

January 16, 2017

The Honorable Kirstjen M. Nielsen  
Secretary  
U.S. Department of Homeland Security  
3801 Nebraska Avenue NW  
Washington, DC 20528

Dear Secretary Nielsen:

We, the undersigned organizations who serve or work on behalf of immigrants, refugees, and asylum seekers, write to express our profound opposition to the proposal currently under review to separate migrant families arriving or apprehended at our borders.<sup>1</sup> This proposed policy is fundamentally un-American, cruel, and breaches U.S. and international child welfare and refugee principles and laws. Family separation will only further traumatize those already fleeing harm, and will inhibit their ability to access a legal process to which they have a right. Moreover, family separation will not deter future others from seeking protection. Instead, it will only render them even more vulnerable on an already dangerous journey. We urge you to reverse course on any policy proposal that would seek to tear apart families or otherwise inflict trauma and harm.

Family unity is recognized as a fundamental human right, enshrined in international law.<sup>2</sup> Moreover, separating children from their parents is cruel, traumatizing all those involved,<sup>3</sup> and exposes children to toxic stress that can have lifelong consequences.<sup>4</sup> The American Academy of Pediatrics expressed serious concern over a similar proposal by your predecessor, calling the plan “harsh and counterproductive” and stating that authorities should “exercise caution to ensure that the emotional and physical stress children experience as they seek refuge in the United States is not exacerbated by the additional trauma of being separated from their siblings, parents or other relatives and caregivers.”<sup>5</sup>

As illustrated by a complaint recently filed with the Department of Homeland Security’s (DHS) oversight components, as well as recent media reports, separating family members at the border, including in numerous instances where a parent is subsequently referred for criminal prosecution, presents additional, unnecessary obstacles to meaningfully accessing the legal process. The practice of separating family

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<sup>1</sup> “Trump Administration Considers Separating Families to Combat Illegal Immigration,” *New York Times*, December 21, 2017. [https://www.nytimes.com/2017/12/21/us/trump-immigrant-families-separate.html?\\_r=0](https://www.nytimes.com/2017/12/21/us/trump-immigrant-families-separate.html?_r=0). “To curb illegal border crossings, Trump administration weighs new measures targeting families,” *Washington Post*, December 21, 2017. [https://www.washingtonpost.com/world/national-security/to-curb-illegal-border-crossings-trump-administration-weighs-new-measures-targeting-families/2017/12/21/19300dc2-e66c-11e7-9ec2-518810e7d44d\\_story.html?utm\\_term=.b453d1a71549](https://www.washingtonpost.com/world/national-security/to-curb-illegal-border-crossings-trump-administration-weighs-new-measures-targeting-families/2017/12/21/19300dc2-e66c-11e7-9ec2-518810e7d44d_story.html?utm_term=.b453d1a71549)

<sup>2</sup> Family unity as a protected right can be found in: Final Act of the 1951 U. N. Conference of Plenipotentiaries on the Status Of Refugees and Stateless Persons, Recommendation B.; U.N. International Covenant on Civil and Political Rights, art. 23, (March 23, 1976); U.N. Convention on the Rights of the Child, art. 9, (September 2, 1990); General Comment 6 to the Convention, “Treatment of Unaccompanied and Separated Children Outside their Country of Origin” (CRC 2005).

<sup>3</sup> For further discussion, see: Women’s Refugee Commission, Kids in Need of Defense, and Lutheran Immigration and Refugee Service: *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families*. March 2017. Pp. 12-13. <https://www.womensrefugeecommission.org/rights/gbv/resources/1450-betraying-family-values>. See also: American Immigration Council. *Divided by Detention: Asylum-Seeking Families’ Experiences of Separation*. August 2016. <https://www.americanimmigrationcouncil.org/research/divided-by-detention-asylum-seeking-families-experience-of-separation>

<sup>4</sup> Artiga, S. and Ubri, P, Kaiser Family Foundation, *Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health*, December 13, 2017, available at: <https://www.kff.org/report-section/living-in-an-immigrant-family-in-america-issue-brief/>.

<sup>5</sup> See “AAP Statement Opposing Separation of Mothers and Children at the Border.” March 4, 2017. Available at: <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/immigrantmotherschildrenseparation.aspx>. For further discussion and recommendations on the treatment of immigrant children, see also: Linton JM, Griffin M, Shapiro AJ, AAP COUNCIL ON COMMUNITY PEDIATRICS. Detention of Immigrant Children. *Pediatrics*. March 2017. Available at: <http://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf>

members at the border seriously impacts the ability to present their case for legal protection.<sup>6</sup> Parents or children may be uncomfortable or simply unable to articulate the details of an asylum claim that is in fact linked to the family member from whom they have been separated. Separation could also result in only one family member retaining important documents that help the family to establish identity or provide much needed evidence to support their claim. Currently, DHS components and the Office of Refugee Resettlement (ORR) lack the mechanisms to ensure not only that communication between separated family members is coordinated, but also to ensure that family members who have been separated can pursue their case together if they wish to do so. Cases where one family member is referred for criminal prosecution for illegal entry or illegal re-entry present not only additional hurdles to family reunification, but the DHS Office of Inspector General (OIG) has already identified the prosecution of asylum seekers as a practice that may violate U.S. obligations under international law.<sup>7</sup>

In addition, rendering thousands of children unaccompanied and sending them to ORR custody will unnecessarily overwhelm the system and cause a crisis in care. Children may ultimately languish in CBP custody for significant periods of time as they await transfer to ORR shelters that will now find themselves with a sudden and significant increase in children, including toddlers and babies, requiring care. In other words, family separation would not only traumatize families and create obstacles to protection, it will come at great financial cost and create chaos while overburdening current government systems.

Many of the families who are currently turning themselves in to U.S. border officials or presenting themselves at ports of entry are doing so because they feel they have no other choice for survival. Similar policies of detaining asylum-seeking families to deter their migration have already been found by a U.S. court to violate U.S. law.<sup>8</sup> Comprehensive research of DHS data has proven that even U.S. policies of deterrence will have little impact on migration from Northern Triangle countries, and in fact, spikes in regional violence have a causal effect in driving migration.<sup>9</sup> Indeed, evidence has shown that children and families fleeing Northern Triangle countries continue to seek asylum in other surrounding countries.<sup>10</sup>

Secretary Nielsen, we implore you to respect the principles of family unity and liberty in our immigration and border enforcement policies. Families should not be separated nor needlessly locked up in costly and

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<sup>6</sup> American Immigration Council, Women's Refugee Commission, et al. "The Separation of Family Members Apprehended by or Found Inadmissible while in U.S. Customs and Border Protection (CBP) Custody at the U.S.-Mexico Border." Complaint filed with DHS Office of Civil Rights and Civil Liberties (CRCL) and Office of Inspector General (OIG), December 11, 2017. Available at: <https://www.womensrefugeecommission.org/images/zdocs/Family-Separation-Complaint-FINAL-PUBLIC-12-11-17.pdf>. See also: "Trump moves to end 'catch and release', prosecuting parents and removing children who cross border," *Houston Chronicle*, November 25, 2017. Available at: <http://www.houstonchronicle.com/news/houston-texas/houston/article/Trump-moves-to-end-catch-and-release-12383666.php>.

<sup>7</sup> The 1951 Refugee Convention states: "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..." See: *Streamline: Measuring its Effect on Illegal Border Crossing*, DHS Office of the Inspector General, May 2015, pp. 16-17, available at: [https://www.oig.dhs.gov/assets/Mgmt/2015/OIG\\_15-95\\_May15.pdf](https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf). See also: *The Rise in Criminal Prosecutions of Asylum Seekers*, Human Rights First, July 2017, available at: <http://www.humanrightsfirst.org/sites/default/files/hrf-criminal-prosecution-of-asylum-seekers.pdf>.

<sup>8</sup> See *R.I.L.R. v Johnson*. Information available at: <https://www.aclu.org/cases/rilr-v-johnson>

<sup>9</sup> See Violence, Development, and Migration Waves: Evidence from Central American Child Migrant Apprehensions, CGD Working Paper 459. Washington, DC: Center for Global Development, available at: <https://www.cgdev.org/publication/violence-development-and-migration-waves-evidence-central-american-child-migrant> (Finding that in almost 180,000 cases of unaccompanied child migration from Northern Triangle from 2011 through 2016, U.S. policies, environmental and economic factors provided no reliable indicator for a child's migration. Instead they concluded violence was the single biggest indicator and that for every ten murders in a region, six additional children will migrate).

<sup>10</sup> See "They Are Refugees: An Increasing Number of People Are Fleeing Violence in the Northern Triangle," *Center for American Progress*, February 24, 2016. Available at: <https://www.americanprogress.org/issues/immigration/news/2016/02/24/131645/they-are-refugees-an-increasing-number-of-people-are-fleeing-violence-in-the-northern-triangle/>

inhumane family or adult detention facilities. The Department has long had alternatives available to both practices, including the recently terminated Family Case Management Program (FCMP), to mitigate flight risk and support compliance with immigration requirements and court proceedings.<sup>11</sup> Respecting the fundamental right to family unity and the right to seek safety without fearing punishment through detention or separation from one's children, parents, or other family members is not at odds with our laws and values but in fact a central component of those laws and values that this Administration has committed to uphold.

If you have any questions, please do not hesitate to reach out to Katharina Obser at the Women's Refugee Commission at [katharinao@wrcommission.org](mailto:katharinao@wrcommission.org) or Katie Shepherd at the American Immigration Council at [kshpherd@immcouncil.org](mailto:kshpherd@immcouncil.org) for more information.

Sincerely,

### **National Organizations**

African American Ministers In Action  
America's Voice  
American Civil Liberties Union  
American Friends Service Committee (AFSC)  
American Immigration Lawyers Association  
American-Arab Anti-Discrimination Committee (ADC)  
Americans for Immigrant Justice  
Amnesty International USA  
Appleseed  
Asian Pacific Institute on Gender-Based Violence  
ASISTA  
Asylum Seeker Advocacy Project (ASAP) at the Urban Justice Center  
Casa de Esperanza: National Latin@ Network for Healthy Families and Communities  
Catholic Legal Immigration Network, Inc.  
Center for American Progress  
Center for Constitutional Rights (CCR)  
Center for Gender & Refugee Studies  
Center for Justice and International Law (CEJIL)  
Center on Immigration and Child Welfare  
Center on Immigration at Cabrini University  
Church World Service  
Congregation of Our Lady of Charity of the Good Shepherd, US Provinces

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<sup>11</sup> "ICE Shuts Down Family Case Management Program," *The Atlantic*, June 9, 2017, available at: <https://www.theatlantic.com/news/archive/2017/06/ice-shuts-down-program-for-asylum-seekers/529887/>. See also: American Immigration Lawyers Association, Lutheran Immigration and Refugee Service, National Immigrant Justice Center, and Women's Refugee Commission. *The Real Alternatives to Family Detention*. Available at: <http://www.aila.org/infonet/the-real-alternatives-to-detention>

CREDO

Detention Watch Network

Farmworker Justice

First Focus

Franciscan Action Network

Free Migration Project

Futures Without Violence

Global Campaign to End Immigration Detention of Children

Grassroots Leadership

HIAS

Human Rights First

Human Rights Watch

Immigrant Justice Corps

Immigrant Legal Resource Center

International Detention Coalition (IDC)

International Rescue Committee

Jobs With Justice

Kids in Need of Defense

Latin America Working Group

Lutheran Immigration and Refugee Service

Maryknoll Office for Global Concerns

MomsRising

National Advocacy Center of the Sisters of the Good Shepherd

National Association of Social Workers (NASW)

National Center for Youth Law

National Council of Jewish Women

National Employment Law Project

National Immigrant Justice Center

National Immigration Law Center

National Network to End Domestic Violence

National Resource Center on Domestic Violence

Oxfam America

Partnership for America's Children

People For the American Way

PICO National Network

Save the Children

Southeast Asia Resource Action Center (SEARAC)

Southern Border Communities Coalition  
Southern Poverty Law Center  
Tahirih Justice Center  
The Advocates for Human Rights  
The Center for Victims of Torture  
The Children's Partnership  
The United Methodist Church - General Board of Church and Society  
U.S. Committee for Refugees and Immigrants  
Unitarian Universalist Service Committee  
Voto Latino  
Washington Office on Latin America  
We Belong Together  
Women's Refugee Commission  
Young Center for Immigrant Children's Rights

**State/Local Organizations**

African Services Committee  
Al Otro Lado  
Aldea - The People's Justice Center  
American Gateways  
Arizona Chapter, American Immigration Lawyers Association  
Atlas: DIY  
BorderLinks  
California Immigrant Policy Center  
Capital Area Immigrants' Rights Coalition  
Casa Mariposa Detention Visitation Program  
Catholic Charities of Southern New Mexico  
Center for the Human Rights of Children, Loyola University Chicago  
Central American Resource Center  
Coalition to Abolish Slavery & Trafficking  
Colibrí Center for Human Rights  
Empowerment Congress of Doña Ana County  
End Streamline Coalition  
Fuerza del Valle  
Healthy House Within a MATCH Organization

Her Justice  
Hope Border Institute  
Human Rights Initiative of North Texas  
Immigrant Legal Advocacy Project  
Interfaith Welcome Coalition  
Keep Tucson Together  
Kino Border Initiative  
La Union del Pueblo Entero  
Labor Justice Committee  
Las Cruces Christian Coalitian  
Las Cruces CIVIC  
Law Foundation of Silicon Valley  
Migrant Rights Collective  
NM CAFe  
Northern Illinois Justice for Our Neighbors  
Pangea Legal Services  
Pantsuit Austin  
Pantsuit Republic  
Pennsylvania Council of Churches  
Pennsylvania Immigration and Citizenship Coalition  
Pennsylvania Immigration Resource Center  
Pima County Interfaith Civic Education Organization (PCICEO)  
Public Counsel  
Refugee and Immigrant Center for Education and Legal Services (RAICES)  
Roman Catholic Diocese of Las Cruces  
Shalom Mennonite Fellowship  
Shut Down Berks Coalition  
Southside Worker Center  
Southwest Environmental Center  
St. Mark's Presbyterian Church  
Su Casa Catholic Worker  
The Florence Immigrant and Refugee Rights Project  
The Resurrection Project  
Tucson Samaritans

Tulsa Immigrant Resource Network

Unitarian Universalist Legislative Advocacy Network

USC International Human Rights Clinic

YWCA Greater Austin