

January 16, 2018

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.¹ 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.² Moreover, separating children from their parents is cruel, traumatizing all those involved,³ and exposes children to toxic stress that can have lifelong consequences.⁴ 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.”⁵

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

¹ “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. “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

² 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).

³ 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>

⁴ 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/>.

⁵ 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.⁶ 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.⁷

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.⁸ 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.⁹ Indeed, evidence has shown that children and families fleeing Northern Triangle countries continue to seek asylum in other surrounding countries.¹⁰

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

⁶ 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>.

⁷ 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. 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>.

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

⁹ 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).

¹⁰ 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.¹¹ 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 or Katie Shepherd at the American Immigration Council at 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

¹¹ "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