grande Valley of South Texas], you interview people as quickly as you can,” said one senior CBP official who works on fraud detection.

In recent weeks, the agency has processed nearly 2,000 people a day along the border with Mexico, more than half of whom are women and children. After turning themselves in to U.S. agents, most families can expect to be assigned a court date months or years away and released from custody after a few days. With existing detention facilities near capacity, the government has virtually nowhere to put them. In recent weeks, U.S. immigration authorities have been dropping off hundreds of newly arrived parents and children at church shelters and charities in Texas, Arizona and California.

Instances of adults traveling with minors who are not their biological children are not necessarily human-trafficking cases or fake “adoptions,” said Alejandra Colom, an anthropologist at the Universidad del Valle de Guatemala who works with adolescent girls in rural mountain areas facing high levels of emigration.

“In these small communities, a lot of people are related, and traveling with someone who is your cousin or distant family member is not the same as going with a total stranger,” Colom said. At the same time, she said, there is a “now or never” view that has taken hold in some rural areas where it is well-known that the way to gain entry to the United States and avoid immediate deportation is to bring a child. “They think they won’t ever have another opportunity again like this.”

In some rural areas of Guatemala, “adoptions” are viewed as both an economic necessity as well as a source of shame. The country was once a major source for foreign adoptions, which were sharply curtailed a decade ago amid widespread allegations of forged birth certificates, payoffs to lawyers and judges and cash payments to desperate mothers.

For a fee, dubious documents

Dina Casanga is 19 and has four children. The eldest, Benjamin, is either 5 or 6 years old, depending on which of his birth documents is to be believed.

Such documents, issued by the Guatemala’s National Registry of Persons (RENAP), are at the center of the controversy over true parentage in the disputed cases in Chanmagua. The town’s mayor, and other officials, allege the RENAP office in nearby Esquipulas will issue, for a fee, documents establishing a parent-child relationship, particularly for single mothers who did not have a father initially registered.

RENAP did not respond to multiple requests for comment.

Elmer Oseas Moran, 20, left Chanmagua with the young boy, Benjamin, in October, headed for the United States. In an interview with The Washington Post, the mother, Dina Casanga, first described Elmer as “the father” and later as “an acquaintance,” and said she did not know his last name.

Casanga’s father, Héctor Casanga, 50, disputes Moran is the boy’s father and is pressing a legal complaint against his daughter. He said he raised the boy for several years and that his daughter had no right to give his grandson to someone else.

In his cramped home, he showed copies of two RENAP documents. The most recent one, dated Oct 12, listed the boy’s last name as Moran Casanga, taking the last name of the man who left with him. But the earlier document shows his name as Casanga Vasquez, the same as the mother, and it had no information identifying a father.


“She named him as her husband, so he could take the boy with him,” said Héctor Casanga, the boy’s grandfather. “She invented that to take him away from me, and RENAP gave her a paper.”

Dina Casanga, who is unemployed and illiterate, said her father was an alcoholic and abusive and that her son would be better off in the United States. The man with her son will provide for him, she said.


“He is going to pay for someone else to take care of him because he has to work,” she said.

Miroff reported from Washington.

Joshua Partlow

Joshua Partlow is The Washington Post’s bureau chief in Mexico. He has served previously as the bureau chief in Kabul and as a correspondent in Brazil and Iraq. [Follow](#) 

Nick Miroff

Nick Miroff covers immigration enforcement, drug trafficking and the Department of Homeland Security on The Washington Post’s National Security desk. He was a Post foreign correspondent in Latin America from 2010 to 2017, and has been a staff writer since 2006. [Follow](#) 

The Washington Post

Reporting the facts for over 140 years.

Try 1 month for \$49 \$1

Mr. GAETZ. And one final one, Mr. Chairman. From the Washington Times, from Tuesday, May 22nd, 2018, Eye-Popping Surge of Illegal Immigrants Abducting Children.

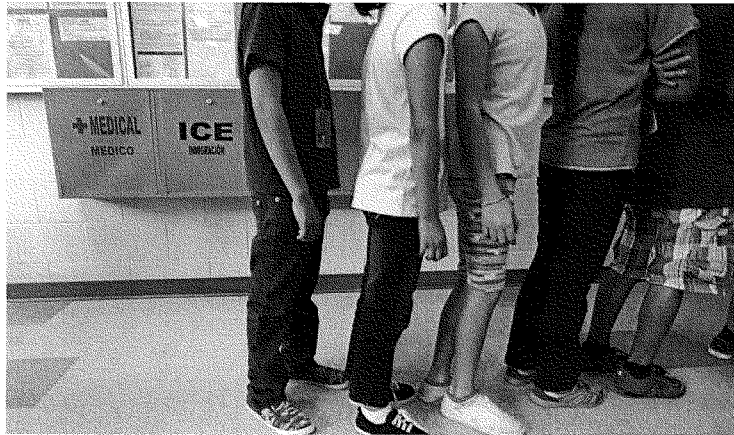
Chairman NADLER. The document will be admitted to the record without objection.

[The information follows:]

REP. GAETZ FOR THE RECORD

Eye-popping surge of illegal immigrants abducting children

Children 'abducted' by illegals hoping to pose as families at U.S. border



"The eye-popping increase in fraud and abuse shows that these smugglers know it's easier to get released into America if they are part of a family and if they bring unaccompanied alien children," said Katie Waldman, a Homeland Security spokeswoman. ... more >

By Stephen Dinan - *The Washington Times* - Tuesday, May 22, 2018

The government warned federal judges in 2016 that their attempts to create a catch-and-release policy for illegal immigrant families would lead to children being "abducted" by migrants hoping to pose as families to take advantage.

The court brushed aside those worries and imposed catch-and-release anyway.

Two years later, children are indeed being kidnapped or borrowed by illegal immigrants trying to pose as families, according to Homeland Security numbers, which show the U.S. is on pace for more than 400 such attempts this year. That would be a staggering 900 percent increase over 2017's total.

"The eye-popping increase in fraud and abuse shows that these smugglers know it's easier to get released into America if they are part of a family and if they bring unaccompanied alien children," said Katie Waldman, a Homeland Security spokeswoman. "These loopholes make a mockery of our nation's laws, and Congress

must act to close these legal loopholes and secure our borders.”

Abductions are one of the more startling aspects of the surge in border crossings, which is testing the Trump administration just as a surge tested President Obama in 2014.



While the previous administration struggled to settle on a policy, President Trump and his team have shown little hesitation in pushing for strict enforcement, announcing a zero-tolerance approach that includes prosecuting adults who attempt to jump the border without going through an official border crossing.

The administration says it's the best way to encourage people not to make the dangerous journey north — particularly if they were going to bring children.

Most of those cases are indeed legitimate families, and the parents may end up facing criminal charges, leading to separation, under the Trump administration's zero-tolerance policy.

But in a growing number of cases, illegal immigrants who aren't even related to the children are showing up and fraudulently claiming to be families.

Homeland Security recorded 191 cases of children having to be separated because of fraudulent family claims during the first five months of fiscal year 2018. That already eclipses the 46 cases reported for all of 2017.

The practice seems particularly popular among Hondurans, based on a sampling of cases that The Washington Times has learned of in recent months. Honduran men on multiple occasions have attempted to cross into Texas with unrelated children in tow — and with bogus birth certificates claiming to show parentage.

While some of the cases involve abductions, other cases involve children whose parents knowingly lend them to friends looking to pose as a family.

Homeland Security is tight-lipped about individual cases but has publicly acknowledged the problem.

“We’ve had many cases where children have been trafficked by people who weren’t their parents,” Thomas D. Homan, the acting chief at U.S. Immigration and Customs Enforcement, told Congress on Tuesday.

Attempts to smuggle children are by no means new, but there does seem to be a shift.

Cases reviewed by The Times from earlier this decade usually involved a U.S. citizen or legal permanent resident smuggling for pay or as a favor to a particular child or family.

In one case that came before U.S. District Judge Andrew S. Hanen, the judge who is hearing Texas’ challenge to the Obama-era DACA program, a woman was convicted in 2013 of trying to smuggle an unrelated 10-year-old girl from El Salvador into the U.S. using one of her own daughters’ birth certificates. The 10-year-old girl’s mother, an illegal immigrant living in Virginia, paid \$6,000 for the attempt.

In the latest rash of cases, however, it is illegal immigrants who are doing the smuggling and using the children for their own benefit, hoping to appear more sympathetic to American law enforcement to try to earn easier treatment.

Border Patrol agents are also seeing instances of parents with multiple children splitting up to enter the U.S., said Brandon Judd, president of the National Border Patrol Council.

He said the parents know that if they came as a couple along with their children, one parent might be separated, leaving just the other parent with the children. But if they cross individually, each with a child, agents won’t separate the child from someone who appears to be a single parent.

Authorities attribute the surge to an overall increase in attempts to jump the border and to a series of court rulings at the end of the Obama administration that created the family catch-and-release policy.

In those rulings, U.S. District Judge Dolly M. Gee decided that a Clinton-era court agreement known as the Flores Settlement, which previously applied only to unaccompanied alien children, should also apply to juveniles who arrive at the border with their parents.

She ruled that the children should generally be released from Homeland Security custody within 20 days. But she also ruled that the children are best-served when they are placed with their parents, so it made sense for the entire family to be released from custody.

The Obama Justice Department warned the courts that created a perverse incentive for people to bring children on the dangerous journey — and in some cases to kidnap children to pose as families.

"When people now know that when I come as a family unit, I won't be apprehended and detained — we now have people being abducted so that they can be deemed as family units, so that they can avoid detention," Leon Fresco, deputy assistant attorney general for the Justice Department's office of immigration litigation, told the 9th U.S. Circuit Court of Appeals at the time.

Judge Gee's office declined to comment Tuesday on the surge in kidnappings other than "to advise you to read the Flores settlement agreement."

But Peter Schey, the lawyer who won the case before Judge Gee, said kidnappings aren't as much of a problem as the Trump administration's zero-tolerance prosecution policy.

"The number of children separated from their parents by human smugglers is a tiny fraction of the number of children being forcibly separated from their parents by the Trump administration," Mr. Schey told The Times.

When families are caught under the new policy, he said, agents will isolate and interrogate the children, looking for evidence to use against their parents in court.

The parents often end up serving brief jail time, but the children by then have by then been shipped into the foster care system, leaving the parents with "no idea how to track down their children who DHS yanked from the parents' custody."

"The policy is irrational and inhumane," Mr. Schey said.

Democrats on Capitol Hill also questioned how Homeland Security was deciding which family claims were deemed fraudulent.

Rep. Nanette Diaz Barragan, a California Democrat who as a lawyer handled some asylum cases, said some people who show up on the border are fleeing horrific circumstances back home.

"It is hard for some of these families, when they're fleeing violence and they're leaving their country. They're not exactly saying, 'Oh, let me get the documents to prove this is my child,'" she said Tuesday at a House Homeland Security Committee hearing.

"I'll tell you right now if I had to go find something to prove my relationship with my child it would probably take me a little bit," she said.

SIGN UP FOR DAILY NEWSLETTERS

Email Address [Manage Newsletters](#)

Mr. GAETZ. Thank you, Mr. Chairman. I yield back.

Chairman NADLER. The gentle lady from California, Ms. Bass, is recognized.

Ms. BASS. Thank you, Mr. Chair.

In the DOJ's filing last week of a joint status report to Judge Sabraw, 11 children were identified as having parents that were determined to be excluded from reunification under the Judge's Order due to criminality. A total of 18 children, as I understand, separated from their families could not be reunified because the parent was determined to be unfit or present a danger to the child.

Mr. McHenry, is that accurate, to your knowledge?

Mr. MCHENRY. Yes, ma'am. The filing represents our position.

Ms. BASS. Thank you. So removing the child from their family in our domestic child welfare system requires trained child welfare agency staff and a determination by a judge that removal is in a child's best interest.

It is a system that is designed to protect parents' rights and to protect the best interest of children.

At the border, the decision to remove a child from their parent is made solely by U.S. Customs and Border Protection agents in the field.

Ms. Asher, is that correct? Who makes the determination?

Ms. ASHER. No, ma'am. I am with ICE, so I will have to—

Ms. BASS. Oh, I am sorry.

Chief PROVOST. So, we make that determination. Of course, we do utilize our Office of Chief Counsel. We work with the consulates of the countries.

Ms. BASS. So in medical or domestic child welfare settings, trained staff often use screening tools to identify abuse, neglect, and trafficking. I do not believe it is within your agency's purview to really make those decisions in the sense that you do not have the training. So I am not blaming you. I am just saying you guys are making the decisions without the proper training.

So in the domestic child welfare setting, a determination of a child's best interest is made by a judge. What training do CBP agents have to inform a determination of a child's best interest?

Chief PROVOST. My agents are trained starting at the Border Patrol Academy in dealing with children and the potential for fraudulent families or—

Ms. BASS. Fraudulent families, but are they trained in a child that might be neglected or abused, like a social worker? So CBP officers are also social workers?

Chief PROVOST. No, ma'am. We are trained, though, throughout our career. We also follow the law, TVPRA and various policies, when it comes to separation. It is a temporary separation—

Ms. BASS. What are the protocols that the agents follow in determining that parents pose a danger to their children?

Chief PROVOST. For one example and the one that they are separated most often are for serious criminal—

Ms. BASS. Could you give me an example? When I went to the border, I was at McAllen and I talked to one of the CBP officers, and I asked could you give me an example of a crime, and the officer recounted a parent who had been convicted of DUI.

So in our nation's child welfare system, if a parent is deemed to have neglected or abused their child, a whole process takes place. No one person decides right there on the spot you are ineligible to receive your child back. So that is what I am trying to get at here.

My concern is that we have one system that is in place to protect children, and your agency—and again, this is an unfair burden on you, so I am not faulting you. But based on what would you make that determination?

Chief PROVOST. We do an initial determination. We are not making a determination that they cannot be placed back together. But as an example, and I see this because I get the daily reports, quite often we have individuals that have convictions for domestic violence. If I may explain a little further as well?

Ms. BASS. Yes, very quickly. I am only interrupting you because I am running out of time.

Chief PROVOST. I turn them over to ICE. ICE is not going to put somebody with that type of criminal conviction in a family residential center. So we have to make that separation temporarily.

Ms. BASS. Okay, so let me just finish. So tell me what happens to these children long term. So we have determined that a child cannot be reunited with their parent. What happens to that child long term if that child does not have family in the United States? Is that you, Commander White?

Mr. WHITE. Yes, ma'am. For those children where there has been a final determination by ORR that the child cannot safely be reunified, which is a child welfare decision, that is a different decision than the one that you were just discussing with Chief Provost.

Ms. BASS. Okay.

Mr. WHITE. Very, very few children in the class within that situation.

Ms. BASS. Right. But what happens—

Mr. WHITE. They have their cases reviewed by the ACLU and the judge. What happens is those children then become true UACs, and sponsors are sought for them, as they are for all—

Ms. BASS. Are they eventually put up for adoption?

Mr. WHITE. The UAC program does not put children up for adoption.

Ms. BASS. Okay. Let me ask you one more question. If a parent is deported and they know where their child is in the United States, how do they get their child back?

Mr. WHITE. We contact the parents. We provide their contact information to the ACLU. The ACLU—

Ms. BASS. So I am in Guatemala; I know my child is in New York. How do I get my child back, and who incurs the expenses?

Mr. WHITE. The children who were separated?

Ms. BASS. Right, and the parents were deported.

Mr. WHITE. We transport the child at our expense for reunification. It is a partnership of ICE and HHS and the ACLU and the government of the home country.

Ms. BASS. So the parents do not have to pay?

Mr. WHITE. That is correct. Yes, ma'am.

Ms. BASS. I yield back my time.

Chairman NADLER. The gentle lady yields back.

The gentleman from Arizona, Mr. Biggs, is recognized.

Mr. BIGGS. Thank you, Mr. Chairman. I appreciate you holding this hearing today, and I am grateful to the witnesses for being here.

I have heard that the zero tolerance policy, I have heard it alleged today that it was designed to specifically separate children and use them as tools by this administration, and yet I have heard it rebutted by the witnesses today.

I have heard that we are using children, toddlers, and infants. And yet I have talked to Border Patrol agents, I have been down to the border, and I think three times removed when I was down at the border, at that time I talked to agents. One described seeing a child dropped from the top of a fence into the United States, a child dropped from the top of a fence into the United States.

I talked to another agent who found a toddler, young child, wandering on the U.S. side of the border with a note pinned to their shirt saying, "My mom is in," then gave the phone number.

I just received an email or a text exchanged recently where two young boys on a list in a facility with their parents named there, they inquired of the youngest, nine years old, is this your parent. He was confused because he had no parent there. He was unaccompanied. He was used, because that parent was going to be released, as well the child. In fact, the children there that were identified as brothers attached to that adult, one was from Honduras and the other was from Guatemala. They were not even brothers. There was not a family unit there.

These are not anomalies. This is what is going on, on a regular basis. I have pictured behind me—oh, one last point to that. We see an increased use of children by human and drug traffickers because of our policies, specifically the Flores case really leads to this.

When we talk about human separation and the tragedy of that, of families being torn asunder, someone even called it kidnapping today, which is kind of outrageous. It was not kidnapping. But what we have here behind me are victims of forced separation because of illegal aliens who were in the country who committed criminal conduct.

We have Marianne Mendoza, who is in the gallery today. Her son was killed by an illegal alien.

Steve Ronaback, his son was killed by an illegal alien.

Marla Wolf, her husband, the father of her two children, was killed by an illegal alien.

That is permanent separation, and that is in part due to policies that fail to control our border and prosecute. And when you have policies that allow 72,000 people last year alone to be let loose into the interior because of an antipathy toward family separation, or actually the antipathy is more toward the prosecution of these illegal aliens, then you see our communities receiving these people, large numbers of people.

Ironically, the folks who want to keep families together passed a bill recently that eliminates 2,500 family beds. It reduces the funding for detention of those who are in this country illegally and are being detained for one reason or another.

Well, as we proceed here and we see that our policies do not provide deterrent, they actually provide incentives to come into this country, which is why you are seeing the marked increase month

over month, year over year, of unaccompanied minors and families coming into this country.

So, this hearing is interesting. I appreciate the Chairman for holding it, but we need to do more than that. We need to enforce our laws, and I yield back.

Ms. SCANLON [presiding]. I recognize the gentleman from Rhode Island.

Mr. CICILLINE. Thank you, Madam Chair.

It is hard to put into words the practice of ripping innocent children, many of whom are arriving seeking protection and asylum from unspeakable violence, and ripping them from the arms of their parents. It is hard to describe in words how that practice does violence to our moral standing in the world and to our great history as a country.

But the court in the Ms. L case maybe said it best when it described this practice of separating children from their parents and the way it was implemented as so egregious, so outrageous as to shock the conscience, and so brutal and offensive that it does not comport with traditional ideas of decency.

So I am pleased that our Chairman is finally, because the Democrats took the majority, we are having a hearing so we can get to the bottom of how this happened.

And I reject the notion that we have to make a choice between securing our borders and the hideous policy of separating children from their families. We can secure our borders and keep this country safe and do it in a way that is consistent with our values.

So the first thing I want to ask you is I sent all of the witnesses a letter back on February 7th asking specific questions about how many children have been separated, how many have been united, whether the individuals can be identified, the parents of the children.

Ms. ASHER, can you answer the questions I put in that letter to you on February 7th?

Ms. ASHER. Thank you for the question, sir.

Mr. CICILLINE. By the way, you do not need to thank me for the question. I have really limited time, so I would ask you to just please answer, respectfully.

Ms. ASHER. The various questions that you have posed in there are in a consolidated report that is updated regularly, and that is the Joint Status Report from the——

Mr. CICILLINE. Okay. And will you send that in response to my letter? Will you forward that to me?

Ms. ASHER. We can have that sent to you.

Mr. CICILLINE. Thank you very much.

So, it is very clear, Chief Provost, that at the time that this policy was announced, this zero-tolerance policy was announced, that CBP did not have in place a system for the tracking and identification of children being separated from their parents. Correct?

Chief PROVOST. No, I would disagree with you.

Mr. CICILLINE. Okay. So——

Chief PROVOST. We had the ability to track. We also had added a searchable field within our systems. Our systems were different than HHS', and we have been improving on that.

Mr. CICILLINE. Okay. I am going to read to you exactly from the Office of the Inspector General. I know criticism is tough.

In June of 2018, and I quote, “no centralized system existed to identify, track, or connect families separated by DHS.”

The court order, the court decision similarly says, “The practice of separating these families was implemented without any system or procedure for tracking the children after they were separated from their parents, enabling communication between the parents and their children after separation, and reuniting the parents and children after the parents are returned to immigration custody following completion of their sentence.”

So the court, after listening to evidence, and the Inspector General said there was no system in place. And my question to you, Chief, is when that order of family separation or zero tolerance was announced, did you or anyone in your department say we do not have the system in place to keep track of these kids, we need to build a system before we can start separating children from their parents? That is a yes or a no.

Chief PROVOST. I do not believe it is a yes or a no, and there is a system to track. It is not——

Mr. CICILLINE. I am asking at the time you began to separate children from their parents, when a system——

Chief PROVOST. There was a system at that time.

Mr. CICILLINE. So you disagree with the court’s finding and the Inspector General both?

Chief PROVOST. I disagree with that finding.

Mr. CICILLINE. Okay. And in addition to that, are you aware, Chief, of a pilot program? The number that has been used at this hearing is 2,816 children separated. That was for a specific date in the litigation. Correct, Ms. Asher?

Ms. ASHER. If that is what it says in the report, yes.

Mr. CICILLINE. Well, do you know how many children have been separated from their parents, period, during the time you have been in charge of this policy?

Ms. ASHER. My agency is responsible for the adults through this process. You are asking about the exact number for the children?

Mr. CICILLINE. Yes.

Ms. ASHER. I am merely telling you that, right off the top of my head, I cannot tell you the exact number.

Mr. CICILLINE. Well, can you find out that number for us?

Ms. ASHER. The number is in the Joint Status Report that——

Mr. CICILLINE. Well, are you familiar with a pilot program that was started in July of 2017 and went up through November of 2017 that was not publicly announced where children were separated from their parents as part of an El Paso pilot program? Ms. Asher, are you familiar with that program?

Chief PROVOST. I think that is a question for me.

Mr. CICILLINE. That is a question first for Ms. Asher, and then I will get to you, Chief.

Are you familiar with that program?

Ms. ASHER. I am not familiar with that program, no.

Mr. CICILLINE. You never heard about it?

Ms. ASHER. I am not familiar with the program that you referenced.

Mr. CICILLINE. Okay.

Chief, are you familiar with the program?

Chief PROVOST. We had a prosecution initiative in El Paso where we worked with the Department of Justice. Within that, there were some subjects that were separated.

Mr. CICILLINE. So the truth is today, as you sit here before Congress, nobody on this panel can tell us how many children were actually separated from their parents before that date that the court decision came, or since it, and whether or not those young children can be reunited with their parents. We do not actually know.

Chief PROVOST. We have numbers. I have numbers for Border Patrol. When it comes to tracking, we can provide you those numbers of who we have separated——

Mr. CICILLINE. From before that date that was used in the court order?

Chief PROVOST. From the timeframe during zero tolerance and then since then——

Mr. CICILLINE. My question was about before zero tolerance was officially announced.

Chief PROVOST. We would have to do a manual poll because——

Mr. CICILLINE. And you have not done that yet, have you?

Mr. COLLINS. Order.

Mr. CICILLINE. I have a unanimous consent request. That is not out of order.

Mr. COLLINS. You have been ordered. You have been going for over a minute——

Mr. CICILLINE. Well, you are not the Chairman of the committee.

Mr. COLLINS. I can ask for order.

Mr. CICILLINE. No, you cannot.

Mr. COLLINS. Yes, I can.

Mr. CICILLINE. No, you cannot. The person who presides over the hearing controls the hearing.

Mr. COLLINS. I can ask for order.

Mr. CICILLINE. Well, I would ask for a unanimous consent——

Ms. SCANLON. We have a unanimous consent request.

Mr. CICILLINE. Thank you. I would ask unanimous consent that the following articles be made a part of the record: a Pro Publica Report, “Families Are Still Being Separated at the Border Months After Zero Tolerance was Reversed”; another article, “Families Still Being Separated at the Border Months After Trump’s Zero-Tolerance Policy Reversed”; a second article from the Washington Post, “Seven Questions About the Family Separation Policy Answered”; a Vox article, “The Trump Administration’s Separation of Families at the Border Explained”; Buzzfeed News, “The Trump Administration is Slowing the Asylum Process to Discourage Applicants, An Official Told Congress”; an NPR report, “After Traveling 2,000 Miles for Asylum, This Family’s Journey Halts at a Bridge”; and an NPR report, “Trump’s Administration Begins Remain-in-Mexico Policy, Sending Asylum Seekers Back”; and finally, an article entitled, “Asylum Seekers Being Turned Away No Matter Where They Cross the Border,” dated November of 2018.


Ms. SCANLON. Okay. Without objection, they will be accepted.

[The information follows:]

REP. CICILLINE FOR THE RECORD



Stay informed with the Big Story newsletter.

 Enter your email

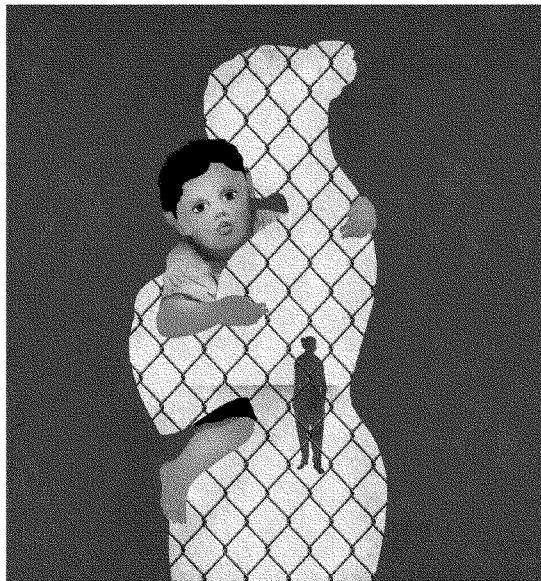
[Sign Up](#)

ZERO TOLERANCE

Families Are Still Being Separated at the Border, Months After “Zero Tolerance” Was Reversed

Immigration lawyers say border agents are again removing children from their parents. The explanation? They’re protecting kids from criminal dads and moms. Immigration advocates say it’s zero tolerance by another name.

by Ginger Thompson, Nov. 27, 2018, 4:45 p.m. EST



Brian Stauffer, special to ProPublica

Leer en español. <<https://www.propublica.org/article/todavía-hay-familias-que-están-siendo-separadas-en-la-frontera-meses-después-de-haberse-revocado-la-cero-tolerancia>>

The Trump administration has quietly resumed separating immigrant families at the border, in some cases using vague or unsubstantiated allegations of wrongdoing or minor violations against the parents, including charges of illegally re-entering the country, as justification.

Over the last three months, lawyers at Catholic Charities, which provides legal services to immigrant children in government custody in New York, have discovered at least 16 new separation cases. They say they have come across such instances by chance and via their own sleuthing after children were put into temporary foster care and shelters with little or no indication that they arrived at the border with their parents.

ProPublica stumbled upon one more case late last month after receiving a call from a distraught Salvadoran father who had been detained in South Texas, and whose 4-year-old son, Brayan, had literally been yanked from his grasp by a Customs and Border Protection agent after they crossed the border and asked for asylum. Julio, the father, asked to be identified only by his first name because he was fleeing gang violence and worried about the safety of relatives back home.

“I failed him,” said Julio, 27, sobbing uncontrollably. “Everything I had done to be a good father was destroyed in an instant.”

ProPublica tracked down Brayan, who has reddish-blond hair and an endearing lisp, at a temporary foster care agency in New York City, and reached out to the lawyer who represents him. Until that phone call, the lawyer, Jodi Ziesemer, a supervising attorney at Catholic Charities, had no idea that Brayan had been separated from his father. The chaos, she said, felt disturbingly like zero tolerance all over again.

“It’s so disheartening,” Ziesemer said “This was supposed to be a policy that ended.”

Sign up for ProPublica’s Big Story newsletter <<https://propub.li/2DKyd1Y>> to receive articles and investigations like this one as soon as they’re published.

Officially it has. On June 20, President Donald Trump signed an executive order retreating from his so-called zero-tolerance immigration enforcement policy, which called on authorities to criminally prosecute adults caught illegally crossing the border and separate them from any children they brought with them. A week later, a federal judge, Dana M. Sabraw, issued an injunction against the separations and ordered the government to put the thousands of affected families back together.

Sabraw, however, exempted cases in which the safety of the child was at risk, and crucially, imposed no standards or oversight over those decisions.

As a result, attorneys say, immigration officials — taking their cues from an administration that has made it clear it still believes family separations are an effective deterrent — are using whatever justification they can find, with or without substantiation, to deem immigrant parents unfit or unsafe.

“If the authorities have even the most specious evidence that a parent was a gang member, or had some kind of blemish on their record,” said Neha Desai, a senior attorney at the National Center for Youth Law, “anything they can come up with to say that the separation is for the health and welfare of the child, then they’ll separate them.”

In an email, a senior CBP official acknowledged that immigrant families are still being separated, but said the separations had “nothing to do with zero tolerance.” The official added that “this administration continues to comply with the law and separates adults and children when required for the safety and security of the child.” The official declined to say how many children have been taken from their parents for what was said to be their own protection.

CBP officials explained that Brayan was such a case. One official said that the agency had conducted a routine background check on Julio, and that it “confirmed his gang affiliation with MS-13.” Spokeswoman Corry Schiermeyer declined to provide the evidence the agency had to support the allegation, saying only that it was “law enforcement sensitive.” Nor would she say why CBP believed Julio was a danger to his child. But Sabraw’s order, she said, “did not prevent these separations, in fact it explicitly allows DHS to continue with this prior practice.”

CBP has also not shared any evidence supporting its assertion of Julio’s gang ties with his lawyer, Georgia Evangelista, who said she wonders whether it exists.

(On Tuesday, a government lawyer repeated the allegation to an immigration judge in South Texas but said he could not provide documentation to the court because it was “confidential,” according to Evangelista. She said the immigration judge did not press for release of the evidence but freed her client on an \$8,000 bond. Evangelista was



*Brayan, a 4-year-old Salvadoran boy.
(Courtesy of Mercedes Linares)*

frustrated by the outcome, saying, “How can we fight these charges when we don’t know what they are.”)

According to Evangelista, Julio arrived at the border in mid-September, carrying a letter prepared by a Salvadoran lawyer that explained that he had fled El Salvador with his son because he had been attacked and threatened by gangs there for years. At Evangelista’s request, the Salvadoran lawyer and Julio’s former employer sent sworn statements vouching for Julio’s character, and stating that he was never involved in criminal activity.

“I’m furious about this. They aren’t playing by the rules,” Evangelista said, referring to U.S. immigration authorities. “They’re treating him like a criminal so they can justify taking away his son. Where’s the proof? It’s his word against theirs. It sickens me.”

Susan Watson, a civil rights and family lawyer, said this kind of action could not be done without a judge’s review in custody cases that do not involve immigration issues. “Constitutionally, before a parent is separated from a child, you are entitled to due process,” she said. “Some decision in a dark corner by the Border Patrol doesn’t meet that standard.”

In New York, Ziesemer says the new separations identified by her organization involve children between the ages of 2 and 17, including Brayan. All of them arrived in New York City without any records indicating they had been separated from their parents at the border and why. A few weeks ago, the ACLU, which brought the lawsuit over the first round of family separations, sent a letter to the Justice Department raising concerns about the new cases, specifically about the grounds for the separations and why the ACLU hadn’t been notified about them.

Lee Gelernt, the ACLU attorney who led the organization’s lawsuit against family separations in the spring, said, “If the government is still secretly separating children, and is doing so based on flimsy excuses, that would be patently unconstitutional and we will be back in court.”

Lawyers at the ACLU and Catholic Charities said that the DOJ responded that it wasn’t obligated to report the new separations to the ACLU because they hadn’t been done as a part of the zero-tolerance policy. The DOJ said that in 14 of the 17 cases flagged in the ACLU’s letter, the children were removed from their parents’ custody because authorities suspected the parents had some kind of criminal background that made them unfit — even dangerous. But the agency would not specify what crimes the parents were suspected of committing and what evidence authorities had to support these allegations.

The ACLU and other groups representing immigrant children said the DOJ’s secrecy is highly troubling on several counts. They worry that the Department of Homeland Security has allowed authorities without formal

training in custody issues — primarily Border Patrol agents — to make decisions using standards that could violate the spirit of the court order and that would never hold up in non-immigration cases. Ziesemer has talked to relatives and social workers and says she suspects that at least eight of the cases involve parents whose crime is illegally re-entering the country. Illegal re-entry is a felony, although previous administrations did not typically separate families in such cases. Ziesemer said the allegations the government has advanced to justify separations in eight other cases were either vague or unsubstantiated. The final case she identified involved a parent who was hospitalized.

“The government’s position is that because these are not zero-tolerance cases, they don’t have to tell us, or anyone, about them,” Ziesemer said. “Our position is that when children are separated from their parents, there needs to be some oversight.”

Brayan’s case is a vivid example of how government officials are interpreting the court order to allow separations of families.

I found out about him by accident. Early last month, after the government reported that of the more than 2,600 immigrant children separated under the zero-tolerance policy, only one child under the age of 5 remained in their care. I decided to try to find that child, thinking the case might make a compelling bookend to a story I’d written this year about a girl named Alison Jimena Valencia Madrid, <https://www.propublica.org/article/children-separated-from-parents-border-patrol-cbp-trump-immigration-policy> whose cries were recorded inside a Border Patrol detention facility in June. The recording ignited a storm of outrage that tipped the political scales against the Trump administration’s family separation policy.

An attorney on the border, Thelma O. Garcia, said she represented a 6-year-old Salvadoran boy named Wilder Hilario Maldonado Cabrera <https://www.propublica.org/article/6-year-old-in-immigration-court-by-himself-zero-tolerance-family-separation>, who was in a temporary foster home in San Antonio. Wilder had been separated from his father in June, Garcia said, and hadn’t been reunited because the father had a 10-year-old warrant for a DUI charge in Florida.

The father, Hilario Maldonado, called me from the South Texas detention facility in Pearsall and said he’d tried to keep in touch with Wilder by phone, but his social worker didn’t always pick up. When they did connect, he said, Wilder, pudgy, precocious and missing his two front teeth, scolded him for not coming to take him home.

I told Maldonado that it appeared he would be one of the last parents to go through such a separation because the government had agreed to stop them.

Maldonado, 39, said that wasn't true. The separations are still happening, he said, and he knew of one.

A few minutes later, I got a call from Julio, who was at the same detention facility. He sounded desperate, crying and pleading for answers. He said he'd turned himself and Brayan into the authorities as soon as they'd crossed the border, asked for asylum and told immigration agents that his mother, who lives in Austin, Texas, was willing to help him get on his feet. Seven days later, a Border Patrol agent took Brayan, dressed in a SpongeBob SquarePants T-shirt, away, screaming.

Julio said all he knew was that his son was somewhere in New York. As soon as we hung up, I called Ziesemer at Catholic Charities, which has a government contract to provide legal services to the unaccompanied minors in the city. I asked whether she'd heard of Brayan.

"We do know this kid," Ziesemer quickly responded, "but were not aware he was separated from his father."

Ziesemer was audibly shaken. "Until you called, all I had was his name on a spreadsheet," she said.

Ziesemer immediately arranged to have Brayan, who had been placed in a temporary foster home, brought to her office. Her experience told her not to expect much from their first interaction, partly because Brayan was likely to be afraid, and partly because he was only 4. So she tried putting Brayan at ease by opening a box of crayons and a Spider-Man coloring book.

He warmed up to her quickly, putting down his crayons to show her his Spider-Man moves and squiggling lines on a piece of paper when she asked whether he knew how to write his name. But, as Ziesemer expected, he was too young to make sense of what had happened to him on the border, much less explain it to an adult he'd just met. And his lisp made it hard for Ziesemer to understand the few things he could tell her.

After the meeting, she sounded both exasperated about having to grill a tiny child and terrified that there might be other children like him buried in her spreadsheets.

"We, and the caseworkers and the consulates, do what we can to fill in the gaps and figure out where these kids came from," she said. "But that means days and weeks go by with a child not knowing where his parents are and vice versa. And it doesn't have to be that way. It shouldn't be that way."

After Ziesemer's meeting with Brayan, I traveled to Pearsall to meet Julio. He said he'd fled the country with Brayan because street gangs had threatened to kill him after finding out that he reported one of their members to the police. His wife and stepson stayed behind because there

wasn't enough money to pay for everyone to come. I spoke to his wife, who told me she was hiding out at her parents' house because she didn't want to be home if gang members came looking for her husband.

In photos his relatives sent, Julio looked sort of like a cop, stocky with a crew cut. But after a month in detention, he looked pale and deflated. He wore navy blue detention garb and his dark brown hair was wet, though neatly combed. He didn't have any tattoos, which are common among Central American gang members.

Through tears, Julio told me he'd replayed the days since his arrival at the border in his mind, trying to make sense of why authorities took away his son. Julio and Brayan had been taken to the "ice box," a notorious air-conditioned cellblock that is the first stop for most immigrants intercepted at the border. Brayan developed a high fever and had to be taken to the hospital for treatment. A Border Patrol agent who drove Julio and his son scolded Julio for bringing a small boy on such a harrowing trip. Could that be the reason they took his son away? Was it because the agents had looked at the color of Brayan's hair and didn't believe he was the boy's father?

Julio wonders whether he had been fooled into signing a document at the hospital — they were all in English — surrendering his rights to his child. Was it because he'd once been arrested for a robbery in El Salvador, but exonerated two days later when authorities realized they had the wrong person? Why would they consider him a danger to his child?

It wasn't until I told him that Julio learned his child had been taken from him because Border Patrol agents suspected he was a gang member. The news hit him hard, and it was confounding because at the same time the CBP had deemed him a gang member, another agency within DHS had found that his asylum petition, in which Julio claims he was a victim of gang violence, was persuasive enough to be heard by an immigration judge.

In early October, Julio had met with an asylum officer for what's known as a credible fear interview. According to the report of that interview, which Julio provided to ProPublica, the asylum officer not only asked him why he fled El Salvador, but whether he had a criminal record. Among the questions were: Have you ever committed a crime in any country? Have you ever harmed someone for any reason? Even if you did not want to, have you ever helped someone else harm people? Have you ever been arrested or convicted of a crime? Have you ever been a member of a gang?

Julio answered no to all of them. The asylum officer who conducted the interview deemed Julio's account credible, and, even more significantly, indicated that she had been provided no derogatory information or criminal records that would automatically bar Julio from winning asylum.

The discrepancy reflects differences in the legal standards for asylum and family separation. While the asylum officer's decision is subject to review by a judge, the Border Patrol's decision to take away Julio's child was not.

"I don't know what information, if any, they really have on Julio," his attorney, Evangelista, said. "They have total discretion when it comes to separating him from his child. They can do what they want. And they don't have to explain why."

Julio said his own father had abandoned him when he was about Brayan's age. Then his mother left for the United States when he was 7. He said he vowed never to do the same thing to Brayan, which is why he didn't leave the boy behind in El Salvador. He wonders now whether that was a mistake. In every phone call with Brayan, Julio says, he feels his son slowly slipping away.

"He tells me: 'You're not my Papa anymore. I have a new Papa,'" Julio said of his son, adding: "He doesn't even call me Papa. He calls me Papi. I never taught him that word."

Back in New York, Ziesemer said she worries family separations may be beginning all over again.

Sitting with Brayan in her office, she said, brought back the faces of the 400 or so separated kids who had shuffled through over the summer. As Catholic Charities' point person during the crisis, she said she came to know every single one of those kids by name. One 9-year-old girl went into a full panic attack when she was asked to step into a room without her sister because she thought Ziesemer was going to take her sister away like officials had taken her mother. "At one point, we had to have a meeting with the entire office to explain why the conference room was full of all these wailing kids," she said.

Catholic Charities, the ACLU and several other large immigrant advocacy groups took the lead in putting the families together again; working the phones to find parents who were still in immigration detention and dispatching colleagues to Central America to track down parents who had already been deported. In addition to the "huge, heavy lift" of reunification, Ziesemer said, there was a crush of calls and emails from Congress, consulates and the media — all seeking information about the separations.

Ziesemer said she and her team worked around the clock for months, and though there are still several dozen kids awaiting reunification, she thought things were winding down. That's when she began seeing new cases, like Brayan's, which had some of the same hallmarks of the old ones.



*Brayan's grandmother in Austin, Texas, outfitted a bedroom in anticipation of his arrival.
(Courtesy of Mercedes Linares)*

Ziesemer didn't know much about Brayan, except the little bit of information she'd gotten from him during their meeting. So I shared with her some of the things I'd learned about him from his family: that he could eat four hard-boiled eggs in one sitting; that he loved Lightning McQueen, a character from the Pixar movie "Cars"; and that he had a dog, Lucky, whom he insisted on seeing during every WhatsApp video call with his mother. His grandmother in Austin had fixed up a bedroom for him, filled with Mickey Mouse dolls, remote-control cars and winter coats. I told Ziesemer how distraught Brayan's father was that his son called him "Papi."

"A couple of weeks is a long time for a kid his age," she said about Brayan. "They start losing attachments to people, even their parents."

Filed under: Immigration <<https://www.propublica.org/topics/immigration>>, The Trump Administration <<https://www.propublica.org/topics/trump-administration>>



Ginger Thompson

Ginger Thompson is a senior reporter at ProPublica who writes about the drug war.

✉ ginger.thompson@propublica.org 🐦 @gingerthomp1

☎ 917-512-0229 📠 Signal: 202-615-9406

Families still being separated at border — months after Trump's 'zero tolerance' policy reversed

Ginger Thompson, ProPublica Published 9:26 p.m. ET Nov. 27, 2018 | Updated 5:00 p.m. ET Nov. 28, 2018



(Photo11: Spencer Platt, Getty Images)

The Trump administration has quietly resumed separating immigrant families at the border, in some cases using vague or unsubstantiated allegations of wrongdoing or minor violations against the parents, including charges of illegally re-entering the country, as justification.

Over the last three months, lawyers at Catholic Charities, which provides legal services to immigrant children in government custody in New York, have discovered at least 16 new separation cases. They say they have come across such instances by chance and via their own sleuthing after children were put into temporary foster care and shelters with little or no indication that they arrived at the border with their parents.

ProPublica stumbled upon one more case (<https://www.propublica.org/article/border-patrol-families-still-being-separated-at-border-after-zero-tolerance-immigration-policy-reversed>) late last month after receiving a call from a distraught Salvadoran father who had been detained in South Texas, and whose 4-year-old son, Brayan, had literally been yanked from his grasp by a Customs and Border Protection agent after they crossed the border and asked for asylum. Julio, the father, asked to be identified only by his first name because he was fleeing gang violence and worried about the safety of relatives back home.

"I failed him," said Julio, 27, sobbing uncontrollably. "Everything I had done to be a good father was destroyed in an instant."

ProPublica tracked down Brayan, who has reddish-blond hair and an endearing lisp, at a temporary foster care agency in New York City, and reached out to the lawyer who represents him. Until that phone call, the lawyer, Jodi Ziesemer, a supervising attorney at Catholic Charities, had no idea that Brayan had been separated from his father. The chaos, she said, felt disturbingly like zero tolerance all over again.

"It's so disheartening," Ziesemer said "This was supposed to be a policy that ended."

Officially it has. On June 20, President Donald Trump signed an executive order retreating from his so-called zero-tolerance immigration enforcement policy, which called on authorities to criminally prosecute adults caught illegally crossing the border and separate them from any children they brought with them. A week later, a federal judge, Dana M. Sabraw, issued an injunction against the separations and ordered the government to put the thousands of affected families back together.

Sabraw, however, exempted cases in which the safety of the child was at risk, and crucially, imposed no standards or oversight over those decisions. As a result, attorneys say, immigration officials — taking their cues from an administration that has made it clear it still believes family separations are an effective deterrent — are using whatever justification they can find, with or without substantiation, to deem immigrant parents unfit or unsafe.

More: [Who is Dana Sabraw?](https://www.propublica.org/article/who-is-dana-sabraw) (<https://story/news/nation/2018/07/11/immigrant-children-judge-dana-sabraw/774663002/>)

"If the authorities have even the most specious evidence that a parent was a gang member, or had some kind of blemish on their record," said Neha Desai, a senior attorney at the National Center for Youth Law, "anything they can come up with to say that the separation is for the health and welfare of the child, then they'll separate them."

‘Nothing to do with zero tolerance’

In an email, a senior CBP official acknowledged that immigrant families are still being separated, but said the separations had “nothing to do with zero tolerance.” The official added that “this administration continues to comply with the law and separates adults and children when required for the safety and security of the child.” The official declined to say how many children have been taken from their parents for what was said to be their own protection.

CBP officials explained that Brayan was such a case. One official said that the agency had conducted a routine background check on Julio, and that it “confirmed his gang affiliation with MS-13.” Spokeswoman Corry Schiermeyer declined to provide the evidence the agency had to support the allegation, saying only that it was “law enforcement sensitive.” Nor would she say why CBP believed Julio was a danger to his child. But Sabraw’s order, she said, “did not prevent these separations, in fact it explicitly allows DHS to continue with this prior practice.”

CBP has also not shared any evidence supporting its assertion of Julio’s gang ties with his lawyer, Georgia Evangelista, who said she wonders whether it exists.

(On Tuesday, a government lawyer repeated the allegation to an immigration judge in South Texas but said he could not provide documentation to the court because it was “confidential,” according to Evangelista. She said the immigration judge did not press for release of the evidence but freed her client on an \$8,000 bond. Evangelista was frustrated by the outcome, saying, “How can we fight these charges when we don’t know what they are.”)

According to Evangelista, Julio arrived at the border in mid-September, carrying a letter prepared by a Salvadoran lawyer that explained that he had fled El Salvador with his son because he had been attacked and threatened by gangs there for years. At Evangelista’s request, the Salvadoran lawyer and Julio’s former employer sent sworn statements vouching for Julio’s character, and stating that he was never involved in criminal activity.

“I’m furious about this. They aren’t playing by the rules,” Evangelista said, referring to U.S. immigration authorities. “They’re treating him like a criminal so they can justify taking away his son. Where’s the proof? It’s his word against theirs. It sickens me.”

Susan Watson, a civil rights and family lawyer, said this kind of action could not be done without a judge’s review in custody cases that do not involve immigration issues. “Constitutionally, before a parent is separated from a child, you are entitled to due process,” she said. “Some decision in a dark corner by the Border Patrol doesn’t meet that standard.”

In New York, Ziesemer says the new separations identified by her organization involve children between the ages of 2 and 17, including Brayan. All of them arrived in New York City without any records indicating they had been separated from their parents at the border and why. A few weeks ago, the ACLU, which brought the lawsuit over the first round of family separations, sent a letter to the Justice Department raising concerns about the new cases, specifically about the grounds for the separations and why the ACLU hadn’t been notified about them.

‘Flimsy excuses’

Lee Gelernt, the ACLU attorney who led the organization’s lawsuit against family separations in the spring, said, “If the government is still secretly separating children, and is doing so based on flimsy excuses, that would be patently unconstitutional and we will be back in court.”

Lawyers at the ACLU and Catholic Charities said that the DOJ responded that it wasn’t obligated to report the new separations to the ACLU because they hadn’t been done as a part of the zero-tolerance policy. The DOJ said that in 14 of the 17 cases flagged in the ACLU’s letter, the children were removed from their parents’ custody because authorities suspected the parents had some kind of criminal background that made them unfit — even dangerous. But the agency would not specify what crimes the parents were suspected of committing and what evidence authorities had to support these allegations.



Protesters rally against President Trump's immigrant family separation policies in Philadelphia, Penn., June 30, 2018. (Photo11: DOMINICK REUTER, AFP/Getty Images)

The ACLU and other groups representing immigrant children said the DOJ's secrecy is highly troubling on several counts. They worry that the Department of Homeland Security has allowed authorities without formal training in custody issues — primarily Border Patrol agents — to make decisions using standards that could violate the spirit of the court order and that would never hold up in non-immigration cases. Ziesemer has talked to relatives and social workers and says she suspects that at least eight of the cases involve parents whose crime is illegally re-entering the country. Illegal re-entry is a felony, although previous administrations did not typically separate families in such cases. Ziesemer said the allegations the government has advanced to justify separations in eight other cases were either vague or unsubstantiated. The final case she identified involved a parent who was hospitalized.

"The government's position is that because these are not zero-tolerance cases, they don't have to tell us, or anyone, about them," Ziesemer said. "Our position is that when children are separated from their parents, there needs to be some oversight."

More: [Timeline: Immigrant children separated from families at the border](https://www.propublica.org/article/children-separated-from-parents-border-patrol-cbp-trump-immigration-policy) ([/story/news/2018/06/27/immigrant-children-family-separation-border-timeline/734014002/](https://www.propublica.org/article/children-separated-from-parents-border-patrol-cbp-trump-immigration-policy))

Brayan's case is a vivid example of how government officials are interpreting the court order to allow separations of families.

I found out about him by accident. Early last month, after the government reported that of the more than 2,600 immigrant children separated under the zero-tolerance policy, only one child under the age of 5 remained in their care. I decided to try to find that child, thinking the case might make a compelling bookend to a story I'd written this year about a girl named [Alison Jimena Valencia Madrid](https://www.propublica.org/article/children-separated-from-parents-border-patrol-cbp-trump-immigration-policy) (<https://www.propublica.org/article/children-separated-from-parents-border-patrol-cbp-trump-immigration-policy>), whose cries were recorded inside a Border Patrol detention facility in June. The recording ignited a storm of outrage that tipped the political scales against the Trump administration's family separation policy.

An attorney on the border, Thelma O. Garcia, said she represented a [6-year-old Salvadoran boy named Wilder Hilaro Maldonado Cabrera](https://www.propublica.org/article/6-year-old-in-immigration-court-by-himself-zero-tolerance-family-separation) (<https://www.propublica.org/article/6-year-old-in-immigration-court-by-himself-zero-tolerance-family-separation>), who was in a temporary foster home in San Antonio. Wilder had been separated from his father in June, Garcia said, and hadn't been reunited because the father had a 10-year-old warrant for a DUI charge in Florida.

The father, Hilaro Maldonado, called me from the South Texas detention facility in Pearsall and said he'd tried to keep in touch with Wilder by phone, but his social worker didn't always pick up. When they did connect, he said, Wilder, pudgy, precocious and missing his two front teeth, scolded him for not coming to take him home.

I told Maldonado that it appeared he would be one of the last parents to go through such a separation because the government had agreed to stop them.

Maldonado, 39, said that wasn't true. The separations are still happening, he said, and he knew of one.

A few minutes later, I got a call from Julio, who was at the same detention facility. He sounded desperate, crying and pleading for answers. He said he'd turned himself and Brayan into the authorities as soon as they'd crossed the border, asked for asylum and told immigration agents that his mother, who lives in Austin, Texas, was willing to help him get on his feet. Seven days later, a Border Patrol agent took Brayan, dressed in a SpongeBob SquarePants

T-shirt, away, screaming.

Julio said all he knew was that his son was somewhere in New York. As soon as we hung up, I called Ziesemer at Catholic Charities, which has a government contract to provide legal services to the unaccompanied minors in the city. I asked whether she'd heard of Brayan.

"We do know this kid," Ziesemer quickly responded, "but were not aware he was separated from his father."

Ziesemer was audibly shaken. "Until you called, all I had was his name on a spreadsheet," she said.

Ziesemer immediately arranged to have Brayan, who had been placed in a temporary foster home, brought to her office. Her experience told her not to expect much from their first interaction, partly because Brayan was likely to be afraid, and partly because he was only 4. So she tried putting Brayan at ease by opening a box of crayons and a Spider-Man coloring book.

He warmed up to her quickly, putting down his crayons to show her his Spider-Man moves and squiggling lines on a piece of paper when she asked whether he knew how to write his name. But, as Ziesemer expected, he was too young to make sense of what had happened to him on the border, much less explain it to an adult he'd just met. And his lisp made it hard for Ziesemer to understand the few things he could tell her.

After the meeting, she sounded both exasperated about having to grill a tiny child and terrified that there might be other children like him buried in her spreadsheets.

"We, and the caseworkers and the consulates, do what we can to fill in the gaps and figure out where these kids came from," she said. "But that means days and weeks go by with a child not knowing where his parents are and vice versa. And it doesn't have to be that way. It shouldn't be that way."

After Ziesemer's meeting with Brayan, I traveled to Pearsall to meet Julio. He said he'd fled the country with Brayan because street gangs had threatened to kill him after finding out that he reported one of their members to the police. His wife and stepson stayed behind because there wasn't enough money to pay for everyone to come. I spoke to his wife, who told me she was hiding out at her parents' house because she didn't want to be home if gang members came looking for her husband.

In photos his relatives sent, Julio looked sort of like a cop, stocky with a crew cut. But after a month in detention, he looked pale and deflated. He wore navy blue detention garb and his dark brown hair was wet, though neatly combed. He didn't have any tattoos, which are common among Central American gang members.

'Ice box'

Through tears, Julio told me he'd replayed the days since his arrival at the border in his mind, trying to make sense of why authorities took away his son. Julio and Brayan had been taken to the "ice box," a notorious air-conditioned cellblock that is the first stop for most immigrants intercepted at the border. Brayan developed a high fever and had to be taken to the hospital for treatment. A Border Patrol agent who drove Julio and his son scolded Julio for bringing a small boy on such a harrowing trip. Could that be the reason they took his son away? Was it because the agents had looked at the color of Brayan's hair and didn't believe he was the boy's father?

Julio wonders whether he had been fooled into signing a document at the hospital — they were all in English — surrendering his rights to his child. Was it because he'd once been arrested for a robbery in El Salvador, but exonerated two days later when authorities realized they had the wrong person? Why would they consider him a danger to his child?

It wasn't until I told him that Julio learned his child had been taken from him because Border Patrol agents suspected he was a gang member. The news hit him hard, and it was confounding because at the same time the CBP had deemed him a gang member, another agency within DHS had found that his asylum petition, in which Julio claims he was a victim of gang violence, was persuasive enough to be heard by an immigration judge.

In early October, Julio had met with an asylum officer for what's known as a credible fear interview. According to the report of that interview, which Julio provided to ProPublica, the asylum officer not only asked him why he fled El Salvador, but whether he had a criminal record. Among the questions were: Have you ever committed a crime in any country? Have you ever harmed someone for any reason? Even if you did not want to, have you ever helped someone else harm people? Have you ever been arrested or convicted of a crime? Have you ever been a member of a gang?

Julio answered no to all of them. The asylum officer who conducted the interview deemed Julio's account credible, and, even more significantly, indicated that she had been provided no derogatory information or criminal records that would automatically bar Julio from winning asylum.

The discrepancy reflects differences in the legal standards for asylum and family separation. While the asylum officer's decision is subject to review by a judge, the Border Patrol's decision to take away Julio's child was not.

"I don't know what information, if any, they really have on Julio," his attorney, Evangelista, said. "They have total discretion when it comes to separating him from his child. They can do what they want. And they don't have to explain why."

Julio said his own father had abandoned him when he was about Brayan's age. Then his mother left for the United States when he was 7. He said he vowed never to do the same thing to Brayan, which is why he didn't leave the boy behind in El Salvador. He wonders now whether that was a mistake. In every phone call with Brayan, Julio says, he feels his son slowly slipping away.

"He tells me: 'You're not my Papa anymore. I have a new Papa,'" Julio said of his son, adding: "He doesn't even call me Papa. He calls me Papi. I never taught him that word."

Happening again?

Back in New York, Ziesemer said she worries family separations may be beginning all over again.

Sitting with Brayan in her office, she said, brought back the faces of the 400 or so separated kids who had shuffled through over the summer. As Catholic Charities' point person during the crisis, she said she came to know every single one of those kids by name. One 9-year-old girl went into a full panic attack when she was asked to step into a room without her sister because she thought Ziesemer was going to take her sister away like officials had taken her mother. "At one point, we had to have a meeting with the entire office to explain why the conference room was full of all these wailing kids," she said.

Catholic Charities, the ACLU and several other large immigrant advocacy groups took the lead in putting the families together again, working the phones to find parents who were still in immigration detention and dispatching colleagues to Central America to track down parents who had already been deported. In addition to the "huge, heavy lift" of reunification, Ziesemer said, there was a crush of calls and emails from Congress, consulates and the media — all seeking information about the separations.


Ziesemer said she and her team worked around the clock for months, and though there are still several dozen kids awaiting reunification, she thought things were winding down. That's when she began seeing new cases, like Brayan's, which had some of the same hallmarks of the old ones.

Ziesemer didn't know much about Brayan, except the little bit of information she'd gotten from him during their meeting. So she shared with her some of the things he'd learned about him from his family: that he could eat four hard-boiled eggs in one sitting; that he loved Lightning McQueen, a character from the Pixar movie "Cars"; and that he had a dog, Lucky, whom he insisted on seeing during every WhatsApp video call with his mother. His grandmother in Austin had fixed up a bedroom for him, filled with Mickey Mouse dolls, remote-control cars and winter coats. She told Ziesemer how distraught Brayan's father was that his son called him "Papi."

"A couple of weeks is a long time for a kid his age," she said about Brayan. "They start losing attachments to people, even their parents."

This article (<https://www.propublica.org/article/border-patrol-families-still-being-separated-at-border-after-zero-tolerance-immigration-policy-reversed>) was originally published by ProPublica. Its content was created separately to USA TODAY.

Read or Share this story: <https://www.usatoday.com/story/news/politics/elections/2018/11/27/donald-trump-zero-tolerance-policy-border-migrants-families-separated-immigration/2132426002/>

 The Washington Post

Politics

7 questions about the family-separation policy, answered

By Seung Min Kim
June 19, 2018

President Trump is facing an escalating humanitarian and political crisis at the Mexican border as migrant parents are increasingly separated from their children under his new immigration enforcement policy.

But Trump and top administration officials have, at times, obfuscated the facts and sent contradicting messages on the practice of separating families that illegally enter the United States. The growing crisis has upset lawmakers in both parties and prompted GOP leaders to scramble for a legislative fix — even as Democrats and some Republicans push Trump to reverse the controversial practice on his own.

Here are The Washington Post's answers to commonly asked questions about the controversy over family separation at the border:

Q: *Is the White House required under law to separate families, as President Trump says?*

A: No. There is no law that requires migrant children who arrive at the border to be separated from their parents. The separation practice began in earnest when Attorney General Jeff Sessions announced in early May that the departments of Justice and Homeland Security would work together to criminally prosecute everyone who crosses the border illegally — the “zero tolerance” policy.

“If you are smuggling a child, then we will prosecute you and that child will be separated from you as required by law,” Sessions said in Scottsdale, Ariz., on May 7.

That tactic, in effect, directly leads to migrant children being separated from their parents; kids cannot be held in criminal jails alongside their mother or father. The children are deemed “unaccompanied” and are routed through a processing system that also involves the Department of Health and Human Services.

Top administration officials, including Sessions and White House Chief of Staff John F. Kelly, have said this policy is needed to deter migrants from crossing the border illegally. But Homeland Security Secretary Kirstjen Nielsen has denied that the zero-tolerance policy is meant to be a deterrent, although other administration officials continue to contradict her publicly.

“We expect that the new policy will result in a deterrence effect,” Steven Wagner, a top official at HHS’s Administration for Children and Families, said on a conference call Tuesday. “We certainly hope that parents stop bringing their kids on this dangerous journey.”

Q: *Why does Trump keep blaming Democrats for family separation and calling it “their law”?*

A: In briefings with reporters, administration officials — including Nielsen and White House senior policy adviser Stephen Miller — have referred to a 2008 anti-trafficking law as one of the root causes of the family separation practice. The William Wilberforce Trafficking Victims Protection Reauthorization Act bars unaccompanied migrant children from nations other than Mexico and Canada who show up at the border from being promptly sent back to their home countries.

Instead, the law requires those children be referred to Health and Human Services' Office of Refugee Resettlement, which screens children to see if they are victims of trafficking while making arrangements to put them in one of its shelters, in foster care or with a sponsor in the United States, such as a family member.

But it's not a Democratic law: It was passed unanimously by both chambers of Congress and signed into law in the final days of the George W. Bush administration.

Both Miller and Nielsen have also pointed to the "Flores settlement" as another genesis of the separation. The 1997 court settlement dramatically limits the detention of migrant children and calls on them to be held in the "least restrictive setting appropriate to age and special needs." Combined, administration officials say, those factors are exacerbating the family separation practice by barring families from being detained together. But again, they aren't Democratic policies, and neither the Bush nor Obama administrations interpreted the 2008 anti-trafficking law or the Flores settlement as requiring family separation.

Q: *Which migrant families are affected? Is it all undocumented immigrants or only those seeking asylum? Are families being reunited?*

A: Nielsen and other DHS officials have said that everyone who crosses the border illegally between ports of entry — designated locations that process people entering the country — will be a target of the zero-tolerance initiative. DHS statistics show that it's already having a widespread effect: 2,342 children were separated from their parents between May 5 and June 9.

Wagner, the HHS official, could not provide statistics Tuesday on how many of the separated children had been reunited with their parents, noting that the policy is "relatively new."

Administration officials, including Nielsen, have repeatedly stressed that people seeking asylum in the United States will not be prosecuted so long as they show up at a port of entry and don't enter the country illegally.

"If an adult enters at a port of entry and claims asylum, they will not face prosecution for illegal entry," Nielsen said at a White House news briefing on Monday.

Q: *Are migrants who are seeking asylum being turned away from ports of entry?*

A: The administration says no, but some appear to be, according to news reports. In a June 15 piece, NPR tracked the journey of the Berduo family, which traveled from Guatemala and arrived at an international bridge connecting to Brownsville, Tex., as they sought asylum in the United States. But the Berduo family has

tried at least three times to enter the United States to claim asylum and all three times has been turned away by authorities at the border.

The Post also wrote about Serbando Pineda Hernandez and his 15-year-old son, Riquelmer, who had tried at least nine times to reach the port of entry in El Paso and apply for asylum. They were similarly blocked from making their case.

The stated reason is that there is no more room in U.S. Customs and Border Protection stations. DHS doesn't consider that being "turned away," however, and says the asylum seekers can return another time.

But that hasn't satisfied a handful of Republican senators. Sens. Jeff Flake (Ariz.) and Susan Collins (Maine) pressed DHS and HHS in a letter this week on whether families who request asylum at legal ports of entry were being separated. The letter cited the case of a Honduran woman who said she was separated from her 18-month-old son in February, even though she had crossed at an international bridge in Brownsville to seek asylum. She has since been reunited with her son, and her lawsuit was detailed in a May 28 op-ed column in The Washington Post.

And immigration law experts say there is no legal requirement that asylum seekers come to a port of entry. Jeanne Butterfield, who was the executive director of the American Immigration Lawyers Association from 1993 to 2009, said immigrants have up to a year from when they left their home countries to apply for asylum, even if they've already been in the country without legal status.

"You don't have to present yourself [at a port of entry]. That has never been a part of refugee and asylum law," Butterfield said. But DHS says crossing anywhere else on the border is indeed, breaking the law.

Q: *Are the chain-link-fence cages new or were they used before Trump took office?*

A: Customs and Border Protection released images of migrants being processed at a center in McAllen, Tex. The photos depict people enclosed in large pens with chain-link fences for walls. Reporters who were allowed to tour the center last weekend found that as many as 20 or more young children were held in concrete-floor cages in this warehouselike facility and given foil blankets, bottled water and food as they waited to be processed.

When the migrant crisis escalated in 2014 under the Obama administration, there were similar images circulated in the news media. The Arizona Republic published photos in June 2014 depicting immigrant children in similar cages with chain-link fences at a CBP facility in Nogales, Ariz.

"The CBP agents in the building seem to be genuinely compassionate in their interactions with the children. The facility is clean and air-conditioned," wrote Michael Kiefer, a Republic reporter. "But in essence, it is a juvenile prison camp. The children, mostly of high school and junior-high-school age, are housed behind 18-foot-high chain-link fences topped with razor wire."

Q: *What happened to the families when they crossed the border under the same circumstances during the Obama administration?*

A: Trump's predecessor had a different strategy when confronted with the rising numbers of migrant families at the border in the latter years of his administration. Typically, families from Central America who came to the border and sought asylum would be processed and given a "notice to appear" for a court date. They would then be released together into the United States after a brief stint in custody, said Theresa Cardinal Brown, the director of immigration and cross-border policy at the Bipartisan Policy Center.

The Obama administration tried detaining families together but faced furious pushback from Democratic lawmakers and immigrant rights groups. Ultimately in 2016, the U.S. Court of Appeals for the 9th Circuit upheld a ruling that expanded protections outlined in the Flores settlement, saying migrant children couldn't be detained at length — whether they came to the United States alone or with a parent. Generally, detention of children is limited to 20 days under the Flores settlement and subsequent rulings.

The practice of briefly detaining families and then releasing migrants and requiring they appear before a judge is the "catch-and-release" policy that has been harshly criticized by Trump and congressional Republicans.

Brown said there were cases of family separation during the Obama administration if the children were being trafficked or officials couldn't confirm that the adult was indeed the kid's parent.

Q: *Where are the girls?*

A: Government officials haven't allowed the news media to capture images at immigration centers, citing privacy concerns and instead handing out government-issued photos and videos. The images released by CBP and HHS almost exclusively show boys, prompting questions about where the migrant girls were being held.

Nielsen wasn't able to answer that question directly on Monday, but at a briefing with reporters on Tuesday morning, DHS spokeswoman Katie Waldman said the government was working to get more footage and images of the facilities requested by news organizations.

Seung Min Kim

Seung Min Kim is a White House reporter for The Washington Post, covering the Trump administration through the lens of Capitol Hill. Before joining The Washington Post in 2018, she spent more than eight years at Politico, primarily covering the Senate and immigration policy. Follow [🐦](#)

The Trump administration's separation of families at the border, explained

Why children are being sent to “foster care or whatever” while their parents are sent to jail.

By Dara Lind | dara@vox.com | Updated Aug 14, 2018, 1:29pm EDT



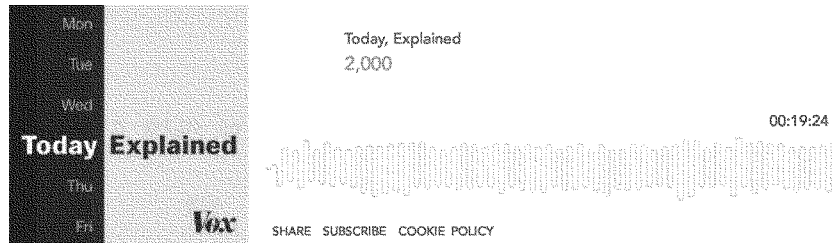
The Trump administration is separating families like this one (seen in 2015) who cross the US-Mexico border illegally, prosecuting the parents and placing the children in government custody or foster care. | John Moore/Getty Images

Part of

The family separation crisis at the US border

As a matter of policy, the US government is **separating families** who seek asylum in the US by crossing the border illegally.

Dozens of parents are being split from their children each day — the children labeled “unaccompanied minors” and sent to government custody or foster care, **the parents** labeled criminals and sent to jail.



Between October 1, 2017 and May 31, 2018, at least 2,700 children have been split from their parents. 1,995 of them were separated over the last six weeks of that window — April 18 to May 31 — indicating that at present, an average of 45 children are being taken from their parents each day.

To many critics of the Trump administration, family separation is an unpardonable atrocity. Articles depict children crying themselves to sleep because they don't know where their parents are; one Honduran man **killed himself in a detention cell** after his child was taken from him.

But the horror can make it hard to wrap your head around the policy.

Family separation isn't sudden, nor is it arbitrary. While the Trump administration claims it's taking extraordinary measures in response to a temporary surge, it is entirely possible this will be the new normal. Here's what you need to know to understand it.



The Trump administration has separated over 2,000 families at the US/Mexico border. This visualization from Vox's Javier Zarracina shows family separations over six weeks, from mid-April to the end of May. On May 7, Attorney General Jeff Sessions announced a "zero-tolerance" policy of prosecuting everyone caught crossing the border illegally (between ports of entry), launching the family-separation policy in its current form. | Javier Zarracina/Vox

1) How is the government separating families at the border?

To be clear, there is no official Trump policy stating that every family entering the US without papers has to be separated. What there is is a policy that all adults caught crossing into the US illegally are **supposed to be criminally prosecuted** — and when that happens to a parent, separation is inevitable.

Typically, people apprehended crossing into the US are held in immigration detention and sent before an immigration judge to see if they will be deported as unauthorized immigrants.

But migrants who've been referred for criminal prosecution get sent to a federal jail and brought before a federal judge a few weeks later to see if they'll get prison time. That's where the separation happens — because you can't be kept with your children in federal jail.

RELATED

The House GOP says their new bill bans separating families at the border. That's a lie.

It's not just cruel to separate a breastfeeding baby from a mom. It's medically dangerous.

The racist history of the Bible verse the White House uses to justify separating families

Trump keeps making it harder for people to seek asylum legally

According to federal defenders, some Border Patrol agents are lying to families about why and how long they're being separated. A federal defender told the **Washington Post's Michael E. Miller that parents were told their children** were just being taken away briefly for questioning. **Liz Goodwin of the Boston Globe** cites a defender saying that in several cases, children were taken "by Border Patrol agents who said they were going to give them a bath. As the hours passed, it dawned on the mothers the kids were not coming back."

Rep. Pramila Jayapal (D-WA), who visited a **federal prison** where some mothers were being housed on Sunday, recounted stories of women being told by Border Patrol agents that "their 'families would not exist anymore' and that they would 'never see their children again.'"

First-time border crossers don't usually do prison time. After a few weeks in jail awaiting trial, they're usually brought before a judge in mass assembly-line prosecutions (according to **Lomi Kriel of the Houston Chronicle**, one courtroom in McAllen, Texas, has been hearing 1,000 cases a day in recent weeks) and sentenced, within minutes, to time served — as long as they plead guilty. Michael E. Miller depicted the scene for **the Washington Post**:

As [the federal defender] consulted with Nicolas-Gaspar, dressed in the same dirt-caked tennis shoes and mud-stained shirt in which he'd been detained, the immigrant in his late 20s began to sob. She told him the best chance he had of seeing his son soon was to plead guilty.

"*Culpable*," he told the judge when court resumed minutes later. "*Culpable. Culpable.*"

There are also **some cases** in which immigrant families are being separated after coming to ports of entry and presenting themselves for asylum — thus following US law. It's not clear how often this is happening, though it's definitely not as widespread as separation of families who've crossed illegally. Trump administration officials claim that they only separate families at ports of entry if they are worried about the safety of the child, or if they don't think there's enough evidence that the adult is really the child's legal custodian.

Upon being separated from their parents, children are officially designated "unaccompanied alien children" by the US government — a category that typically describes people under the age of 18 who come to the US without an adult relative arriving with them. Under federal law, unaccompanied alien children are sent into the custody of the Office of Refugee Resettlement (ORR), which is part of the Department of Health and Human Services. The ORR is responsible for identifying and screening the nearest relative or family friend living in the US to whom the child can be released.



Have You Been Separated From Your Child(ren)?

U.S. Immigration and Customs Enforcement may be able to help you locate your child(ren) if you became separated during the immigration process.

You can ask for help locating and/or getting in contact with your child(ren) by making the following phone calls:

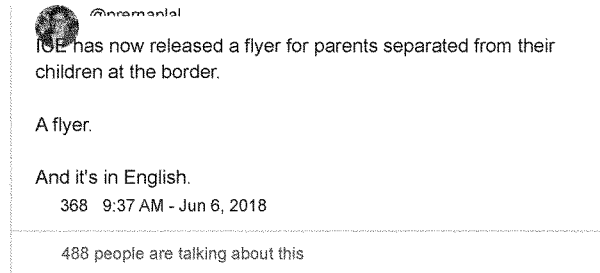
- If you need assistance locating your child(ren) or setting up regular communication with your child(ren), call the Detention Reporting Information Line at 1-888-351-4024.
- If you know that your child(ren) is in the custody of the U.S. Government, call the Office of Refugee Resettlement (ORR) Parent Hotline at 1-800-203-7001.

ICE and ORR work together to locate children, verify the parent/child relationship, and set up regular communication and removal coordination, if necessary.

U.S. Immigration
and Customs
Enforcement

Prerna P. Lal, Esq.



2) How many families have been separated at the border?

At least 2,700 — but we don't know how many more.

Lomi Kriel of the Houston Chronicle **first reported last fall** that families were being separated by Border Patrol after arriving in the Rio Grande Valley in Texas. The **New York Times** later reported that from October 2017 to April 20, 2018, 700 families were split by the Trump administration. (The Trump administration **claims** it piloted its “zero-tolerance” prosecution policy in the Rio Grande Valley in summer 2017, which would have led to family separations over that period; **Reuters has reported** that nearly 1,800 families were separated between October 2016 and February 2018, suggesting that the practice may have been going on for some time.)

In early April, the Department of Justice announced that any migrant referred for illegal entry by DHS officials would be prosecuted. On May 7, DOJ and DHS announced that any migrant caught by Border Patrol agents after crossing illegally would be sent to DOJ — and, therefore, prosecuted.

From April 18 to May 31, Department of Homeland Security officials reported in June, 1,995 children were taken from 1,940 adults.

That might be an undercount. According to DHS officials, this number reflects only the families that have been separated when parents were sent into criminal custody to be prosecuted for illegal entry. That means it doesn't include families who presented themselves for asylum legally by coming to a port of entry — an official border crossing — and were then separated.

It doesn't look like all families apprehended by Border Patrol get separated — or even most of them. According to Border Patrol statistics, 9,485 migrants were apprehended in “family

units" in May 2018 — 306 a day — while the CBP statistics on family separations suggest that 93 people were separated from their children or parents a day after the zero-tolerance directive went into effect.

But the pace may be picking up. **Federal defenders in McAllen** counted 421 parents coming into court between May 21 and June 5 — and that represents just one Border Patrol sector, though admittedly the highest-traffic one for family crossings. (Many of those parents could have been apprehended and split from their children during the May 7-21 period and counted in the Customs and Border Protection stats.)

3) Is the policy of separating families new?

Yes. But it's building on an existing system, and attention to family separation has brought more awareness to problems with that system that have been going on for some time.

For the past several years, a growing number of people coming into the US without papers have been Central Americans — often families, and often seeking asylum. Asylum seekers and families are both accorded **particular protections in US and international law**, which make it impossible for the government to simply send them back. Those protections also put strict limits on the length of time, and conditions, in which children can be kept in immigration detention.

When the Obama administration attempted to respond to the "crisis" of families and unaccompanied children crossing the border in summer 2014, it **put hundreds of families in immigration detention** — a practice that had basically ended several years before. But federal courts stopped the administration from holding families for months without justifying the decision to keep them in detention. So most families ended up getting released while their cases were pending — which immigration hawks have derided as **"catch and release."** In some cases, they disappeared into the US rather than showing up for their court dates.

The Trump administration has stepped up detention of asylum seekers (and immigrants, period). But because there are such strict limits on keeping children in immigration detention, it's had to release most of the families it's caught.

The government's solution has been to prosecute larger numbers of immigrants for illegal entry — including, in a break from previous administrations, large numbers of asylum seekers. That allows the Trump administration to ship children off to ORR, rather than keeping them in immigration detention.

4) What happens to the children?

In theory, unaccompanied immigrant children are sent to ORR within 72 hours of being apprehended. They're kept in government facilities, or short-term foster care, for days or weeks while ORR officials try to identify the nearest relative in the US who can take the child in while his immigration case is being resolved.

But the system for dealing with unaccompanied immigrant children was already overwhelmed, if not outright broken.

ORR facilities were already 95 percent full as of June 7; 11,000 children are being held. (Remember, most of these are probably children who arrived in the US without their parents.) According to the **New York Times**, the government "has reserved an additional 1,218 beds in various places for migrant children, including some at military bases."

The agency has been overloaded for years; its backlog in 2014 precipitated the child migrant "crisis," when Border Patrol agents ended up having to care for kids for days. An **American Civil Liberties Union report** released in May 2018 documented hundreds of claims of "verbal, physical, and sexual abuse" of unaccompanied children by Border Patrol.



This picture is from 2014, when a surge of unaccompanied children crossing the border caused Border Patrol to use temporary holding centers to house immigrant children before sending them to the Office of Refugee Resettlement to be placed with relatives. Often, the children's parents were already living in the US. | John Moore/Getty Images

There are questions about how carefully ORR vets the sponsors to whom it ultimately releases children. A PBS *Frontline* investigation found cases of teenagers getting released to labor traffickers by ORR. The agency told Congress in April that of 7,000 children it attempted to contact in fall 2017, 1,475 could not be contacted — leading to allegations that the government “lost” children, or that they’d been handed over to traffickers.

For the most part, though, it’s probable that the families ORR was unable to contact made the deliberate decision to go off the map. People who came to the US as unaccompanied children were usually teenagers who had close relatives here to reunite with. In 2014-’15, according to an Office of the Inspector General report, 60 percent of unaccompanied children were released to their parents; 99 percent were released to relatives or close friends. (The other 1 percent were put in long-term foster care.)

That isn’t true of children who come to the US with their parents — children who don’t have to be old enough to make the journey on their own — and are then separated from them. ORR isn’t used to changing diapers.

In May, according to the **New York Times**, the government put out a request for proposals for “shelter care providers, including group homes and transitional foster care,” to house children separated from parents. One organization coordinating placements is placing children with foster families in Michigan and Maryland — and planning to expand to several other states.

Some of these foster families have experience fostering unaccompanied children. But they’re not used to children who’ve just been separated from their parents.

5) Are families being reunited?

Some have been. But the government is sending very mixed signals about how families can be reunited — and whether the Trump administration is even trying to make that happen at all.

In an ACLU lawsuit over the separation of families in immigration detention, a DOJ official **told the judge** that “once a parent is in ICE [Immigration and Customs Enforcement] custody and the child is taken into the Health and Human Services system, the government does not try to reunite them, and instead attempts to place the child with another relative in the United States — if the child has one.”

That isn't what ICE and DHS say. They claim that once parents have finished their criminal sentences for illegal entry or reentry, they can be reunited with their children in civil immigration detention while they pursue their asylum case.

They don't appear to have a system to bring families back together.



This family was reunited in Houston after being separated upon crossing into the US from El Salvador. Others aren't so lucky. | Michael Stravato/The Washington Post via Getty Images

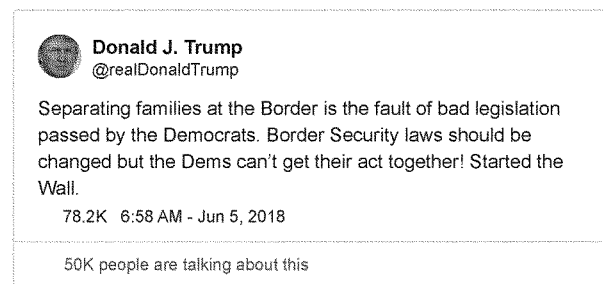
One flyer given to parents in Texas offered a number to call to locate children. But the number was wrong: Instead of being a number for ORR, it was an **ICE tip line**. (The flyers had to be corrected in pen.) And even if a parent can call ORR and ORR can identify the child, they might not be able to call the parent back — because immigrants in detention don't have phone access. (Federal judges sentencing immigrants have **urged the government** to make sure that they have access to phones so they can relocate their kids.)

The plaintiffs in the ACLU's family-separation lawsuit are one woman separated from her child for eight months after she presented herself for asylum at a port of entry, and another woman who was sentenced to a brief jail term for illegal entry but couldn't be reunited with her child for months after her release back to DHS custody.

Some parents are being deported without their children. And some small children, according to advocates in Central America, are getting deported without their parents.

6) Why does Trump say there's a "Democratic law" requiring families to be separated?

President Trump has responded to criticisms of family separation by claiming that a "Democratic law" requires him to do it, and that if Congress doesn't like it, they can change the law.



This is not true. There is no law that requires immigrant families to be separated. The decision to charge everyone crossing the border with illegal entry — and the decision to charge asylum seekers in criminal court rather than waiting to see if they qualify for asylum — are both decisions the Trump administration has made.

Other administration officials back up Trump by pointing to the laws that give **extra protections to families, unaccompanied children, and asylum seekers**. The administration has been asking Congress to change these laws since it came into office, and has blamed them for stopping Trump from securing the border the way he'd like. (Those aren't "Democratic laws" either; the law addressing unaccompanied children was passed overwhelmingly in 2008 and signed by George W. Bush, while the restriction on detaining families is a result of federal litigation.)

In that context, the law isn't forcing Trump to separate families; it's keeping Trump from doing what he'd perhaps really like to do, which is simply sending families back or keeping them in detention together, and so he has had to resort to plan B.

7) Does family separation deter people from coming illegally, or coming at all?



John Moore/Getty Images

Some administration officials say they're prosecuting immigrants (and separating families) for a simple reason: They want to stop people from coming into the US illegally between ports of entry. "You have an option to go to a port of entry and not illegally cross into our country," Homeland Security Secretary Kirstjen Nielsen told a Senate committee last month.

It sounds like common sense — and it allows the administration to avoid awkward legal or moral questions about trying to keep out people fleeing persecution.

But there isn't evidence that strategy will work. In early May, rolling out the zero-tolerance policy, the Trump administration claimed that a pilot of the program along one sector of the border had reduced border crossings in that sector by 64 percent — but **failed to produce numbers to back up that claim** and instead produced numbers about something else.

Furthermore, the administration sends mixed signals about whether it actually wants people to use ports of entry to seek asylum legally.

Some asylum seekers have been separated from their children at ports of entry, though advocates don't believe it's happening systematically. The Trump administration has

promised to prosecute anyone who submits a “fraudulent” asylum claim — and Attorney General Jeff Sessions has made it clear that he suspects many, if not most, asylum claims are fraudulent.

Meanwhile, at several ports of entry, asylum seekers are being told there’s no room for them and that they’ll have to come back another time. In at least one case, asylum seekers were **physically prevented from stepping on US soil** — which would have given them the legal right to seek asylum at the port of entry.

The statistics the Trump administration uses to back up the idea that there’s a “surge” since last year sometimes count both people getting caught by Border Patrol between ports of entry and those presenting themselves without papers at ports of entry for asylum. The implication is that the current crackdown will reduce both — implying that one point of the policy is to stop families from trying to enter the US to seek asylum, period.

8) How is family separation legal?

The Trump administration puts it bluntly: Criminal defendants don’t have a right to have their children with them in jail.

The question is whether the Trump administration has the legal authority to put asylum-seeking parents in jail awaiting trial to begin with, knowing they’re splitting them from their children.

Human rights organizations, including the United Nations, have argued that it violates international law to prosecute asylum seekers criminally. But no administration has agreed with that interpretation; the Obama administration prosecuted some asylum seekers too, just not as often.

Federal courts have, however, ruled that it’s illegal to keep an immigrant in detention in the hopes of deterring others, instead of making an individual assessment about whether that immigrant needs to be detained.

That might pave the way for advocates to fight back against family separation — or, at least, to force the government to start helping families get reunited after the parents have been sentenced.

The ACLU won an early victory in its case in June: The federal government asked the judge to throw out the case, and **the judge refused**. In his ruling, he made it clear he believed

that if the allegations against the administration were true, they might very well be unconstitutional — violating family integrity, which some courts have found is implicitly part of the Fifth Amendment's guarantee of "liberty" without due process of law.

This doesn't mean that the case is definitely going to succeed, though the tea leaves are favorable. And, of course, any opinion will be appealed — and will likely go to the Supreme Court unless something else happens to change the policy before then.

Even if the ACLU does succeed, it won't stop families from being separated at the border. The lawsuit argues that it's unconstitutional for parents who are in immigration detention to be separated from their children — but not that it's unconstitutional to charge parents with illegal entry and take them into separate criminal court.

A victory would merely obligate the federal government to reunite parents with their children once they've served their (brief) time for illegal entry. But whether the government will actually be able to do that is another question. And it's certainly less preferable, for families, than not being separated at all.



Spencer Platt/Getty Images

9) How long will this last?

The Trump administration presents its crackdown as a temporary response to a temporary “surge” of people crossing the border illegally. But the “surge” is simply a return to normal levels of the past several years after a brief dip last year. It would be foolish to assume that the administration will be satisfied with border apprehension levels in a few months, and wind down the aggressive tactics it’s started to use.

If we had a different president running a different White House, the outrage that family separation has generated would probably make it more likely that the policy would be quietly ended or at least curbed. Not only is it galvanizing progressives, but some conservatives — including **talk show host Hugh Hewitt** and **evangelical leader Samuel Rodriguez** — have voiced concerns for the children.

But this administration very rarely backs down from something because people are mad about it — often, the president takes that as an indication he’s doing something right.

It’s possible the administration simply won’t have the resources to keep this many people in detention for this long — it’s already running out of space in ICE detention — or to keep prosecuting more and more people for a crime that already overwhelms federal dockets. But it’s also possible that it will simply burn through the money it has and demand Congress give it more, in the name of protecting the US from an invasion of illegality.

It is extremely unlikely that Congress is going to pass a law that stops the administration from separating families at the border. Democrats are scrambling to propose bills to limit prosecution and separation, but the issue isn’t even inspiring the bipartisan momentum that Trump’s decision to end the **Deferred Action for Childhood Arrivals (DACA)** program last fall did.

Indefinite family separation is almost certainly going to overwhelm the already precarious system for dealing with migrant children. Border Patrol and ORR aren’t going to get the resources they need to address the new jobs they’re being asked to take on by treating children separated from their parents as “unaccompanied” children. But the public and policymakers never paid much attention to that part of the immigration system anyway.

When it first became clear that the Trump administration was engaging in wide-scale family separation, White House Chief of Staff John Kelly waved off questions about the policy by saying that children would be sent to “foster care or whatever.” The vagueness and inaccuracy were telling.

The administration knows it is separating families. It does not appear to believe it's its job to reunite them.

*For more on the family separations at the border, listen to the **June 18 episode of Today Explained.***

The family separation crisis at the US border

Explainers



Separation of families at the border: a visual explainer

What Obama did with migrant families vs. what Trump is doing

The scary ideology behind Trump's immigration instincts

It's not just cruel to separate a breastfeeding baby from a mom. It's medically dangerous.

I work with children separated from caregivers at the border. What happens is unforgivable.

Developments

5

WORLD

The Trump Administration Is Slowing The Asylum Process To Discourage Applicants, An Official Told Congress

In a letter to Customs and Border Protection, senior Democrats said the closed-door testimony raised questions about whether the administration is obeying the law.

By Hamed Aleaziz

Posted on December 17, 2018, at 5:58 p.m. ET



Guillermo Arias / AFP / Getty Images

A high-ranking Customs and Border Protection official told Congress earlier this month that border agents were limiting asylum applications along the border because allowing too many migrants to

apply would inspire more migrants to come, according to a letter written by senior House Democrats on Monday.

The statement by Jud Murdock, CBP's acting assistant commissioner, contradicted official claims that the practice of "metering" — when officials limit the number of individuals who can make asylum claims at ports of entry on any given day — was due to resource constraints, including a lack of detention space and personnel. When asked about the practice at a Senate hearing last week, CBP Commissioner Kevin McAleenan said that it was not meant as a deterrent.

But on Dec. 6, Murdock said in a closed congressional briefing that CBP had chosen to limit asylum-seekers at ports of entries because "[t]he more we process, the more will come," according to the letter.

Murdock's answers to follow-up questions "clearly indicated, given the context, that the Department's decision to limit processing was primarily motivated by its desire to deter migrants from seeking asylum at ports of entry" generally, according to the letter, which was signed by Reps. Zoe Lofgren, Bennie Thompson, and Jerrold Nadler, the ranking Democrats on the Immigration Subcommittee, the Homeland Security Committee, and the Judiciary Committee, respectively.

The letter was sent to McAleenan on Monday and demands that the agency immediately respond to questions, including whether the practice is being used as a deterrent.

The Democrats said Murdock's comments were "disturbing" considering repeated messages by DHS Secretary Kirstjen Nielsen that migrants should go to ports of entry to be processed for their asylum claims. Advocates have long criticized metering, saying the practice is illegal.

“These comments not only contradict previous statements by the Administration on this issue, but also raise significant questions about the Department’s compliance with existing statutory authority,” the representatives wrote. According to the Immigration and Nationality Act, DHS must process and provide a credible fear screening for those who intend to apply for asylum, the letter stated.

Customs and Border Protection officials said Monday that the comments made in the briefing were taken out of context.

“During this briefing, CBP reiterated what we have said numerous times, that with the influx of Central American family units arriving at our ports of entry without proper documentation, and crossing our borders illegally, the processing system at CBP and our partner agencies has hit capacity,” said Corry Schiermeyer, press secretary for CBP. “As more people are processed, the capacity challenges increase, and become unsustainable.”

Schiermeyer said that unless “Congress responds to our repeated requests for additional resources and to address pull factors for illegal immigration, we will continue to experience capacity challenges.”

A study released this month by the University of Texas at Austin's Robert S. Strauss Center for International Security and Law found that the practice began more than two years ago and has become “institutionalized” across the Southwest border in the past six months under the Trump administration.

Experts said the statements made by CBP officials behind closed doors were revealing.

“Murdock's statement not only confirms that DHS is using metering to slow-walk asylum applications, regardless of whether the agency has the capacity to process such, but also that they are doing so for the

purpose of deterring future arrivals of asylum-seekers,” said Sarah Pierce, an analyst at the Migration Policy Institute.

The American Immigration Council has filed a federal lawsuit challenging the practice; earlier this year the Department of Homeland Security inspector general found that it had forced some to cross into the country without authorization.

McAleenan told Vox in October that they were not “turning people away” but that they were “asking them to wait.” He said that the practice was occurring at three to four ports of entry on the Southwest border, but that the port in Tijuana, San Ysidro, was the only one that was consistently using it.



Hamed Aleaziz is a reporter for BuzzFeed News and is based in San Francisco.

Contact Hamed Aleaziz at hamed.aleaziz@buzzfeed.com.

Got a confidential tip? [Submit it here](#).

Pick Your NPR Station
There are at least two stations nearby

npr NEWS
DONATE

LIVE RADIO

SHOWS



NATIONAL

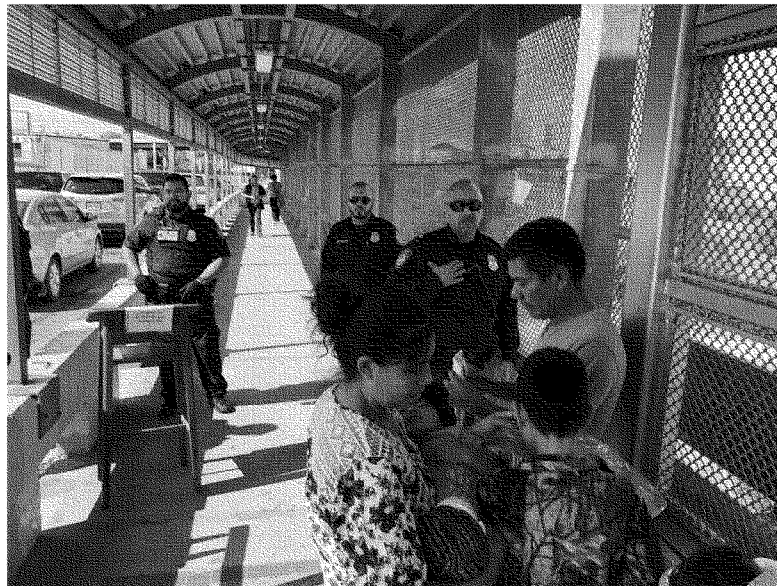
After Traveling 2,000 Miles For Asylum, This Family's Journey Halts At A Bridge

LISTEN · 8:11

QUEUE Download

June 15, 2018 · 1:12 PM ET

JOHN BURNETT



The Berduo family speaks with authorities as they try to cross the international bridge between Matamoros, Mexico, and Brownsville, Texas.

John Burnett/NPR

The Berduo family traveled nearly 2,000 miles from Guatemala to the international bridge between Matamoros, Mexico, and Brownsville, Texas, but they could go no further.

Under a new policy, federal border agents stationed in the middle of international bridges are turning away asylum seekers like the Berduos, telling them there is no room in U.S. Customs and Border Protection stations for them.

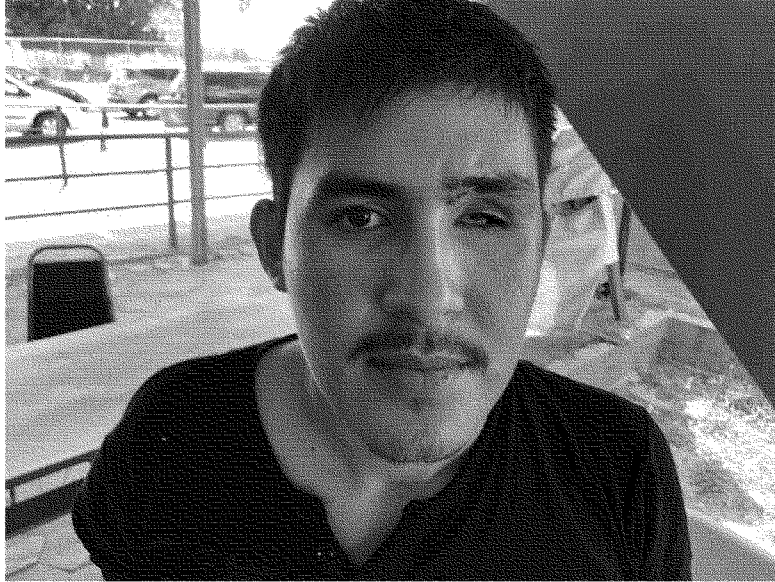
Since arriving on Monday, the family said they had tried three times to cross into the U.S., and three times border agents turned them back. On Tuesday, the nine family members, who range in age from 58 years to nine months, sat glumly at a picnic table on the Mexican side of the bridge.

**NATIONAL**

Inside The Trial Of 3 Guatemalan Mothers Separated From Their Children

"We've been here on the border for two days asking for asylum, but the U.S. government won't pay attention to us," said Victor Samuel Berduo, the family patriarch, with an expression of resigned exasperation. "They tell us to wait or go to a different bridge. But we don't know any other bridges."

Immigrant advocates say these are the latest victims of White House policies meant to discourage asylum seekers from coming to the nation's borders to ask for protection.



Wayner Berduo's eye socket was mangled by a bullet. His father says a drug lord sent two assassins to kill his sons one day last December in Guatemala.

John Burnett/NPR

Up and down the southwest border, courtrooms are packed with immigrants arrested for unlawful entry. Youth shelters are filling up with immigrant children. Migrants are worried because Attorney General Jeff Sessions has sharply curtailed which cases qualify for asylum.

And now, border agents have begun turning away asylum seekers at ports of entry, telling them to come back another time. That leaves some immigrants, like the Berduos, in limbo.

Article continues after sponsor message

"If we go back home," Berduo said, "they will kill us."

Then, in a gruesome show and tell, he presented his 23-year-old son, Wayner. He removed sunglasses to reveal a left eye socket mangled by a bullet, and he pulled away a towel to show an ugly scar that zigzags up the length of his right arm, the result of four more bullets.

His father said a drug lord sent two assassins to kill his sons one day last December. As Victor explained it, his boys made a living taking tourists to a place called the Blue Waterfall in the Peten province of northern Guatemala. But the narco owns the property and doesn't like visitors.



NATIONAL

'These Are Not Kids Kept In Cages': Inside A Texas Shelter For Immigrant Youth

Berduo's wife, Estafania, opens a plastic bag containing a stack of papers, the documentation they will use to back up their plea for asylum.

One document, that bears an official-looking stamp and a signature from a local judge, affirms the family is a victim of "real threats" and urges any "civil, military or diplomatic" authority in a receiving country to allow them "to live peacefully."

Customs and Border Protection, which is in charge of the nation's border crossings, says it is overwhelmed with asylum seekers fleeing domestic abuse and gang violence in Central America. Statistics show a 58 percent jump in families and a 14 percent

increase in unaccompanied children asking for protection at ports of entry this year compared to last year.

Agents have been posted in the middle of pedestrian bridges across the U.S.-Mexico border to check documents and turn away applicants.

"No one is being denied the opportunity to make a claim of credible fear or seek asylum. CBP officers allow more people into our facilities for processing once space becomes available," the agency says in a statement.

Immigrant advocates say this is just the latest obstacle for asylum seekers under the Trump administration.



Six of the nine members of the Berduo family from Guatemala. The ages range from 58 years to nine months.

John Burnett/NPR

Under a new "zero tolerance" policy announced last month, immigrants who cross the border illegally will be prosecuted, even if they are seeking asylum, and they may have their children taken away and sent to government-contracted shelters.

Then, earlier this week, Sessions narrowed the path to asylum and said domestic abuse would no longer be accepted as a valid claim.

Christina Patiño Houle, director of the Rio Grande Valley Equal Voice Network, says the administration is giving a mixed message. Federal officials are telling asylum applicants to stop wading across the river and entering unlawfully. Rather, they should come through an official port of entry.

"A message is being broadcast across the nation that migrants should be seeking asylum through official channels, and it's just not possible," Patiño Houle says. "What we're seeing on the ground is that people are being turned away. They're being told that either there's no room or they cannot enter the bridge."

U.S. officials say there may be a holdup at some bridges but that, ultimately, immigrants who wait a matter of hours or days are permitted to enter.

"Port of Entry facilities were not designed to hold hundreds of people at a time who may be seeking asylum," CBP says in its statement.

But there are not hundreds of migrants a day trying to cross the Matamoros/Brownsville bridge, according to Mexican officials interviewed on the Matamoros side. They estimate only 10 to 15 asylum seekers show up a day, and they're surprised that U.S. agents are saying there's no room in their station.

Late Tuesday, the Berduo family decided to try again. They pick up their bags and troop up the concrete walkway that spans the murky, sluggish Rio Grande.

Two immigration agents sweating in dark blue uniforms await them at the top of the bridge.

"Did you bring documents to enter?" one of them asks.

Victor Berduo answers, "We are asking for asylum because we cannot return to Guatemala."

The officers frown and call a supervisor when they see a reporter with a microphone accompanying the Guatemalan family. The supervisor is bald and wears sunglasses. He examines their papers and passports. He tells the reporter to stop recording.

"You can either stop or we won't do anything," he says.

The reporter answers that he is on the Mexican side of the international boundary.



Victor Berduo's daughter-in-law, Yeni Johary Leal Cruz and her two small children are escorted by an agent as they cross the bridge into Brownsville, Texas. They were the only family members to enter America.

John Burnett/NPR

"It doesn't matter," the supervisor replies. "I'm actually trying to help them."

Another agent gets a call on his radio: "We have room for one family."

The agent tells the Berduos family they will only accept three people: their daughter-in-law, Yeni Johary Leal Cruz, and her two small children. The six remaining family members will have to return to Mexico and wait.

On this sweltering afternoon, American tourists are passing by on the bridge walkway, carrying bottles of tequila and pictures of Pancho Villa, and looking on quizzically as an anxious family conversation ensues.

"We can't do it. We're one family. She always goes with us," says an anguished Estefania.

The agents are adamant: They will only take three.

Finally, the family relents. The 20-year-old daughter-in-law, her eyes brimming with tears, collects her children, a nine-month-old and a two-year-old. The agent shoulders her pink backpack and escorts her into America.

The rest of the family walks back down the concrete bridge to the picnic area on the south side of the river to wait some more.

"Tomorrow I hope they'll attend us and our family can be complete again," says Victor Berduo, hopefully. "This is what we want."

Sign Up For The NPR Daily Newsletter

Catch up on the latest headlines and unique NPR stories, sent every weekday.

What's your email?

SUBSCRIBE

Pick Your NPR Station
There are at least two stations nearby

npr NEWS
SHORT
UPDATE

LIVE RADIO

SHOWS



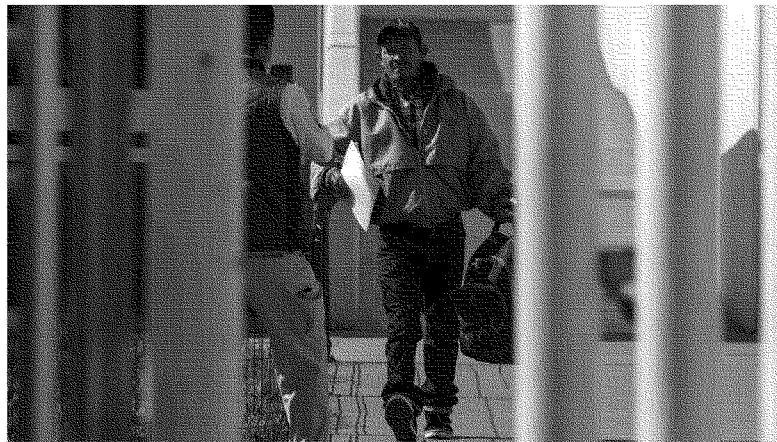
LAW

Trump Administration Begins 'Remain In Mexico' Policy, Sending Asylum-Seekers Back

January 29, 2019 · 8:59 PM ET



RICHARD GONZALES



Carlos Catarlo Gomez, an asylum-seeker from Honduras, returns to Mexico from the United States while his case is processed. He was the first person returned under a new U.S. policy being called Remain in Mexico.

Guillermo Arias/AFP/Getty Images

The Trump administration began implementing a new hard-line immigration policy by sending a single asylum-seeker from Central America back to Tijuana, Mexico, to await his assigned court date later this year in San Diego.

The first asylum-seeker to be returned to Mexico was a Honduran man identified as Carlos Catarlo Gomez. He appeared confused and scared by the throng of reporters

waiting for him Tuesday on the Mexican side of the San Ysidro border crossing, according to the San Diego Union-Tribune. He was whisked away by Mexican authorities.

Officially dubbed "Migrant Protection Protocols," the policy was announced by Homeland Security Secretary Kirstjen Nielsen last December. Administration officials initially called it a "Remain in Mexico" policy to deter the waves of asylum-seeking families fleeing mainly the Northern Triangle nations of Guatemala, El Salvador and Honduras.

Until now, asylum-seekers were allowed to remain in the U.S., pending their immigration court appearances.

There is a backlog of 800,000 cases piled up in U.S. immigration courts. The number of migrants detained at the border is near its lowest level in decades, even as the number of asylum-seekers has doubled since 2015.

Article continues after sponsor message

The new policy does not apply to unaccompanied minors or to asylum-seekers from Mexico, according to government documents.

Once the program gets underway, about 20 asylum-seekers will be returned to Mexico each day, reports Jean Guerrero of NPR member station KPBS.

Abuse of Power

Asylum Seekers Being Turned Away No Matter Where They Cross the Border

BY KATHERINE HAWKINS | FILED UNDER INVESTIGATION | NOVEMBER 20, 2018

(Photo: U.S. Customs and Border Protection)

*This piece originally appeared on **Just Security**.*

On November 9, in response to a large caravan of migrants from Central America slowly traveling through Mexico towards the U.S. border, President Donald Trump's administration issued a **proclamation** seeking to forbid migrants who cross the U.S. border anywhere but at an official port of entry from applying for asylum.

The move is legally **questionable**, and **civil rights groups** quickly sued to stop it. On Monday night, a federal judge **issued a temporary nationwide** restraining order barring enforcement of the new policy, saying it likely violated federal law. The federal **asylum statute** specifically says that anyone who arrives in the United States “whether or not at a designated port of arrival...may apply for asylum.” The president’s proclamation attempts to use **another provision of immigration law** to override this requirement—the same section he used to **ban** most citizens of five Muslim-majority countries from entering the United States. The temporary restraining order will remain in effect until Dec. 19, when the court will hear arguments for and against a permanent order.

The proclamation states that the prospect of members of large caravans of migrants entering illegally between ports of entry “is contrary to the national interest,” and “puts lives of both law enforcement and aliens at risk. By contrast, entry at ports of entry at the southern border allows for orderly processing.”

But even as it tells asylum-seekers they must go to a port of entry, the Trump administration has been turning them away from these very same ports for months, claiming that they are “at capacity.” According to both immigration lawyers and a **report** from the Inspector General for the Department of Homeland Security (DHS), this has led some migrants to attempt crossing unlawfully.

DHS **claims** on its website that it is a “myth” that it has turned away asylum-seekers at ports of entry, and in fact “CBP [Customs and Border Protection] processes all aliens arriving at all ports of entry without documents as expeditiously as possible.... As the number of arriving aliens determined to be inadmissible at ports of entry continues to rise, CBP must prioritize its limited resources to ensure its primary mission is being executed.”

Evidence shows that the increasing wait times at ports of entry are not a function of a sudden surge of migrants, but of deliberate policy decisions by the Trump Administration to detain as many asylum seekers as possible for as long as possible.

REUTERS/CHRISTOPHER FOLIO/GETTY IMAGES



Based on an investigation by the Project On Government Oversight (POGO)—including a review of recent court documents, government reports and statistics, and interviews—DHS’s claim is disingenuous at best. The evidence shows that the increasing wait times at ports of entry are not a function of a sudden surge of migrants, but of deliberate policy decisions by the Trump Administration to detain as many asylum seekers as possible for as long as possible.

The cumulative impact of the administration’s policies and practices is to leave migrants fleeing extreme violence and poverty in Honduras, Guatemala, and El Salvador—including a large and growing number of families with young children—trapped in vulnerable situations on the Mexican side of the border, where crime and corruption are rife.

Turned Away, Prosecuted and Separated

Human rights groups and immigration lawyers began documenting cases of asylum-seekers being turned away from the San Ysidro port of entry, between San Diego and Tijuana, in 2016. In July 2017, asylum-seekers who had been turned away from the San Ysidro and Laredo, Texas ports filed a class-action lawsuit against DHS, *Al Otro Lado v. Nielsen*. They alleged that CBP was “violating the law by utilizing various tactics—including misrepresentations, threats and intimidation, verbal abuse and physical force, and coercion” to prevent people from seeking asylum at ports of entry.

It was in May and June of 2018, though, that turn-backs became visible across the entire U.S.-Mexico border—around the same time that the Trump administration started separating parents from their children. CBP officers began stationing themselves at the international boundary between the U.S. and Mexico and checking migrants’ travel documents. Asylum-seekers were told that the ports were “at capacity,” and they would have to wait. The lines quickly backed up. Families spent **days or weeks** camped **outside**, relying on volunteers to provide food, water, and other necessities. In some cases, they waited on bridges without toilet facilities, where temperatures sometimes reached 100 degrees.

Taylor Levy, the legal coordinator for a shelter serving migrants in El Paso, emailed POGO on June 5 that “Everything is awful. Refusing to accept Asylum Seekers at the POEs [ports of entry] funnels them to EWI [entry without inspection], which leads to the government-sanctioned kidnapping of their children.”

Levy later submitted a **court declaration** describing how she witnessed CBP agents turn away asylum-seekers at a pedestrian bridge in El Paso. Levy **said** she heard CBP agents and supervisors give the following explanations:

"We have orders not to let anybody in. As soon as we have room, yea." "We have an order." "This is a policy across the border." "There is no room for them right now. You can wait in line. Once there is room they can come in." "They can wait until we have room for them." "It's an order from [then-Attorney General Jeff] Sessions."

Annunciation House, the shelter where Levy works, housed a number of separated parents after their release from government custody. She wrote in her declaration that "[m]any of these parents report that it was only when they had been turned away at the port of entry—sometimes multiple times—that they attempted to cross elsewhere and were prosecuted for unlawful entry."

Levy described interviewing two specific parents—a Honduran father and a Guatemalan mother—who had been charged with illegal entry and separated from their three-year-old children after repeatedly trying to seek asylum at ports of entry and being turned away. She concluded, "I simply cannot believe that my government could have done this to these people."

Michael Seifert, a strategist for the ACLU of Texas based in the Rio Grande Valley, also told POGO that the turn-backs in Brownsville started at around the same time as the "zero tolerance" prosecution policy that was used to separate families. By late May and early June, people were waiting on the bridges for up to six days. This included children. Others gave up and tried to cross the river. The "administration told them to come the right way, but they couldn't," Seifert said.



"It was only when they had been turned away at the port of entry—sometimes multiple times—that they attempted to cross elsewhere and were prosecuted for unlawful entry."

TAYLOR LEVY, LEGAL COORDINATOR FOR ANNUNCIATION HOUSE IN EL PASO

Seifert's and Levy's descriptions are consistent with a report released this October by DHS's Office of the Inspector General (OIG). OIG inspectors found that even as officials encouraged families seeking asylum to enter through ports of entry to avoid separation, CBP agents were blocking access to the ports through a process they called "metering," leading more people to cross illegally. A Border Patrol

supervisor had acknowledged to OIG inspectors that “the Border Patrol sees an increase in illegal entries when aliens are metered at ports of entry,” and three asylum-seekers described crossing illegally only after being turned away from ports of entry.

In a written response to the OIG report, DHS **acknowledged** having taken “operational actions to manage the flow of asylum-seekers at Ports of Entry through the process known as ‘queue management,’” which was “undergoing pilot evaluation as directed by the Secretary of Homeland Security” in June. DHS claimed, though, that family separation and “queue management” were “separate and distinct,” and discussing them together “detracts from an accurate understanding of either issue.”

DHS’s press office did not respond to requests for details about this “queue management” pilot program, nor did DHS provide additional information about it to OIG investigators. Arlen Morales, a spokesperson for OIG’s public affairs office, wrote in an email to POGO that DHS’s written response “was the first and only time they told us” about a pilot.

She continued, “To the best of our knowledge, metering has been used on and off for a couple years. However, we do not know the details of the prior metering, such as whether it took the same form of officers standing in the middle of the bridge. Nor do we know why CBP decided to reinstate metering when it did in 2018.”

A Dangerous Limbo at the Border

After Trump ended family separations in response to public outcry, the lines outside some ports of entry shortened or disappeared for a time, but immigration attorneys began to see disturbing new tactics to deny asylum-seekers access.

In the Rio Grande Valley, **lawyers** say, Mexican immigration officials began removing migrants from the bridges at CBP’s request. A petition filed with the Inter-American Commission on Human Rights in October by attorney Rochelle Garza **alleges** that starting in late June 2018, “for the first time ever, Mexican immigration officials...were stationed at the entryway to Mexico-Texas international bridges, demanding identification or Mexican visas from all persons seeking to cross the bridges.” Asylum-seekers who had visas to be present in Mexico were allowed to enter. Those who did not “were apprehended and detained, then either deported or warned never to return.”

An **amended complaint** filed last month in the *Al Otro Lado* case alleges that this September and October, Mexican immigration officials forced four of the plaintiffs off a pedestrian bridge at the Hidalgo-Reynosa port of entry, briefly detained them, and threatened them with deportation from Mexico. (According to one of their attorneys, Angelo Guisado of the Center for Constitutional Rights, all but one of the plaintiffs named in the case have been allowed to enter the United States since the complaint was filed.)

One of the *Al Otro Lado* plaintiffs, whom the complaint calls “Maria Doe,” is a Guatemalan citizen with legal permanent residence in Mexico. She and her children fled her abusive husband, who was affiliated with a drug cartel. The family was turned away from the Laredo port of entry on September 10, and then attempted to cross at the Reynosa-Hidalgo port accompanied by an American lawyer. Mexican officials forced them off the bridge twice, and threatened to destroy Maria’s identity documents and revoke her permanent residency in Mexico.

Asylum-seekers waiting in Mexico also face the threat of violence and kidnapping by gangs and cartels. The situation is particularly bad in the Rio Grande Valley. The U.S. State Department has issued a “do not travel” warning for the Mexican state of Tamaulipas—the same warning it issues for countries that

It is also important to note that asylum seekers are, and have always been, a small fraction of total traffic at U.S. ports of entry.



are active war zones. The State Department urges U.S. citizens to “reconsider travel” to most other Mexican border states. Cartels often **specifically target migrants** for kidnapping, demanding ransom from family members. Migrants who cannot pay are sometimes killed. Notoriously, the Zetas cartel **massacred 72 migrants** in San Fernando, Tamaulipas in 2010, and at least 193 bodies were found in mass graves in the same city in 2011.

Tijuana is less dangerous than the Rio Grande Valley, but the wait at the port of entry can be even longer—up to four or five weeks. Asylum-seekers are placed on an informal waiting list that is kept in a notebook, which is managed by asylum-seekers in coordination with Mexican immigration officials. Two of the *Al Otro Lado* plaintiffs were handed pieces of paper with the numbers 919 and 1013 on them, and told those were their numbers on the list. Guisado, the attorney, described migrants’ situations outside the San Diego port as ranging from “tenuous to harrowing.” There are shelters, but male and female

family members cannot stay together there, and “cartels monitor who go in and out of a shelter,” Guisado said.

In an interview at the end of August, Joanna Williams, the director of the Kino Border Initiative, said that since mid-July the wait times outside the port of entry in Nogales, Arizona had shortened considerably. But the lines started growing again the week of our interview, and by early October, Williams **told the *Arizona Republic*** that they had reached three weeks: “We’ve had maybe one or two families processed max a day. And almost all of last week, there was not a single family processed.” This was in contrast to early August, when **CBP was processing 10 to 15 families a day**.

Delays have only increased at ports all along the border this fall.

Near El Paso, approximately 100 migrants were **camped out** on the Paso del Norte bridge as of early November waiting to be processed. Mexican authorities **recently removed** them to a shelter at CBP’s request.

Kennji Kizuka, a researcher for Human Rights First, **tweeted** on November 8 that CBP was “allowing only 3 asylum seekers daily into Calexico port,” while over 200 waited in shelters on the Mexican side of the border. His colleague Alyssa Isidoridy **said** that at the San Luis port, near Yuma, Arizona, about 50 families were camped out in makeshift tents, and CBP was processing only one or two families a day.

Kizuka and Isidoridy encountered sick children at both ports: **a four year old** who began vomiting while researchers interviewed his mother near Calexico, and **a nine-month-old infant with bronchitis** at San Luis.

These delays were occurring before the president’s new proclamation went into effect, when the large, well-publicized migrant caravans were hundreds of miles from any port. The lines are likely to increase dramatically in the weeks ahead.

Lack of Capacity, or a Slow Lane for Seeking Refuge?

A CBP spokesperson emailed a statement to POGO that read:

“CBP processes undocumented persons as expeditiously as possible without negating the agency’s overall mission, or compromising the safety of individuals within our custody.... No one is being denied the opportunity to make a claim of credible fear or seek asylum.”

CBP did not respond to multiple follow-up inquiries.

Immigration advocates are extremely skeptical of DHS's claims of lack of capacity. Taylor Levy, the attorney from El Paso, wrote in her court declaration that "it was especially infuriating to be told by the agents that there was no space to process these people when I knew personally from my work with Annunciation House that this was simply not true."

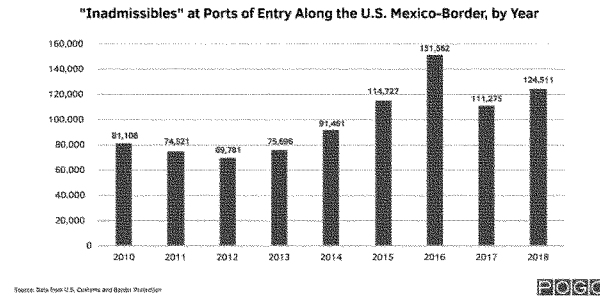
DHS statistics do not show any sudden increase in people coming to ports of entry without documents that could explain the long lines on the bridges that started this May.

_____ 

Michael Seifert said that when he and his colleagues in the Rio Grande Valley ask DHS for an explanation for the delays in processing asylum-seekers, they generally "don't answer the phone." When they did speak to agents, Seifert said, the response was "ping pong," where officials at the ports attributed the delays to policies from Washington, D.C., and officials in Washington blamed local conditions at the ports of entry on the border.

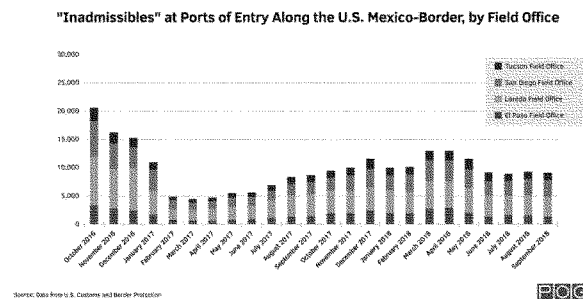
Joanna Williams said she received shifting explanations for lines at the port of entry in Nogales. Officers had said that the Nogales port was understaffed and needed to devote more resources to drug seizures. At other times, CBP attributed the delay to a lack of space in Immigration and Customs Enforcement (ICE) detention facilities, but "ICE has claimed the opposite" and said the delays were due to CBP. "The two agencies are pointing fingers at each other," Williams said. It is clear to her, though, that "they don't see asylum-seekers as as high of a priority" as in the past.

DHS statistics do not show any sudden increase in people coming to ports of entry without documents that could explain the long lines on the bridges that started this May. In fiscal year 2018 (from October 1, 2017 to September 30, 2018), a total of 124,511 inadmissible individuals were processed at ports of entry along the U.S.-Mexico border. This was only a small increase from the 111,275 processed in fiscal year 2017 and the 114,727 processed in fiscal year 2015, and was lower than the 151,562 who came through the ports of entry in 2016.



There was also no evidence of a surge in inadmissibles in May and June of 2018 that would explain DHS's decision to pilot-test "metering" across the southwest border; in fact, there was a decrease from the months immediately before.

It is possible that a large group of asylum-seekers simultaneously arriving at a single port, which would not necessarily be apparent in monthly statistics, could cause temporary capacity issues. But that would not explain the sustained, border-wide delays in processing that attorneys have routinely observed.



It is also important to note that asylum seekers are, and have always been, a small fraction of total traffic at U.S. ports of entry. For example, San Ysidro, according to the **General Services Administration**, "is the busiest land border crossing in the Western Hemisphere," and processes "an average of 70,000

northbound vehicle passengers and 20,000 northbound pedestrians per day.” CBP has been accepting between **40** and **100** asylum seekers daily for processing according to recent press reports.

If there is not a dramatic influx at the ports of entry, what explains increasing delays for asylum seekers? Two government reports suggest one potential issue may be that the holding cells at ports of entry are full—and they are full more often because of the Trump administration’s changes to immigration enforcement.

The Inspector General’s report on family separation said that OIG “did not observe CBP turning away asylum-seekers while there was available space,” and noted that there was “limited” detention capacity, especially for families and children, at the ports. OIG found that “[d]epending on who is being held on a given day and the configuration of the hold rooms, the facility can reach capacity relatively quickly. At one port of entry the OIG team visited, CBP staff attempted to increase their capacity by converting former offices into makeshift hold rooms.”

A Congressional delegation that visited the Brownsville-Matamoros port of entry also **noted** the use of offices as holding cells. CBP officers **told Congressional staff** that “they are processing legal asylum claims as quickly as ICE...can pick up the individuals or families,” but “[i]f the Port cannot transfer the individual or family, then the line quickly backs up.”

DHS generally detains individuals fleeing persecution at least until they pass an initial interview by an asylum officer, known as a “credible fear” screening. Asylum seekers are first detained by CBP in either holding cells located at ports of entry (if they come to a port), or border patrol stations (if they turn themselves in to or are caught by the border patrol), and then transferred to longer-term detention facilities operated by ICE.

As a result of the Trump administration’s opposition to “catch and release,” ICE is detaining more people than ever before, including an **increasing number of asylum seekers**. The agency reported to Congress in October that it was detaining **an average of 44,631 people per day**—about **10,000 more** than was typical during the last fiscal year of the Obama administration. The U.S. government is also detaining a record number of unaccompanied migrant children in shelters run by the Department of Health and Human Services (HHS) because of policy changes that have slowed releases from shelters. According to the *New York Times*, the number of migrant children in shelters **quintupled over the last year, to over 13,000** as of September 30.



OIG documented at least 564 cases in the Rio Grande Valley and 297 cases in El Paso where children were held in Border Patrol custody for longer than 72 hours, and one case where the Border Patrol detained a child for 25 days.

As HHS shelters and ICE detention centers have filled, CBP has held people in its custody for longer and longer periods before transferring them. CBP detention cells, whether they are located at ports of entry or at border patrol stations, are not designed to hold people overnight. Most are either **concrete boxes** or **chain link cages**, with no furniture other than concrete, metal, or wooden benches. Detainees commonly call the CBP cells “*hieleras*,” meaning freezers, or “*perreras*,” meaning dog kennels. Medical care is minimal or nonexistent, and detainees do not receive sleeping mats or bedding other than a mylar blanket.

CBP policy states that detainees should “generally not be held for longer than 72 hours in CBP hold rooms” or detention facilities. For minors, this limit is legally binding—but the OIG report found that it was repeatedly violated while family separations were in effect. OIG documented at least 564 cases in the Rio Grande Valley and 297 cases in El Paso where children were held in Border Patrol custody for longer than 72 hours, and one case where the Border Patrol detained a child for 25 days.

Immigration advocates have also observed an increase in the time their clients spend in *hieleras* more recently, including parents with children. Kennji Kizuka, the Human Rights First researcher, emailed POGO that he had interviewed four fathers at an ICE family detention center who had been held with their children in *hieleras* for five to 10 days in mid-September. Similarly, an Arizona newspaper **reported** that advocates in a Tucson shelter were receiving families who had been in Border Patrol detention for 10 days. Local 1929 Border Patrol Union in El Paso **told a news station** that their detention facilities were holding three times the number of detainees they were meant to, contributing to outbreaks of chicken pox and other diseases.

But while DHS’s hard-line detention policies are leading to real overcrowding, turning asylum-seekers away from ports of entry does not solve the problem. Based on the reports referenced above, Border Patrol detention facilities seem to be at least as crowded as CBP holding cells near ports of entry. More

asylum-seekers **cross the border** than present themselves at ports, and are processed into the same ICE detention facilities (for adults) and shelters (for unaccompanied minors).

The Trump administration acknowledges that its new restrictions on asylum are likely to increase the backlog at ports of entry. According to regulations issued with the proclamation, “aliens would likely face increased wait times at a U.S. port of entry, meaning that they would spend more time in Mexico.” The **regulations** state that Central Americans “appear highly unlikely to be persecuted on account of a protected ground or tortured in Mexico,” and therefore it is reasonable for them “to be subject to orderly processing at ports of entry that takes into account resource constraints at ports of entry and in U.S. detention facilities.”

The government does not acknowledge that the resource constraints on processing are, to a large extent, created by the government’s own detention policy. Nor does the Trump administration recognize the likelihood that migrants will face harsh or inhumane conditions as they wait for “orderly processing.” It cites no evidence for its claim that Hondurans, El Salvadorans and Guatemalans can safely wait in Mexico. It does not address the travel warnings the U.S. government has issued for Mexican border regions or the evidence that migrants are particular targets for cartels in those areas.

The large caravan that began in mid-October in Honduras **traveled to Tijuana** rather than the much closer ports in Tamaulipas to avoid being targeted by cartels. At press time, they were still arriving, to a city whose shelters were already over capacity. City officials opened an emergency shelter in a local sports complex with **mattresses for 360 people**, but some members of the caravan camped out on a beach near the border on the night of Wednesday, November 14. They were surrounded by Tijuana residents chanting for them to leave, including members of a vigilante group that is **organizing and making violent threats** on social media. Another group of anti-migrant demonstrators **confronted riot police** guarding the city’s emergency shelter on November 18. Meanwhile, the waiting list to apply for asylum at San Ysidro has reportedly grown **to 3,000 people**.

Ms. SCANLON. The gentleman from Pennsylvania is recognized.

Mr. RESCHENTHALER. Thank you, Madam Chairwoman.

Thank you to all the witnesses who came here today. The work you do is absolutely critical for the safety and security of our nation, so thank you.

There is definitely no question in my mind that we are dealing with a humanitarian crisis at the southern border. I just wanted to throw out some statistics.

In April 2017, 1,118 family units, adults traveling with minors, were apprehended by Border Patrol. But by 2018, December 2018, that number was up to 27,518 family units. That is a 2,323 percent increase. So over a 2,000 percent increase in just over two years.

In following the precedent of administrations that came before the current DHS, DHS has separated adults and children in certain situations, including when they believe a child has been trafficked. So rather than debate what I think is a non-existent family separation policy, I would like to focus on something that poses a very real threat, and that is the despicable practice of human trafficking.

The stats speak for themselves. During the Fiscal Year 2018, ICE and Homeland Security investigations made 1,588 trafficking arrests and identified 308 victims. So over the 1,588 arrests, 1,543 were for sex trafficking violations. This is modern-day slavery.

As a nation, we have a moral obligation to protect women and children from falling prey to this practice. I praise President Trump for the steps he has already taken to combat criminal organizations that engage in human trafficking, to strengthen programs supporting survivors, and also bring human traffickers to justice.

I know several of you mentioned human trafficking in your testimony already, but can you please elaborate on how the current family reunification process and the current policy help combat human trafficking?

Ms. ASHER. So I can start from my point, sir, from ERO. As we have done as a longstanding process where our reunification primarily occurs at the time of removal, and that is a very well vetted process when the parent who happens to be in single adult custody at the time receives the removal, we are made aware that they have a child in the United States. We go through a process in asking if the individual would like to take their child back.

As part of that vetting, we also look and ensure that the individual is essentially safe to return with their child. Probably one of the most important pieces to making that reunification specifically for removals is that we do have to have that removal cleared with consular officials from home country. So on a regular basis, on a daily basis, my officers work with consular officials to do those types of checks, as well as to confirm familial relationships and the like prior to issuing travel documents so that they can return to their home country.

Mr. RESCHENTHALER. Is there anything that you think Congress can do that would help combat human trafficking?

Ms. ASHER. So I can certainly support that much more is needed in that realm. Under ICE, I am in Enforcement Removal Operations. My partners, HSI, Homeland Security, are the primaries in my agency conducting human trafficking, and undoubtedly they

can always use more resources and stronger support from Congress to do the great work that they do in trafficking.

I will defer to the Chief as well for her viewpoint.

Chief PROVOST. I would just add to that we work closely with our partners at Homeland Security Investigations. This is an area focus for them, and any information that we have of suspected human trafficking we provide to HSI for investigation.

Mr. RESCHENTHALER. Thank you. I appreciate it, and I yield back the remainder of my time.

Ms. SCANLON. The gentleman from Maryland is recognized.

Mr. RASKIN. Thank you, Madam Chair.

On June 20th, the President putatively ended his scandalous and dangerous family separation policy, but family separations are still happening at the border under a shadowy set of rules that apparently do not offer sufficient accountability or due process.

The January Homeland Security OIG report found that at least 118 kids had been separated from their parents and placed in HHS care after the supposed end of the separation policy. The numbers may even be higher. In the ongoing lawsuit over family separation, the Federal Government just admitted that at least 245 families have been separated since late June.

When the Texas civil rights group followed up on these cases, it found the parents often had no idea that they were being separated from their children or why. Dozens of other kids were also separated from adult siblings, cousins, grandparents, or other relatives.

Now, there can be valid health or safety reasons to separate a child from a parent, such as where there are signs of child abuse or trafficking, but DHS does not appear to have a principled or consistent policy on family separations, and it does not give HHS enough information to know whether the separations are, in fact, justified.

So, let me start with you, Chief Provost, if I may. Since the President's executive order, how many children have been separated from their parents who were apprehended by CBP either at ports of entry or between the ports?

Chief PROVOST. I can speak to the numbers between the ports of entry, that area that I have. We have 304.

Mr. RASKIN. Okay. Who makes the determination to separate a child from his or her parents or legal guardian, and what are the criteria used in that process?

Chief PROVOST. The criteria used are if they have a serious criminal conviction; if they have a medical condition, meaning the parent may have a medical condition and need to be hospitalized; if it is in the welfare of the child, if they present a danger to the child. Those are the instances in which we would separate them. As I stated—

Mr. RASKIN. Could I just ask you about that one? So what is the character of the inquiry or investigation about the welfare of the child? Are there social workers involved in that process?

Chief PROVOST. As I said before, this is a temporary separation because we have to place into ICE custody. We work with the consulates as well, just like ICE does. We work with our counsel when it comes to the criminality issue in relation to them. ICE is not going to take somebody into their family residential centers where

a parent has a serious criminal conviction, like I stated earlier. It is temporary.

Mr. RASKIN. So a criminal conviction, that seems like something that is definable. You can see it on paper. It exists. And if they have a medical condition, obviously if they are suffering a heart attack or something, they cannot take care of the kids. But welfare of the child, as we know, is a very big, slippery standard. So who is making that decision? The Customs agent?

Chief PROVOST. My agents, working with our counsel or the consulates. We have an initial determination, and we err on the side of caution for the child based on laws on the books. We are following TVPRA. We are following for the concern of the child.

Mr. RASKIN. Do the parents have an opportunity to be heard during that process?

Chief PROVOST. Of course. We interview them.

Mr. RASKIN. Is the decision to divide them from their children, is that an appealable decision?

Chief PROVOST. HHS—yes. That is not—as I stated before, that is temporary. We give the parents information when we do the separation. We do track all of this. We provide the information to HHS—

Mr. RASKIN. Do you have written guidance for the agents?

Chief PROVOST. We have guidance that has gone out since the executive order—

Mr. RASKIN. Can we see a copy of that? Can you show us the guidance? Do you have a copy of that guidance?

Chief PROVOST. We can provide that.

Mr. RASKIN. So this goes out to every agent and says here are the steps that you follow?

Chief PROVOST. We sent the guidance out once the executive order came out, and then, of course, Ms. L, we provided further guidance.

Mr. RASKIN. Okay. Do CBP officers receive training about how to make these determinations?

Chief PROVOST. We receive training about dealing with family members from day one at the Border Patrol Academy. We are trained every year on TVPRA and on Flores. That is a recurring training for our agents on the law.

Mr. RASKIN. It has been reported that DHS may be separating U.S. citizen children from their parents at the border as well. Is that right?

Chief PROVOST. I am not sure in relation to—

Mr. RASKIN. Well, if their parents are non-citizens but they are citizens, then there have been cases like that.

Chief PROVOST. That would not be a reason for a separation from our perspective on it. It would have to be other circumstances that would revolve around it from Border Patrol.

Mr. RASKIN. Finally, does any Federal Government agency have the responsibility to track all of these children who have been separated from their kids today?

Chief PROVOST. We provide that information to HHS. I do not know if the Commander wants to weigh in, Mr. Lloyd.

Mr. LLOYD. Yes. So, any child referred to us, then we have responsibility to track those children.

Mr. RASKIN. Okay. So if someone is missing his or her child because they have been separated, you would be able to locate them today?

Mr. LLOYD. Yes.

Ms. SCANLON. The gentleman's time has expired.

Mr. WHITE. To clarify, ORR can identify at any given moment the location of every single child in care. We are also able, where appropriate, to say to whom we released a child. But we do not have any authority or oversight over a child who has been released from our care.

Ms. SCANLON. Thank you.

Mr. RASKIN. Thank you.

Ms. SCANLON. The gentleman from California is recognized.

Mr. MCCLINTOCK. Thank you, Madam Chairwoman.

Commander White, I think you were the victim of a drive-by slander a few minutes ago. You and your colleagues were all but accused of being serial child molesters and were not given a chance to respond. Would you like to respond now?

Mr. WHITE. We share the concern that I think everyone in this room feels. Any time a child is abused in the care of ours is one time too many. We abide fully with the laws this Congress has passed in terms of PREA—I mean the Prison Rape Elimination Act and the Violence Against Women Act—and we are very proud of our outstanding track record of full compliance, including referring every allegation, every allegation for investigation. And the vast majority of allegations prove to be unfounded when they are investigated by state law enforcement and Federal law enforcement and the state licensure authorities to whom we refer them.

It is important to note, I am not aware of a single instance anywhere of an allegation against a member of the ORR Federal staff for abuse of a child, and I apologize if I sounded forceful in refuting that statement. To be clear, however, that has not happened.

Mr. MCCLINTOCK. Under the circumstances, I think you were remarkably restrained, and I am embarrassed that such a question would be put to you in this committee. I think I speak for many of my colleagues.

Chief Provost, I am still trying to get a grasp of the fundamental principles here. It is a misdemeanor to cross the border illegally. Correct?

Chief PROVOST. That is correct.

Mr. MCCLINTOCK. And it is actually a felony to cross the border after being deported.

Chief PROVOST. Yes, sir.

Mr. MCCLINTOCK. Now, any other crime for which we make an arrest, we arrest the perpetrator. Correct? We do not arrest the children of a perpetrator.

Chief PROVOST. Yes, sir.

Mr. MCCLINTOCK. So, for example, if an American citizen is arrested for drunk driving with a toddler in the back seat, we arrest the perpetrator and we take the toddler into protective custody until we can reunite them with their family. Is that accurate?

Chief PROVOST. Yes, sir.

Mr. MCCLINTOCK. Well, to Ms. Bass' point, then, who makes that immediate decision? Is it the arresting officer, or is it a judge or social worker?

Chief PROVOST. I cannot speak to—well, when I was in local law enforcement before joining the Border Patrol, just like we work with HHS—

Mr. MCCLINTOCK. You made that decision when you took the perpetrator into custody. Correct?

Chief PROVOST. They work with CPS to turn the child over, much like we turn them over to HHS.

Mr. MCCLINTOCK. So what we are calling family separation is exactly the same process as for any other arrest. We arrest the perpetrator, and then we take the child into protective custody and take care of the child until we can find a family member to put them back in custody with. Is that accurate?

Chief PROVOST. I would say that is accurate, yes.

Mr. MCCLINTOCK. It seems to me that there are essentially just two alternatives to this particular practice. We can arrest and incarcerate the child for the crime of the parent, which to my ear sounds completely medieval, or do not arrest the perpetrator, do not enforce the law, in which case the law means precisely nothing. Is there any other alternative you can think of?

Chief PROVOST. This comes back to the outdated laws that have an impact on our ability or on ICE's ability to detain families temporarily together until they can have, from the administrative side, an immigration proceeding.

Mr. MCCLINTOCK. So basically we arrest the perpetrator and take care of the child. That is our current policy. The two alternatives are arrest the child for the crime of the parent or do not enforce the law. Obviously, my colleagues on the left reject the first policy, so obviously they are arguing for one of the two others, and frankly I just do not understand that.

But just to be clear, the zero-tolerance policy we keep hearing about, that simply means enforce the law in the same manner as we enforce any other law?

Chief PROVOST. Yes, sir. It is a prosecution initiative. Actually, of the timeframe from May 5th through June 20th, when adults that had children with them were a part of that group, they made up 40 percent—family units made up 40 percent of our apprehensions. It was approximately 10 percent of the prosecutions were individuals that had children with them.

Mr. MCCLINTOCK. Let me ask you this. If we do not enforce our immigration law, then what exactly do our borders mean? Do they mean anything?

Chief PROVOST. My experience in my 27 years in law enforcement is if we do not enforce the law and there is no consequence for violating the law, people continue to violate those laws.

Mr. MCCLINTOCK. Is there a legal way to enter our country?

Chief PROVOST. Through a port of entry.

Mr. MCCLINTOCK. How many people legally enter our country every year?

Chief PROVOST. Huge numbers.

Mr. McCLINTOCK. So those who enter our country illegally, they do have a legal way to apply for entry; they simply choose not to do it. They simply choose to break the law.

Chief PROVOST. Coming between the ports of entry is a violation of the law, yes.

Mr. McCLINTOCK. Thank you for your earnest efforts to enforce the law and defend our country.

Ms. SCANLON. The gentlewoman from Washington is recognized.

Ms. JAYAPAL. Thank you, Madam Chair.

And let me just remind anybody that might be watching, it is legal to seek asylum. It is, in fact, not just legal within our laws, it is legal within the human rights conventions that we are party to. So when the gentleman asks about whether people should come through legal ports of entry, let me also just remind people that the Trump Administration tried to ban asylum seeking and started the process of metering, which then prevented people from coming through legal ports of entry to actually take advantage of a process that is legal.

Everybody knows that I have been haunted by what I heard from 176 women in a Federal prison. I was the first member of Congress to go and speak to these women who were asylum seekers who had been ripped apart from their children, and I am a parent and it haunts me to this day.

Chief Provost, are you a parent?

Chief PROVOST. Yes, I am.

Ms. JAYAPAL. Ms. Asher.

Ms. ASHER. Yes, I am. And a grandmother.

Ms. JAYAPAL. Thank you.

Mr. Lloyd.

Mr. LLOYD. Yes, Congresswoman.

Ms. JAYAPAL. Commander White.

Mr. WHITE. Yes, ma'am.

Ms. JAYAPAL. Director McHenry.

Mr. MCHENRY. I am.

Ms. JAYAPAL. I think it is critical that we ask that question because we are talking about children, and we are all parents who understand what that means. So as parents, I do not think anybody on this panel would argue that you would be not devastated if the government tried to forcibly separate you from your children, including, by the way, a breast-feeding baby that was taken.

Commander White, you testified on February 7th in the House Energy and Commerce Committee that you as an expert on child welfare had expressed concerns to Mr. Lloyd specifically that family separation—and these are your words—“would be inconsistent with the Office of Refugee Resettlement’s legal requirement to act in the best interest of the child and would expose children to unnecessary risk or harm.” Is that correct?

Mr. WHITE. That is correct.

Ms. JAYAPAL. And, in fact, Commander White, you testified that you warned three Trump appointees about the potential health risks of family separation more than a year in advance of this policy. Is that correct?

Mr. WHITE. Yes, ma'am.

Ms. JAYAPAL. Commander White, I want to thank you for raising these concerns repeatedly and for having at least a sense of compassion and moral obligation that seems to be completely missing from anybody else.

Mr. Lloyd, you were the head of ORR, the primary agency tasked with caring for these children. When Commander White, as a child welfare expert, warned you about the cruel consequences of family separation, were you concerned? Yes or no is fine.

Mr. LLOYD. I accepted what he told me, yes.

Ms. JAYAPAL. So you were concerned, or not? You obviously were not—

Mr. LLOYD. He reported what the consequences would be, and I listened to what—

Ms. JAYAPAL. So you heard his deep concerns, and you at that point, according to the October 2018 Government Accountability Office report on family separation—this is at a time when ORR officials noted to you that there was more than a 10-fold increase in children separated from their parents in 2017—did you take any actions whatsoever to address those concerns?

Mr. LLOYD. Yes, we did. So in the—

Ms. JAYAPAL. Make it brief, please.

Mr. LLOYD. In the end of 2017, Commander White noted to me why we were seeing it in our field, and so we followed up on what had been anecdotal reports of these—

Ms. JAYAPAL. Did you do anything to start tracking the children?

Mr. LLOYD. Yes, absolutely.

Ms. JAYAPAL. Did you ask DHS to make sure that your agency had what it needed to eventually reunite children with their parents?

Mr. LLOYD. We did communicate with DHS regarding—

Ms. JAYAPAL. I just want to remind you that your testimony here is under oath. According to GAO—this is a quote—“ORR officials noted that they considered planning for continued increases in separated children but did not do so because DHS officials told them that DHS did not have an official policy of separating parents and children.”

Did you tell ORR officials not to engage in any planning, Mr. Lloyd?

Mr. LLOYD. No, I did not.

Ms. JAYAPAL. And your employees, many of whom are child—

Mr. LLOYD. May I clarify that?

Ms. JAYAPAL. Briefly.

Mr. LLOYD. So planning is something that—so I never directed anybody to not plan. We—

Ms. JAYAPAL. You did not direct anybody to not plan, and you did not direct anybody to plan to ensure—

Mr. LLOYD. It is not true.

Ms. JAYAPAL [continuing]. That we could actually address the serious concerns raised by Commander White, a child welfare expert, about the long-term consequences to these children.

Commander White, when children are separated from their parents, even if they are reunited three months or six months later, can you tell me if the impact on those children for their entire life is potentially devastating to them?

Mr. WHITE. The best available evidence is that separation of children from parents entails very significant and potentially life-long risks of psychological and physical harm.

Ms. JAYAPAL. Very significant and potentially life-long impacts.

Mr. Lloyd, you were the head of this agency at the time of family separation, and you did not even allow your staff to continue to do a spreadsheet that tracked where people were. You did not put into place any policies that would pull this—I do not even have words for it—pull this horrendous policy back.

Did you ever say to the Administration, “This is a bad idea; here is what my child welfare experts have told us; we need to stop this policy”? Did you once say that to anybody above you?

Ms. SCANLON. The gentle lady’s time has expired, but you may answer the question.

Mr. LLOYD. To answer your last question, I did not say those words.

Ms. JAYAPAL. You never said that to anybody, you never told anybody that this was a deeply harmful policy.

Madam Chair, I believe that this is just outrageous. I get worked up every time I see it because I see that nobody is actually taking this—I should not say nobody. Commander White has. People are not taking this seriously in terms of the deep, long-term effects on these children.

Madam Chair, I yield back.

Mr. COLLINS. I have a parliamentary inquiry. How many questions do you get past your 5 minutes? And how long do you get to enter into a diatribe? That is my parliamentary inquiry. Are we going by the 5-minute rule?

So is there no response to my parliamentary inquiry?

Ms. SCANLON. That is not a parliamentary inquiry, but the gentlewoman from Florida is recognized.

Mrs. DEMINGS. Thank you so much, Madam Chairwoman.

Let me just thank our witnesses for being here.

Look, it appears to me that you have been given an improper and unjust order, and the person who is ultimately responsible for the mess that has been created, the self-inflicted wounds, is not in this room.

I served as a 27-year law enforcement officer as well, Chief. Thank you for your service. But before that I served as a social worker, working with foster care children. Children in America have a tough enough time, but when they are placed in foster care, separated from their parents, the emotional, psychological damage, as you have already said, can have lasting results, and we are talking about kids who many times have been physically abused or emotionally or sexually abused.

But it was interesting with those children, no matter how difficult the home situation may have been, they yearned and longed to be reunited with their families.

The mess that we have here today has been self-created and self-inflicted, and with all of America’s challenges, it amazes me that we would create this mess at the border and then require the men and women of CBP and others to make it right.

I had a zero-tolerance policy too as a police chief. You know who it was for? For murderers and rapists and robbers and other people

who committed violent crime, not people trying to get across the border who had committed no violent offense, just trying to make a better life for their families.

I am ashamed of my colleagues' statements across the aisle. We can do better than this.

Chief, I would like to know, if we can begin with you, what is your zero—what does that mean, your zero policy? What is that? And I know it was not yours, but you are charged with carrying it out. So what do you believe it is?

Chief PROVOST. So, the zero-tolerance policy, in conjunction with the Department of Justice, is to attempt to prosecute all violators of USC 1325, single adults at this point, who cross the border illegally—

Mrs. DEMINGS. Which is a misdemeanor.

Chief PROVOST. The first time it is a misdemeanor, yes.

Mrs. DEMINGS. And we are prosecuting—you know what? As a police chief, I sure wish I could have prosecuted every person who shoplifted, but it was an undue burden on the resources, and that is why there is a mess at the border, because the resources have been strained trying to prosecute every person.

I heard my colleague say that if a person crossed the border, is that not a misdemeanor and should we not enforce the laws? Well, let me tell you this: If a woman crossed the border who was being chased by a man with a knife trying to stab her, would you arrest her?

Chief PROVOST. I still have an obligation to—

Mrs. DEMINGS. Would you arrest her?

Chief PROVOST. I would arrest her for—

Mrs. DEMINGS. And ultimately, would you prosecute her?

Chief PROVOST. I would not in that case, but we are not prosecuting everyone that comes across.

Mrs. DEMINGS. Let us talk about the two children who died in government custody, what we ought to be doing if we are going to stay in the family separation business, and Lord knows I hope we do not. We ought to make sure that what happened to those children—you know, as a police chief, yes, we arrested parents, but we took every effort to make sure that the children who were already traumatized were taken care of. They do not deserve what has happened to them. We have victimized them and victimized them over and over again.

So, we had two children that died, an 8-year-old and a 10-year-old. What policies have changed in your operations to prevent children in your custody—because if a child died in our custody as law enforcement, we took it very seriously. We took every step—something had to change. What policies have changed to make sure that children, who are not the violators, do not die in your custody?

Commander White or Chief, who would like to answer that question?

Mr. WHITE. I am going to have to defer to CBP. Those children were not in ORR care. They were with CBP.

Chief PROVOST. Those two tragic losses of life were in Border Patrol custody. As you mentioned, it is a tragedy. We do everything, my men and women do everything within their abilities to take care of—

Mrs. DEMINGS. What policies—I am sorry, but my time is running out. What policies have changed since the two children died to now to prevent that from happening?

Chief PROVOST. We make a 100 percent medical screening on all juveniles that come into our custody. That is one——

Mrs. DEMINGS. And you were not doing that before?

Chief PROVOST. That is correct.

Mrs. DEMINGS. Okay.

Chief PROVOST. That is the main thing. Obviously, we provide—we have always provided medical care, emergent medical care to anyone. But since then, whether you are a contractor, our own EMTs, other support across the southwest border, every juvenile, every child under the age of 18 is medically screened upon apprehension.

Mrs. DEMINGS. Thank you.

Thank you very much, Madam Chairwoman. My time has run out.

Ms. SCANLON. Okay. Thank you.

The gentleman from Virginia is recognized.

Mr. CLINE. Thank you, Madam Chair. Thank you for the time.

I want to follow on the comments of my colleague. I would agree with her that there is a mess at the border. It is more than a mess, in my view. Some would say it is a crisis. Some would even say it is an emergency. I would call it an emergency.

And I know that we have several types of emergencies. What we are hearing about today, the humanitarian emergency that we have at the border is real, and we must do all that we can to stop the humanitarian emergency at the border.

We have an emergency, human trafficking emergency at the border. We have a sex trafficking emergency at the border. We have a drug trafficking emergency at the border. So in all these ways, I want to thank especially, Chief Provost, your men and women on the Border Patrol, working every day to address this emergency that we have at the border.

And as you have said earlier, this is having a significant impact on your ability to recruit and retain officers to help address this crisis. Would you say that the events that you spoke of, the assaults, the treatment of your officers in the interior of the country, can you expand a little bit more on the ability of your agency to recruit to make sure that we address this emergency?

Ms. ASHER. So, sir, I am with ICE, and so I deal with the interior, as we had discussed before. And as far as it relates to their problems in recruiting, there is a challenge in getting the individuals who have law enforcement, military background to be interested or willing on the occasion to support in particular the interior enforcement mission of ICE. And sadly, it is because of a lot of negativity, the fact that we are compared to Gestapo, the Ku Klux Klan unfairly.

Every one of my officers, as I have done in the last 20-plus years in this capacity under several administrations, we take an oath to uphold the laws, and those are the laws that are passed by Congress. So with a combination of laws and policies and executive orders from administration to administration, I would argue that the

enforcement of the immigration laws at the Federal level is by far one of the most challenging.

Mr. CLINE. We have a bill up on the floor this week dealing with the instant background checks for firearm purchases. One of the factors, one of the reasons for denial is illegal status, if you are in the country illegally. Would it help you all to enforce our immigration laws if you all received notification from NICS as to which individuals are actually trying to buy firearms in this country illegally because they are in the country illegally?

Ms. ASHER. Without question, yes. The more information that we have on an individual, negative or positive, allows us to make those case-by-case determinations.

Mr. CLINE. Thank you.

I offered that amendment at Rules last night. Unfortunately, it was not allowed in order.

Chief Provost, I know that Border Patrol agents conduct hundreds of rescues of people who are illegally crossing. Can you give us some examples of the good work that U.S. Border Patrol does in that area and give us an idea of the number of rescues your agency conducts in a given time period?

Chief PROVOST. Yes, sir. I can tell you that last year, in fiscal year 2018, we rescued over 4,300 people. My agents have rescued over 1,000 people already this year. Just last week, I had agents in Eagle Pass jump into the river and extract a 12-year-old boy who was not breathing. They performed CPR and revived him.

Those are the things that don't get told. Those are the stories that don't get out, all of the amazing work that my men and women do, day in and day out, that make me so proud to be here representing them.

Mr. CLINE. We are grateful to you.

Thank you all, and I yield back.

Ms. SCANLON. Thank you.

And I will recognize myself for 5 minutes.

First of all, I want to enter without objection an article from Vox over this weekend, entitled Hundreds of Families Are Still Being Separated at the Border.

[The information follows:]

REP. SCANLON FOR THE RECORD

Hundreds of families are still being separated at the border

New government statistics show 250 parents have been separated from children since a June court order. Separations of siblings and other relatives could account for hundreds more.

By Dara Lind | dara@vox.com | Feb 21, 2019, 2:40pm EST



While families such as this one from El Salvador were reunited last year after a federal judge ordered the Trump administration to end its family separation policy, new statistics show that nearly 250 parents — and hundreds of other relatives — have been separated from children in the past eight months. | Win McNamee/Getty Images

Eight months after a federal judge ordered the Trump administration to stop separating parents and children at the US-Mexico border, families are still being separated.

Newly released government data shows nearly 250 parents have been separated from their children since June 26. Meanwhile, **a report released Thursday from the advocacy group Texas Civil Rights Project** suggests that those separations might be dwarfed by the number of *other* relatives — siblings, aunts and uncles, grandparents, cousins — who bring a child to the US without her parents and are then separated from her by immigration agents.

A June order issued by Judge Dana Sabraw of the Southern District of California bars the government from separating families in most circumstances — and required them to

reunite families who had been separated. (The overwhelming majority of those families have been reunited, or the child has been placed with a relative in the US.)

Since then, the government claimed in a **Wednesday night court filing**, it's separated 245 families that are excluded from that order. But advocates argue that some of the continued separations for often murky "law enforcement purposes" do violate the order to keep parents and children together.

Separations of families that aren't simply parent-child, though, aren't included in the court order — or counted in separation statistics at all. The Department of Homeland Security maintains that it's required by law to treat any child entering the US without a parent or legal guardian as "unaccompanied" and send him or her to the custody of Health and Human Services.

The Texas Civil Rights Project report is the first data on family separations to come from outside the government. The group's lawyers interviewed thousands of immigrants being prosecuted for immigration violations at one of the 18 federal courthouses along the border over six months. They found 38 parents who'd been separated from children — but six times as many siblings and other relatives who had. At that rate, according to the new official statistics, 245 parents have been separated from children — but that dramatically understates how many families have been separated, because so have 1,500 non-parents.

Immigrants are only counted as "family units" if the adult is the parent or legal guardian

Children aren't allowed to be held in immigration custody; instead, "unaccompanied alien children" are supposed to be referred to the Department of Health and Human Services for placement. Any child who is sent to HHS custody is legally considered "unaccompanied," even if they entered the US with an older sibling or other relative — which is what made it so difficult to reunite families even after Judge Sabraw's ruling, and why there are still so many questions about whether official statistics truly capture the scope of the family separation policy under the Trump administration.

Legally speaking, any child who comes to the US without a "parent or legal guardian" is an unaccompanied child.

That means, DHS officials point out, that when they apprehend a pair of siblings where one sibling is under 18 and the other is over 18 — or any other pair of relatives where the adult isn't the parent or guardian of the child — they have no choice but to separate the two and

treat the child as “unaccompanied.” They’re not even counted as “family units” in apprehension data — the child is counted as an unaccompanied child, and the adult relative as a single adult.

There aren’t a lot of “unaccompanied children” coming into the US these days compared to the number of “family units,” defined as at least one parent and at least one child. (In the 12 months prior to Judge Sabraw’s order, twice as many immigrants were apprehended in family units as unaccompanied children; now, the ratio is more than four to one.) But we have no way of knowing how many of those “unaccompanied” children did, in fact, have relatives with them — just not relatives recognized as such by US law.

The majority of separated non-parents the TCRP lawyers interviewed were siblings — often themselves under 21, and often, the TCRP report says, “traumatized by the separation.”

Ironically, once an “unaccompanied” child is referred to HHS, HHS officials work to find a relative living in the United States who can house the child while their immigration case is pending. If the child doesn’t have a parent living in the US, an adult sibling, aunt, uncle, or grandparent is usually considered a prime candidate to be a “sponsor.”

In theory, the relative from whom the child is separated at the border would be someone who could easily pick them up from government custody. In many cases, though, adult immigrants are summarily prosecuted and deported — or kept in immigration detention. So it’s not clear how many children who have been separated from relatives at the border have ended up being stuck in HHS custody without a relative to sponsor them — because they were separated from the relative they had.

Parental separations are rare — but they’re not always well explained

According to the new court filing, the federal government has identified 245 cases in which parents and children were separated after June 26. Given that more than 300 families were separated in a single week during the peak of the family separation policy, that’s a very steep decline — though advocates on the ground claim that the rate of separations is still higher than it was under the Obama administration.

The government maintains that when families are separated now, it’s for one of a few specific reasons: The parent has a criminal history or is separated for another “law enforcement purpose”; the separation is medically necessary (for example, the parent needs to be hospitalized, because the Department of Homeland Security can’t keep the

child in custody until the parent's return); or there isn't enough evidence that the adult is actually the parent or legal guardian of the child.

But the nonprofit organization's report suggests that in practice, some of them — particularly the "law enforcement" exception — are broader than they look.

The injunction against separating families didn't include parents who had a "criminal history." But Lee Gelernt of the American Civil Liberties Union says that was mostly because Sabraw wanted to reunite as many families as possible as quickly as possible — it wasn't intended to be a blanket statement that the government was allowed to separate parents with any past criminal record. Furthermore, "law enforcement" separations can happen for a much broader array of reasons — including suspicions that are difficult to disprove.

The government's statistics show that "law enforcement" separations accounted for the overwhelming majority of cases: 225 of 245, or 92 percent. Of the (much smaller) sample of parents interviewed in the TCRP report, though, only 22 of 38 had criminal *convictions* — 58 percent. (Some of those convictions were for serious crimes, but others were for simple controlled substance violations, reckless driving, or a decade-old misdemeanor assault charge.)

One father interviewed by TCRP was separated from his children in November after being accused by a CBP agent of being a gang member. The father's lawyers investigated and found "no known criminal convictions in the United States or his home country of El Salvador, no tattoos indicating gang membership, and a long-time employer verified his good moral character." That didn't change CBP's assessment or result in the father being reunited with his children.

In another case, lawyers found that a father seeking asylum for government persecution in his home country of Guatemala had been separated from his children because of an outstanding Guatemalan warrant. Upon checking with human rights defenders, the TCRP lawyers concluded that the warrant was retaliatory — and that it should serve as evidence in his asylum case, not of his unsuitability to care for children.

It's not clear how many of the 225 parents separated for "law enforcement" purposes in the past eight months had no criminal convictions. And it's not clear how exactly this compares to past policies. Because there is so little trust between lawyers and the government when it comes to family separations right now, though, any case in which CBP

agents appear to have exercised discretion in separating children is coming under serious suspicion.

Ms. SCANLON. As I have been listening here, I have been struck a couple of times by the denial of humanity of many of these families and children. When the issue is framed as an invasion by aliens and when we refer to children as UACs, it is easier to pretend they are not human or worthy of compassion. When you say that the cause of migration is legal loopholes or bad judicial decisions rather than the dire conditions of violence and poverty in these people's home countries that is literally driving them from home, it gets easier to slam the door against these kids and these families.

This hearing is a recognition and an insistence on that humanity, a recognition that the Flores decision also addressed and a recognition that just following orders is no more an excuse today than it was back in Germany.

I have also been struck that the introductory testimony of the witnesses focused on efforts to reunify families after the border separations, the family separations were exposed and after a Federal court ordered it. But in our oversight capacity, we want to know how this un-American policy got put in place in the first place and prevent it from happening again.

So, you know, there has been a claim the families are only being separated when there is just cause. During my visit to El Paso 3 weeks ago, we met with a family that had been separated when there had been no criminal conviction, there was no health issue, there was no allegation that the mom was unfit. So my question, I guess for Chief Provost, is what written guidance do Customs and Border Patrol agents have at this point in time for when to decide to do family separation?

Chief PROVOST. We have the guidance that I mentioned earlier that has been sent out to the field in relation to criminal prosecutions, a danger to the child, a medical condition that would cause separation, if the parent had to be hospitalized, for example.

Ms. SCANLON. Okay. I was a little unclear because you talked about different times when there were different policies. So is there a current written policy?

Chief PROVOST. Since—since June 20th and the executive order, that is the guidance that has been placed out to the field when it comes to family separations.

Ms. SCANLON. Is that one document?

Chief PROVOST. I can't say for certain, but we can provide the document.

Ms. SCANLON. Okay. If you could provide that document, I would appreciate it.

How about before the executive order? Was there written guidance at that time?

Chief PROVOST. The same type of guidance, following the laws set through whether it is TVPRA, the PREA. All of those laws impacted how we have worked. Those cases, prosecution was one of those, so the criminal activity. It has been the same guidance when it comes to reasons that we would have separated prior to zero tolerance.

Ms. SCANLON. Okay. So the only change in the policy was during the zero-tolerance period?

Chief PROVOST. It wasn't a change because it was still for a criminal prosecution, which would impact the separation.

Ms. SCANLON. But that is when criminal prosecution was because you were going to criminally prosecute parents at that point?

Chief PROVOST. We had criminally prosecuted parents previously as well. The numbers increased during that timeframe. As I stated before——

Ms. SCANLON. Because there was a decision made to prioritize prosecution of parents during that period?

Chief PROVOST. No, the decision was not made to prioritize prosecution of parents. The decision was made to prioritize prosecutions, as I stated earlier, during that timeframe from May 5th through June 20th when parents were included. Only about 10 percent of our prosecutions were family members, while at the time when 40 percent of our apprehensions were family units. I would not say it was a prioritization.

Ms. SCANLON. Okay.

Chief PROVOST. It was part of the group.

Ms. SCANLON. Okay. So does Customs and Border Patrol ever review family separations?

Chief PROVOST. We work with our Office of Chief Counsel. If there are any allegations, our Office of Professional Responsibility or DHS's Office of Inspector General does investigations into those allegations.

Ms. SCANLON. Okay. One more quick question for Mr. Lloyd. There was a discussion about the concerns that have been raised by Commander White concerning family separations and the mental health impact that it could have. Did you ever consult with any mental health professionals or get any advice from them on how to implement family separation?

Mr. LLOYD. The advice that Commander White would have imparted to us would be done in consultation with mental health experts whom we have on staff, and I would just add that there was nothing surprising about the determination that there could be mental health consequences through separation from a parent for any period of time. It is something we took under advisement.

And once we started seeing changes in our referrals at the end of the summer——

Ms. SCANLON. Okay. I see my time has expired. So I want to—if you could provide us with the credentials and any written communications regarding your consultations about mental health, we would appreciate it.

Okay. At this point, I would recognize Ms. Garcia, the gentlewoman from Texas.

Ms. GARCIA. Thank you, Madam Chair.

And I am so deeply troubled by a lot of what has been said today. It is almost hard to even begin because this is just such a, in my view, so inhumane and unconscionable that I just sometimes can't even deal with it. So I want to first start by thanking you, Commander White, for at least at some point objecting to the separation and bringing to light, at least to those that might listen, that this could have lasting effects.

I wanted to ask all the other members of the panel, did you all ever object at any point in this process to your superiors or to

someone that might listen that this was harmful and not a good idea? And I will start with you, Director McHenry.

Mr. MCHENRY. Again, we don't usually typically comment on internal discussions. But this is a prosecution policy. It was vetted. It was discussed internally—

Ms. GARCIA. Well, I am not talking prosecution.

Mr. MCHENRY [continuing]. With career prosecutors.

Ms. GARCIA. I am just talking, didn't you ever just think this really goes against humanity, we should not be doing this? I am not asking you to share a discussion with the Attorney General or anyone else. You, as a human being, did it ever strike you to just say, wait a minute, guys, I know I am a lawyer, but—

Because I am a lawyer and I am a former judge, too. And sometimes I saw some things that I didn't like, and I would speak out. And you never did that?

Mr. MCHENRY. No, we understand the concerns and the sensitivities. But again, the focus—

Ms. GARCIA. Sir, I have asked you a question. If you would please answer yes or no?

Mr. MCHENRY. Did I? No.

Ms. GARCIA. Thank you.

Mr. Lloyd.

Mr. LLOYD. The effects—

Ms. GARCIA. It is real simple, sir. Did you ever just say this really goes against humanity, we should not be doing this to children?

Mr. LLOYD. I did not say anything along those lines. As a parent and a fellow human being—

Ms. GARCIA. Did you ever think of your own child and what would happen if somebody took your child from you?

Mr. LLOYD [continuing]. I did have concerns about the children. That is why we labored. I saw my role as managing the program that labored to give the children that were involved the best care that they possibly could have. I am proud of our record and the care that we gave to them.

Ms. GARCIA. But your answer is no. All right. Thank you.

Ms. Asher.

Ms. ASHER. I did not voice in that exact term, no. However, I don't want it to be lost on anyone that we in law enforcement, you know, we—many of my officers are parents as well. And of course, it is a difficult situation—

Ms. GARCIA. Well, I could tell you that one of the—I have visited many facilities. I visited one in the valley when the unaccompanied minor issue first came to light, and I have visited ORR facilities. I have visited CBP, all these facilities. And I can tell you that some of your officers don't feel good about it and shared that with me.

I am just wondering if you are just as human as them and ever said anything to anyone?

Ms. ASHER. As I said, I did not raise it to my superiors. But again, neither I nor my officers in ERO, I don't think it is fair to say that it doesn't bother those as well.

Ms. GARCIA. The answer is no, I get it. I am losing time here. And Chief?

Chief PROVOST. As you stated, this is a difficult situation, and it is for any law enforcement professional, my men and women as

well. But as law enforcement professionals, it is our job to enforce the law.

Ms. GARCIA. It is a job, and you just moved on? I thank you.

Chief PROVOST. No.

Ms. GARCIA. Now I want to ask Mr. Lloyd a question. I wanted to follow up with my colleague Sheila Jackson Lee's question about the Southwest key facility in her district, which borders mine and impacts my district. So I thought your answer was sort of disingenuous. Did you tell her that it wasn't up to you to license that facility, or what exactly did you mean?

Mr. LLOYD. I would preface this by saying I am not sure which exact facility you are referencing and——

Ms. GARCIA. It is one that wants to open. She doesn't want opened. I don't want it open. I don't know anybody that wants it open.

Mr. LLOYD. Sure. So you are talking about one that is—yes, and so you are talking about one that is to open, and I am no longer involved in the day-to-day operations of——

Ms. GARCIA. No, I realize that.

Mr. LLOYD. So, but our——

Ms. GARCIA. I sent you a letter earlier this month on February 14th asking some questions about this, and I have not gotten a response.

Mr. LLOYD. And you can expect a reply to that, but the reference that you questioned about was our residential facilities are first licensed by the State before we open them. And that is part of our standard procedure——

Ms. GARCIA. All right. But you fund them. So unless they know that you are going to give them money to open, they don't go to the State to get a license. I think we need to put it on the record that you fund them——

Mr. LLOYD. Our residential facilities——

Ms. GARCIA. Yes.

Mr. LLOYD [continuing]. Must be licensed before they can open.

Ms. GARCIA. That is right. But they wouldn't bother opening, they wouldn't bother trying to operate unless they knew you had a contract or were going to give them the money. So you drive all this.

Mr. LLOYD. Again, I can't speak to—I am not even sure which facility you are speaking to.

Ms. GARCIA. I am talking about any facility, sir. Somebody pays for them——

Ms. SCANLON. The gentlelady's time has expired.

Mr. LLOYD. Right. And so we fund the facility, and we get it licensed by the State, and then it operates.

Ms. GARCIA. It all works together?

Mr. LLOYD. Yes.

Ms. SCANLON. Okay. Thank you.

The gentleman from Louisiana is recognized.

Mr. JOHNSON of Louisiana. Thank you. And thank you all for being here. I know it has been a long day. We appreciate your patience.

I have just a couple of questions for Director McHenry first. As the Director in charge of overseeing the DOJ's mission to review

and adjudicate immigration cases, do you believe the unprecedented surge in family units crossing the Southern border has exposed faults in the credible fear standard under our asylum law?

And if you have answered some of these questions already, I apologize. We are coming in and out because we have other meetings today, too. But—

Mr. MCHENRY. It is clear that the increased number of credible fear cases is contributing to the increased backlog, particularly in the past couple of years.

Mr. JOHNSON of Louisiana. I have found it a bit absurd since I got to Congress to look into all this, and to think as a result of the Flores agreement, we expect our immigration court system to interview an alien, usually for credible fear, and then subsequently have a hearing before a U.S. immigration judge and adjudicate their case within 20 days. I mean, I was a practicing attorney. It is just not a feasible timetable.

And just last year alone, I know you reported 99,035 people applied for asylum in the U.S. And of that, over 74,000 were found to meet the criteria of credible fear on the front end, but then after appearing before an immigration judge, only 16 percent of those cases were later confirmed to be truly legitimate.

So we have got this current backlog of over 800,000 cases. It is just an untenable situation. So Ranking Member Collins and I have introduced legislation to try to fix some of these loopholes and address some of these frivolous claims.

But do you think it is possible that under the current relaxed credible fear standard that that can act as a catalyst for Southern border crossings, and how exactly does it endanger families in the process? I mean, that is what we are trying to get to the nut of to try to fix.

Mr. MCHENRY. I would defer a little bit to my colleagues from Department of Homeland Security, first, because they actually implement the credible fear process and, second, because they are more versed in terms of what factors would lead to increased border crossings. From our perspective at EOIR, as I said, it certainly caused an increase in the number of cases that we have seen, especially in the last 2 years.

Based on the numbers that we see, out of about every 100 credible fear claims, only about 8 to 10 will ultimately end up getting asylum. The rest go through the system. They take time. They take up resources. So it is definitely an area of concern. But again, on the operational side, I would defer to the Department of Homeland Security.

Mr. JOHNSON of Louisiana. I want to get to them, but one more question for you before I move on. The EOIR statistics show that the vast majority of Central Americans are ultimately found not eligible for asylum, and some have said that those individuals could be eligible for some other form of protection like under the withholding of removal or protection under the U.N. Convention against Torture.

Those aren't reflected in the asylum statistics, however, as I understand it. So do you know what percentage of Central Americans found not eligible for asylum are, in fact, granted withholding or relief under CAT?

Mr. MCHENRY. I don't have the percentages with me, and I don't have all of Central America. But we do know for the Northern Triangle, the raw numbers for those who began as a credible fear claim, it is less than 160 that are granted withholding and less than 320 who are granted CAT, at least in the last fiscal year. So the numbers are relatively small.

Mr. JOHNSON of Louisiana. I appreciate that. And on this issue of the credible fear problems with the implementation and asylum, what would DHS say about that, Homeland Security? Anybody want to weigh in on that?

Chief PROVOST. From CBP's side of this, I can tell you that everyone who makes a credible fear claim is referred, whether prosecuted, not prosecuted. We have seen an increase, a dramatic increase in the last few years of credible fear claims from individuals that are crossing the border, but that ultimately lies with our partners at USCIS when it comes to the determinations and the initial determination.

We provide that information. We ask questions of everyone to make a determination of whether or not they have a fear of returning to their country. That is logged in our system of record, and then that information is provided forward through ICE and on to CIS.

Mr. JOHNSON of Louisiana. Do you know why that spike occurred a few years ago? I mean, it was under the Obama administration. Was it—our theory is that there was some directive that came down from on high that we should be easier on that determination, but what do you think?

Ms. ASHER. Well, I can't speak to specifically what is in CIS's lane that relates to, you know, constitutes the framework for credible fear. Another observation I can share is the rate in which individuals who come to our custody who have been processed as expedited removal that is at the time of encounter with our colleagues in Border Patrol, Chief Provost's agents ask them do you have a fear to return to your country? Many of them say, no, they do not.

However, once these individuals have been transferred to my custody, as they are mandatory detention, it happens on a regular basis and it has been happening on an increasing basis that these individuals then change their claim and then say now they have a fear to return to their country. That then cancels out the expedited removal, and then my officers have to put the individual into the credible fear process.

Mr. JOHNSON of Louisiana. I am out of time. I wish I could explore that further, but thank you.

I yield back.

Ms. SCANLON. Thank you.

We recognize the gentleman from Colorado.

Mr. NEGUSE. Thank you, Madam Vice Chair, and thank you to the witnesses for appearing before the committee this afternoon.

As the son of African immigrants, this issue hits very close to home for me. Over 35 years ago, my parents came to America as refugees from a war-torn country in East Africa. So I can only begin to understand the plight that many of these families fleeing their home countries must feel.

Also as a new father, my wife and I have a 6-month-old daughter, our first child, I cannot imagine to be forced to be separated from her. And so the thought that even one family separation could have been prevented outrages me, and it is this that I want to ask you about today.

The Department of Homeland Security Inspector General report, which I believe the witnesses have with them at the table there, released in September 2018, found that CBP may have been able to avoid reuniting some families. Several parents separated from their children, prosecuted under the zero-tolerance policy, were quickly returned to CBP custody where their children may have still been waiting for them.

However, instead of readmitting them and reuniting parents with their children, CBP chose to have adults transferred to ICE custody. The report reveals, and I will quote here, according to a senior official who was involved with this decision, "CBP made this change in order to avoid doing the additional paperwork required to readmit the adults."

And so I want to give Chief Provost a chance to talk about this. Obviously, my view is it is absolutely astounding to hear that even a single case of family separation could have been avoided, let alone many.

So, you know, first, Chief Provost, are you familiar with this particular finding in the IG's report?

Chief PROVOST. I believe I am following what you are mentioning referenced in the report, yes.

Mr. NEGUSE. And I guess, can you explain to the committee why some CBP officials thought excessive paperwork would be a sufficient reason to keep families separated, maybe even permanently?

Chief PROVOST. I am not aware that anything to do with paperwork. I can tell you that, meaning from my perspective and anything that I have had access to information, I can tell you that we reunited 500 and some individuals that were in our custody when the executive order came down versus continuing with the process that we had. And I don't know if that caused part of the—or not.

Mr. NEGUSE. I understand that with respect to after the executive order was issued. What I am referencing is this particular point, and again, I will quote directly from the Inspector General's report. "CBP made this change in order to avoid doing the additional paperwork required to readmit the adults."

So, I mean, I want to give you a chance to respond to this IG's finding because it is a very concerning finding that paperwork would have been the driving factor behind not reuniting these parents with their children.

Chief PROVOST. I am not aware of that and have never had that experience. We worked with HHS to reunite, and as I said, anybody within our custody, we reunited immediately, and everybody else, we worked directly with HHS and our partners at ICE to try to reunite—or to try to provide the information that they needed to help do the reunifications.

Mr. NEGUSE. Well, I guess what I would say, Provost, is we will follow by letter because I think it is important to get to the bottom of precisely why. I mean, apparently, there were some folks within

the agency that chose to not do that by virtue of this reason around the paperwork. But we will follow up.

The last question I have is for Mr. Lloyd, and Mr. Lloyd, I want to give you an opportunity—I believe it came up before. So I apologize if I am re-referencing something you have already discussed. But I just want to make sure we have a chance to kind of clear the record.

There is a Politico article, October 23, 2018. And the article references, and I will just quote from it, “three individuals with knowledge of the operation,” reference to the separation of children from their parents, said Mr. Lloyd made “decisions that complicated reunifications. For instance, Lloyd directed his staff to stop keeping a spreadsheet tracking separated families.”

Is that true?

Mr. LLOYD. No, it is not.

Mr. NEGUSE. It is not true?

Mr. LLOYD. It is not true.

Mr. NEGUSE. All right. Thank you.

And with that, I will yield back to the vice chairman.

Ms. SCANLON. Thank you.

Recognizing the gentleman from Arizona.

Mr. STANTON. Thank you very much, Madam Chair.

I want to thank the witnesses. It has been a long hearing and still more to go. This is a very, very important hearing on an issue that the American people are paying close attention to, the shock that we could have, as a government, separated children from their families.

The questions I have will start out with when exactly this policy began. So my first question is to Mr. McHenry. You referred in your written testimony that on April 11, 2017, a full year before the zero-tolerance policy, for first-time entry, misdemeanor 1,325 cases are publicly acknowledged. On April 11th, then-Attorney General Sessions directed all U.S. attorney’s offices along the Southwest border to work with DHS to develop new guidelines for prosecuting 1,325 cases.

General Sessions directed that the new guidelines be submitted to the Deputy Attorney General by April 24, 2017. Did the U.S. attorney’s office submit those guidelines as directed?

Mr. MCHENRY. It is my understanding that the U.S. attorney’s offices complied with the directive in 2017.

Mr. STANTON. Can you provide those memos, as well as any other related documents, such as agreements between the U.S. attorney’s office and Customs and Border Patrol, to this committee?

Mr. MCHENRY. I will take that request back and discuss it with our Office of Legislative Affairs.

Mr. STANTON. Okay. Madam Chair, maybe we can follow up through this committee in a more formal way to get that important information to me and particularly the people of Arizona.

The April 2017 memo also directed the U.S. attorney’s office to designate a border security coordinator to work with DHS to oversee the prosecution of these offenses, including misdemeanors and record and routinely report prosecution statistics. Is that correct?

Mr. MCHENRY. Yes, that is what the memo directed.

Mr. STANTON. Can you provide this committee with all of the prosecution statistics that were collected through this initiative?

Mr. MCHENRY. We can take that request back as well. The Executive Office for U.S. Attorneys does typically provide statistics on a yearly basis. So they may have already been provided.

Mr. STANTON. All right. I think we will be writing, asking for that in a more formal way. I believe that these guideline statistics may show the first chapter of this administration's family separation policy, and it is important that we see them, particularly as it relates to timeline.

Now I am deeply troubled by some of the horror stories that I have heard about how children were literally ripped away from the arms of their parents. Stories from parents in which Border Patrol agents told them that their children were being taken for a bath or out to play and then never seeing their children again. Widely reported, obviously, in the media.

These stories raise important questions. So the next—my next questions will be for Chief Provost. Chief Provost, during and prior to zero tolerance, what specific training were given to CBP, to agents on how to physically separate a child from their parent? Now I am not talking about who to separate. I am talking about the actual physical separation of parent and child.

Chief PROVOST. Starting at the academy, the agents are trained how to deal with family units. And then beyond that timeframe, every year, we follow the law, and we have training on TVPRA, the Prison Rape Elimination Act, and Flores, which addresses care as well as the treatment of those in our custody.

Mr. STANTON. Are those policies written down?

Chief PROVOST. TVPRA, PREA, Flores, yes. We also have—

Mr. STANTON. Okay. Are there written policies specifically about—

Chief PROVOST [continuing]. Policy.

Mr. STANTON. Are there written policies specifically about advising agents on the actual physical separation of parent and child?

Chief PROVOST. Not that I am aware of. But I can tell you that any allegations—and I am not aware of what you stated earlier, but any allegations of such are taken very seriously by CBP, and the Department of—and DHS Office of Inspector General either investigates or the Office of Professional Responsibility on any and all allegations.

Mr. STANTON. You indicated that these policies are not in written form but were still provided to—

Chief PROVOST. The policies are in written form.

Mr. STANTON. That the policies provided training to those agents as to how to physically separate. Are you aware of whether or not those policies were created in consultation with child welfare experts?

Chief PROVOST. If I may be clear, too, we are talking acts. So some of these were Prison Rape Elimination Act, the Trafficking Victims, these are laws. So I can't speak to the consultation in relation to those.

Mr. STANTON. How about trauma experts? You have heard testimony here today, questions from members of this committee about how traumatic this event would be in a child's life to be taken

away from a parent, even for a short period of time, how that could have a lifelong impact on that child. In preparation for your agents to engage in that activity, was there consultation with trauma experts on how to best implement this policy?

Chief PROVOST. Not that I am aware of. Not that I am aware of.

Mr. STANTON. Is there anything to prevent a Border Patrol agent from deceiving a parent when separating a child?

Chief PROVOST. Once again, my—

Ms. SCANLON. The gentleman's time has expired, but you may answer.

Chief PROVOST. My agents are compassionate law enforcement professionals that are trying to deal, like any other law enforcement professional, with what is a very difficult situation. If that were to occur and an allegation were made or we were aware of it, it would be investigated.

Mr. STANTON. Thank you.

Ms. SCANLON. Mr. Jeffries is recognized.

Mr. JEFFRIES. Thank you, Madam Chair, and I thank all the witnesses for their presence here today.

The Trump administration's family separation policy and the practice of ripping children out of the hands of their parents was un-American, unacceptable, and unconscionable. It is not clear to me how any administration can come up with such a treacherous policy, but it appears, based on much of the information that has been provided, that this was a deliberate attempt to deter people who were fleeing incredible conditions of violence and disenfranchisement in the Central American Northern Triangle countries of Guatemala, Honduras, and El Salvador.

Now the Homeland Security Secretary has denied that any family separation was being done to deter migrants. Is that correct, Commander White?

Mr. WHITE. I don't work for the Department of Homeland Security. I have only seen those statements in the media. Others would have to answer that.

Mr. JEFFRIES. Okay. Now she indicated that she would find that notion offensive. Does anyone on the panel find the notion offensive that the Trump administration was engaging in family separation policy to deter?

Chief PROVOST. If I may, sir? The prosecution—zero-tolerance policy is a prosecution initiative, and the top—there were prioritizations, but the focus was on, first and foremost, criminal aliens and then single adults and then those who had—I think it went from serious criminal aliens, meaning felonies, then misdemeanor convictions, then prior removals, single adults before any family unit whatsoever.

It was not a family separation policy. It was a prosecution initiative for violating the law for 8 U.S.C. 1325.

Mr. JEFFRIES. Okay. By criminal aliens, you mean human beings. Is that correct?

Chief PROVOST. Yes, sir. "Illegal alien" is a term in law, but immigrants, yes.

Mr. JEFFRIES. Okay. Undocumented immigrants. In March of 2017, John Kelly, the DHS Secretary at the time, said he was con-

sidering separating immigrant children from their parents to deter immigration. Is that right?

Chief PROVOST. I cannot speak to what he said. I am unaware of that.

Mr. JEFFRIES. He reiterated the goal of the zero-tolerance policy in May of 2018 when he was Chief of Staff was “a big name of the game being deterrence.” Is that correct?

Chief PROVOST. I am not aware, and I cannot speak for the Attorney General. I work for DHS.

Mr. JEFFRIES. Okay. In June of 2018, when asked if the zero-tolerance policy would be deterring, then-Attorney General Jeff Sessions said, “Yes, hopefully, people will get the message.” Does anyone disagree with that statement on the panel?

[No response.]

Mr. JEFFRIES. Apparently not. Commander White, does that strike you as deterrence was the objective of family separation that was taking place at the border?

Mr. WHITE. I apologize. I can’t speak to what the intention was. The effect on children is my area of concern, and that effect was negative.

Mr. JEFFRIES. Now with respect to the Acting Assistant Secretary for Children and Families, Steven Wagner mentioned that the new zero-tolerance policy will result in a deterrent effect. Is that correct?

Mr. WHITE. I am aware that he made that statement.

Mr. JEFFRIES. And you believe that that was the policy of the administration?

Mr. WHITE. I did not participate in the discussions around the formulation of the final zero-tolerance policy. The earlier discussions, which occurred in February and March of 2017, did discuss this as a deterrence intervention.

Mr. JEFFRIES. And do you believe that the zero-tolerance policy is a policy consistent with the values of the American people, or is it an unconscionable effort to try to deter individuals who are fleeing violent conditions in Central America from trying to apply under law for refugee status? Sir, yes?

Mr. WHITE. As I previously testified, neither I nor any career staff person at ORR would have recommended or supported any policy which would have the effect of separating children from their parents as that would be inconsistent with the best interests of the child.

Mr. JEFFRIES. Okay. I thank each and every one of you for your testimony.

Ms. SCANLON. Thank you.

Mr. JEFFRIES. I would just ask that you continue to make yourselves available as we try to come to some understanding as to how such a policy could ever have been implemented in the great United States of America.

I yield back.

Ms. SCANLON. Recognize my colleague from Pennsylvania.

Ms. DEAN. Thank you, Madam Chair.

I, too, come at this as a mother and as a grandmother. I will not disguise in any way my belief that what has happened with the zero-tolerance policy and the family separation that took place be-

fore that and after that is inhumane and un-American. I make no apologies for that, but I am happy that we are doing the important work of identifying what the heck happened and what we can do to repair the damage, if it is at all possible, and ultimately that we not let this ever, ever, ever happen again.

I thank you, Commander White, for voicing your concerns for the children, for voicing your concerns about the policy. I wish others had as well.

I want to examine the Office of Refugee Resettlement, and so, Mr. Lloyd, I am going to read to you from the website what we do. And this is what you did. "The Office of Refugee Resettlement provides new populations with the opportunity to achieve their full potential in the United States. Our programs provide people in need with critical resources to assist them in becoming integrated members of the American society."

Would you agree that is the mission of ORR?

Mr. LLOYD. I do agree, yes.

Ms. DEAN. And tell me, when were you brought on at ORR?

Mr. LLOYD. My first official day was March 24, 2017.

Ms. DEAN. And your final day?

Mr. LLOYD. December 1, 2018.

Ms. DEAN. Okay, March 2017 to December of 2018, roughly the entire period of time when we are now aware that children were being separated. How many children were in your custody at any one time?

Mr. LLOYD. That would—that fluctuated during my tenure. I think at a low point, it was between 5,000 and 6,000. At a high point, it was over 15,000.

Ms. DEAN. And describe for us your expertise in working with children and displaced populations.

Mr. LLOYD. I came to the Office of Refugee Resettlement after having spent time with the Knights of Columbus among displaced populations in Iraq and not physically, but also in Syria, to investigate the harms and the crimes that they had experienced at the hands of ISIS and to advocate on behalf of their interests and rights. I also have some experience as a teacher, which I think spoke to the Unaccompanied Alien Children's Program.

Ms. DEAN. And you told us that you did hear from Commander White his concerns. I don't think you have any degree in trauma to children or any medical degree. Is that correct?

Mr. LLOYD. That is correct. I do not.

Ms. DEAN. It is too bad you didn't avail yourself of the greater expertise of Commander White.

Mr. LLOYD. That is not true. I did listen very closely to my advisers, including child welfare experts, mental—

Ms. DEAN. And then did not speak up against the policy or speak up about the problems for the children. Something you did take an initiative on. Isn't it true that you tracked the menstrual cycles of young girls, young women in your custody?

Mr. LLOYD. That is not an accurate characterization of what occurred. I am not sure what exactly you are referring to.

Ms. DEAN. I believe in a deposition you actually admitted to that. But you are now saying you did not track the menstrual cycles, or you did not have your staff track the menstrual cycles?

Mr. LLOYD. The best——

Ms. DEAN. It is a yes or no. Did you track—did you create any kind of tracking mechanism——

Mr. LLOYD. I don't have a yes or no answer for that question, but the best guess as to what you are referring to is, is a list that included that included pregnant women, and it would have mentioned their last menstrual period, which is a way of tracking the amount of time that they have been pregnant.

Ms. DEAN. So you are now denying that you tracked the menstrual cycles of young women in your custody? You are denying that?

Mr. LLOYD. I am denying that I tracked menstrual cycles of women in my custody.

Ms. DEAN. We will be able to compare your deposition.

Mr. LLOYD. Okay.

Ms. DEAN. Isn't it true that you personally visited pregnant minors to pressure them to continue their pregnancies?

Mr. LLOYD. No, that is not true.

Ms. DEAN. That is not true?

Mr. LLOYD. No.

Ms. DEAN. Okay. Isn't it true you instructed your staff to prevent minors seeking abortion from meeting with attorneys?

Mr. LLOYD. Can you—I am sorry. Can you repeat the question?

Ms. DEAN. Certainly. Isn't it true you instructed your staff to prevent minors seeking abortion from meeting with attorneys, lawyers to get advice?

Mr. LLOYD. Okay. So there was one instance where we said that there was——

Ms. DEAN. So it is a yes?

Mr. LLOYD [continuing]. A brief period of—in one instance we said for a brief period of time, it would be not—it wouldn't be appropriate to meet with an attorney at that point——

Ms. DEAN. And you would determine whether or not it was appropriate, and you had the expertise, medical and otherwise, to determine that?

Mr. LLOYD. Ma'am, all of the children in our——

Ms. DEAN. Isn't it true——

Mr. LLOYD. All the children in our care received, they receive legal screening and access to an attorney. I never finally blocked access to an attorney for anybody, anybody.

Ms. DEAN. Not finally, but when a minor is pregnant, any blocking of legal advice might be critical to that person.

Mr. LLOYD. It was—I did not——

Ms. DEAN. Isn't it true—I have very little time left.

Mr. LLOYD. Okay.

Ms. DEAN. And I want to use the language that we have been told——

Ms. SCANLON. The gentlewoman's time has expired. The witness may answer the final question there.

Mr. LLOYD. I didn't hear the end of the question.

Ms. DEAN. My question is this. When you took the initiative to track menstrual cycles, which your deposition reveals——

Mr. LLOYD. I did not do that.

Ms. DEAN [continuing]. And to try to guide young women or block them from getting legal advice, did you also take the initiative, and is this initiative underway, to assess the mental health of the children in your custody? Did you take that initiative?

Mr. LLOYD. We do assess the mental health of every child in our custody within 24 hours of them coming into our custody, and they receive both group and individualized mental health care.

Ms. DEAN. Hopefully, my colleagues will ask the ongoing—

Ms. SCANLON. Okay.

Ms. DEAN. The 24-hour first impression is one thing, but we are talking about the trauma created from separation—

Mr. LLOYD. It is ongoing throughout their care in ORR.

Ms. SCANLON. Okay. The chair recognizes the gentlewoman from Texas.

Ms. ESCOBAR. Thank you, Madam Chair, and thank you to the panel. Thank you for your service. Thank you for being here.

I am from the safe, secure, and vibrant U.S.-Mexico border community of El Paso, Texas, where, unfortunately, we have the dubious distinction of being the testing ground for the Trump administration's family separation policy.

Chief Provost, I have a couple questions for you as follow-ups to what some of my colleagues asked you. You acknowledged earlier that you do not know how many children were separated, beginning with the time that the policy was implemented in El Paso in July 2017 and when the policy was officially announced on April 6, 2018. Is that correct?

Chief PROVOST. I don't have that number with me. It is a number that I can get.

Ms. ESCOBAR. Okay. But okay, so then you do know how many children exactly were separated during that testing period?

Chief PROVOST. Once again, it wasn't a family separation testing period. It was a prosecution initiative like many others we have done.

Ms. ESCOBAR. I understand that. I do understand—

Chief PROVOST. But we can pull that information.

Ms. ESCOBAR. Okay. And I will tell you—so if we could have that, I would appreciate that.

We do—in El Paso, we call it the child separation policy because that is exactly what happened. I know it is far more academic to call it by its governmental name, but those of us who have actually sat with the families who have been separated and then reunited, we have seen the trauma firsthand. It is painful, and we should call it for what it is.

So what is the plan—how many—do you know how many of those families during that testing period, how many of them have been reunited?

Chief PROVOST. I do not. That is something that, once again, anybody that we separate, for whatever reasons—and there are still reasons that we have to separate children from parents—that information we provide to HHS going forward, and I don't deal with the reunifications.

Ms. ESCOBAR. Okay. Who on the panel deals with the reunifications?

Mr. WHITE. That would be me, ma'am.

Ms. ESCOBAR. And can you tell me how many of those children have been reunited? Those who were separated during the testing period.

Mr. WHITE. If the child was still in ORR's care on the 26th of June 2018, regardless of when they were separated, whether they were separated during the declared period of zero tolerance or before, those are minors who in the Ms. L.—whose parents are in the Ms. L. class. And we can say of those which were reunified and which were not.

What neither I nor anyone in HHS knows is which of the children who had already been discharged from our care before the 26th of June, which of them were separated and which weren't. Although if someone were to give us such a list, we could certainly tell you to whom we discharged every single one of those children.

Ms. ESCOBAR. Who can get you that list?

Mr. WHITE. We don't have it in HHS. I would assume that only DHS could provide such a list.

Ms. ESCOBAR. Okay. So we need to make sure—will you request that list from DHS? Wouldn't it be incumbent on us to make sure that every single child that was separated could be accounted for? Isn't that our obligation?

Mr. WHITE. That is a matter that Judge Sabraw is deciding right now.

Ms. ESCOBAR. But I am talking about the folks before—I am talking about the children and the families separated——

Mr. WHITE. But unless there is a—unless there is a court order, we are not going to go into the homes of families to take a child from their other parent or their aunt to bring them back——

Ms. ESCOBAR. All right. Thank you. I reclaim my time.

Earlier in this hearing, Mr. Raskin referenced the work of the Texas Civil Rights Project. Because of their work, we know that family separation continues to this day, several months after an executive order should have stopped it.

Madam Chair, I ask unanimous consent that a report by the Texas Civil Rights Project, entitled *The Real National Emergency: Zero Tolerance and the Continuing Horrors of Family Separation at the Border*, be entered into the record.

Ms. SCANLON. Without objection.

[The information follows:]

REP. ESCOBAR FOR THE RECORD



**The Real National Emergency:
Zero Tolerance & the Continuing Horrors
of Family Separation at the Border**

Laura Peña
Author

Efrén C. Olivares
Senior Contributor

FOREWORD

Deep in South Texas, where the Rio Grande twists and turns as it meanders southeast toward the Gulf of Mexico, the city of McAllen bustles. Its stores teem with Mexican shoppers and its streets with the bilingual hum of a city that melds two countries into a single culture. In the last year, the city of my birth, the community that taught me to cherish family and kindness to the stranger as much as to the friend, became witness to the shame of family separation. In the name of securing the border that unites neighborhoods north and south of the river, children were taken from their parents. As tearful stories spread around the world during the summer of 2018, the irony of the mightiest government on the planet protecting itself from migrant families by prosecuting parents and thrusting children into a labyrinth of converted Wal-Marts, dusty motels, and an assortment of other shelters—prisons, advocates say—was lost on few.

In those days, I found myself visiting Auschwitz and Birkenau, Nazi concentration camps where humanity's worst excesses became an unspeakable reality. Arriving early for my scheduled tour, I stopped alongside a nondescript road marked by a single train car and a small sign. This, I learned, was where trains unloaded the people who would be distributed to the nearby camps. Standing a continent away from McAllen, the distance suddenly closed. There was a child being torn from his father's arms. From McAllen, the images came by way of journalists and advocates. From Nazi-era Poland, they came by way of drawings made by an unknown witness. Clearly, the end result was different. But the process was remarkably similar.

"I didn't like the sight, or the feeling, of families being separated," President Trump said in June 2018 as he signed an executive order ending his administration's policy. "We're keeping families together," he added from his White House desk.

Go to McAllen today and the emptiness of his words hangs heavy above the federal courthouse where, *The Real National Emergency: Zero-tolerance & the Continuing Horrors of Family Separation at the Border*, reveals the saga of family separation continues. Listen closely and you will still hear the cries of traumatized children. Watch and you will still witness parents walking through the nightmare not knowing when—or whether—they will see their children again. In this groundbreaking report, the Texas Civil Rights Project forces all of us who were recoiled in disgust a year ago to become uncomfortable again. Family separation is not yet the past; it remains the present.



Mr. García Hernández is a tenured associate professor of law at the University of Denver. He is a scholar of migration, author of the blog *crimmigration.com*, and engaged intellectual who regularly weighs in on pressing public affairs.

I. EXECUTIVE SUMMARY

The Texas Civil Rights Project (TCRP) has been interviewing separated asylum seeking and migrant parents at the southern border since the height of the family separation crisis in the summer of 2018. This report provides a comprehensive non-governmental account of family separations at or near McAllen, Texas during a six month period after the issuance of the Executive Order purportedly ending the practice. During the reporting period, TCRP screened nearly **10,000** migrants and asylum seekers who were being criminally prosecuted for illegal entry to determine whether family separation had occurred. Of those screened, TCRP attorneys and staff interviewed **272** adults separated from a child family member, including **38** parents or legal guardians separated from their children. Of the **38** parents/legal guardians, **46** children were separated, including **25** children under the age of 10. The youngest infant impacted was 8 ½ months old at the time of separation from her mother. To date, the government has not reported these children to anyone—neither to the courts nor to Congress—and the government has admitted it may be impossible to find all separated children.¹

The government's “normal” practice under zero tolerance in the late spring and early summer of 2018 was to separate mothers and fathers from their children, regardless of age, regardless of any criminal record or finding of unfitness, and incarcerate them. This policy tortured thousands of families.² The examples below highlight separations that occurred after the issuance of an Executive Order intended to end the practice and a federal court order enjoining the government from separating families:

- Mr. V, a father who was separated from his seven year old son, allegedly due to a misdemeanor conviction of battery over 10 years ago³;
- Mr. A, a father who was separated from his 11 year old daughter and nine year old son on uncorroborated allegations of gang affiliation;
- Ms. Y, a mother who fled sexual slavery and was accused of being a danger to society and unfit to be a parent because she had shot her captor non-fatally in self defense⁴;
- Mr. Perez-Domingo, an indigenous father from Guatemala whose primary language is Mam and whose parentage was questioned by DHS due to lack of assistance by a translator;
- Ms. B, a legal guardian and biological aunt who has been separated from her child for over six months due to the government refusing to recognize her legal guardianship⁵; and
- Mr. Z, a father who entered the U.S. with his U.S. citizen son and who remains separated from him.

TCRP highlights the following key recommendations to Congress and the Executive Branch (a full list is included at the end of the report):

- End zero tolerance policy of prosecuting all asylum-seekers and migrants for illegal entry under 8 USC § 1325(a).

- Immediately reunify all families and end family separations, including separations of non-parental families, except where a clear finding of unfitness and best interest of the child is established under concrete, transparent procedures that comport with due process rights under the Fourteenth Amendment.
- Mandate the Department of Homeland Security (DHS) use interpreters during processing and questioning including for non-native Spanish speakers who speak an indigenous language.
- Establish flexible, clear procedures to prevent obstacles for legal guardians to establish custody over the child.
- Mandate release on parole for undocumented parents or legal guardians with U.S. citizen children who are apprehended by DHS.

II. INTRODUCTION

About the Texas Civil Rights Project Family Reunification Efforts

The Texas Civil Rights Project (TCRP) boldly serves the movement for equality and justice in and out of the courts. We are Texas lawyers for Texas communities, and we use our tools of litigation and legal advocacy to protect and advance the civil rights of everyone in Texas. We undertake our work with a vision of a Texas in which all communities can thrive with dignity, justice, and without fear. We are lawyers deeply rooted on our communities, and when the family separation crisis hit our borders last summer, we were there to respond with action. For years, TCRP has fought back against mean-spirited and dangerous attacks against the most vulnerable in Texas, and our work defending the rights of asylum-seeking and migrant families represents our long-time commitment to quickly and aggressively respond to civil and human rights violations.

In May 2018, TCRP was contacted by the Federal Public Defenders of the Southern District of Texas. Their clients were parents being prosecuted for illegal entry under the Trump Administration's new zero tolerance policy, and the parents were stricken with fear and concern due to the forcible taking of their children by the U.S. government. The Defenders contacted TCRP to help find their clients' children when nobody else, including the government, knew where they were. In response, TCRP began interviewing parents during the height of the family separation crisis, investigating the whereabouts of their children, coordinating with local nonprofit children organizations to match family units, connecting parents with pro bono legal representation to prevent deportation, and working to reunify and assist families pursuant to the *Ms. L. vs. ICE injunction*. In addition, TCRP filed a request for precautionary measures in the Inter-American Commission on

Human Rights seeking relief for these families.⁶ From May through June 20, 2018, TCRP assisted with reunification efforts for 382 families and, through our pro bono partners, we continue assisting with immigration representation for over 100 families.⁷ To date, the TCRP lawyers and staff in the Río Grande Valley continue daily interviews of parents being prosecuted under zero tolerance to monitor compliance with the Executive Order purportedly ending family separations.⁸



This report provides primary evidence of family separations after the issuance of the June 20th Executive Order intended to halt the abhorrent and widely condemned practice.⁹ Our findings are based on direct interviews with adult family members separated from their children at or near McAllen, Texas from June 22, 2018 through December 17, 2018.

To date, there are no independently verified figures and only the government has provided numbers of family separations. Most recently, the DHS reported 81 separations of children from parents or legal guardians after apprehension by U.S. Customs and Border Protection (CBP) from June 20 through November 2018.¹⁰ The DHS spokesperson stated that family separations are “rare” and have returned

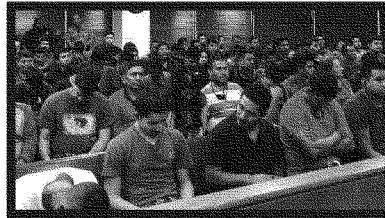
to “normal levels.”¹¹ According to the DHS spokesperson, these separations occurred if the adult accompanying the child was not the parent or legal guardian, there was concern for the child’s safety, or there was an urgent medical reason or serious criminal activity by the adult.^{12 13}

Our findings suggest that the number of family separations is higher than the 81 separations disclosed by DHS. During the six month reporting period, TCRP interviewed 272 family members separated from one or more children under the age of 18 after apprehension by CBP at or near McAllen, Texas. This area is only one place on the southwest border where migrants and asylum seekers are arraigned under the zero tolerance prosecutions of illegal entry. According to illegal entry prosecution data, there are at least 18 federal districts along the southwest border where U.S. Customs and Border Protection (CBP) refers illegal entry cases to the federal prosecutor.¹⁴

A Brief Overview of Zero Tolerance and Family Separations

The Department of Homeland Security (DHS) began discreetly implementing family separation policies in Texas and New Mexico from July 2017 through November 2017.¹⁵ Later that year, DHS officials circulated an internal sixteen-point strategy to strip asylum-seeking parents and children of their rights under the law.¹⁶ The strategy included plans to “increase prosecution of family unit parents,” which would require “placing the adults in adult detention, and placing the minors under the age of 18 in the custody of HHS as unaccompanied alien children.”¹⁷ The strategy disturbingly recommended prolonged detention of children by seeking criminal prosecution and removal of undocumented sponsors who voluntarily sought to save the child from the trauma of continued government detention.¹⁸ The chilling effect would admittedly “require HHS to keep the [children] in custody longer,” but that “once the deterrent impact is seen on smuggling and those

complicit in that process, in the long-term there would likely be less children in HHS custody.”¹⁹ At the same time, the policy recommended stripping children of their legal rights to asylum and circumventing established legal protections.²⁰ In April 2018, Attorney General Jeff Sessions announced the zero tolerance policy, instructing U.S. Attorneys across the southwest border to prosecute all instances of illegal entry referred by DHS.²¹



As had been carefully crafted by the Administration, the mass-scale forcible separations of parents from their children resulted in torturing families throughout the summer.²² It was during that period that TCRP, many other nonprofits, and law firms were on the ground seeking to assist the traumatized families. As a result of the widespread condemnation of the Administrations’ inhumane and illegal practice of separating families, President Trump in a rare about-face was forced to issue an Executive Order ending the practice and requiring the maintenance of “families during the pendency of any criminal improper entry or immigration proceeding.”²³ Shortly thereafter, a federal district court certified a class action, enjoined the Administration from separating families, and ordered the reunification of all families who had been separated prior to June 26, 2018.²⁴ Notably, the class excluded parents with criminal history or communicable diseases.²⁵ Following a chaotic and traumatic reunification process in July, many but not all children were reunited with their parents.²⁶

In two post-mortem investigations, the DHS Office of Inspector General found that “DHS was not fully prepared to implement the Zero Tolerance Policy, or to deal with the certain effects of the policy following implementation...[] children [were] separated under the policy for long periods in facilities intended solely for short-term detention.... and [DHS failed to] reliably track separated parents and children.”²⁷ Months later, the Inspector General of the Department of Health and Human Services (HHS) concluded that “[t]he total number and current status of all children separated from their parents or guardians by DHS and referred to ORR’s care is unknown,” and that there is “even less visibility for separated children who fall outside the [Ms. L] court case.”²⁸ The Inspector General further noted that

“efforts to identify and assess more recent separations may be hampered by incomplete information,” and encouraged “efforts to improve communication, transparency, and accountability for the identification, care, and placement of separated children.”²⁹

The following findings shine a bright light into family separations following the purported end to the cruel and inhumane practice, which has been found to constitute torture.³⁰

*“We can easily forgive a child who is afraid of the dark;
the real tragedy of life is when men are afraid of the light.” - Plato*

III. FINDINGS

Methodology

Since May 2018, the Texas Civil Rights Project has conducted ongoing monitoring of zero tolerance prosecutions at the United States District Court in McAllen, Texas.³¹ This report provides first-hand information into the monitoring activities conducted by TCRP from June 22, 2018³² through December 17, 2018. These activities include interviews with adult migrants and asylum-seekers prior to the criminal prosecution of alleged violations under 8 USC §1325(a) illegal entry (misdemeanor crimes) and 8 USC §1326 illegal reentry (felony crimes). Most commonly, the courts hold morning and afternoon “zero tolerance” hearings that require TCRP interview screenings twice daily. Since May 2018, the number of defendants in each zero tolerance hearing have ranged from a few dozen to over one hundred individuals per proceeding.

Prior to the start of the zero tolerance hearing before a United States Magistrate Judge,³³ TCRP attorneys and staff ask the group of defendants if any of them have been separated from a minor child when crossing the border. If a defendant raises his or her hand, the TCRP attorney or professional will conduct a brief interview with the individual to determine the relationship to the minor, name, age, date of birth, medical conditions of the minor, and if the government official provided any explanation for the separation.³⁴ TCRP also secures information from the defendant including name, country of origin, date of birth, removal history and criminal history, if any, and contact information for any family or friends in the United States or home country. This information has proven critical in order to assess the facts regarding each instance of family separation, and the ability to locate the individual following the completion of the illegal entry proceeding.

Since the Executive Order purportedly ended the family separation policy and practice, TCRP has continued investigating and representing families whose separation violates the Executive Order and/or the nationwide injunction issued in *Ms. L. vs. ICE*. In addition, for non-parental family separations,³⁵ TCRP makes courtesy calls to family members in the United States to ensure they understand the process to sponsor the child or children who are being held in a government shelter. TCRP also attempts to secure representation for the adult in immigration proceedings in the event of long-term detention. In some cases, no family member in the United States knows the whereabouts of the child and TCRP helps locate the child in government custody. In other cases, there is no family member or friend in the United States, and TCRP investigates the case for family reunification in country of origin or locates the minor's attorney to assist with alternative options in the event that he or she has deemed reunification is not in the best interest of the child.

Based on the information available at the time of publication of this report, TCRP may be the only non-governmental organization in the United States monitoring illegal entry prosecutions to identify instances of family separations and assist with reunifications. The findings below are limited to information that has been secured through the interviews with the clients, who were interviewed prior to the commencement of the illegal entry hearing at the federal courthouse in McAllen, Texas.

Findings

By the Numbers

During the approximately six month reporting period, TCRP screened an estimated 9,804 adults prosecuted for illegal entry under 8 USC §1325(a) and 492 adults prosecuted for illegal reentry under 8 USC §1326.³⁶ Of these prosecutions, the vast majority of the defendants were from the Northern Triangle in Central America (Guatemala, Honduras, and El Salvador).

During the six month period following the purported “end” of the family separation practice, TCRP screened 272 instances³⁷ of family separations in the following categories:

Parent-Child Separations	Legal Guardian or Step Parent	Siblings	Cousins	Grandparents	Uncles/Aunts	Mixed Legal Status	Non-Familial
34	4	107	28	22	62	1	14

Parents and Legal Guardians Separated from Children

About the children

Of the 38 separations of parents or legal guardians from their children:

46 Children were separated	25 Children were 10 years old or younger at the time of separation	8.5 months The youngest at the time of separation ³⁸
--------------------------------------	--	---

Reunification status

TCRP tracks family reunification through phone calls to the separated family members or other relatives in the United States and home countries.

18 families have been reunited	10 families have not been reunited	10 families reunification status is unknown
11 reunified with a sponsor in the U.S.	9 children remain in ORR custody	
7 reunified with separated parent/guardian in the U.S.	1 child turned 18 and was deported to his/her home country	

Parents Removal Status

TCRP has confirmed 6 parents have been removed from the United States.

- 3** cases the child has been released to a sponsor in the U.S.
- 2** cases the child remains in ORR custody
- 1** case child turned 18 and later removed to home country

Criminal History

Of the 38 parents and legal guardians forcibly separated from their children, a majority of the parents were fathers traveling with young children.³⁹ TCRP also determined through the interview process that 22 of the 38 parents/legal guardians had a prior criminal conviction in the United States. As such, the parents were typically “ineligible” for family reunification under the parameters established in the *Ms. L* class action.^{40 41} Moreover, the government has held a long-time policy of separating families under the TVPRA when it determines that the separation

is in the child’s best interest.⁴² Even during the height of the family separation crisis, the *Ms. L* class membership excluded parents with criminal history.⁴³ For the most part, the types of crimes included misdemeanors such as driving under the influence and possession of a controlled substance. In at least one case, there was a more serious violent conviction of rape.⁴⁴ Although the information is readily available, DHS does not always report this data to ORR. Moreover, “ORR officials and staff noted that from a child welfare perspective, not all criminal history rises to a level that would preclude a child from being placed with his or her parent.”⁴⁵

Mr. V

Mr. V was separated from his 7 year old son under the false promise that his son would still be at the CBP processing center upon his return from the illegal entry hearing.⁴⁶ During a screening interview with the father, a TCRP attorney informed Mr. V that his son might be transferred to a government shelter. In assessing the possible reason for separation, TCRP confirmed that Mr. V had been convicted of misdemeanor battery in Louisiana ten years ago. The father explained several people were arrested outside a home when a dispute between two families occurred in his neighborhood. Based on this conviction, TCRP advised that the government could take the position that the father was not eligible for reunification. The father broke down in tears, repeating that if he was deported, that he would want to be deported with his child. Mr. V was removed without his son approximately ten days later. Although Mr. V asked to be reunited with his son before getting on a plane to be removed to his home country, the officer refused his request. The officer told Mr. V that his son could be sent back home, but it had to be on a different plane—a plane for children. At no point did a government official require Mr. V to waive his rights to be removed without his child. At the time of this report, the child remains in government custody, and TCRP is currently advocating for the release of the child to his aunt in the United States.⁴⁷

Baseless Government Allegations of Criminal History

In at least two cases during the reporting period, the Department of Homeland Security separated parents from their children based on “suspicion” or “evidence” of criminal history or gang affiliation.

Mr. A

Mr. A was separated from his 11 year old girl and 9 year old boy on or around November 5, 2018. He fled El Salvador with his children due to violence and

threats of death by local gangs. He has been accused of being a gang member or having some criminal history that resulted in CBP separating him from his children. Following TCRP’s initial interview with Mr. A, TCRP lawyers conducted an investigation into his background. TCRP confirmed that he has no known criminal convictions in the United States or his home country of El Salvador, no tattoos indicating gang membership, and a long-time employer verified his good moral character. Mr. A had even presented some of this evidence to CBP when the agent accused him of being a gang member. Mr. A vehemently denies ever being affiliated with any gang or having any criminal history in El Salvador. As of the date of this report, TCRP and law firm partner Haynes & Boone have filed a motion for a temporary restraining order⁴⁸ in federal district court demanding the government provide an explanation for the separation and seeking relief with immediate reunification and a credible fear interview that comports with constitutional requirements. The father’s health is rapidly deteriorating due to this traumatic separation.

Mr. X⁴⁹

Mr. X was separated from his ten year old son on or about November 26, 2018. He fled Guatemala due to a violent and prolonged land dispute against indigenous peoples in North Central Guatemala. Mr. X and his child’s primary language is Quiche, an indigenous language, and they had little understanding of Spanish upon their arrival to the U.S. Upon further investigation, TCRP confirmed that CBP separated the family due to a warrant for the father’s arrest in Guatemala. In collaboration with human rights defenders, former Peace Corps Volunteers and professors with connections to the region, TCRP discovered the arrest warrant was related to the local land dispute and serves as primary evidence in his claim for asylum. Mr. X contends that he is being persecuted by the government of Guatemala and other local actors on the basis of his indigenous heritage and political opinion. To date, both ICE and

ORR are utilizing a baseless, retaliatory arrest warrant in the home country as justification for continued detention of Mr. X and continued separation from his child. Mr. X remains in ICE custody and the child is held in a government shelter. Mr. X has had minimal opportunity to speak to his child, who is struggling in the government shelter due to his native language being Quiche.

Ms. Y



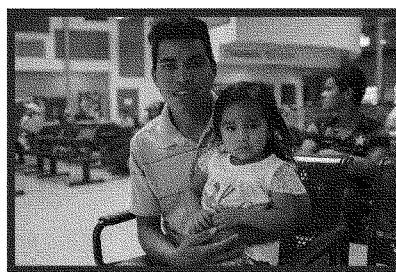
In a third case prior to the reporting period,⁵⁰ TCRP assisted with the reunification of a mother who fled sexual slavery in Honduras with her eleven year old daughter. In that matter, Immigration and Customs Enforcement (ICE) and the ORR utilized the mother's statement that she had shot her captor non-fatally to escape sexual slavery as a reason for continued separation. The act of self-defense was a part of the mother's claim for asylum, and she had given the voluntary statement in full compliance with questioning by an asylum officer during her credible fear interview. ICE used that statement to argue against releasing the mother on bond, and DHS further used that statement to find the mother was unfit to have her child released to her care. Through pro bono representation at her bond hearing, the Immigration Judge concluded the mother's admission was insufficient to establish that she was a risk to society, and granted the mother bond. After release from ICE custody, TCRP in collaboration with Congressman Filemon Vela's office advocated on the

mother's behalf and provided written statements and explanations of the issue. The government eventually approved the release of the child to the mother after nearly four months of separation.

Language Barriers Cause Further Injustice

A majority of the families seeking protection at this area of the U.S.-Mexico border are from Central America. In Guatemala alone, over 60 percent of the population is indigenous, representing approximately 22 different indigenous peoples⁵¹ and dozens of indigenous languages and dialects. In relation to the rest of the country, 21 percent of indigenous peoples face extreme poverty in Guatemala, compared to 7.4 percent of the non-indigenous population.⁵² Moreover, indigenous peoples face challenges to political participation, extreme violence against women, and access to basic resources.⁵³ As a result of these push factors, TCRP screens many Guatemalan migrants and asylum-seekers of indigenous origin who have limited understanding of Spanish. The language barrier poses a specific challenge for these indigenous families, as fathers are sometimes accused of human trafficking.

Mr. Perez-Domingo



On or about July 5, 2018, Mr. Perez-Domingo, an indigenous Guatemalan whose primary language is Mam, was separated from his two year old daughter

after a CBP agent accused him of not being the biological father of the child. In interviews with Mr. Perez-Domingo, TCRP confirmed that he spoke very little Spanish and had limited understanding of what happened when the agent took his daughter away. Mr. Perez-Domingo had offered a copy of the birth certificate to the agent, who accused him of providing a fraudulent document. The agent pressured Mr. Perez-Domingo, repeating the leading question—“You’re not the father, right?” Confused and scared, Mr. Perez-Domingo agreed with the agent, not understanding what that meant for his family. At no time did the agent seek the assistance of a Mam translator to facilitate the critical interview. TCRP conducted an investigation into the matter, and confirmed with the Guatemalan consulate the authenticity of the birth certificate. TCRP found the young child had been transferred to a foster family in El Paso, Texas. After demanding immediate reunification,⁵⁴ TCRP engaged in negotiations with an officer of Homeland Security Investigations (HSI).⁵⁵ The officer stated that confirmation of parentage through DNA testing would be required in order to reunify the family. The officer further stated that if the DNA test concluded that Mr. Perez-Domingo was not the father, he could be charged with serious crimes of smuggling or trafficking. TCRP required DHS to secure a translator to receive the father’s consent to the DNA testing, and to provide consent for his daughter. After receiving his consent with the assistance of a translator, it took DHS over two weeks to figure out which contractor was authorized to conduct the DNA testing. There was little to no guidance about how to coordinate with ORR regarding DNA testing, which resulted in bureaucratic delays. Following positive results of the DNA test confirming parentage, DHS reunified the family on August 3, 2018. The lack of assistance of translators, in combination with aggressive questioning by the CBP agent, resulted in severe discrimination and traumatic consequences for this indigenous family. Had TCRP not interviewed this father early in the process, it is highly likely that Mr. Perez-Domingo

would have been deported without his daughter, and his child unlawfully orphaned in the United States.⁵⁶

Legal Guardians Face Significant Hurdles

Legal guardians and stepparents face significant challenges demonstrating legal custody over their children. Despite objections filed by two legal guardians represented by TCRP and King & Spalding in *Ms. L vs. ICE*, the court declined to specifically include legal guardians as class members. In at least five interviews during the reporting period, legal guardians and stepparents expressed frustration at government officials for failing to recognize the legal documentation they carry with them when they come to the United States.⁵⁷ These challenges contravene the Flores Settlement Agreement, which requires highly preferential treatment for legal guardians.⁵⁸

Ms. B.

Ms. B is a *de facto* parent and legal guardian separated from her daughter last June during the height of family separations. In separate litigation, the legal guardian seeks relief before in federal district court. Ms. B is the biological aunt of the child, and she sought legal custody due to the death of the sole-providing parent. As of the date of this report, Ms. B remains detained in ICE custody and separated from her child—in large part because the government refuses to treat legal guardians as parents to keep families together.

Troubling Concerns for U.S. Citizen Children

The U.S. government admits to continue separating families where the children are found to be U.S. citizens.⁵⁹ The government separates the families in part because DHS lacks the authority to “detain U.S. citizen children in these instances.”⁶⁰ In most instances, DHS will rely on the relevant child protective services agency to place the child with a relative in the United States. However, if no relatives are available and the parent remains detained or

deported, then the child likely ends up ensnared in the foster care system. In those cases, the harm to the parent amounts to de facto loss of parental rights. Moreover, even if a parent is released from immigration custody and reunified with the child, the state child protective services agency can continue taking punitive actions against the parent for child endangerment—even if the family fled their home country to seek protection in the United States.

Mr. Z

On or about August 27, 2018, Mr. Z was separated from his twelve year old U.S. citizen son after crossing the U.S.-Mexico border. Mr. Z and his family fled Honduras due to the return of a violent, criminal gang member who had violated his U.S. citizen son when he was a child. After the gang member's return, the family had been subjected to death threats and physical attacks by the gang member's associates. Upon investigation, TCRP made contact with Child Protective Services (CPS), the agency in charge of placing the child with a family member in the U.S. After several days, CPS was able to locate the biological mother who had entered the U.S. at a different time. The U.S. citizen son was released to the care of the biological mother. Unfortunately, Mr. Z remains in ICE custody and separated from his family. He continues to fight his removal from the U.S. based on relief under asylum, withholding of removal, and the Convention Against Torture. At the same time, CPS has taken action against the father, adding further complication and stress to an already tenuous situation for a family at risk of permanent separation.

Deported Parents

Of the 38 separated parents and legal guardians interviewed by TCRP during the reporting period, at least six are known to have been removed from the United States. Parents who have been removed from the United States without their children face severe challenges locating their children and navigating the

ORR system to be able to speak with their children. They also face significant challenges in securing a sponsor in the United States, particularly when the sponsor does not have lawful status, as DHS and HHS agreements put sponsors at risk for detention and removal by ICE.⁶¹ In addition, even if a sponsor is secured in the United States, ORR procedures are costly—charging sponsors and their families thousands of dollars to pay for transportation. As has also been widely reported, deported parents face great risk losing their parental rights permanently due to adoption in the U.S.⁶²

Reunification Challenges during Federal Criminal Custody

The implementation of the Administration's zero tolerance policy continues to rip families apart. Parents who are charged with illegal reentry under 8 USC §1326, a felony, face even greater hardship in locating and communicating with their children. The President created a loophole when issuing the Executive Order purportedly ending family separations. The Order instructs the Secretary of DHS to "maintain custody of alien families during the pendency of *any criminal improper entry* or immigration proceedings involving their family members."⁶³ Since DHS does not have custody over the parent during pendency of the illegal reentry proceeding, the Administration maintains that a parent in U.S. Marshals custody does not have the right to be reunified with the child. While family separations are violations of federal and international laws, these separations particularly shock the conscience because parents and children are left in the dark to suffer while the criminal justice system claims no duty to keep the family informed, much less together.

Mr. C

Mr. C was separated from his five year old daughter by a CBP agent on December 20, 2018, after crossing into the United States. Mr. C is being charged with

8 USC §1326 illegal reentry—a felony charge which will likely result in several months of imprisonment in the U.S. Marshals custody. Partly because the father is not yet in DHS custody, ORR had not communicated with Mr. C regarding the location of his child. For six weeks, Mr. C had no idea why his daughter had been taken away, where she was being held, or if he would ever see her again. As a result, Mr. C suffered from severe anxiety and depression, crying constantly during consultations. It required TCRP intervention to locate the child in government custody. At that point, TCRP requested permission from the U.S. Marshals to facilitate a phone call with the child. Mr. C finally got to speak with his child after nearly two months of separation. At the time of this report, it is uncertain whether the U.S. Marshals and ORR will provide continued communication between the father and daughter.

Unknown Basis for Family Separation

At least ten parents interviewed by TCRP during the reporting period had no known criminal conviction in the United States or their country of origin. Of these ten cases, TCRP has verified that five children have been reunified with either the separated parent or the sponsor. One child is pending reunification with a

sponsor. At least two parents remain in immigration custody while seeking relief from removal while their children remain in government shelters. The status of two families is unknown at this time. Without further information from the government as to the basis for these separations, they appear to be clear violations of the Executive Order and Ms. L federal injunction.⁶⁴

Non-parental family separations

TCRP interviewed 234 non-parental/legal guardian family separations. The majority were siblings who traveled together due to violence and insecurity in their home countries. For many of these siblings, the adult sibling is under the age of 21 and traumatized by the separation. For grandparents traveling with their grandchildren, they are often the sole provider for the grandchildren. Aunts and uncles have similar relationships with their nieces and nephews, often taking the arduous journey with the child because the parents are either under threat of violence or have died due to violence in their home region. Once again, the Administration's zero tolerance policy continues to rip families apart without any recourse for families—and particularly for the children who may have lost the only caretaker and provider that the child has known.

IV. ANALYSIS

The Administration Bends Legal Authorities to Implement Broad Family Separation Policies in Support of Zero Tolerance Agenda

The common legal justification for family separations is found in the 2008 Trafficking Victims Reauthorization Act (TVPRA). That law requires the Secretaries of HHS and DHS to promulgate policies to “ensure that unaccompanied alien children in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.”⁶⁵ In addition, the TVPRA states unaccompanied minors “may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child’s physical and mental well-being. Such determination shall, at a minimum, include verification of the custodian’s identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child.”⁶⁶ U.S. District Court Judge Dana Sabraw in the *Ms. L vs. ICE* litigation further provided a carve-out for the government, excluding parents with any criminal history from class membership. In addition, the court found that the DHS officials had discretion to determine “fitness” of a parent, within the definition of the class:

“Fitness” is an important factor in determining whether to separate parent from child. In the context of this case, and enforcement of criminal and immigration laws at the border, “fitness” could include a class member’s mental health, or *potential criminal involvement in matters other than “improper entry” under 8 U.S.C. § 1325(a)*, (see Executive Order § 1), among other matters. Fitness factors ordinarily would be *objective and clinical*, and would allow for the *proper* exercise of discretion by government officials.⁶⁷

The Administration has exploited the plain meaning of the TVPRA and abused Judge Sabraw’s judicial opinions to create a broad policy that results in continued family separations. A fact sheet from DHS confirms a broader policy, including family separations in the following instances:

- 1) when DHS is unable to determine the familial relationship,
- 2) when DHS determines that a child may be at risk with the parent or legal guardian, and
- 3) when the parent or legal guardian is referred for criminal prosecution.⁶⁸

Former Obama Administration officials have conceded that some family separations may have occurred, but not as a result of a specific policy set by the administration.⁶⁹ DHS has not rescinded the fact sheet cited above, despite the Executive Order requiring the maintenance of family units during pendency of criminal illegal entry or immigration proceedings. TCRP meetings with CBP officials confirm that family separations continue to occur if the agent is unable to verify parentage or there is some arbitrary “suspicion” of criminal history. Once CBP separates a family, the minor is referred to ICE, which coordinates with HHS to designate the child as an “unaccompanied minor.” Pursuant to the TVPRA regulations, DHS is required to transfer the minor to HHS custody within 72 hours.⁷⁰ These aggressive policies promulgated by DHS undermine the spirit of the TVPRA and contort the critical language in Judge Sabraw’s decisions in *Ms. L vs. ICE*. As a result, erroneous and oftentimes irreparable family separations continue to occur.

DHS' Broad Family Separation Policies Lead to *De-Facto* Loss of Parental Rights Without Due Process Under the Law.

The Supreme Court has established procedural safeguards to protect the constitutional rights of parents, which the Court has long considered to be fundamental rights. In terms of the burden of proof on a State, "the Due Process Clause of the Fourteenth Amendment demands . . . [that] [b]efore a State may sever completely and irrevocably the rights of parents in their natural child . . . the State [must] support its allegations [of parental unfitness] by at least clear and convincing evidence."^{71 72} Moreover, in one of its earliest decisions, the Supreme Court held that "all . . . parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody."⁷³ A parent's rights can be terminated only when there has been a finding the parent is unfit, and only then can the State turn to the best interest of the child.⁷⁴ State laws define fitness.

In Texas, the existence of criminal history and prior deportation of a parent is legally insufficient to support termination of parental rights:

A court cannot terminate a person's parental rights unless the State proves by clear and convincing evidence that the parent engaged in certain proscribed conduct, as specified in the Family Code, and that termination is in the best interest of the children. In this case, an immigrant convicted in another state of unlawful conduct with a minor and given a probated sentence years before his children were born was later deported to Mexico. The State relied on these facts in petitioning to terminate this father's

parental rights, yet put on no evidence concerning the offense committed years earlier, nor the circumstances of his deportation. We are asked to determine whether legally sufficient evidence supports termination of this father's parental rights under these facts. We conclude the evidence is legally insufficient and, accordingly, reverse the court of appeals' judgment in part and remand the case to the trial court.⁷⁵

When a parent or legal guardian separated from a child is removed from the United States, a *de facto* loss of parental rights occurs without due process. As reported above, of the 38 parent/legal guardian separations, at least six parents are known to have been removed from the United States—all without their children. In the case of Mr. Perez-Domingo, Mr. A, Mr. X, and several other cases investigated by TCRP, DHS has failed to even closely meet the legal standards to make a determination of fitness under federal or state law. In many cases, it is extremely difficult and time-consuming—and in some cases impossible—to reunite that parent and child. In those instances, DHS is violating federal and state laws requiring a fair hearing, a finding of unfitness by clear and convincing evidence, and a determination of the best interest of the child *before* removing a parent. Instead, a CBP agent's "suspicion" of fraud or criminal history, or a ten-year-old misdemeanor battery conviction, results in a parent being removed, potentially never to see their child again. The lack of due process in these situations is a clear contravention of our laws.

V. KEY RECOMMENDATIONS TO CONGRESS AND THE EXECUTIVE BRANCH

- End zero tolerance policy of prosecuting all asylum seekers and migrants for illegal entry under 8 USC § 1325(a).
- Immediately reunify all families and end family separations, including separations of non-parental families, except where a clear finding of unfitness and best interest of the child is established under concrete, transparent procedures that comport with due process rights under the Fourteenth Amendment.
- Require the Department of Homeland Security (DHS) to share criminal history about a parent with the Health and Human Services Department's Office of Refugee Resettlement (ORR).
- Provide access to independent counsel for parents accused of alleged criminal history, gang affiliation, or where there is a question that the individual is the biological parent *prior to* the separation of a family unit.
- Mandate DHS use interpreters during processing and questioning including for non-native Spanish speakers who speak an indigenous language.
- Establish flexible, clear procedures to prevent obstacles for legal guardians to establish custody over the child.
- Mandate release on parole for undocumented parents or legal guardians with U.S. citizen children who are apprehended by DHS.
- Immediately halt removal of parents who have been separated from their children until ORR makes a finding of fitness and best interest of the child *prior to* the removal of the parent.
- Require the DHS or the Department of Justice (DOJ), through Congressional oversight, to provide the U.S. Judiciary, U.S. Federal Public Defenders, and non-profit organizations serving migrant populations on the southwest border a detailed account of any family separations that occur as a result of the implementation of the zero tolerance policy.
- Convene combined House Oversight Committee Hearings with Administration officials in the Department of Homeland Security and the Department of Justice to analyze the legality, implementation, and effects of the zero tolerance policy.

ACKNOWLEDGEMENTS

The Texas Civil Rights Project family reunification work is possible due to the foundations, grant makers, and grassroots donors from across the nation. In particular, TCRP would like to thank Together Rising, Emergent Fund, Rauschenberg Foundation, Wachtell Lipton Rosen & Katz, Beatrice Snyder Foundation, Mai Family Foundation, Metabolic Studios, Lisa & Douglas Goldman, DuBose Family Foundation, Hispanics in Philanthropy, among others for their partnership and support, which made it possible to expand our efforts in the Río Grande Valley in response to the family separation crisis.

TCRP law firm partner Haynes and Boone continues to go above and beyond in supporting our family reunification work. We thank especially Luis Campos, Brent Beckert, Camie Carlock, and Kathy Gutierrez for providing assistance with editing, formatting, and designing the report. We would like to show our gratitude to Maggy Krell, Chief Counsel of Planned Parenthood Affiliates of California, for her smart feedback, rapid editing, and general pro bono support with separated families. We also greatly appreciate TCRP board member Carlos Moctezuma García, who remains a critical advisor on our family reunification strategies and a reliable source of humor and delicious botanas for the South Texas office.

This report would not be possible without the TCRP lawyers and staff on the border continuing the daily work monitoring family separations, assisting with family reunifications, and helping highlight these human rights violations:

Efrén C. Olivares, Director of Racial and Economic Justice
 Laura Peña, Senior Visiting Attorney
 Karla Vargas, Senior Attorney
 Ricky Garza, Staff Attorney
 Georgina Guzman, Paralegal and Office Manager
 Robert Lopez, Community Engagement Coordinator
 Max Mauriz, Law Clerk
 Gianna Guzman, Student Volunteer and Former Student Intern
 Alexis Bay, Former Law Clerk

ABOUT THE AUTHOR

Laura Peña is a visiting attorney with the Texas Civil Rights Project who manages the family reunification efforts and fight against zero tolerance policies along the U.S.-Mexico border. Laura was previously appointed as a foreign policy advisor at the U.S. State Department under the Obama Administration and later served as an immigration trial attorney at the U.S. Department of Homeland Security. Prior to joining the Texas-based organization, Laura worked in private practice managing corporate business immigration strategies for technology companies in Silicon Valley. As a native of the Rio Grande Valley, Laura joined the organization to help those most vulnerable families being targeted by extreme law enforcement policies.



ABOUT THE SENIOR CONTRIBUTOR

Efrén C. Olivares is the Director of TCRP's Racial and Economic Justice Program. He handles and supervises cases in state and federal court involving institutional discrimination, constitutional violations, immigrants' rights, disability and economic rights, among others. Efrén is passionate about working to provide equality of opportunity to people regardless of their ethnic or racial background, and their economic or immigration status. He represents clients in state and federal courts, including on appeals, as well as before international human rights bodies. Efrén immigrated from Mexico to Texas with his family at the age of 13, and is devoted to advocating for the constitutional and human rights of immigrants and their families. Efrén joined TCRP's South Texas office in 2013 after working at the Inter-American Commission on Human Rights and at Fulbright & Jaworski, LLP (now Norton Rose Fulbright) before that.



¹ Scoboroff, Jacob and Romero, Dennis (February 2, 2019). *Finding all migrant children separated from parents may be impossible, feds say*. NBC News. Retrieved from <https://www.nbcnews.com/news/us-news/finding-all-migrant-children-separated-their-families-may-be-impossible-n966266>

² The authors do not use the term torture lightly. In an October 2018 report, Amnesty International analyzed and concluded that family separations met the definition of torture noting, "[t]aken together, the *de facto* policy and practice of family separations by the Trump administration were clearly (1) intentional; (2) carried out and condoned by government officials; and (3) carried out for the specific purposes to deter asylum-seeking families from seeking protection in the United States, or to coerce those who already had sought asylum into giving up their claims [and (4)] inflicted severe pain and suffering, particularly mental pain and suffering, with an apparently negative impact on physical health in some cases." See USA: Catastrophic immigration policies resulted in more family separations than previously disclosed. (2018, October 11). Retrieved from <https://www.amnesty.org/en/latest/news/2018/10/usa-treatment-of-asylum-seekers-southern-border/> See also Emergency Request for Precautionary Measures Pursuant to Article 25 Rules of Procedure of the Inter-American Commission on Human Rights on Behalf of Parents Systematically Separated from Their Children at the United States-Mexico Border. (May 31, 2018) Retrieved from https://texascivilrightsproject.org/wp-content/uploads/2018/05/20180531-Emergency-Request-For-Precautionary-Measures_Redacted.pdf

³ This separation occurred after the reporting period in January 2019.

⁴ This separation occurred prior to the reporting period in June 2018. It is included to highlight common practices of using victim statements against them to prevent reunification.

⁵ This separation occurred prior to the reporting period in June 2018. It is included to highlight the challenge legal guardians face to establish the relationship with the child.

⁶ Texas Civil Rights Project. (2018, May 31). *Civil & Human Rights Groups File Emergency Request to Inter-American Commission on Human Rights to Stop Family Separations, Reunite Families* [Press release]. Retrieved from <https://texascivilrightsproject.org/civil-rights-groups-family-separations/>

⁷ TCRP would like to thank the hundreds of pro bono lawyers who stand with us and continue to assist in representing families torn apart during this ongoing crisis. The following law firms have gone above and beyond in their efforts: Arnold & Porter, Haynes and Boone, King & Spalding, Gibson, Dunn & Crutcher, Ropes & Gray, and Williams & Connolly. We also thank the numerous immigration practitioners and lawyers who have offered their time to help mentor our law firm partners.

⁸ TCRP would like to thank Federal Public Defender of the Southern District of Texas, Marjorie Meyers, Branch Chief Miguel "Andy" Noguera, Senior Litigation Counsel Azalea Alemán, and all the attorneys, investigators, and staff in the McAllen Federal Public Defenders office for their continued partnership to advocate in the best interest of the families traumatized by separation. These families would be lost in the system without this critical partnership, and this report would not be possible without their continued, committed collaboration.

⁹ Exec. Order No. 13841, 83 C.F.R. 29435-29436 (2018).

¹⁰ Sands, G. (2018, December 6). 81 children separated at border since Trump's executive order on dividing families. Retrieved from <https://www.cnn.com/2018/12/06/politics/immigrant-family-separations-children-border-undocumented/index.html> At the time of the report, the statement was no longer available on the DHS website.

¹¹ *Id.*

¹² *Id.*

¹³ Previous disclosures of family separations by CBP to Amnesty International indicated approximately 6,000 separations of family units from April to August 2018, although a DHS official later disavowed the number without further explanation. See USA: Catastrophic immigration policies resulted in more family separations than previously disclosed. (2018, October 11). Retrieved from <https://www.amnesty.org/en/latest/news/2018/10/usa-treatment-of-asylum-seekers-southern-border/> and Devereaux, R., Speri, A., & Currier, C. The Trump Administration Carried Out Thousands More Family Separations than Previously Acknowledged. (2018, October 11). Retrieved from <https://theintercept.com/2018/10/11/trump-family-separation-immigration/>

¹⁴ See "Zero Tolerance at the Border: Rhetoric vs. Reality." (2018, July 24). Retrieved from <https://trac.syr.edu/immigration/reports/520/>.

¹⁵ Sacchetti, M. (2018, April 26). Top Homeland Security officials urge criminal prosecution of parents crossing border with children. *The Washington Post*, Retrieved from https://www.washingtonpost.com/local/immigration/top-homeland-security-officials-urge-criminal-prosecution-of-parents-who-cross-border-with-children/2018/04/26/a0bdcee0-4964-11e8-8b5a-3b1697adcc2a_story.html?noredirect=on&utm_term=.9093c91ac439

¹⁶ U.S. Department of Homeland Security. (2017, December 16) *Policy Options to Respond to Border Surge of Illegal Immigration*. Retrieved January 17, 2019, from <https://www.documentcloud.org/documents/5688664-Merkleydocs2.html#document/p2>

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 2.

²⁰ *Id.* at 3.

²¹ The United States Department of Justice, Office of Public Affairs. (2018, April 6). *Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry* [Press release]. Retrieved from <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>

²² "At its core, the Trump administration's 'zero-tolerance' policy was intended to cause severe mental anguish for asylum-seeking families - first through family separations, and then through the indefinite detention of divided family members." USA: "You Don't Have Any Rights Here" (2018, October 18). Retrieved from <https://www.amnesty.org/en/latest/research/2018/10/usa-treatment-of-asylum-seekers-southern-border/>

²³ Exec. Order No. 13841, 83 C.F.R. 29435-29436 (2018).

²⁴ *L. v. United States Immigration & Customs Enft ("ICE")*, 310 F. Supp. 3d 1133 (S.D. Cal. 2018).

²⁵ *Id.*

²⁶ Pettersson, E., Maki, S. & Hurtado, P. (2018, July 6). Judge Not Ready to Delay Reunification of Immigrant Children. *Bloomberg*, Retrieved from <https://www.bloomberg.com/news/articles/2018-07-06/u-s-seeking-to-delay-reuniting-immigrant-children-with-parents>

²⁷ U.S. Department of Homeland Security. (2018). *Special Review - Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy* (Report No. OIG-18-84). Retrieved from <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf> at 4.

²⁸ U.S. Department of Health & Human Services. (2019). *Separated Children Placed in Office of Refugee Resettlement Care* (Report No. OEI-BL-18-00511). Retrieved from <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf> at 13.

²⁹ *Id.*

³⁰ See USA: Catastrophic immigration policies resulted in more family separations than previously disclosed. (2018, October 11). Retrieved from <https://www.amnesty.org/en/latest/news/2018/10/usa-treatment-of-asylum-seekers-southern-border/>

³¹ In November 2018, the Texas Civil Rights Project honored the Federal Public Defenders with the 2018 Cristy Couvillon Pro Bono award for their commitment to their clients in helping them find their children.

³² Exec. Order No. 13841, 83 C.F.R. 29435-29436 (2018).

³³ NPR reporter Julia Preston described a zero tolerance prosecution hearing in McAllen, Texas: "Picture a federal courtroom. The defendants sit with their lawyers at one table, the prosecutors on the other side, the judge up front. The McAllen courtroom [zero tolerance proceeding] was a stunningly different site. Five rows of wooden benches, usually meant for visitors, were packed with defendants, squeezed in shoulder to shoulder. 74 of them...they're shackled at the ankles and chained around the waist. They all had one hand that was cuffed tightly to the waist chain and just one hand free." Glass, I. (Host). (2018, September 14). Let Me Count the Ways [Radio program]. *This American Life*. Washington, DC: National Public Radio. <https://www.thisamericanlife.org/656/transcript>

³⁴ The Texas Civil Rights Project receives consent from the individual to share the sensitive information with an immigration attorney, if necessary, and secures government privacy waivers, publicity waivers, and attorney representation documentation when necessary.

³⁵ Non-parental family separations include stepparents, legal guardians, siblings, grandparents, aunts, uncles, cousins and in some instances caretakers.

³⁶ The numbers of prosecutions are solely estimates based on TCRP screenings and do not reflect actual government numbers of prosecutions. However, TCRP believes the number is low because according to government records secured by Transactional Records Access Clearinghouse at Syracuse University, there were 4,561 prosecutions filed in the Southern District of Texas with 8 USC §1325 as a lead charge in Fiscal Year 2019 (October - November).

³⁷ This number reflects the instances of family separations. The actual number of children separated from their family members is higher, as some families travel with more than one minor under the age of 18.

³⁸ The mother of the infant remains in prison. The whereabouts of the child are unknown at this time.

³⁹ Of the 38 parents or legal guardians, 33 were fathers or male legal guardians. TCRP interviews with DHS officials indicate that border agents target men due to suspicion of human trafficking or smuggling of undocumented children. DHS Secretary Nielsen and Administration officials have also pointed to an increase of smugglers fraudulently using children as "bait" to "get out of jail free." However, DHS reported family fraud in only 0.6 percent of the 31,000 families apprehended in the first five months of the 2018 fiscal year, debunking the exaggerated excuse in support of family separations. See Qiu, L. (2018, June 18). Kirstjen Nielsen Justifies Family Separation by Pointing to Increase in Fraud. But the Data Is Very Limited. *The New York Times*, Retrieved from <https://www.nytimes.com/2018/06/18/us/politics/nielsen-family-separation-factcheck.html?action=click&module=inline&pgtype=Homepage>

⁴⁰ *Ms. L. v. United States Immigration & Customs Enft ("ICE")*, 310 F. Supp. 3d 1133 (S.D. Cal. 2018).

⁴¹ Our legal advocacy leads us to conclude that government officials and contractors may also be utilizing the zero tolerance prosecution as "criminal history" establishing a parent is unfit for the child. In one phone call with a case worker at a government shelter, TCRP attorney suggested that the minor crime of battery ten years ago failed to constitute a justification for separating a father from his five year old daughter. In response, the case worker said, "Well, that is not the only crime that the father has committed. He also crossed illegally, so really there are two crimes."

⁴² William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008). Notably, there is no child protection agency involved in this purported parental fitness or best-interest-of-the-child determination. Rather, the determination is made in the sole discretion of the Customs and Border Protection agent(s) involved in apprehending and processing the adult and child.

⁴³ Order Granting Plaintiffs' Motion for Classwide Preliminary Injunction, *Ms. L. v. United States Immigration & Customs Enft ("ICE")*, 310 F. Supp. 3d 1133 (S.D. Cal. 2018).

⁴⁴ The following are the criminal convictions for the separated parents and legal guardians: Single Driving Under the Influence (DUI) Conviction (3), Multiple DUIs or Possession of Controlled Substances (2), Assault Causing Bodily Injury (2), Possession of Controlled Substance (4), Infliction of Corporal Injury on Spouse (1), Domestic Assault (1), Assault with a Deadly Weapon Not Firearm (2), Assault on a Female (1), Rape - 2nd Degree (1), Identity Theft (1), Larceny (1), Sexual Battery (1), Hit & Run (1), and Driving Recklessly (1).

⁴⁵ U.S. Department of Health & Human Services. (2019). *Separated Children Placed in Office of Refugee Resettlement Care* (Report No. OEI-BL-18-00511). Retrieved from <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf> at 12.

⁴⁶ TCRP interviewed this separated father in January 2019, outside the reporting period, but the case provides the most recent example of a family separation based on minor criminal history.

⁴⁷ As part of the sponsorship process, ORR required Mr. V to sign a designation letter to authorize the release of the child to the aunt in the United States. Mr. V was not afforded this opportunity while still present in the United States. Moreover, the sponsor is a single mother with two children who is unable to pay the approximately \$2,000 for transportation of the minor.

⁴⁸ Plaintiff's Emergency Motion for Temporary Restraining Order and Preliminary Injunction, *A. v. ICE*, No. 4 (D.D.C. Jan. 3, 2019).

⁴⁹ Mr. X was referred to TCRP through former Peace Corps volunteers who have remained active in Guatemala. As such, TCRP interviewed Mr. X after his criminal prosecution hearing.

⁵⁰ The family was separated in early June 2018 during the height of the family separation policy. TCRP mentions this case because flimsy government allegations, including allegations that closely relate to the reason the family is fleeing persecution, are often used to cause more harm to the asylum seeking family.

⁵¹ World Directory of Minorities and Indigenous Peoples: Guatemala. (2018, January). Retrieved from <https://minorityrights.org/country/guatemala/>

⁵² Indigenous peoples in Guatemala. Retrieved from <https://www.iwgia.org/en/guatemala>

⁵³ *Id.*

⁵⁴ Texas Civil Rights Project. (2018, May 31). *Texas Civil Rights Project Reveals Government's Violation of Family Separation Injunction* [Press release]. Retrieved from <https://texascivilrightsproject.org/statement-texas-civil-rights-project-reveals-governments-violation-of-family-separation-injunction/>

⁵⁵ CBP issued a response letter to TCRP, confirming that Mr. Perez-Domingo had stated he was the father of the child and later recanted that statement. The letter further noted that when CBP "contacted the individual Mr. Perez-Domingo identified as the child's mother, that individual had trouble answering basic information biographical questions about the child, including the child's full name or date of birth." No translators were utilized throughout the CBP's investigative process.

⁵⁶ TCRP has filed a civil rights complaint with DHS regarding the discriminatory treatment and lack of language assistance for this indigenous family who was in CBP custody.

⁵⁷ In some cases, legal guardians have a "carta de poder," a legal document that recognizes a parent has provided authority to the individual to take custody over the minor. Although not legal guardianship, these parents are expressly provided authorization to care for the child.

⁵⁸ In order of preference, unaccompanied minors should be released to a parent, a legal guardian, an adult relative (defined as a sibling, aunt, uncle, or grandparent), an individual or entity designated by the parent or guardian as capable and willing to care for the minor's wellbeing, a licensed program willing to accept custody, and finally any adult or entity seeking custody "when it appears that there is no other likely alternative to long[-]term detention and family reunification does not appear to be a realistic possibility." Flores Agreement ¶ 14. *Flores Settlement Agreement* (*Reno v. Flores*, 507 U.S. 292, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993)).

⁵⁹ See Guerrero, J. (2018, September 28). U.S. Still Separating Families at Border When Children Are U.S. Citizens. *KPBS*, Retrieved from <https://www.kqed.org/news/11695281/u-s-still-separating-families-at-border-when-children-are-u-s-citizens>

⁶⁰ *Id.*

⁶¹ *J.E.C.M. v. Lloyd*, No. 1:18-cv-00903, 2018 WL 6004672 (E.D. Va. Nov. 15, 2018).

⁶² See The Associated Press. (2018, October 9). Deported Parents May Lose Kids to Adoption, Investigation Finds. Retrieved from <https://www.nbcnews.com/news/latino/deported-parents-may-lose-kids-adoption-investigation-finds-n918261>

⁶³ Emphasis added. Exec. Order No. 13841, 83 C.F.R. 29435-29436 (2018).

⁶⁴ *L. v. United States Immigration & Customs Enf't ("ICE")*, 310 F. Supp. 3d 1133, 1149-1150 (S.D. Cal. 2018).

⁶⁵ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008).

⁶⁶ 8 U.S.C. § 1232(c)(3)(A) (2018).

⁶⁷ *L. v. United States Immigration & Customs Enft* ("ICE"), 310 F. Supp. 3d 1133 (S.D. Cal. 2018).

⁶⁸ See U.S. Department of Homeland Security. (2018, June 18). *Myth vs. Fact: DHS Zero-Tolerance Policy*. Retrieved (February 2, 2019) from <https://www.dhs.gov/news/2018/06/18/myth-vs-fact-dhs-zero-tolerance-policy>. At the time of issuance of the fact sheet, the Administration was also implementing the family separation policy which President Trump attempted to end in his Executive Order.

⁶⁹ See NPR interview with former DHS Secretary Jeh Johnson, stating "I can't say that it never happened. There may have been some exigent situation, some emergency. There may have been some doubt about whether the adult accompanying the child was in fact the parent of the child. I can't say it never happened but not as a matter of policy or practice. It's not something that I could ask our Border Patrol or our immigration enforcement personnel to do." Simon, S. (Host). (2018, June 9). Jeh Johnson On Immigration And Trump [Radio program]. *Weekend Edition Saturday*. Washington, D.C.: National Public Radio. <https://www.npr.org/2018/06/09/618496706/jeh-johnson-on-immigration-and-trump>

⁷⁰ Except in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008). Retrieved from <https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf> at 35.

⁷¹ *Santosky v. Kramer*, 455 U.S. 747, 747-48 (1982).

⁷² Undocumented immigrants are entitled to protections under the Fourteenth Amendment of the U.S. Constitution. "Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the . . . Fourteenth Amendment[.]"" *Plyler v. Doe*, 457 U.S. 202, 210 (1982).

⁷³ *Stanley v. Illinois*, 405 U.S. 645, 658 (1972).

⁷⁴ *Id.*

⁷⁵ *In re E.N.C.*, 384 S.W.3d 796, 798 (Tex. 2012).

Ms. ESCOBAR. Chief Provost, you stated earlier that children are currently being separated from their parents when the parent has a criminal conviction. Does that include illegal reentry?

Chief PROVOST. It is not for standard entry. If they have a felony charge, it can include illegal reentry.

Ms. ESCOBAR. So they are being separated today because of illegal reentry?

Chief PROVOST. That is a felony. If they have a conviction for it from previous or they have a felony conviction, they would be a felon. So then in that case.

Ms. ESCOBAR. That is shocking and horrifying.

Chief PROVOST. Not for reentry at this point. It is if they have a felony conviction.

Ms. ESCOBAR. Madam Chair, I ask unanimous consent that a news report by Julia Ainsley, entitled "Trump Administration Weighed Targeting Migrant Families, Speeding Up Deportation of Children," be inserted into the record.

Ms. SCANLON. Without objection.

[The information follows:]

REP. ESCOBAR FOR THE RECORD



IMMIGRATION

Trump admin weighed targeting migrant families, speeding up deportation of children

A draft plan obtained by NBC News also shows officials wanted to specifically target parents in migrant families for increased prosecutions.



A mother and her two children walk across the Suchiate river bridge as Central American migrants cross the border between Guatemala and Mexico, near Ciudad Hidalgo, Chiapas State, Mexico, on Jan. 17, 2019.

Marco Ugarte / AP

Jan. 17, 2019, 8:37 PM EST / Updated Jan. 17, 2019, 8:40 PM EST

By Julia Ainsley

WASHINGTON — Trump administration officials weighed speeding up the deportation of migrant children by denying them their legal right to asylum hearings after separating them from their parents, according to comments on a late 2017 draft of what became the administration's family separation policy obtained by NBC News.

The draft also shows officials wanted to specifically target parents in migrant families for increased prosecutions, contradicting the administration's previous statements. In June, Department of Homeland Security Secretary Kirstjen Nielsen said the administration did "not have a policy of separating families at the border" but was simply enforcing existing law.

The authors noted that the "increase in prosecutions would be reported by the media and it would have a substantial deterrent effect."

[Click here to read the draft and comments](#)

The draft plan was provided to NBC News by the office of Sen. Jeff Merkley, D.-Ore., which says it was leaked by a government whistleblower.



[Exclusive: Whistleblower exposes Trump's harsh policy on migrants](#)

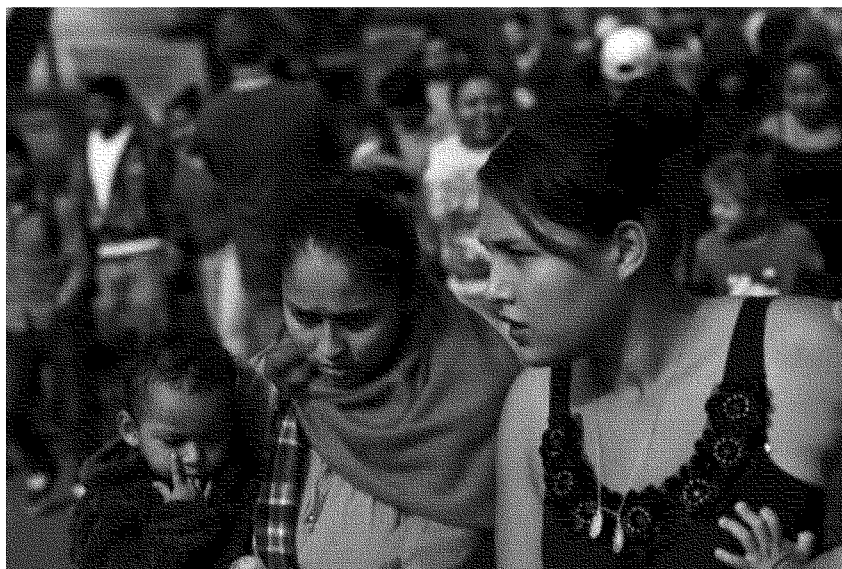
JAN. 17, 2019 06:58

In the draft memo, called "Policy Options to Respond to Border Surge of Illegal Immigration" and dated Dec. 16, 2017, officials from the Departments of Justice and Homeland Security lay out a blueprint of options, some of which were later implemented and others that have not yet been put into effect.

At the time, the number of undocumented immigrants seeking to cross the southern border was near historic monthly lows: 40,519 in December 2017, compared to 58,379 the same month the year prior.

The document was circulated between high level officials at DHS and the Justice Department, at least one of whom was instrumental in writing the first iteration of the administration's travel ban.

The plan, and the comments written in the margins, provide a window into the policy discussion thinking at the time, how far officials were willing to go to deter families seeking asylum and what they may still be considering.



Thousands of migrant children separated from parents prior to 'zero tolerance' policy.

JAN. 17, 2019 01:32

In one comment, the Justice Department official suggests that Customs and Border Protection could see that children who have been separated from their parents would be denied an asylum hearing before an immigration judge, which is typically awarded to children who arrive at the border alone.

Instead, the entire family would be given an order of "expedited removal" and then separated, placing the child in the care of HHS in U.S. Marshall's custody while both await deportation.

"If CBP issues an ER [expedited removal] for the entire family unit, places the parents in the custody of the U.S. Marshal, and then places the minors with HHS, it would seem that DHS could work with HHS to actually repatriate [deport] the minors then," the official wrote.

"It would take coordination with the home countries, of course, but that doesn't seem like too much of a cost to pay compared to the status quo."

It is unclear from the official's comment whether the government planned on reunifying children with their parents before they were deported.



Trump on border security: 'If they feel there will be separation, they won't come'

OCT. 13, 2018 07:16

"It appears that they wanted to have it both ways – to separate children from their parents but deny them the full protections generally awarded to unaccompanied children," said Lee Gelernt, a lawyer for the American Civil Liberties Union who led the class action suit on behalf of migrant parents who had been separated from their children.

A DHS official told NBC News on the condition of anonymity because the department does not comment on pre-decisional documents that the draft's authors' intent was to enable agencies to reunify families after they were separated for prosecution.

But the draft and comments do not mention plans to reunify.

The Inspector General for Health and Human Services released a report on Thursday that said "thousands" of children were separated under the Trump administration during an influx in separations that began in the summer of 2017, before the zero tolerance policy. Whether those children were reunited with their parents is unknown, the report said.

The Department of Homeland Security disputed the "thousands" reported by the HHS Inspector General, claiming the inspector general did not have evidence to back up the claim. According to DHS statistics, in fiscal year 2017, the border patrol separated 1,065, 46 due to fraud and 1,109 due to medical or security concerns.

The December 2017 draft memo states that Customs and Border Protection is "currently executing the [separation policy] on a limited basis in the El Paso sector."



ICE detains U.S.-born marine veteran in Michigan

JAN. 17, 2019 02:00

In a statement, DHS Spokeswoman Katie Waldman said, "The Trump administration has made clear that all legal options are on the table to enforce the rule of law, rein in mass unchecked illegal immigration, and defend our borders. In December of 2017, we saw the number of apprehensions

increasing as a result of the Flores Settlement Agreement, the Trafficking Victims Protection Act, and a lack of physical barrier on the Southern Border."

"In part we were predicting – and trying to prevent – the exact humanitarian and security crisis we are confronted by now," said Waldman. "It would be malpractice to not seriously examine every single avenue to gain operational control of the border and ensure that those who are entering our country have a legal right to be here."

The Justice Department referred questions to DHS.

Officials were aware of potential backlog of children

When the administration began separating immigrant families under the "zero tolerance" policy in May 2018, it held children in the custody of HHS until they could be placed with a sponsor to await an asylum hearing. Zero tolerance never placed children in expedited removal or included systematically deporting them without their parents. Trump reversed the policy in an executive order on June 20, 2018.

One policy that was discussed but not implemented from the draft memo included limiting protections for migrant children who were victims of abuse or neglect.

The draft's authors suggested targeting "potential abuses" in the Special Immigrant Juveniles program, which provides green cards for immigrant children who have been abused, abandoned or neglected by a parent. The Justice Department official notes in a comment that children who have been abused by one parent are often living with the other parent when they qualify and that DHS Secretary Nielsen could refuse to award green cards in such cases.



Trump blames Democrats for migrant children's deaths

DEC. 30, 2018 02:08

It is not clear whether the administration rejected the idea of targeting children in the Special Immigrant Juveniles Program or whether the idea is still under consideration.

Other policies discussed in the draft, however, did materialize. For example, HHS adopted a policy that would require anyone in a household who agreed to sponsor an unaccompanied migrant child to undergo an extensive background check. Publicly, DHS and HHS said that this was to ensure the safety of children. But the draft shows administrators knew the potential for creating a backlog of children in migrant detention, which later became reality and led to the creation of the Tornillo tent city last year.

"There would be a short term impact on HHS where sponsors may not take custody of their children in HHS facilities, requiring HHS to keep the UACs [unaccompanied children] in custody longer," the draft said.

The official commenting in the margins of the draft noted, "I would suggest referring sponsors for criminal prosecution under 1324 if information indicates the sponsor facilitated the travel of the minor into the United States."

The U.S.-Mexico border fence from Playas de Tijuana on Jan. 11, 2019.

Guillermo Arias / AFP - Getty Images

The Justice Department has increased its criminal prosecutions of child smugglers under the Trump administration, but it does not prosecute every parent who has paid for their child to be brought to the United States.

Also, the draft outlined the administration's plan to keep asylum seekers in Mexico. Officials from the administration are currently in negotiations with Mexico to finalize such a deal, forcing all asylum seekers to wait in Mexico until a judge could adjudicate their claims, which could take months or even years due to a backlog in the courts.

"There are litigation risks associated with this proposal, as it would implicate refugee treaties and international law," the draft said. In public testimony, Nielsen has told Congress that the policy is legal.

The officials also weighed "mandatory detention" of asylum seekers "for the duration of the adjudication of their asylum claims."

Releasing immigrants on bond while they wait months or years to see an asylum judge is an issue that has plagued both the Obama and Trump administrations. However, under the 1997 Flores court agreement, ICE is prohibited from holding children in detention for longer than 20 days. In September 2018, the administration announced that it was [seeking to overturn the Flores agreement](#), but the policy has yet to go into effect. ICE is also limited in space to hold all immigrants awaiting asylum hearings.



Julia Ainsley

Julia Ainsley is a national security reporter for NBC News.

Ms. SCANLON. And the gentlewoman's time has expired.

Ms. ESCOBAR. May I ask a final question just related to this article? The article details memos, one of which——

Ms. SCANLON. I am sorry, you can't.

Ms. ESCOBAR. Okay.

Ms. SCANLON. Recognize the gentlewoman from Florida.

Ms. MUCARSEL-POWELL. Thank you, Madam Chair.

And for everyone appearing here today, I understand the difficulty of being on the spot, but this is incredibly important. I represent the Florida's 26th Congressional District, where it is home apparently to the largest detention facility in the country.

Just to tell you a little bit about myself, I am a proud immigrant. I came here when I was 14 with my mother. It was a very difficult experience to leave my home country, but this country welcomed me, and I was never separated from my family. And through their love and support and this incredible country, I am now a sitting Member of Congress.

So when I went to this facility last week, I saw many kids that reminded me of myself. I am also a mother, and I have kids also of similar ages. So they reminded me of my own children. And it was a very troubling experience. I went in with an open mind, and I left with many, many questions and many concerns.

It is highly regimented. The kids start at 6:30 a.m., and they don't go to bed until 10:00 p.m. There is high fencing all over the facility. It definitely feels like a prison. We were instructed not to really speak to the children, but I went ahead and spoke to them anyways.

There are kids that are housed in an area, 144 kids in bunk beds with numbers next to the bunk bed. I believe we are committing a crime against humanity. This is not the country that I came to. It is an America that I do not recognize, and this is not to accuse any of you personally, but you have to understand the severity of the situation.

So I want to start with Mr. Lloyd. Do you know how many children right now are being housed at the Homestead detention facility?

Mr. LLOYD. I will preface my comments by saying that the notion that ORR is committing a crime against humanity by running a temporary shelter is absurd. It is one that I take personally. I take personally on behalf of the dedicated individuals who are caring for those children.

Ms. MUCARSEL-POWELL. Mr. Lloyd, it is obvious that you do not think that this is a crime against humanity. It is obvious to me. You don't have to tell me that.

Mr. LLOYD. So to get to your question——

Ms. MUCARSEL-POWELL. I asked a question.

Mr. LLOYD. So my question is——

Ms. MUCARSEL-POWELL. You should know how many children right now are being housed in the Homestead detention facility?

Mr. LLOYD. I do not have that information. I am not the——

Ms. MUCARSEL-POWELL. You are overseeing that detention facility.

Mr. LLOYD. I am not. I am not the Director of the Office of Refugee Resettlement anymore as of December 1st.

Ms. MUCARSEL-POWELL. So who oversees the Homestead detention facility?

Mr. LLOYD. That would—it is right now under the purview of the Acting Director Jonathan Hayes and the Assistant Secretary for Children and Families—oh, gosh, Lynn Johnson, sorry.

Ms. MUCARSEL-POWELL. So can anyone in the panel answer to me? Because right now the center is being run by a for-profit private company. They are making about \$750 per child. So it is no surprise that there is no rush to getting any of these children reunited with a family member or a sponsor, and last I heard was they were increasing the capacity.

So my question here, and maybe I would love to know if anyone in the panel can answer this, is why was the decision made to use a for-profit company to oversee a detention center for the children being separated from their families?

Mr. WHITE. I will address that for you, ma'am. First of all, the Homestead facility is not a detention center. It is an influx shelter. We operate influx shelters. We operated Homestead in the last administration and in this one. And I am very proud of the work we have done at influx shelters.

Let me explain why we do temporary influx, just so we are clear. We do it because Congress does not appropriate enough funds for us to have all the permanent beds we need for the high point of a fluctuation, and the fluctuations are extraordinary. But Homestead fully meets our national standards.

But let us talk about this question. Why did the contractor who presently has the contract for the operation of Homestead receive it? Because we did a fair and open competitive process in which both for-profit and not-for-profit entities competed, and they had the winning proposal, which was selected by the contracting officer who is not Scott Lloyd or any person in ORR.

Ms. MUCARSEL-POWELL. Now let me ask you, since you mentioned that it is a temporary influx center because I know that that means they don't have to be licensed by the State. So what is the average—since it is a temporary influx center, what is the average length of stay for a child that is being held at the detention center?

Mr. WHITE. We will have to get back to you on the current average for Homestead. However, typically, the standard for placement in the influx facility would be that we would anticipate the child would be in our care 60 or fewer days.

Ms. MUCARSEL-POWELL. Okay. Because I understand that there are children being held there for over 9 months.

And do you know how many that is—

Ms. SCANLON. The gentlewoman's time has expired. But you can answer.

Mr. WHITE. We can get back to you with information on the average time and care of children in that facility. That facility, however, does meet the needs of children, and we have used it successfully in two different administrations.

Ms. SCANLON. The gentlewoman from Georgia is recognized.

Mrs. MCBATH. Thank you so much. Thanks so much, Chairwoman.

Ms. Asher, we have heard a lot today about the DHS and HHS failed—that they actually failed to document family separations

likely in violation of the Federal Records Act. When your agency was tasked with implementing the President's child preparation policy, did you receive instructions not to create and maintain records connecting these children with their parents or other accompanying adults? And if so, who provided those instructions, and what were they, if not instructions, were you given regarding creating or maintaining such records?

Ms. ASHER. We did not create. We did not receive such instructions. What we did do was already in a tried practice is we had to do manual checks of the various systems that were all involved. We essentially had three different agencies involved in tracking either child or parent, and that those systems are siloed from one another, we had to do manual crosschecks through a working group to ensure that we could continue to track the parents that I had in my custody with their children who were in HHS custody.

Mrs. MCBATH. Okay. Thank you.

I yield my time to my colleague Mr. Neguse.

Mr. NEGUSE. Thank you, Congresswoman McBath.

I want to follow up on a questioning, line of questioning from our distinguished caucus chairman, Mr. Jeffries. And Commander White, I think you answered a question that he had posed, and actually your answer essentially around whether—and I understand you can't speak to the comments made by former Secretary Kelly and so forth, but that you would find a policy of separating children, babies from their parents, based in whole or in part on trying to create a deterrent effect, you would find that offensive. Is that correct?

Mr. WHITE. I want to be very specific because deterrence of migration is a law enforcement matter, and that is not a concern in HHS. I will be very specific.

I would be opposed to any process of separation for any cause other than the best interests of the child. It is within the power of Congress to set those limits, and you have not.

Mr. NEGUSE. Understood. And I think that reconfirms what I—and so the question, I think, is probably more appropriately directed towards Chief Provost and Director Asher. Do you agree with Commander White that, ultimately, you would find a policy offensive to the extent that it would separate children from their parents for the purposes of creating a deterrent effect? And the question will go to Provost, Chief Provost.

Chief PROVOST. I can tell you that, once again, this was a prosecution initiative focused on single adults, first and foremost. As a law enforcement professional, any time that we have to deal with families is very, very difficult for us to deal with.

That being said, when adults violate the law—and I don't make the laws. You know that. It is my job to enforce the laws that are on the books. And it is a violation of law to enter this country illegally.

I want these groups of individuals to go, present themselves at a port of entry legally, not put themselves, their children into the hands of smugglers who will harm them. The trip is dangerous. We don't want them putting themselves or their kids—

Mr. NEGUSE. And I don't want to interrupt.

Chief PROVOST [continuing]. In that place.

Mr. NEGUSE. I wanted to give you the time to answer, Chief Provost. I don't want to interrupt your answer, but I think what I am hearing is that the answer is, no, that you would not find that policy offensive to the extent that it was designed, in whole or in part, to provide a deterrent for other folks to ultimately come to the country. That is what I guess I am getting at.

Chief PROVOST. I see the policy as being designed to deliver a consequence for violating the law.

Mr. NEGUSE. Which is essentially what I am—so just so we are clear. You would not find it offensive to implement a policy to separate children from their parents to the extent that that policy is motivating to create, in whole or in part, a deterrent effect, right? That is—

Chief PROVOST. I am trying to—I am trying to answer you to the best of my ability. The policy was a prosecution initiative focused on violations of law, not focused on family separation. It was focused on violation of law, and delivery of consequences for violation of law is—I am a law enforcement professional.

Mr. NEGUSE. Thank you to the witnesses for coming in.

With that, I yield the rest of my time to the distinguished congresswoman from Texas, Ms. Escobar.

Ms. ESCOBAR. Thank you so much.

Chief Provost, while you call it a prosecution initiative, it was clear that it was intended as a deterrent. And I entered earlier into the record an article that identifies 10 memos that were written by the administration and by staff in the administration. One of those memos made it into the hands of Senator Merkley, and the memos outlined the way to best deter via zero tolerance.

Have any of you seen any of those 10 memos, and did you participate in either the writing of or the influencing of those memos? Yes or no.

Chief PROVOST. Ma'am, I am not sure on the memo. So it is hard for me to without seeing the memo.

Ms. ESCOBAR. Okay. All right. So one last question. Was anyone at DHS held accountable for the botched rollout of this policy, the thousands and thousands of children who have been traumatized, and the fact that there are still families that have yet to be reunited? Was anyone held accountable? Yes or no.

Chief PROVOST. No. I am not aware of that.

Ms. ESCOBAR. I yield my time.

Chairman NADLER [Presiding]. The gentlelady's time has expired.

The gentleman from California, Mr. Correa.

Mr. CORREA. Thank you, Mr. Chairman.

First of all, I want to thank you and our ranking member for holding this most important hearing. My apologies for being late. I was actually chairing a Subcommittee on Homeland. It was a very important topic on cyber and other issues that are important and critical to our national security.

As I was walking from there to here, I thought to myself Homeland Security, and a lot of you are under that umbrella, protection of the homeland against terrorists. And I am trying to figure out how family separation works into this whole picture of protection against terrorists.

Ma'am, Ms. Provost, you say this is a law enforcement issue, but I have to tell you, as a dad, I have four kids. And I remember about 20 years ago, my 3-year-old got lost on me at Disneyland for about an hour and a half. That was the most horrible hour and a half of my life, could not find him among thousands and thousands of people. Very hard on me.

And so thinking again of a policy of family separation, law enforcement, deterrence, whatever you want to call it, you know? And then sitting on Homeland Security, I like to go out and talk to members of your groups, the rank and file. And I have to tell you, a lot of your rank and file are not happy. They are demoralized.

This is no way to run an operation. This is no way to protect the homeland, family separations. When the news broke out on this, I got active on this. One June 19th, I traveled to our Southern border to see the facilities firsthand. June 19th, I sent a letter to then-chairman of the Homeland Security Subcommittee on Oversight asking for a hearing on how DHS had produced such a horrific policy.

Then June 20th, I sent a letter to Secretary Nielsen and DHS Inspector Kelly asking for answers. June 22nd, I led a letter, 123 Members joined me in demanding an immediate investigation of DHS and HHS, which eventually led to an HHS OIG report that was released in January.

June 27th, I asked then-House Homeland Secretary chairman to hold a hearing on the issue, and on July 25th in a private meeting, I again asked Secretary Nielsen for answers. Haven't got any answers.

I just want to know what is going on because you know what? These are very critical issues for our country. You know, it is like one of my colleagues said, family separation is not us.

Yes, I get it. You have got to enforce the law. But separating kids from their families is not the way to do it. And I know you know that. And God knows who concocted up this idea, but it has really hurt us as a country.

So I am going to ask you the questions that I have here, letters that I have sent to you all and I haven't gotten answers. I am going to ask them against right now, which is a question for Ms. Provost, Ms. Asher, and Commander White. Do DHS and HHS keep separate records, or is there one system to track parents and their children?

Chief PROVOST. There are separate systems. That was part of the issue that we have talked about. We have worked diligently to get those systems working closer together. There are systems over at—

Mr. CORREA. Not there yet?

Chief PROVOST. DHS and then HHS.

Mr. CORREA. Not there yet?

Chief PROVOST. That is something that we are working on to continue to improve, but we—

Mr. CORREA. I know IT is a very painful area, but when do you think you will have this?

Ms. ASHER. So if I may answer that? That is the constant challenge, that when you have multi agencies involved in an issue, and you know, understanding that those systems do not talk to one an-

other, if this is something that is going to be a more concrete expectation, then I would ask, on behalf of my colleagues here, that we do need funding.

Mr. CORREA. Isn't the liability issue just a human issue, ma'am?

Ms. ASHER. I am not denying that, sir.

Mr. CORREA. I think this should be a concrete goal. Get this done.

Ms. ASHER. Understood. It is a concrete goal with current systems that we have in place, an account with hours and modifications that we can almost band-aid our——

Mr. CORREA. I don't have much time. So let me ask is this an urgent issue? Is this not a top main thing to do?

Ms. ASHER. It is a critical issue that we manage to the best of our ability with the existing systems that we have. And until we get a system that is across the corporate, we will continue to do the best we can.

Mr. CORREA. What do you need to get that done?

Ms. ASHER. We actually need modernization——

Mr. CORREA. I sit on Homeland. What do you need to get that done?

Ms. ASHER. We need IT modernization so systems can talk to one another across the various agencies.

Mr. CORREA. Mr. Chairman, I am out of time. But I would like to submit for the record the letters that I asked these questions of these departments. And hopefully, if you can, I would like to have you answer the remainder of my questions.

Chairman NADLER. Without objection, the documents will be entered into the record.

[The information follows:]

REP. CORREA FOR THE RECORD

J. LUIS CORREA
46TH DISTRICT, CALIFORNIA

WASHINGTON OFFICE
1039 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-2965

SANTA ANA DISTRICT OFFICE
2323 N. BROADWAY, THIRD FLOOR
SANTA ANA, CA 92706
(714) 821-0102



Congress of the United States
House of Representatives
Washington, DC 20515

June 20, 2018

COMMITTEE ON HOMELAND SECURITY
RANKING MEMBER, SUBCOMMITTEE ON OVERSIGHT
AND MANAGEMENT EFFICIENCY
SUBCOMMITTEE ON BORDER AND MARITIME SECURITY
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON ECONOMIC OPPORTUNITIES
SUBCOMMITTEE ON HEALTH

The Honorable John Kelly
Acting Inspector General
Office of Inspector General
Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528-0305

Dear Inspector General Kelly:

As the Ranking Member of the Oversight and Management Efficiency Subcommittee for the Committee on Homeland Security, I am deeply concerned about the Department of Justice's so-called "zero-tolerance" policy that has led to the systematic separation of immigrant children from their parents. Moreover, I am gravely disturbed about reports on children being separated from parents and the possibility that they will never be reunited again. I am alarmed about the Department of Homeland Security's (DHS) quality of the recordkeeping for these families.

Therefore, I urge you to conduct an immediate investigation on DHS' recordkeeping of children and parents who are being separated. Specifically, I would like the following questions to be answered in the report:

- 1.) How is DHS keeping records of parents and children? What system is the Department using?
- 2.) How quickly (average time) can DHS locate a child's parent? Is there an electronic database? Is it a paper file?
- 3.) What is the process for DHS to reunite parents with their children?
- 4.) If parents are deported without their children, what is the process of reuniting the parents with their children?
- 5.) Can every separated child be accounted for in DHS' recordkeeping linking them to their parent, so that they can be reunited?

Given the time-sensitive nature of this ongoing matter, I urge you to begin a timely and complete review of the Department's recordkeeping.

Sincerely,

J. LUIS CORREA
Member of Congress

J. LUIS CORREA
46TH DISTRICT, CALIFORNIA

WASHINGTON OFFICE
1039 LONGWORTH POORE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-2955

SANTA ANA DISTRICT OFFICE
2323 N. BROADWAY, THIRD FLOOR
SANTA ANA, CA 92706
(714) 621-0102



Congress of the United States
House of Representatives
Washington, DC 20515
June 19, 2018

COMMITTEE ON HOMELAND SECURITY
RANKING MEMBER, SUBCOMMITTEE ON OVERSIGHT
AND MANAGEMENT EFFICIENCY
SUBCOMMITTEE ON BORDER AND MARITIME SECURITY
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON ECONOMIC OPPORTUNITIES
SUBCOMMITTEE ON HEALTH

The Honorable Scott Perry
Chairman of the Subcommittee on Oversight and Management Efficiency
Committee on Homeland Security
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Perry:

In recent weeks, the nation has witnessed President Trump's "zero-tolerance" policy has led to the separation of children from families. This immigration policy has been the cause of children being separated from their parents who are seeking a better life in the United States.

The administration contends that this policy is meant to deter children and families from coming to the United States. Chief of Staff John Kelly and Attorney General Jeff Sessions have indicated that the administration's immigration policies are intended to serve as a deterrence for families to come to the United States. On June 18, Secretary Nielsen denied that the administration's policy is meant to be used as a deterrence. Within hours, the Secretary contradicted herself. These conflicting reports from administration officials need clarification. Additionally, we need to understand the factors causing individuals and families to migrate north and what we are doing to address the root causes of these migrations.

As Members of Congress, it is our responsibility to uphold the law and our international agreements on asylum. A Quinnipiac University poll found that 66 percent of Americans oppose President Trump's policy on separating immigrant children and families.¹

There is bipartisan consensus that this policy is wrong and should be ended immediately. Former First Lady Laura Bush in an opinion piece published by the Washington Post expressed, "I live in a border state. I appreciate the need to enforce and protect our international boundaries, but this zero-tolerance policy is cruel. It is immoral. And it breaks my heart."

These unilateral, questionable actions being taken by the administration necessitates oversight by this subcommittee. We must uphold our American values and honor our international agreements to protect human rights. I urge you as Chairman of the Subcommittee on Oversight and Management Efficiency to hold a hearing to address these issues.

Sincerely,


J. LUIS CORREA
Member of Congress

¹"Stop Taking the Kids, 66 Percent of U.S. Voters Say, Quinnipiac University Poll Finds; Support for Dreamers is 79 Percent," Quinnipiac University Poll, 18 June, 2018, <https://poll.qu.edu/national/release-detail?ReleaseID=2550>

J. LUIS CORREA
46TH DISTRICT, CALIFORNIA

WASHINGTON OFFICE
1039 LONGMONT HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-2955

SANTA ANA DISTRICT OFFICE
2323 N. BRIDGWAY, THIRD FLOOR
SANTA ANA, CA 92705
(714) 621-0102



Congress of the United States
House of Representatives
Washington, DC 20515

June 20, 2018

COMMITTEE ON HOMELAND SECURITY
RANKING MEMBER, SUBCOMMITTEE ON OVERSIGHT
AND MANAGEMENT EFFICIENCY
SUBCOMMITTEE ON BORDER AND MARITIME SECURITY
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON ECONOMIC OPPORTUNITIES
SUBCOMMITTEE ON HEALTH

The Honorable Kirstjen Nielsen
Secretary
Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, D.C. 20528

Dear Secretary Nielsen,

I am writing about news reports concerning parents who have been deported without their children. The *New York Times* reports that Elsa Johana Ortiz Enriquez was deported without her son. "An immigration officer handed her a handwritten note on a pink slip of paper with the words, 'Call Shelter Son' and a telephone number. ...[but] she was deported before she could use it."

As a member of the Homeland Security Committee and a father, I am deeply concerned that these children will never see their parents again. I request that Department of Homeland Security answer the following questions:

1. Is it DHS' policy to reunite parents with their children before deportation? Yes or no only.
2. If the answer is yes to the above question, what is the process for DHS to reunite parents and their children?
3. If the answer is no to the first question, why?
4. If parents are deported without their children, what is the process of reuniting the parents with their children?
5. Does DHS coordinate with HHS?
6. How quickly can DHS locate a child's parent? (average length of time) Is there an electronic database? Is it a paper file?
7. Can DHS/HHS locate a parent for each child currently in custody? (I am concerned about the quality of the records.)
8. What does DHS plan to do with children that are not reconnected with their parents?

The Hidden Child Foundation, an organization of children who survived the Holocaust, recounts "the severe and lasting trauma they experienced as a consequence of their forced separation." Rachelle Goldstein said, "We know that the trauma of separation from parents lasts a lifetime. We still ache from the losses we suffered as a result of this separation... forcibly separating children from their parents is an act of cruelty under all circumstances."

Thank you for your attention to this urgent matter.

Respectfully,

A handwritten signature in black ink, appearing to read "J. Luis Correa". The signature is fluid and cursive, with the first name "J." and last name "Correa" being more distinct than the middle name "Luis".

J. Luis Correa
Member of Congress

J. LUIS CORREA
46TH DISTRICT, CALIFORNIA

WASHINGTON OFFICE
1039 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-2965

SANTA ANA DISTRICT OFFICE
2323 N. BROADWAY, THIRD FLOOR
SANTA ANA, CA 92706
(714) 821-0102



Congress of the United States
House of Representatives
Washington, DC 20515

June 27, 2018

COMMITTEE ON HOMELAND SECURITY
RANKING MEMBER, SUBCOMMITTEE ON OVERSIGHT
AND MANAGEMENT EFFICIENCY
SUBCOMMITTEE ON BORDER AND MARITIME SECURITY
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON ECONOMIC OPPORTUNITIES
SUBCOMMITTEE ON HEALTH

The Honorable Michael McCaul
Chairman
Committee on Homeland Security
2001 Rayburn House Office Building
Washington, DC 20515

Dear Chairman McCaul:

President Trump's "zero-tolerance" immigration policy has led to the separation of at least 2,300 children from their parents. This week, U.S. District Judge Dana Sabraw ruled that children under the age of five must be reunited within 14 days and children who are older must be reunited with their parents within 30 days.

It has been reported the administration does not have a clear plan to reunite families. "Trump administration officials say they have no clear plan yet on how to reunite the thousands of children separated from their families at the border since the implementation of a zero-tolerance policy in which anyone caught entering the U.S. illegally is criminally prosecuted. 'This policy is relatively new,' said Steven Wagner, the Acting Assistant Secretary at the Department of Health and Human Services (HHS). 'We're still working through the experience of reunifying kids with their parents after adjudication.'"¹

Additionally, the quality of record keeping appears to be poor or nonexistent. "The biggest problem, as far as I can tell, is where the kids' records don't have information on the parents, said one Homeland Security Department official. I don't know how they're going to go about fixing that."² Additionally, many in custody are babies and toddlers and are too young to give information about their parents, and in some cases, children speak indigenous languages.³ These reports are alarming and DHS needs to provide a plan to ensure the safe return of children to their parents.

¹ The Associated Press, "No Clear Plan Yet on How to Reunite Parents with Children," The New York Times, Jun 20, 2018, <https://www.nytimes.com/aponline/2018/06/20/us/ap-us-immigration-separating-families.html>

² Ted Hesson, "Family Separations will Persist under Trump's Order," POLITICO, Jun 20, 2018, <https://www.politico.com/story/2018/06/20/family-separations-trump-executive-order-641356>

³ Nick Miroff, Dan Lamothe, and Seung Min Kim, "Reversal on Migrant Families Deepens Confusion Over Trump's Immigration Order" Jun 21, 2018, https://www.washingtonpost.com/world/the_americas/the-chaotic-effort-to-reunite-immigrant-parents-with-their-separated-kids/2018/06/21/325cceb2-7563-11e8-bda1-18e53a448a14_story.html?utm_term=.fabf4e0a4130

Last week, 124 Members of Congress called on DHS and HHS Inspectors General for an investigation on reuniting the children and recordkeeping. Given this time sensitive issue, we need answers immediately.

Regardless of any differences that we hold on immigration policy, we all care about the wellbeing of children. Therefore, we must all work together in a bipartisan manner to ensure that every child can be reunited with their parent. I urge you to hold a hearing on this issue to ensure DHS has the necessary information and plan in place to reunite families.

Sincerely,

A handwritten signature in black ink, reading "J. Luis Correa". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

J. LUIS CORREA
Member of Congress

Congress of the United States
Washington, DC 20515

June 22, 2018

Dear Inspectors General Kelly and Levinson:

We are deeply concerned about the Department of Justice's so-called "zero-tolerance" policy that has led to the systematic separation of immigrant children from their parents. Moreover, we are gravely disturbed about reports on children being separated from their parents and the possibility that they will never be reunited again. We are alarmed by the quality of recordkeeping for these families by the Departments of Homeland Security and Health and Human Services.

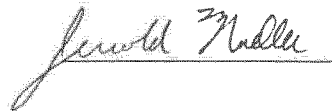
A *New York Times* article reported that Elsa Johana Ortiz Enriquez was deported without her son. "An immigration officer handed her a handwritten note on a pink slip of paper with the words, 'Call Shelter Son' and a telephone number. ...[but] she was deported before she could use it." This is an example of what appears to be a lack of quality recordkeeping to reunite parents with their children.

Therefore, we urge you to conduct an immediate investigation on DHS' and HHS' recordkeeping of children and parents who are being separated. Specifically, we would like the following questions to be answered in the report:

1. Do DHS and HHS keep separate records or is it one system to track the parents and their children? How are DHS and HHS keeping records of parents and children? What system(s) are the Departments using?
2. How quickly (average time) can DHS and/or HHS locate a child's parent? Is there an electronic database? Is it a paper file?
3. What is the process for DHS and HHS to reunite parents with their children? Which is the lead Department to reunite the families?
4. If parents are deported without their children, what is the process of reuniting the parents with their children?
5. Can every separated child be accounted for in DHS' and/or HHS' recordkeeping linking them to their parent, so that they can be reunited?

Given the time-sensitive nature of this ongoing matter, we urge you to begin a timely and complete review of the Departments' record-keeping of immigrant families. Please provide us with a response confirming that your respective offices will be reviewing DHS and HHS recordkeeping by the close of business on Friday, June 29th.

Sincerely,

Joseph G. Gentry
Jim Gentry
Cheri Bustos

Earl Blum

Tim Ryan

Donald S. Berg

Bob Baer

Jim Gentry
Nancy Diaz Bañez

John Vargas

Eligio E. Guzmán

Ed Harris
Kevin J. Thompson

Eric Forner

Jim De

Robert Wasson

Bill Foster

Paul Gentry

Raul H. Higuera

Niki Briggs

Jul Holt
Michael E. Caputo

Kathleen M. Clark
Ed Burr

N. Vay

J. C.

Rob A. Bradley

Katy Castor

Jim A.

W. H. A.

Ed Pataki

Pam Soto

Tulsi Gabbard

Tony Cardenas

Ben. H. C.

M.

Jim P.

Yvette D. Clarke

Paul R.

Jenni Swell

Norma J Jones

Dan H Davis

Mary Kipton

Sheila Jackson Lee

Betty McCollum

John R. Ryan

Robert Lee

Carol B Melaney

W. J. M. S.

Conor Lamb

Edwards

Laura L. L.

Frank Johnson

John Smith

Gary W. W.

David M. C.

N. M. V.

Donis Matsui

Linda L. Sanchez

John L.

Bill Barrett Jr

Alfred Bishop Jr
Mr. [Signature]

Frederica S. Wilson

Joe Green

Jodie Spicer
Charlie Cist

[Signature]

L.O. Chl

Mark [Signature]

Steve Cohen

Joe Schick
Joe [Signature]

Mike Quigley

Anna Titus

Anna G. Esch

Val B. Deming

Michelle Lujan Bink

V & M

Debbie Dingell

A. Donald McEwen



Fred Vele

Jim Van Patten

Albert. Harting

Joe Courtney

Paul Leiglin

Thomas R. Grogg

Don R. J.

Alan Lowenthal

Joe Bosen

Henry Hoch

Jamie Raski

Supreme Brainerd

De Sott

Judy Chou

Mrs M. Loney

Jim B. Ky

Cham Kiean

Jim Gualmell

Bob

Jeff Butcher NC-01

Vince Delitto

Grace F. Nephew

Jim Langwin

Sander Levin

Rosa L. De Lauro

Luella Lopez Albano

Frank A. Szydl

J. P. Patti

Vili

Tom O'Halloran

Jim H. J.
Marlene Waters

John A.

Pete Aguirre

J. K.

Elizabeth H. Esty

Jeri E. Smith

Karen Bass

Brandon J. Boyle

Cheryl R

Chairman NADLER. The gentleman from California, Mr. Lieu.

Mr. LIEU. Thank you, Mr. Chairman.

Chief Provost, thank you for your public service. According to U.S. Customs and Border Patrol, border apprehensions declined 75 percent from 2000 to 2018. You have no reason to doubt the accuracy of your own agency's data on that, right?

Chief PROVOST. The numbers have declined. I can't say the exact percent. But yes, they have declined from 2000 until 2018.

Mr. LIEU. Thank you.

Also according to U.S. Customs and Border Patrol, and I am referencing this because in one of the opening statements, one of my colleagues on the other side of the aisle was talking about the flow of illegal drugs. According to Customs and Border Patrol in fiscal year 2018, 90 percent of heroin came through legal ports of entry, 87 percent of methamphetamine came through legal ports of entry, 80 percent of fentanyl came through legal ports of entry, and 88 percent cocaine came through legal ports of entry.

You have no reason to doubt the U.S. Customs and Border Patrol's data on that either. Correct?

Chief PROVOST. That data has to be put into perspective, and that is where the seizures are. As I stated in my opening statement, we have both a humanitarian crisis at the border and a border security crisis. My agents are being diverted away, and the demographic is very different, too, which I stated in my opening statement.

Mr. LIEU. I heard the opening statement.

Chief PROVOST. You cannot compare just number of apprehensions. You also cannot compare just seizures because it is the unknown. That is what keeps me up at night. What is crossing through our borders between the ports of entry—

Mr. LIEU. No, I got that.

Chief PROVOST [continuing]. Because it is not a controlled environment and are getting past us.

Mr. LIEU. You are certainly entitled—you are certainly entitled to your opinion. I am just relating facts from your agency.

Now I would like to go on and ask Ms. Asher, you are with ICE. Correct?

Ms. ASHER. Yes.

Mr. LIEU. Okay. This is Juliette.

[Playing video of crying baby.]

Mr. LIEU. A 17-month-old baby that was ripped away from her parents. It took 2 months, 2 months to reunite her with her mother. And an article accompanying this story from the San Francisco Chronicle that says that ICE demanded a \$4,000 credit card payment so that the mom could have Juliette back.

So my question is why did ICE ask for \$4,000 in that case?

Ms. ASHER. I have to absolutely dispute that allegation. We in no way have any sort of financial transactions that we use credit cards in exchange to have a service in reuniting a parent with a child.

Mr. LIEU. Why did it take 2 months to do that?

Ms. ASHER. Without the specifics of that particular case that you mentioned, I am not able to give you a thorough response. It is the first I have heard of this.

Mr. LIEU. Okay. So I just note that this was a public article in the San Francisco Chronicle. It is not as if it was hidden, and no one knew about it. We will send that article to your agency and would like a written response.

So now I would like to follow up on the pilot program that was run, and the first thing I would like to do is request that the Department, the DHS department make available to the committee the unredacted version of the DHS Inspector General report as well as any other materials regarding the El Paso pilot program. Is that something we all could get?

Chief PROVOST. The El Paso program was a prosecution initiative, like many others that we have done before. I am more than happy to provide you information on that.

Mr. LIEU. Thank you. So according to the GAO, Border Patrol also conducted a report on this pilot program. Could you also turn over that report to the committee as well?

Chief PROVOST. I would have to look into what report, but I will be glad to turn over any information that we have.

Mr. LIEU. Thank you. Do you consider the pilot program a success?

Chief PROVOST. Sir, once again, this was a prosecution initiative. We have done prosecution initiatives for years through multiple administrations. We did Operation Streamline. We do prosecution initiatives in the field. Our field leadership worked with the U.S. attorneys in those specific locations. There are certain numbers of prosecutions that are allowed. This was a similar program. We have done numerous ones over the years.

Mr. LIEU. And from that program, according to the 2018 GAO report, 1,800 individuals are processed, resulting in 281 individuals separated from their families. Why did either Border Patrol or the other agencies in the Trump administration not figure out there was no computer field for these kids?

Chief PROVOST. There is a computer field. As we have stated before, our systems did not speak to one another. We have always had the information available. We added in April of 2018 an ability to search and pull that info easier.

Mr. LIEU. Thank you. Thank you.

So if I could just conclude real quick? This pilot program that happened in El Paso, the Trump administration should have figured out from there that they were not able to track individuals very well who were separated. And the fact that they did not do that, and then when it launched this family separation policy nationwide was not just immoral and unjust, it was just simply mass incompetence, and the folks involved in that should just be ashamed of themselves.

I yield back.

Chairman NADLER. The gentleman yields back. That is our last Member to have questions.

This concludes today's hearing. Thank you to our distinguished witnesses for attending.

Without objection, all Members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

The hearing is adjourned.

[Whereupon, at 2:04 p.m., the committee was adjourned.]

APPENDIX



Statement of the Tahirih Justice Center:
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Oversight of the Trump Administration's Family Separation Policy
 February 26, 2019

The Tahirih Justice Center ("Tahirih") respectfully submits this statement to the United States House Committee on the Judiciary for consideration as the Committee engages in oversight of the Administration's 2018 Family Separation Policy.

Tahirih is a national, nonpartisan advocacy and direct services organization that has assisted over 25,000 immigrant survivors of gender-based violence over the past 22 years. The women and girls we serve endure horrific abuses such as rape, domestic violence, and human trafficking and are in dire need of humanitarian relief. Tahirih is deeply concerned about the Administration's implementation of its "zero tolerance" policy in 2018 that was used as a justification for separating families. The policy, however, was specifically intended to result in separation to further punish even the most vulnerable asylum seekers and deter them from lawfully seeking refuge in the United States. Such deterrence measures directly contravene international refugee protection principles.ⁱ

Those impacted by the policy include traumatized mothers with children whose lives are irrevocably altered as a result; separation of children from their families causes both short and long-term physical and psychological harm which will last a lifetime. One survivor who Tahirih represents was separated from her young daughter after surviving years of severe domestic abuse in Guatemala. Ms. Carrillo Carrillo fled her country in May 2018 and upon requesting asylum in the US, she was sent to a detention center in one state, while her daughter was put into foster care in another. Although reunification of separated families is required under *Ms. L v. ICE (Immigration & Customs Enforcement)*, ICE deemed Ms. Carrillo Carrillo and her daughter ineligible for reunification because her daughter is a US citizen. All parties agreed that Ms. Carrillo Carrillo's daughter's dependency case would be dismissed if her mother was released, because the sole basis for the proceedings was her mother's detention. Ms. Carrillo Carrillo endured eight months of agony, with the threat of imminent termination of her parental rights looming. Ms. Carrillo Carrillo was finally released on bond and she and her daughter were reunited in January. They are both in desperate need of extensive treatment for trauma resulting not only from domestic violence but from the arbitrary, unnecessary separation from each other. Details about the case have been widely reported in the news.ⁱⁱ

*Protecting Immigrant
 Women and Girls
 Fleeing Violence*

ATLANTA
 230 Peachtree Street NW
 Atlanta, GA 30303
 Tel: 470-481-7400
 Fax: 470-481-7400
 Atlanta@tahirih.org

BALTIMORE
 211 E. Lombard Street
 Suite 307
 Baltimore, MD 21202
 Tel: 410-999-1900
 Fax: 410-630-7539
 Baltimore@tahirih.org

GREATER DC | NATIONAL
 6402 Arlington Boulevard
 Suite 300
 Tel: 571-282-6161
 Fax: 571-282-0162
 TTY: 711
 Falls Church, VA 22042
 GreaterDC@tahirih.org
 Justice@tahirih.org

HOUSTON
 1717 St. James Place
 Suite 450
 Houston, TX 77056
 Tel: 713-496-0100
 Fax: 713-481-1793
 Houston@tahirih.org

SAN FRANCISCO BAY AREA
 881 Sneath Lane
 Suite 115
 San Bruno, CA 94065
 Tel: 650-270-2100
 Fax: 650-466-0006
 SFBayArea@tahirih.org

tahirih.org

Tahirih legal staff also counseled numerous parents seeking asylum who had been forcibly separated from their children, and then encouraged by US Customs and Border Protection (CBP) agents to plead guilty to unlawful entry with the promise of reunification for doing so. The parents were extremely distraught and highly vulnerable to coercion immediately following separation.ⁱⁱⁱ One mother was worried because she had no way of knowing whether her young epileptic daughter was receiving her seizure medication. Another mother, separated from her five year-old daughter, explained how her child was screaming and vomiting as she was taken away. The mother pled with the CBP official to have a moment to comfort her but the answer was no. None of the parents knew where their children were or when they would see them. They had gone several days without contact, were given no telephone access, and were not told the name or address of the facility where their children might be. One father shook uncontrollably as he explained that he didn't know if his child had been fed or not, or was being mistreated. A mother was told by CBP that they needed to take her son away for a few minutes to give him a shower. After some time, she asked where he was, and the official said he had been taken away and they did not know when she would see him again.

It is well-documented that forcibly separating families, particularly while withholding communication among them, is highly traumatizing for both parents and children.^{iv} The harm resulting from separation is even more pronounced for those fleeing gender-based violence, who are already experiencing profound trauma and isolation from critical support networks. The egregious violations of due process and inhumane, exploitative practices perpetrated by the Administration pursuant to its zero tolerance and family separation policies are inexcusable. We applaud the Committee for conducting this critical oversight and we are grateful for your thoughtful consideration of this statement.

Respectfully,



Irena Sullivan
Senior Immigration Policy Counsel

ⁱ The policy involved prosecution of asylum seekers for unlawful entry, which is generally prohibited under the United Nations Convention Relating to the Status of Refugees, and subsequent separation of children from parents while in custody. According to Article 31 of the Convention: "The contracting states shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

ⁱⁱ See, eg, <https://www.nytimes.com/2018/11/23/us/migrant-family-separation-citizen-domestic-abuse.html>, <https://www.nbcnews.com/news/latino/guatemalan-mom-american-born-daughter-reunited-after-8-months-apart-n959846>

ⁱⁱⁱ The parents were also under extreme physical stress from hunger, exhaustion, and trauma as asylum seekers. Our staff learned that they had not been able to change clothes since being arrested three or four days earlier, and had not been provided with showers. One parent had dried blood on his pants from his journey.

^{iv} <http://www.aappublications.org/news/2017/03/13/immigration031317>

Official Website of the Department of Homeland Security



Report Crimes: Email or Call 1-866-DHS-2-ICE

Immigration Enforcement

Immigration Enforcement

Detention Management

ERO

Overview
Family
Residential
Centers

Detention Management - Family Residential Centers



Family Residential Centers maintain family unity as families go through immigration proceedings or await return to their home countries. ICE ensures that these residential centers operate in an open environment, which includes access to medical care, social workers, educational services, legal counsel and recreational opportunities. A language services program provides indigenous language interpretation for residents in family residential centers, to improve meaningful access to services within the centers.

To be eligible to stay at a residential center, the family cannot have a criminal history and must include a non-U.S. citizen child or children under the age of eighteen accompanied by his/her/their non-U.S. citizen parent(s) or legal guardian(s). With limited exceptions stays at residential centers are generally limited to 20 days.

Families are medically screened upon arrival by a licensed nursing staff that is on site 24 hours a day, seven days a week. The facilities provide ongoing medical, dental and mental health care as needed.

All school-aged children receive educational services by state certified teachers. The centers include communal activity rooms, social library, law library, televisions, recreation areas and toddler play areas. Residents have access to cafeterias with child friendly and cultural food choices offered three times a day. Refrigerators in common areas are stocked with fresh fruit, milk and water 24-hours a day. Families have access to an on-site commissary to purchase additional food, snacks and drinks.

Social and legal visitation opportunities are available to residents seven days a week.

ICE headquarters has a designated unit that oversees the compliance of family residential standards and manages an independent compliance inspection program through a contracted team of juvenile subject matter experts.

ICE's three Family Residential Centers (FRC) include:

- The South Texas Family Residential Center in Dilley, Texas;
- the Karnes County Residential Center in Karnes City, Texas;

- and the Berks Family Residential Center in Leesport, PA.

As detailed in the June 2017 DHS Inspector General's report, the family residential centers are "clean, well-organized, and efficiently run" and the agency was found to be "addressing the inherent challenges of providing medical care and language services and ensuring the safety of families in detention."

Last Reviewed/Updated: 02/25/2019

Are You Detained and Separated From Your Child(ren)?

Even though you are in immigration detention you can still communicate with your child(ren) and make decisions about their care.

¿Está usted detenido y separado de su(s) hijo(s)?

Aun cuando se encuentre detenido por inmigración, usted puede comunicarse con su(s) hijo(s) y tomar decisiones sobre su cuidado.



U.S. Immigration and Customs Enforcement

You can ask for help locating and/or getting in contact with your child(ren) by making the following free calls from your housing unit phones. Ask facility staff for instructions on making phone calls using the pro bono phone platform.

- If you need assistance locating your child(ren) or setting up regular communication with your child(ren), call the **Detention Reporting Information Line (Speed Dial 9116# on the Free Call Platform).**

- If you know that your child(ren) is in the custody of the U.S. Government, call the **Office of Refugee Resettlement (ORR) Parent Hotline using the free speed dial 699# on the detention phones.**

In addition to calling, you may also fill out a detainee request form asking an ICE officer for assistance in locating and/or communicating with your child.

ICE and ORR work together to locate children, verify the parent-child relationship, and set up regular communication and removal coordination, if necessary.

Additional information regarding your parental rights may be found in the *Women's Refugee Commission's* self-help toolkit, *Detained or Deported: What About My Children*, available on the law library computers.

Usted puede pedir ayuda para localizar y/o ponerse en contacto con su(s) hijo(s) al realizar las siguientes llamadas sin costo alguno desde el teléfono de la unidad ubicada en su habitación. Solicite las instrucciones del personal de las instalaciones sobre cómo realizar llamadas por teléfono utilizando la plataforma gratuita.

- Si usted necesita asistencia para localizar a su(s) hijo(s) o para establecer comunicación con su(s) hijo(s), llame a la **Línea de Información y Denuncias de los Centros de Detención (Marque 9116# desde la plataforma gratuita).**

- Si usted sabe que su(s) hijo(s) están bajo la custodia del gobierno de los Estados Unidos, llame a la línea telefónica para padres de la **Oficina de Resentamientos de Refugiados (ORR, por sus siglas en inglés)** marcando el número gratuito 699# desde cualquiera de los teléfonos de su centro de detención.

Además de llamar, usted puede llenar un formulario de solicitud del detenido. Para solicitar asistencia en localizar y/o comunicarse con su hijo(s), pida ayuda a un oficial del Servicio de Inmigración y Control de Aduanas de los Estados Unidos (ICE, por sus siglas en inglés).

El Servicio de Inmigración y Control de Aduanas de los Estados Unidos (ICE, por sus siglas en inglés) y la Oficina de Resentamiento de Refugiados (ORR, por sus siglas en inglés) trabajan en conjunto para localizar niños(s), corroborar la relación familiar entre padres e hijos, establecer comunicaciones con ellos, y coordinar la expulsión conjunta de padres e hijos de ser necesario.

Para obtener más información sobre sus derechos parentales, lee el material de autoayuda de la Comisión de Mujeres Refugiadas *Detained or Deported: What About My Children? (Detenido y Deportado: ¿Qué les pasará a mis hijos?)*, disponible en las computadoras de las bibliotecas legales.



House Judiciary Committee
Oversight of the Trump Administration's Family Separation Policy
Questions for the Record
March 7, 2019

Questions for the Record From Ranking Member Jerrold Nadler and Subcommittee Ranking Member Zoe Lofgren

Information Sharing Between ORR & DHS for Immigration Enforcement:

An April 13, 2018, Health and Human Services (HHS) and Department of Homeland Security (DHS) agreement "requires HHS to share the immigration status of potential sponsors and other adults in their households with DHS to facilitate HHS's background checks." On December 18, 2018, HHS announced that it would stop requiring fingerprinting of all household members of the sponsor, in order to be able to release unaccompanied children and separated children more quickly. The Fiscal Year 2019 DHS spending package prohibits DHS from using fingerprinting information shared from ORR about UC sponsors and household members' for purposes of immigration enforcement or deportation.

1. What procedures are in place to comply with this prohibition?
2. What sort of facts must be gathered to verify any potential risks to the minor? In a home study, what requirements must be met?
3. For what purposes would HHS continue to share fingerprints of sponsors with DHS?
4. How many individuals have been apprehended by ICE as a result of the Information Sharing agreement signed in April? Have you found that as a result of this policy, children are kept in ORR custody for longer than necessary?

Questions for the Record from Representative Sylvia Garcia

Immigration and Customs Enforcement:

One of the reasons we had so many children in HHS facilities is that ICE was using information about sponsors as a deportation road map. This resulted in fewer sponsors willing to come forward. The recent appropriations bill contained language that would prohibit DHS from detaining or deporting a sponsor, potential sponsor, or household member of an unaccompanied minor based on information shared with HHS if the individual had no felony charges or convictions. Ms. Asher, what type of firewall or other safeguards has ICE established to ensure that it follows the law and does not use the HHS furnished information about sponsors in any enforcement activity?

Questions for the Record from Representative Veronica Escobar:

Customs and Border Protection:

1. Chief Provost, how many children were separated between July 2017 and April 6, 2018? How many of these children have been reunited?
2. For CBP: How many families have been separated, beginning in July 2017 until now, based on illegal reentry convictions?

Health and Human Services:

3. How many separated children (between July 2017 and April 2018) were discharged from ORR care prior to the June 26, 2018 injunction by Judge Sabraw? To whom were they discharged?

For All Witnesses:

4. Does the Administration have memos outlining the use of the zero tolerance policy, and subsequent family separations, as a way to deter asylum seekers from coming to the United States? If so, please provide a copy of each memo and the name of the authors.

Questions for the Record from Representative Greg Stanton:

Customs and Border Protection:

1. During and prior to Zero Tolerance, what special considerations were given by Border Patrol agents when separating a parent from a child with a disability?
2. What specific policies are in place for when a Border Patrol agent needs to provide a reasonable and fair accommodation to a child with disabilities? Were these policies created in consultation with disability experts?
3. What specific training did Border Patrol agents receive on how to detain a child with disabilities? Was this training created in consultation with disability experts?
4. During Zero Tolerance, was Border Patrol ever at a 100% referral rate for prosecution? Please provide the referral rate for prosecution of 8 U.S.C. Sec. 1325(a) offenses for all sectors along the Southwest Border during Zero Tolerance.

Health and Human Services:

5. If a pre-verbal or non-verbal child arrived at the shelter, and there was no notation from DHS or BP to indicate the child had been separated, how did ORR determine if the child had in fact been separated and the identity of the parents?

For All Witnesses:

6. How many children with disabilities were separated from their parents?
7. How many months old was the youngest baby separated from his or her parents?

RESPONSES FROM MS. NATHALIE ASHER, U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT

AND

CHIEF CARLA PROVOST, U.S. BORDER PATROL

Question#:	I
Topic:	Fingerprint Prohibition
Hearing:	Oversight of the Trump Administration's Family Separation Policy
Primary:	The Honorable Jerrold Nadler
Committee:	JUDICIARY (HOUSE)

Question: An April 13, 2018, Health and Human Services (HHS) and Department of Homeland Security (DHS) agreement “requires HHS to share the immigration status of potential sponsors and other adults in their households with DHS to facilitate HHS's background checks.” On December 18, 2018, HHS announced that it would stop requiring fingerprinting of all household members of the sponsor, in order to be able to release unaccompanied children and separated children more quickly. The Fiscal Year 2019 DHS spending package prohibits DHS from using fingerprinting information shared from ORR about UC sponsors and household members’ for purposes of immigration enforcement or deportation.

What procedures are in place to comply with this prohibition?

Response: U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO), U.S. Customs and Border Protection (CBP), and the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) entered into a memorandum of agreement (MOA) on April 13, 2018. The purpose of this MOA is to ensure that these signatories share relevant information concerning unaccompanied alien children (UAC), their potential adult sponsors, and adult members of those potential sponsors’ households to verify that the potential sponsor is capable of providing shelter and care, and that the potential sponsor’s cohabitants do not endanger the child after placement.

However, as a result of the funding restrictions contained in the Fiscal Year (FY) 2019 enacted budget, ICE ERO has directed its field offices to cease making arrests based solely on information referred from HHS pursuant to the April 13, 2018 MOA. Additionally, ICE is no longer transmitting any HHS lead referrals to its field offices and previously transmitted referrals have been removed from ICE’s case management system.

Although ICE is no longer conducting arrests of sponsors or potential sponsors based solely on information received from HHS under the MOA, ICE notes that it does not exempt any class or category of alien in violation of federal immigration laws from potential enforcement action and will continue to conduct interior enforcement in line with its mission and the laws passed by Congress. As a result, aliens who are identified as potentially being removable through means other than an HHS lead referral may be subject to enforcement regardless of their status as a sponsor or potential sponsor.

Question#:	2
Topic:	Risks to Minors
Hearing:	Oversight of the Trump Administration's Family Separation Policy
Primary:	The Honorable Jerrold Nadler
Committee:	JUDICIARY (HOUSE)

Question: What sort of facts must be gathered to verify any potential risks to the minor?
In a home study, what requirements must be met?

Response: The Department of Homeland Security (DHS) defers to HHS ORR for further information on their policies on gauging risks posed to a minor while in their custody and to address home study requirements.

Question#:	3
Topic:	Sharing Fingerprints
Hearing:	Oversight of the Trump Administration's Family Separation Policy
Primary:	The Honorable Jerrold Nadler
Committee:	JUDICIARY (HOUSE)

Question: For what purposes would HHS continue to share fingerprints of sponsors with DHS?

Response: ICE ERO, CBP, and HHS ORR entered into an MOA on April 13, 2018. The purpose of this MOA is to ensure that these signatories share relevant information concerning unaccompanied alien children (UAC), their potential adult sponsors, and adult members of those potential sponsors' households to verify that the potential sponsor is capable of providing shelter and care, and that the potential sponsor's cohabitants do not endanger the child after placement.

However, as a result of the funding restrictions contained in the FY 2019 enacted budget, ICE ERO has directed its field offices to cease making arrests based solely on information referred from HHS pursuant to the April 13, 2018 MOA. Additionally, ICE is no longer transmitting any HHS lead referrals to its field offices and previously transmitted referrals have been removed from ICE's case management system.

Although ICE is no longer conducting arrests of sponsors or potential sponsors based solely on information received from HHS under the MOA, ICE notes that it does not exempt any class or category of alien in violation of federal immigration laws from potential enforcement action and will continue to conduct interior enforcement in line with its mission and the laws passed by Congress. As a result, aliens who are identified as illegally present through means other than an HHS lead referral may be subject to enforcement regardless of their status as a sponsor or potential sponsor.

Question#:	4
Topic:	Apprehensions
Hearing:	Oversight of the Trump Administration's Family Separation Policy
Primary:	The Honorable Sylvia Garcia
Committee:	JUDICIARY (HOUSE)

Question: How many individuals have been apprehended by ICE as a result of the Information Sharing agreement signed in April? Have you found that as a result of this policy, children are kept in ORR custody for longer than necessary?

Response: While the MOA was in full effect, from July 9, 2018 through February 21, 2019, ICE arrested 310 UAC sponsors.

DHS defers to HHS for any impacts on UACs in ORR custody.

Question#:	5
Topic:	Fewer Sponsors
Hearing:	Oversight of the Trump Administration's Family Separation Policy
Primary:	The Honorable Louie Gohmert
Committee:	JUDICIARY (HOUSE)

Question: One of the reasons we had so many children in HHS facilities is that ICE was using information about sponsors as a deportation road map. This resulted in fewer sponsors willing to come forward. The recent appropriations bill contained language that would prohibit DHS from detaining or deporting a sponsor, potential sponsor, or household member of an unaccompanied minor based on information shared with HHS if the individual had no felony charges or convictions. Ms. Asher, what type of firewall or other safeguards has ICE established to ensure that it follows the law and does not use the HHS furnished information about sponsors in any enforcement activity?

Response: ICE ERO, CBP, and HHS ORR an MOA on April 13, 2018. The purpose of this MOA is to ensure that these signatories share relevant information concerning UACs, their potential adult sponsors, and adult members of those potential sponsor's—and to ensure that adult members of the potential sponsor or the sponsor's household to verify that the potential sponsor is capable of providing shelter and care and that the potential sponsor's cohabitants do not endanger the child after placement.

While the MOA was in full effect, from June 9, 2108 through February 21, 2019, ICE arrested 310 UAC sponsors.

As a result of funding restrictions contained in the FY 2019 enacted budget, ICE ERO has directed its field offices to cease making arrests based solely on information referred from HHS pursuant to the April 13, 2018 MOA. Additionally, ICE is no longer transmitting any HHS lead referrals to its field offices that do not fall within subsection (b)¹ of section 224 in the Consolidated Appropriations Act, 2019. Previously transmitted referrals are no longer accessible in the case management system and those that do not fall within the exception will remain inaccessible.

¹ (b) Subsection (a) shall not apply if a background check of a sponsor, potential sponsor, or member of a household of a sponsor or potential sponsor reveals: (1) a felony conviction or pending felony charge that relates to (A) an aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43))), (B) child abuse, (C) sexual violence or abuse, or (D) child pornography; (2) an association with any business that employs a minor who (A) is unrelated to the sponsor, potential sponsor, or member of a household of a sponsor or potential sponsor, and (B) is (i) not paid a legal wage or (ii) unable to attend school due to the employment; or (3) an association with the organization or implementation of prostitution.

<https://www.congress.gov/bills/116/congress/house-joint-resolution/31/text?q=%7B%22search%22%3A%5B%22Consolidated+Appropriations+Act+2019%22%5D%7D&r=5>.

Question#:	5
Topic:	Fewer Sponsors
Hearing:	Oversight of the Trump Administration's Family Separation Policy
Primary:	The Honorable Louie Gohmert
Committee:	JUDICIARY (HOUSE)

Although ICE is no longer conducting arrests of sponsors or potential sponsors based on information received from HHS under the MOA, ICE notes that it does not exempt any class or category of alien present in violation of federal immigration laws from potential enforcement action and will continue to conduct interior enforcement in line with its mission and the laws passed by Congress. As a result, aliens who are identified as illegally present through means other than an HHS lead referral may be subject to enforcement regardless of their status as a sponsor or potential sponsor.

Question#:	6
Topic:	Separations
Hearing:	Oversight of the Trump Administration's Family Separation Policy
Primary:	The Honorable Veronica Escobar
Committee:	JUDICIARY (HOUSE)

Question: Chief Provost, how many children were separated between July 2017 and April 6, 2018?

Response: CBP systems did not capture specific information on the number, reason or nature of family separations prior to April 19, 2018. Recognizing the importance of capturing this information, CBP performed system enhancements to address the issue during summer 2018. Therefore, CBP cannot provide data based on the requested date range.

Question: How many of these children have been reunited?

Response: DHS defers this question to the HHS.

Question: How many families have been separated, beginning in July 2017 until now, based on illegal reentry convictions?

Response: As stated above, CBP did not maintain data on family separations prior to April 19, 2018. From April 19, 2018 to present, there have been 2 family unit separations based on 8 U.S.C. § 1326 (Re-entry of removed aliens) by the CBP Office of Field Operations, and 402 family units separated by USBP for subjects referred and/or accepted for prosecution.

Question#:	7
Topic:	Memos
Hearing:	Oversight of the Trump Administration's Family Separation Policy
Primary:	The Honorable Veronica Escobar
Committee:	JUDICIARY (HOUSE)

Question: Does the Administration have memos outlining the use of the zero tolerance policy, and subsequent family separations, as a way to deter asylum seekers from coming to the United States? If so, please provide a copy of each memo and the name of the authors.

Response: No.

Question#:	8
Topic:	Children with Disabilities
Hearing:	Oversight of the Trump Administration's Family Separation Policy
Primary:	The Honorable Greg Stanton
Committee:	JUDICIARY (HOUSE)

Question: During and prior to Zero Tolerance, what special considerations were given by Border Patrol agents when separating a parent from a child with a disability?

Response: The USBP considers the best interest of the child and understands the seriousness involved in the separation of families. USBP ensures that all separations were warranted and approved based on policies in place.

Question: What specific policies are in place for when a Border Patrol agent needs to provide a reasonable and fair accommodation to a child with disabilities?

Response:

- **DHS Directive 065-01: Nondiscrimination for Individuals With Disabilities in DHS-Conducted Programs And Activities (Non-Employment).** This Directive establishes DHS policy and implementation mechanisms for ensuring nondiscrimination for individuals with disabilities served by DHS-conducted programs and activities under Section 504 of the Rehabilitation Act of 1973, as amended (Section 504).
- **CBP Directive 2130-021: Roles and Responsibilities of U.S. Customs and Border Protection Component Offices and Employees Regarding Civil Rights and Civil Liberties Matters.** This policy defines the roles and responsibilities of CBP offices and personnel with regard to civil rights and civil liberties allegations filed by members of the public and requires all CBP employees to abide by CBP policy to treat all individuals in a non-discriminatory manner, with respect to all forms of protected status under federal law, regulations, Executive Order, or policy.
- **CBP Directive 51735-013A: Standards of Conduct.** This policy prohibits employees to act or fail to act on an official matter in a manner that improperly takes into consideration an individual's race, color, age, sexual orientation, religion, sex, national origin, disability, union membership, or union activities.
- **CBP Policy on Zero Tolerance of Sexual Abuse and Assault** (March 11, 2015). This policy stipulates that CBP will provide reasonable accommodations to individuals with disabilities in CBP custody to ensure

Question#:	8
Topic:	Children with Disabilities
Hearing:	Oversight of the Trump Administration's Family Separation Policy
Primary:	The Honorable Greg Stanton
Committee:	JUDICIARY (HOUSE)

access to CBP efforts to prevent, detect, and respond to sexual abuse in CBP holding facilities.

- ***CBP National Standards on Transport, Escort, Detention, and Search*** (October 2015). This policy stipulates that CBP will provide reasonable accommodations to at risk children and other individuals in CBP custody, who have known or reported mental and/or physical disabilities, to include additional care and oversight in CBP holding facilities. TEDS also requires specific accommodations to prevent, detect, and respond to sexual abuse.
- ***CBP Directive 2130-030: Prevention, Detection and Response to Sexual Abuse and/or Assault in CBP Holding Facilities.*** This policy stipulates that CBP will ensure effective communication with persons with disabilities and ensure their access to CBP efforts to prevent, detect, and respond to sexual abuse and/or assault.

Question: Were these policies created in consultation with disability experts?

Response: The policies for ensuring nondiscrimination, care/custody conditions, and protection of civil rights/liberties for individuals with disabilities served by DHS and/or CBP-conducted programs were developed through consultation with the U.S. Department of Justice, the DHS Office for Civil Rights and Civil Liberties, national disability stakeholder organizations, and/or subject matter expert personnel in DHS and/or CBP.

Question: What specific training did Border Patrol agents receive on how to detain a child with disabilities?

Response: The Border Patrol Academy provides training based on U.S. Customs and Border Protection National Standards on Transport, Escort, Detention, and Search (TEDS) Policy (October 2015) during e3 Processing. This includes TEDS Section 5.0 *At-Risk Populations*, page 19, subsection 5.1 *General* of the policy discusses individuals with disabilities, including children. All trainees are provided a copy of the policy and are advised to read and become familiar with it, as it is part of their official duties.

USBP Agents are trained at the Border Patrol Academy to treat everyone with dignity and respect. USBP strives to accommodate all individuals, including children, with disabilities appropriately and in consultation with medical professional, when warranted. Additionally, USBP strives to provide an appropriate level of care to any individual that requires medical attention, either from injury or disability.

Question#:	8
Topic:	Children with Disabilities
Hearing:	Oversight of the Trump Administration's Family Separation Policy
Primary:	The Honorable Greg Stanton
Committee:	JUDICIARY (HOUSE)

Question: Was this training created in consultation with disability experts?

Response: CBP is committed to complying with Section 504 of the Rehabilitation Act.

Per CBP's interim Medical Directive signed on January 28, 2019, all juvenile aliens in CBP custody receive a mandatory health interview and a mandatory health assessment during initial processing. These medical assessments will normally be conducted by CBP contracted medical professionals, or other Federal, State and Local credentialed healthcare providers.

CBP will continue to follow its established guidelines for referral of all individuals in custody to the appropriate level of healthcare based on the consultation and professional opinion of the relevant credentialed medical personnel, or the direction of the supervisory agent or officer on scene.

Additionally, CBP took extraordinary efforts to rapidly expand its medical services contracts during the partial government shutdown in order to ensure these services were available in locations considered high-risk for Unaccompanied Alien Children and Family Unit Aliens. "At risk" locations includes those areas where CBP is apprehending or encountering large volumes of family units and unaccompanied minors.

Question: How many children with disabilities were separated from their parents?

Response: Currently, CBP does not have a method for tracking this category of identified individuals.

Question#:	9
Topic:	Referral Rate
Hearing:	Oversight of the Trump Administration's Family Separation Policy
Primary:	The Honorable Greg Stanton
Committee:	JUDICIARY (HOUSE)

Question: During Zero Tolerance, was Border Patrol ever at a 100% referral rate for prosecution?

Response: No, due to judicial constraints, court capacities and other issues, USBP never reached a 100 percent prosecutorial referral rate.

Question: Please provide the referral rate for prosecution of 8 U.S.C. Sec. 1325(a) offenses for all sectors along the Southwest Border during Zero Tolerance.

Response: USBP processing systems do not capture data that would distinguish a Zero Tolerance 8 USC 1325 prosecution from any other 8 USC 1325 prosecution. Prosecutions of 8 USC 1325 violations are a regular and on-going occurrence everywhere the Border Patrol operates and have been for the last 20 plus years. Current USBP prosecution referral rate is at 30 percent of all Southwest Border apprehensions for prosecution of an 8 U.S.C. § 1325 charge.

Question#:	10
Topic:	Youngest Separation
Hearing:	Oversight of the Trump Administration's Family Separation Policy
Primary:	The Honorable Greg Stanton
Committee:	JUDICIARY (HOUSE)

Question: How many months old was the youngest baby separated from his or her parents?

Response: All separations are recorded within the electronic system of record, which is limited to capturing age in years and not months. USBP complies with all laws, executive orders, policies, regulations, and court decisions that regulate the care and custody of vulnerable populations such as unaccompanied alien children and family units. The safety and security of apprehended aliens remains a top priority and the decision to separate a parent or legal guardian from a minor child is not taken lightly.

RESPONSES FROM COMMANDER JONATHAN WHITE, U.S. PUBLIC HEALTH
COMMISSIONED CORPS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND

MR. SCOTT LLOYD, CENTER FOR FAITH AND OPPORTUNITY INITIATIVES, U.S.
DEPARTMENT OF HEALTH AND HUMAN SERVICES

Committee on the Judiciary
House of Representatives

Oversight of the Trump Administration's Family Separation Policy

Questions for the Record
March 7, 2019

Questions for the Record from Chair Nadler and Subcommittee Chair Lofgren

Information Sharing Between ORR and DHS for Immigration Enforcement

An April 13, 2018, Health and Human Services (HHS) and Department of Homeland Security (DHS) agreement "requires HHS to share the immigration status of potential sponsors and other adults in their households with DHS to facilitate HHS's background checks." On December 18, 2018, HHS announced that it would stop requiring fingerprinting of all household members of the sponsor, in order to be able to release unaccompanied children and separated children more quickly. The Fiscal Year 2019 DHS spending package prohibits DHS from using fingerprinting information shared from ORR about UC sponsors and household members for purposes of immigration enforcement or deportation.

1. What procedures are in place to comply with this prohibition?

HHS Response:

For FY 2019, Congress included language in appropriations bills limiting how DHS uses information it receives from HHS, specifying that the funds provided will not be used to deport, detain or initiate any removal proceedings on any person applying for sponsorship of a UAC or their household members, unless the information shared from HHS reveals specific criminal charges. (See section 224 of P.L. 116-6 and section 409 of P.L. 116-26).

In accordance with this language, as well as the requirement at section 204 of P.L. 116-26, in June 2019, HHS provided the following guidance to care providers regarding the limitations on DHS use of information it receives from HHS:

Through September 30, 2019, DHS is restricted from using a background check subject's information for immigration enforcement actions such as placing a subject in detention, removal, referring the individual for a decision on removal, or starting removal proceedings. For now, Congress wrote the prohibition to be in effect through September 30, 2019, through the emergency supplemental appropriations, HR 3401. ORR does not know if it will continue beyond that date. Congress may impose these same restrictions, different restrictions, or not restrict DHS in the future.

Additionally, ORR added language to the agency's *Authorization for Release of Information* that is signed by sponsors as part of the sponsorship application process. The

new language references the restrictions on DHS's ability to use a sponsor's information for immigration enforcement purposes as specified in section 224 of P.L. 116-6.

HHS defers to DHS for any actions it has taken to comply with this prohibition.

2. What sort of facts must be gathered to verify any potential risks to the minor? In a home study, what requirements must be met?

HHS Response:

ORR gathers a number of facts to verify any potential risks to the minor. These include facts gathered from interviewing a child, conducting a sponsor assessment, and performing background checks on all potential sponsors.

ORR uses the results from background checks to determine whether release of a child to a potential sponsor is safe. A potential sponsor may be denied based on the results of a background check, and a release decision may remain outstanding until ORR obtains the results of a potential sponsor's criminal history or child abuse and neglect reports.

The care provider screens each case to determine whether to conduct a home study of the potential sponsor as required under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). The TVPRA requires home studies under the following circumstances:

- The child is a victim of a severe form of trafficking in persons;
- The child is a special needs child with a disability as defined by section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12102);
- The child has been a victim of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened; or
- The child's sponsor clearly presents a risk of abuse, maltreatment, exploitation or trafficking, to the child based on all available objective evidence.

Information about the child is collected during initial placement into an ORR facility and throughout his or her stay. The care provider then uses the information collected about and from the child in conjunction with the sponsor assessment process to determine whether to conduct a home study. ORR also requires a home study before releasing any child to a non-relative sponsor who is seeking to sponsor multiple children, or who has previously sponsored or sought to sponsor a child and is seeking to sponsor additional children. In addition, ORR requires a home study for children who are 12 years and under before releasing to a non-relative sponsor.

In circumstances in which a home study is not required by the TVPRA or ORR policy, the Case Manager and Case Coordinator may recommend that a home study be conducted if they agree that the home study is likely to provide additional information

required to determine whether the sponsor is able to provide for the health, safety, and well-being of the child.

The care provider must inform the potential sponsor whenever a home study is required, explaining the scope and purpose of the study and answering the potential sponsor's questions about the process. In addition, the home study report will be provided to the potential sponsor if the release request is denied.

A home study consists of interviews, a home visit, and a written report containing the home study case worker's findings. A home study assesses the potential sponsor's ability to meet the child's needs, educates and prepares the sponsor for the child's release, and builds on the sponsor assessment conducted by the care provider staff to verify or corroborate information gathered during that process. The home study is conducted as a collaborative psycho-educational process in which the home study case worker identifies areas where additional support, resources, or information are needed to ensure a successful sponsorship, and provides corresponding psycho-educational assistance. The final recommendation must present a comprehensive and detailed assessment of the sponsor's ability to care for the needs of the child and address any additional information that emerges during the course of the home study regarding the sponsor, the sponsor's household or the child.

The home study provider makes a recommendation to ORR about release of a child to the sponsor. The ORR Federal Field Specialist takes the home study provider's recommendation into consideration when making a release decision. ORR has the final authority on release decisions.

3. For what purposes would HHS continue to share fingerprints of sponsors with DHS?

HHS Response:

ORR does not release the results of the FBI fingerprint background checks to DHS, outside organizations or individuals, or ORR care providers. During the course of its check, the FBI searches DHS databases that may contain records on the subject of the check. The FBI system generates an automatic notification to the DHS system if a particular record has been searched.

Until September 30, 2019, DHS is restricted from using information from HHS regarding a sponsor, potential sponsor, or a member of a household of a sponsor or potential sponsor for immigration enforcement actions such as placing a subject in detention, removal, referring the individual for a decision on removal, or starting removal proceedings. Per the Fiscal Year 2019 DHS Consolidated Appropriations (PL 116-6), DHS may engage in enforcement actions using information from HHS for only the following reasons: certain felonies; an association with a business that employs minors and does not pay a legal wage or prevents the minor from going to school; or an association with an organization of prostitution. These certain felonies include: (A) an aggravated felony as defined in 8 U.S.C. 1101(a)(43); (B) child abuse; (C) sexual

violence or abuse; or (D) child pornography. An aggravated felony is defined at 8 U.S.C. § 1101(a)(43), and includes a listing of 21 different kinds of crimes.

4. How many individuals have been apprehended by ICE as a result of the Information Sharing agreement signed in April? Have you found that as a result of this policy, children are kept in ORR custody for longer than necessary?

HHS Response:

ORR defers to ICE to answer the question regarding how many individuals have been apprehended by ICE as a result of the information sharing agreement.

ORR has issued four Operational Directives between December 2018 and June 2019 that has decreased the average length of time a UAC stays in ORR custody. The Operational Directives enable completion of individualized suitability assessments of sponsors without requiring expanded background checks in appropriate cases. This applies to all categories of sponsors and their adult household members. The Operational Directives also allow for the release of a UAC to their sponsors in eligible cases where there are no red flags. Additionally, ORR no longer obtains immigration status from DHS ICE and sponsors are informed of the current restrictions on DHS' ability to target a subject (using information from the ORR background check process) for immigration enforcement purposes under restrictions in DHS' appropriation.

Questions for the Record from Representative Sylvia Garcia

For All Witnesses

6. How many children with disabilities were separated from their parents?

HHS Response:

While the number of separated children of the original *Ms. L.* class, comprised of parents whose children were in ORR care as of June 26, 2018, is known, the number of children of the expanded *Ms. L.* class of parents (whose children were discharged between July 1, 2017 and June 26, 2018) is currently unknown. An interagency effort by HHS and DHS components CBP and ICE to identify all children referred on or after July 1, 2017, and discharged prior to June 26, 2018, with any preliminary indication of separation is underway. ORR will be able to provide the number of children with disabilities separated from their parents once the complete universe of the *Ms. L.* class members is identified. Judge Sabraw has provided a deadline of October 25, 2019, for the government to provide the full list of class members, and at this time HHS anticipates meeting this target date.

7. How many months old was the youngest baby separated from his or her parents?

HHS Response:

HHS does not separate children from their parents. However, the youngest child referred to HHS from DHS was three months old.

Questions for the Record from Representative Veronica Escobar

Health and Human Services

1. How many separated children (between July 2017 and April 2018) were discharged from ORR care prior to the June 26, 2018, injunction by Judge Sabraw? To whom were they discharged?

HHS Response:

The exact count of children separated from their parents and referred to ORR, and discharged prior to the *Ms. L.* preliminary injunction on June 26, 2018, has not yet been completed; execution of a Court-approved interagency plan by HHS and DHS to determine that is underway. The process includes HHS manual case file review for every child referred on or after July 1, 2017, and discharged prior to June 26, 2018, to identify all children with any preliminary indication of separation. Those cases are then transmitted to DHS to confirm whether the child was, in fact, separated as well as information related to any class exclusion issues and the circumstances of the parents. Once DHS review of a subset of cases is finished, the government concludes its review for that subset, and the corresponding list is provided to class counsel on a rolling basis.

HHS has completed its preliminary review of all children from the class expansion period, and numerous lists of subsets of cases have been provided to class counsel. The interagency review process, however, is ongoing. Judge Sabraw has provided a deadline of October 25, 2019, for the government to complete its work. At this time, HHS anticipates the government will meet that deadline.

The great majority of children from the class expansion period were discharged to individual sponsors, typically the separated parent, the other parent, or a close relative. HHS does not discuss individual cases to protect the privacy of the children. More detailed aggregate information will be available when the interagency analysis is complete.

For All Witnesses

2. Does the Administration have memos outlining the use of the zero tolerance policy, and subsequent family separations, as a way to deter asylum seekers from coming to the United States? If so, please provide a copy of each memo and the name of the authors.

HHS Response:

In February 2017, the HHS/ACF/ORR staff prepared a 'pre-decisional discussion draft' internal memorandum regarding the potential impact of potential DHS proposals, including separation of children from parents in family unit apprehensions, in ORR. The deliberative process privilege applies to the memorandum.

Questions for the Record from Representative Greg StantonHealth and Human Services

1. If a pre-verbal or non-verbal child arrived at the shelter, and there was no notation from DHS or BP to indicate the child had been separated, how did ORR determine if the child had in fact been separated and the identity of the parents?

HHS Response:

If a child is pre-verbal and arrives with no to very limited information at the time of apprehension at the border, the program staff (Case Manager) will take the following steps as soon as possible:

- The Case Manager will check the UAC Portal Intakes tab of the child's case file to see what information on parent relationships or parent separation was entered by CBP (DHS) at the time of border processing.
- The Case Manager will contact via email the CBP officer who entered the initial data into the Portal Intakes tab to request more information, and copy the program's assigned Federal Field Specialist (FFS) on the email.
- The FFS will reach out to the Case Management ORR HQ team as soon as possible if CBP does not provide additional information, or does not respond.
- The ORR HQ Case Management Team will reach out to national contacts at ICE/CBP for more information on any adult traveling with the child – even if the adult is not a parent.
- Once contact with another adult traveling with the child (parent or other person) is established through these lines of communication, the FFS and program Case Manager will continue dialogue with the identified adult to determine if further investigation in the home country of the child, with the help of Consulate staff, is necessary to find the parent or the primary caregiver of the child. The FFS and program Case Manager will work to reunify the child with the separated parent of the child or to communicate with the adult traveling with the child who could potentially sponsor the child.
- The FFS and program Case Manager will continue all ORR processes and efforts to safely release the child to a qualified sponsor through the established ORR policies and procedures for releasing a UAC.

RESPONSES FROM DIRECTOR JAMES MCHENRY, EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 10, 2019

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of James McHenry, Director of the Executive Office for Immigration Review at the Department of Justice, for a hearing on February 26, 2019, before the House Judiciary Committee entitled "Oversight of the Trump Administration's Family Separation Policy." We hope that this information is of assistance to the Committee.

Please do not hesitate to contact this office if we can be of additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

A handwritten signature in black ink, reading "Prim Escalona", is positioned above the typed name.

Prim F. Escalona
Principal Deputy Assistant Attorney General

Enclosure

cc: The Honorable Doug Collins
Ranking Member

Questions for the Record

James McHenry
Director of Executive Office for Immigration Review
Department of Justice

Before the
House Judiciary Committee

For a Hearing Entitled:
“Oversight of the Trump Administration’s Family Separation Policy”

February 26, 2019

QUESTIONS FOR THE RECORD FROM
REPRESENTATIVE VERONICA ESCOBAR

1. Does the Administration have memos outlining the use of the zero tolerance policy, and subsequent family separations, as a way to deter asylum seekers from coming to the United States? If so, please provide a copy of each memo and the name of the authors.

RESPONSE: The Department of Justice’s (Department) memorandum entitled “Zero Tolerance for Offenses Under 8 U.S.C. § 1325(a)” is available online at <https://www.justice.gov/opa/press-release/file/1049751/download>. A prosecution for violating 8 U.S.C. § 1325(a) under the Zero Tolerance Prosecution Initiative does not preclude an alien from applying for asylum if otherwise eligible.

**QUESTIONS FOR THE RECORD FROM
REPRESENTATIVE GREG STANTON**

1. How many children with disabilities were separated from their parents?

RESPONSE: The Department of Justice ("Department") has no operational or logistical role in either the care or processing of aliens for removal, regardless of whether they are adults or minors. Alien children without a parent or legal guardian available to provide care and physical custody are transferred by the Department of Homeland Security ("DHS") to the Department of Health and Human Services ("HHS") in accordance with the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008. Accordingly, the Department respectfully defers to DHS and HHS regarding questions related to personal characteristics of alien children transferred from DHS to HHS.

2. How many months old was the youngest baby separated from his or her parents?

RESPONSE: See response to Question 1. The Department respectfully defers to DHS and HHS regarding a response to this question.

