

FAMILY SEPARATION

Two Years Later, the
Crisis Continues

KIND
KIDS IN NEED OF DEFENSE

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On May 14, 2018, 11-year-old Nancy watched in horror as immigration officials in Texas forcefully took her father from her at the U.S. border. She has not seen him since. Nancy has no one else – her father was her only caretaker. The terror, trauma, fear, and confusion that resulted from the forced separation remains with Nancy to this day. Nancy and her father came to the United States seeking protection from gang violence in her home country. Instead of finding refuge, Nancy experienced the worst event of any child's life – the loss of a parent.

By the time the Trump Administration had abandoned its “zero tolerance” policy that cruelly separated immigrant and refugee parents and children at the U.S. border in June 2018, about **2,800** children—including more than **1,000** children under the age of 10—had been forcibly taken from their parents.^[1] The policy, which began in May 2018 and was the subject of enormous public outcry,^[2] required that any adult crossing the southern border without authorization—even if they were asking for protection—be turned over for prosecution. In the chaotic implementation of the policy, immigration enforcement officials at the border often used coercion, lies, and harassment to tear children away from their parents. Many of the parents were summarily deported while their children remained in the United States.

Shortly after the administration ended its zero tolerance policy, a federal court ruled that many of the separations had been unconstitutional and ordered the government to halt the practice except in limited circumstances. The court also ordered the government to reunify the families it had separated. That would prove impossible due to the administration's careless and irresponsible implementation of the policy. It later emerged that thousands more separations had taken place even before the zero tolerance policy was implemented.^[3]

Now, years later, many of these families have yet to be reunified. Some may never be.

Thousands of children are still navigating their legal cases for protection made only more difficult by the trauma and separations they experienced, without their parents by their side.



Alarming, family separation has continued since the end of the zero tolerance policy in significant numbers due to a lack of standards to guide when separations should occur or oversight to ensure appropriate child welfare standards are being met, as well as other more recent harsh deterrence policies that are forcing families apart.

KIND has assisted more than **1,100** individuals affected by family separation in the United States, as well as in the countries to which separated parents have been wrongfully deported. KIND has provided legal screenings and representation, facilitated court-ordered reunifications, advocated for the return to the United States of parents deported without their children, connected children and families with trauma-informed social services, and spearheaded the effort to implement safeguards to prevent harmful and unnecessary separations in the future. Together with coalition partners, KIND's efforts helped reunite hundreds of children and families and enabled them to begin the difficult process of healing from trauma and pursuing their immigration cases. For families reunified in Central America, KIND partners have provided psychosocial support and ongoing reintegration assistance. Despite these efforts, however, it is tragically clear that far more remains to be done.

This report details KIND's work on behalf of separated children since the end of the zero tolerance policy and highlights the gaps that remain in preventing wrongful separations in the immigration system. Absent concrete actions to limit family separations and ensure accountability, these gaps will tragically persist and children will continue to be ripped from their parents without assurance of reunification. This report also provides recommendations to help ensure that life-altering decisions about when separations should occur are made by professionals with expertise in child welfare, rather than law enforcement, and that the best interests of children are central to all decisions made at the border. This will help ensure that no family is separated in the name of deterrence and that the fair and appropriate treatment of all children at the border is not an aspiration, but a reality.

More than 5,400 Children Have Been Separated from Their Parents



Ending the Zero Tolerance Policy

In June 2018, President Trump issued an executive order formally abandoning the zero tolerance policy and purporting to maintain family unity through increased use of family detention.^[4] However, the executive order did not provide any guidance about how to reunify families who were forcibly separated under the policy. Similarly, it lacked guidance about the circumstances in which family separations might occur in the future, apart from stating that parents and children would not be detained together if there were concerns that a parent posed a risk to the child's welfare. On June 26, 2018, a federal court—in the case of *Ms. L v. ICE*—ordered the government to halt separations of migrant parents and their minor children absent a determination that a parent is unfit or presents a danger to his or her child, has a criminal history, or has a communicable disease.^[5] The court also ordered the government to immediately reunify separated families.

As became painfully clear during the reunification process, the federal government had failed to systematically track children and their parents and lacked effective mechanisms to quickly reunify them. Nongovernmental organizations, including KIND, stepped in to fill the gap and devoted critical resources to scanning through client databases and spreadsheets to try to ensure no parents or children were overlooked in the process. The Department of Homeland Security (DHS) possessed data on the parents, and the Office of Refugee Resettlement (ORR), within the Department of Health and Human Services (HHS), maintained information on the children in its custody. Yet the two agencies lacked a central database to connect this vital data to the families the government had torn apart.^[6] DHS, shockingly, had not tracked which parents had been separated from a child. And, when they referred separated children to ORR, DHS did not inform ORR which children had been separated. After separation, agency employees had to manually comb through thousands of records to assess whether a child in ORR custody had been separated from a parent. The process^[7] was rife with mistakes and confusion. In one case, KIND assisted a mother who had been separated from her children, including a 6-month-old. ORR employees initially handed over the wrong baby to her before correcting their mistake.

Ongoing litigation and government oversight investigations have documented shocking failures by the government to carry out even basic planning for the implementation of the zero tolerance policy, which further compounded the cruelty of the design. Those failures included the absence of any reliable systems for identifying, tracking, and reunifying children and parents who were torn from each other.^[8]

KIND met Brianna in the chaos of June 2018 at the Port Isabel Detention facility in South Texas. Brianna was desperate—she had been separated from her 5-year-old son and did not know when she would see him again.

Brianna fled her home country seeking safety after her partner physically abused and threatened to kill her if she did not participate in violent political protests. KIND placed Brianna's case with a pro bono attorney after she was released and reunified with her son later that summer. Following months of preparation and planning, including hours of testimony in court, an immigration judge granted Brianna and her son asylum. They can now move forward with their lives and begin to heal from the past traumas they have endured, including the trauma inflicted upon them at the hands of U.S. government officials.

KIND sent emergency teams of lawyers and paralegals to assist separated parents held at the Port Isabel Processing Center (PIDC) in Texas in the summer of 2018. Parents were desperate and devastated.

Here is what they told KIND:

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They told me my child would be there when I returned from court. When I got back my child was gone and they wouldn't tell me for weeks where they'd taken her.

Mother of 8-year-old child, from El Salvador

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I don't know how he's doing; I haven't spoken to him, I don't know where he is. We're here because we watched our family get murdered. He has bad separation anxiety – it was bad even before we left because, imagine, he watched his family get murdered. He never wants to leave me and gets really bad if we're apart. Then we got here and they took him. I can't imagine what he's like, I just want to take his suffering for him. He can't be apart from me, he's suffering, I know it.

Mother of a 6-year-old boy

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They told us they were only taking the children while we went to court. My daughter is 6 years old, so when they came for her in the middle of the night, she didn't want to go. I promised her it was only for a little while and that we would be together again soon. That was the last time I saw her. When I was finally able to speak with my daughter, three weeks later, she didn't want to speak to me. She is resentful towards me. She thinks I lied to her. I can't hold her and explain to her that I didn't know this was going to happen.

Mother from Honduras

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The officer tore my 6-year-old daughter from my arms in the middle of the night.

Father from Guatemala

The Fight for Children Whose Parents Were Deported Without Them

Although hundreds of parents and children were reunified through the court order, the process came too late for **471** parents who had already been deported from the United States without their children.^[9] In response, the Ms. L court ordered the formation of a Steering Committee, of which KIND is a part, to locate and assist these parents who were deported to their countries of origin without their children. In some cases, parents who feared for their lives withdrew their asylum claims and agreed to deportation after being told that this was the only way to get their children back.



A family assisted by KIND reunited in the Los Angeles International Airport after the court in Ms. L ordered the father's return.

In September 2019, after advocates, including KIND, brought these cases to the Ms. L court's attention, the court eventually ordered the return of **11** of the 471 separated parents who were wrongfully removed. The court found significant defects in the process those parents had gone through prior to their deportation, including cases in which parents were compelled to give up their asylum cases after being told it was the only way they would see their children again. In January 2020, **nine** of the 11 parents returned to the U.S. and were reunited with their children.^[10]

Even today, hundreds of children remain separated from their parents, who were removed to their countries of origin.

KIND met with a single mother who fled to the United States from Guatemala in May 2018 with her surviving family members after her adult son and a grandchild were murdered and one of her daughters and another grandchild were shot and injured. The mother presented at the El Paso port of entry to seek asylum and was separated from her 17-year-old daughter and an adult daughter and her children. The mother was confused and disoriented after the separation, and KIND identified serious due process violations during her detention. She returned to the United States twice after her original deportation, fearing for her life and desperate to reach her daughters and was deported for a third time in October 2019 and forced into hiding. In April 2020, KIND was able to secure counsel for both the mother in Guatemala and her daughters and grandchildren in the U.S.

They dream of one day reunifying safely in the United States.

Separations Prior to the Zero Tolerance Policy

While advocates worked to reunify families separated under the zero tolerance policy, increasing reports by advocates,^[11] the media,^[12] and federal oversight and accountability agencies began to reveal that the government's use of family separation was more widespread than it had previously acknowledged. In October 2018, the Government Accountability Office (GAO) reported that the administration began a secret pilot program to separate children and their parents arriving at the border in July 2017.^[13] In January 2019, the Department of Health and Human Services Office of Inspector General issued a separate report finding that thousands of separations may have occurred before the announcement of the zero tolerance policy.^[14] Informed by these reports, and upon advocacy by the American Civil Liberties Union (ACLU) as counsel for the plaintiffs and evidence provided by its partners, including KIND, the court in *Ms. L* ordered a full accounting of these previously unknown separations in March 2019. The court broadened the scope of the case to include families separated from the beginning of the pilot program in July 2017 through the date of the court's June 2018 order. Seven months later—in October 2019—the administration provided a total count of the families that it had not previously revealed, stretching back to July 2017; the number of additional children that had been separated from their parents totaled **1,556**.

Given that the government only began to produce data about its pilot separations more than two years after many of these incidents occurred, it has been extremely difficult to locate and contact the separated families, many of whom include parents deported without their children and without the information needed to reunify. The Steering Committee appointed by the court, comprising the Paul, Weiss law firm, KIND, the Women's Refugee Commission, and Justice in Motion has located over **400** of the families as of May 2020, while nearly **600** could not be reached with the contact information the government provided.^[15] Approximately 70 percent of these unreachable parents are believed to have been deported without their children. Covid-19 travel restrictions have halted searches to find these parents in their communities.^[16]

KIND continues to identify and evaluate cases of asylum-seeking parents who were separated as far back as July 2017. Many parents were coerced by U.S. government officials into accepting deportation or misled about the asylum process, separation, or reunification, among other factors. Since June 2019, KIND has worked with over **160** deported parents separated from their children prior to the zero tolerance policy, the majority of whom are still seeking reunification with their children, now after nearly three years of separation in some cases. KIND continues to work to facilitate family reunification, to assist deported parents seeking return to the United States, to support children and families post-reunification, and to identify and advocate for local, regional, and international protection solutions for families in need.



"Laura" and her two boys, victims of the pilot phase of family separation, were separated for nearly two years. With KIND's assistance, they were reunited.

KIND worked with a mother from El Salvador who was separated from her 12-year-old daughter upon arrival in the U.S. in September 2017, fleeing from a gang member who wanted her daughter to become a gang girlfriend, threatening to kill them both when the mother tried to protect her child. The mother begged the immigration judge to grant her bond so that she could reunify with her daughter, but the judge told her that the only way to reunify would be for the mother to accept deportation. Devastated, the mother agreed to be deported in order to get her daughter back. Despite assurances that they would be returned together, ICE deported her several weeks later—without her child. The child's ORR caseworker then pressured the mother to find her daughter a sponsor in the United States. Fearing for her child's life, the mother eventually found a family friend to take the child, who spent eight months in custody, and is still struggling to find a stable sponsor due to her mother's removal.

KIND secured legal counsel for the mother to pursue her reunification claim to be with her daughter in the United States.

Post Zero-Tolerance: KIND's Ongoing Work with Separated Children

While public outrage about family separation diminished at the close of 2018—after hundreds of families were reunited—the underlying structures within the U.S. immigration system and the limitations of the court order allowed a new crisis to more quietly unfold in 2019. **In the spring of 2019, KIND attorneys saw an alarming increase in children separated from their parents at the border and placed in ORR custody. This time, the children were even younger than the children seen during the zero tolerance policy—in many cases toddlers and pre-verbal children.** Advocates working with these children had to navigate a labyrinth of government officials and contacts to find even basic information about the child's background, the reason that the child had been separated from the parent, and the location of the parent in government custody. Frequently, the parents were hundreds or thousands of miles away, many of them in remote Immigration and Customs Enforcement (ICE) facilities in the southern U.S. that were not adequately served by legal service providers.

Through KIND's work with these children, it became clear that U.S. Customs and Border Protection (CBP) officials had adopted a disturbing interpretation of some of the more ambiguous terms of the *Ms. L* court's order that said parents could be separated from their children in various circumstances, including: whenever the parent had any indicia of prior criminal history or communicable disease; when officials doubted the relationship between the parent and child; when CBP alleged that the parent and child's identity documents were false; or when CBP officials, who have little to no child welfare training, perceived a parent to be unfit to care for their child. These broad bases for discretion have no grounding in domestic child welfare standards. In one reported case, a child was apparently separated from a parent because the baby had a full diaper.^[17] In a KIND case, three girls fleeing violence were separated from their father because he was HIV-positive.^[18] In another case, a father's decade-old forgery conviction led to his forcible separation from his 11-year-old daughter, without any indication that this charge posed a threat to the child's safety. After she was separated from her father, the child was placed in a CBP holding cell with unknown adults and forced to sleep on the floor for over ten days.

KIND has also served children who have been separated from their parents because CBP did not consider legally recognized documents granting custody to be valid, or because of language issues. These situations have also arisen in cases involving legal guardians responsible for the custody and care of the child in their country of origin or who are the child's legal parent under the color of law despite the fact that immigration law considers legal guardians to have the same rights as parents in this regard.^[19]

In total, more than 1,150 children have been forcibly separated from their parents since the formal end of the zero tolerance policy, despite the court's injunction in June 2018. More than 200 were under the age of five.^[20] CBP officials with little to no training in evaluating the best interests of children are making these life-altering decisions that are not subject to review or challenge. These rapid determinations result in forceful separations and the quick shuttling of children to ORR facilities frequently hundreds of miles away, while parents are sent to ICE detention facilities.

In 2019, KIND worked with more than 40 children in detention who had been separated from their parent after the June 26, 2018 injunction. The average age of these clients was five years old. Only four children were over the age of ten; sixteen children were under the age of five. The youngest child was only four months old when he was separated from his mother and six months old when a KIND attorney represented him in immigration court. These cases are complex and require close collaboration between KIND's legal services and international programs. KIND assisted several children who sought to reunify and jointly repatriate with their parent.

Throughout 2019, KIND supported the ACLU's efforts to halt these ongoing separations. KIND submitted a declaration to the court and advised the ACLU in coordination with other partner organizations. However, in January 2020, the court signaled its reluctance to manage the government's determinations at the border,^[21] finding that agencies may continue to separate parents from their children based on any criminal history—including minor and nonviolent crimes, previous unlawful reentry, or often uncorroborated gang allegations.^[22] The court found that while the government had acknowledged some errors, it was largely in compliance with the court's earlier order. As a result, more than 1,000 separations that occurred subsequent to the court's original order were deemed permissible, thereby excluding hundreds of parents and their children from the court's 2018 ruling that protected the right to family unity.

In one case, a 6-year-old boy was separated from his father for several months because CBP doubted their relationship. Unable to speak Spanish and understand when asked to verify his relationship to his son, the father was accused of fraud; his child taken away. Father and son were sent to facilities thousands of miles from each other. For months the government did not acknowledge the separation. Only after extensive advocacy and a DNA test that proved the relationship were the father and child finally reunited.

KIND represented a 3-year-old who was sexually assaulted while in ORR custody after she and her father were separated because his name was not on her birth certificate. The child was severely traumatized by the separation and the abuse. Working with the father's attorneys, KIND fought government delays to obtain a DNA test and coordinate joint repatriation to their home country. However, the government swiftly deported the father, causing the toddler to travel by herself. KIND's partners continue to provide the child with reintegration services and psychosocial support.

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I was not told where I was going, where my dad was. I didn't know if I could talk to my mom. I'm really scared of the police and what they will do to me again.

6-year-old child separated from his father

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I will die if I go back, but at least I will die with my son.

Father separated from his 5-year-old son

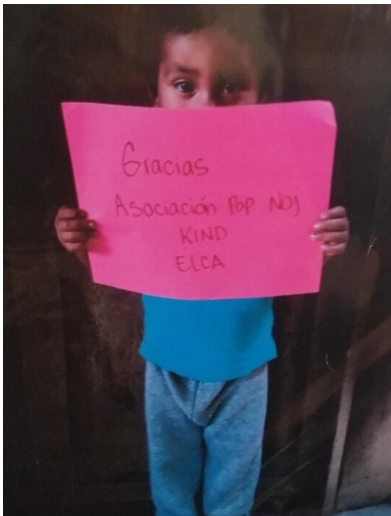


Photo credit:
Asociación Pop Noj

KIND routinely encounters cases in which neither the parent nor child were told why they were being separated or given any opportunity to challenge the separation. In some cases, parents continue to not know where their children are for days or weeks after being torn from them. Communication problems persist, with children frequently having great difficulty reaching their parents by phone in detention facilities.

The structural problems and deficiencies made clear during the zero tolerance policy largely endure and continue to harm children and families. The government's ongoing failure to adequately track family relationships in one system; to properly share information between agencies and with legal service providers, parents, and children; and to provide an effective mechanism for parents or children to challenge separations make reunification of families that have been separated ever more difficult to achieve.^[23]

These problems are amplified by the absence of any meaningful standards to guide the decisions of border officials making these life-altering decisions. Once a decision to separate is made, it is extremely difficult to undo, and in KIND's experience, requires intensive advocacy by both an attorney for the child and an attorney for the parent, even when both parent and child only want to repatriate to their home country together. With so many separated parents detained in remote facilities with little to no access to free legal service providers, it is only the exceptional case where such advocacy can be achieved on both ends.

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They lied to me. They told me that all I had to do was sign this form and I would get my child back...I can't sleep at night, I have constant nightmares about what is happening to my little girl.

Father separated from his 2-year-old daughter

Family Separation, the Migrant Protection Protocols, and Public Health Expulsions

At the end of 2019, KIND staff began to notice a downward trend in the number of newly separated children entering ORR shelters. Instead of separating children and parents and sending them to different facilities on U.S. soil, a new attack on the ability of families to access protections in the U.S. was resulting from the Migrant Protection Protocols (MPP), also known as the “Remain in Mexico” policy. Under MPP, the U.S. sends certain asylum seekers to Mexico to wait for proceedings in their U.S. immigration cases. This policy, which has returned more than **65,000** asylum seekers to Mexico to date, has forced a new form of family separations. ^[24]

Families in MPP are returned to dangerous border towns in Mexico, where they must wait for weeks or months for court hearings in tent courts along the U.S. border, often without access to shelter or a means of supporting themselves. These families are uniquely vulnerable to exploitation and violence in border towns where criminal organizations operate with impunity. Since the policy began, there have been more than **1,114** reported violent assaults, kidnappings, and even murders of asylum seekers returned to Mexico through MPP. ^[25]

Due to these conditions, hundreds of children placed in the MPP program have been forced to make the decision to separate from their parents and guardians and come to the U.S. to seek protection alone. HHS has reported that from October 1, 2019 to January 13, 2020, it received referrals of more than **350** unaccompanied children in the U.S. whose families remained in Mexico. KIND has served more than **90** children impacted by MPP, including children who came to the U.S. alone after a parent’s disappearance or kidnapping. In some cases, these children have been ordered removed to their countries of origin in Central America despite the fact that their parents remain in Mexico. These family separations—the consequence of the government’s cruel efforts to deter parents and children from seeking asylum—not only cause serious trauma to children but also severely undermine their ability to access lifesaving protections.

Daniel's Story

Daniel, 16, from Honduras, and his mother presented themselves at the U.S.-Mexico border in August 2019 to seek protection in the U.S. and were sent to Mexico to wait for their asylum cases under MPP. They had nowhere to go and were forced to remain in the dangerous border area, where they were terrified of the rampant violence. They found a church in the area that gave them a place to stay. One day during a service at the church, armed, masked men came in and forced everyone into waiting vehicles, including Daniel’s mother. Daniel managed to hide from the kidnappers. He did not come out until the next day. His mother had disappeared. Not knowing what else to do, he returned to the border and turned himself in to CBP. He was transferred to an ORR children’s shelter. Early one morning he was told to get ready because he had an appointment with immigration in Miami. Daniel asked if he was going to be deported to Honduras and was told no. It was only when officials asked him to get on the plane did they tell him that he was being deported to Honduras. His family in Honduras did not know he was coming until he was able to call his sister from the Honduran reception center after his removal. Daniel’s mother calls the family every now and then from different numbers. The calls are very short and she never says where she is; she only asks how Daniel and the rest of the family are. Daniels fears for himself and his mother.

The Trump Administration's March 2020 closure of the U.S.-Mexico border to asylum seekers and unaccompanied children in response to the Covid-19 pandemic is the most recent attempt to curtail access to children seeking safe haven in the U.S. and has led to the expulsion of more than **2,000** children. These expulsions violate the law^[26] and force migrating children into perilous conditions along the border or back to their countries of origin, to which many are returned without any screening for protection needs, counter to special protections in the Trafficking Victims Protection Reauthorization Act enacted to facilitate due process and prevent the return of unaccompanied children to harm, including human trafficking.

In addition, children are being sent back into Mexico by the U.S. government with adults they do not know who have not been screened by U.S. officials to determine if they are a potential risk to the child for abuse, trafficking, or exploitation. This complete disregard of these children's safety flies in the face of the purported reasons the administration separates children from their parents – supposed safety concerns for the child. Expelling children not only exposes them to grave danger, but in some cases keeps them from safety, including from reuniting with parents in the United States.

The pandemic has also accelerated ICE's use of "binary choice," a cruel method of requiring parents to choose between keeping their family intact in U.S. immigration detention or allowing a child to be released into ORR custody to be placed with a sponsor. Recent reports suggest that ICE began circulating forms to parents housed in its family detention facilities in May 2020 demanding they waive their children's legal rights against indefinite detention or else have the family separated and the children treated as though they were unaccompanied.^[27] As evidence of widespread outbreaks of Covid-19 in ICE facilities continues to grow, many parents are facing a Sophie's choice: keep their children with them or send them away to avoid the risk of illness or death in custody. ICE reportedly plans to use the signed forms as proof that parents are waiving their children's right to be released from unlicensed detention facilities for prolonged periods of time.

Conclusion






Two years after the zero tolerance policy, and despite various lawsuits, the court order in *Ms. L v. ICE*, oversight reports, and congressional hearings, there continues to be very little oversight over the agencies executing family separations, which carry pervasive and devastating consequences for the families they tear apart. In working with hundreds of victims of family separation over the last three years, KIND has seen firsthand the disastrous impact of these separations on children and families. The psychological and medical trauma to children and their parents cannot be overstated. It is critically important that the U.S. government take steps to stop future separations from occurring and meaningfully address the needs of families still suffering from this harmful practice.









Recommendations

Family separation imposes catastrophic and long-lasting consequences on the health and well-being of children. It also greatly impacts their ability to fully and fairly make their cases for legal protection. The government continues to separate families, however, with few safeguards to guarantee that it is done only sparingly and when truly necessary to prevent a clear danger to a child. The zero tolerance policy and the thousands of separations that occurred before, during, and after its implementation underscore the need for critical reforms to ensure the best interests and appropriate treatment of all children arriving at the border. Tragically, this is not happening, and children continue to be forcibly taken from their parents at the U.S. border.

KIND calls for the immediate implementation of the following recommendations:

-  DHS should consider and prioritize the best interests of the child in all processing, custody, removal, and repatriation decisions.
-  DHS should hire licensed child welfare professionals to oversee the care and screening of all children in CBP custody and facilities. Child welfare professionals should be charged with deciding whether a separation is necessary for child safety. A recent federal funding law directed the agency to hire child welfare professionals at all points along the southwest border. DHS must swiftly comply with this directive, and Congress should conduct oversight to ensure it is achieved.
-  DHS should immediately halt all parent-child and guardian-child separations. In the exceptional case where separation may be warranted due to human trafficking or other child welfare concerns, a child welfare professional should conduct an assessment before the separation occurs and recommend separation only when warranted by specific criteria and approved by supervisory review. The assessment should be provided in writing to the parent and a copy maintained in their detention file. A copy of the assessment should also be uploaded to the unaccompanied child portal and made accessible to legal service providers assisting the child.
-  In the exceptional case where a separation must occur due to concerns about the child's well-being, DHS should provide children and parents or guardians with clear information about the basis for separation, in writing, information about how to reach each other, as well as an accessible, immediate, and independent process by which they can challenge the separation, and access to government records including adverse records regarding the parent or legal guardian. When a determination is made that the parent provides no safety threat to the child, the parent should be prioritized for release from detention.
-  In cases of separation based on concerns about the validity of the relationship between the adult and child, DHS should offer, but not require, rapid DNA testing to any adult and child claiming a biological relationship. In cases of claimed non-biological relationship, child welfare professionals must assess the validity of the relationship while keeping the best interests of the child at the forefront of the investigation.

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- DHS and ORR should upgrade database systems and create robust mechanisms to track and share information about any and all separations of children from parents, legal guardians, and other family members, including the reasons for any such separations.
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- DHS and ORR should facilitate routine (at a minimum, weekly) video communication between separated parents and children, as well as access to legal counsel for each affected parent and child. DHS and ORR should facilitate in-person visitation for each parent and child when the separation lasts for more than 30 days, which should occur in only the most extreme circumstances. DHS and ORR should share information with legal counsel necessary to effectuate the representation of each child and parent.
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- DHS should work with ORR to swiftly reunify an adult and child after the reason for an initial separation—such as an illness or condition that rendered the parent temporarily unfit or unavailable—is resolved. The child should be provided an opportunity to consult with his or her attorney before the reunification occurs.
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- DHS and ORR should develop streamlined and expedited processes to reunify children and their parents or guardians when the reasons for the separation have been successfully challenged or overcome. The best interest of the child should remain central to all steps in the reunification, with safe and appropriate travel provided to the child and adequate opportunities for them to speak to their parent and legal service provider about any concerns. When a parent and child decide to jointly repatriate to their country of origin, DHS and ORR must ensure that the parent and child are able to reunite in the United States and make the trip back together. Adequate notice of travel or movement of the child should be provided to legal service providers assisting the child and parent, so that arrangements can be made for the safe reception of the family in the country of origin.
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- DHS should immediately end the practice of requiring parents to choose between keeping their family together or allowing the child to be released separately into ORR custody. If a family is detained together, they should be detained for a maximum of 20 days; otherwise, DHS must place the family in an alternative to detention program.
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- DHS should immediately stop placing children in the Migrant Protection Protocols and expelling unaccompanied children under Title 42. Expulsions violate protections for unaccompanied children under the Trafficking Victims Protection Reauthorization Act, and expose children to grave harm, including human trafficking.

Endnotes

- [1] OFFICE OF THE INSPECTOR GENERAL U.S. DEP'T OF HEALTH AND HUMAN SERVICES, OEI-BL-18-00510, Communication and Management Challenges Impeded HHS's Response to the Zero-Tolerance Policy 8 (Mar. 2020) (hereinafter HHS OIG REPORT MARCH 2020) <https://oig.hhs.gov/oei/reports/oei-BL-18-00510.pdf>; see also ACLU, *Family Separation: By the Numbers*, ACLU, <https://www.aclu.org/issues/immigrants-rights/immigrants-rights-and-detention/family-separation>.
- [2] See Joint Status Report, at 9, *Ms. L. v. U.S. Immigration & Customs Enf't*, No. 18-cv-00428-DMS-MDD (S.D. Cal. Dec. 12, 2018); see also OFFICE OF THE INSPECTOR GENERAL U.S. DEP'T OF HEALTH & HUMAN SERVS., OEI-BL-18-00511, SEPARATED CHILDREN PLACED IN OFFICE OF REFUGEE RESETTLEMENT CARE 11 (Jan. 17, 2019) (hereinafter HHS OIG REPORT JANUARY 2019) <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf>; OFFICE OF THE INSPECTOR GENERAL U.S. DEP'T OF HEALTH AND HUMAN SERVICES, OEI-BL-18-00510, Communication and Management Challenges Impeded HHS's Response to the Zero-Tolerance Policy 11 (Mar. 2020) (hereinafter HHS OIG REPORT MARCH 2020) <https://oig.hhs.gov/oei/reports/oei-BL-18-00510.pdf>.
- [3] HHS OIG REPORT JANUARY 2019 at 1.
- [4] See Exec. Order No. 13841 (June 20, 2018), 83 Fed. Reg. 29,435 (June 25, 2018); see also U.S. Gov't Accountability Off., GAO-19-163, Unaccompanied Children: Agency Efforts To Reunify Children Separated From Parents At The Border 2 (Oct. 9, 2018) <https://www.gao.gov/assets/700/694918.pdf>.
- [5] *Ms. L. v. U.S. Immigration and Customs Enforcement ("ICE")*, 310 F. Supp. 3d 1133 (2018).
- [6] See OFFICE OF THE INSPECTOR GENERAL U.S. DEP'T OF HOMELAND SECURITY, OIG-20-06, DHS Lacked Technology Needed to Successfully Account for Separated Migrant 8 (Nov. 06, 2019) (hereinafter DHS OIG REPORT NOVEMBER 2019) <https://www.oig.dhs.gov/sites/default/files/assets/2019-11/OIG-20-06-Nov19.pdf>; see also HHS OIG REPORT MARCH 2020 at 22.
- [7] DHS OIG REPORT NOVEMBER 2019 at 13.
- [8] See OFFICE OF THE INSPECTOR GENERAL U.S. DEP'T OF HOMELAND SECURITY, OIG-20-06, DHS Lacked Technology Needed to Successfully Account for Separated Migrant 21-27 (Nov. 06, 2019) (hereafter DHS OIG REPORT NOVEMBER 2019) <https://www.oig.dhs.gov/sites/default/files/assets/2019-11/OIG-20-06-Nov19.pdf>; see also HHS OIG REPORT JANUARY 2019 at 13; HHS OIG REPORT 2020 at 22.
- [9] See Priscilla Alvarez, *471 parents were deported from US without their children during family separations*, CNN (Mar. 7, 2019), <https://www.cnn.com/2019/03/06/politics/family-separation-update-immigration-border/index.html>.
- [10] See Camilo Montoya-Galvez, *More parents deported without their kids may be able to return to the U.S. - if advocates can find them*, CBS News (Feb. 18, 2020), <https://www.cbsnews.com/news/deported-parents-separated-children-return-us-advocates/>.
- [11] KIND was the first to sound the alarm on family separations. See KIDS IN NEED OF DEFENSE, LUTHERAN IMMIGRATION & REFUGEE SERVICE & WOMEN'S REFUGEE COMM'N, BETRAYING FAMILY VALUES: HOW IMMIGRATION POLICY AT THE UNITED STATES BORDER IS SEPARATING FAMILIES (2017) https://supportkind.org/wp-content/uploads/2017/03/BetrayingFamilyValues_Feb2017.pdf.
- [12] Lomi Kriel, *Trump moves to end 'catch and release,' prosecuting parents and removing children who cross the border*, Houston Chron.(Nov. 25, 2017), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Trump-moves-to-end-catch-and-release-12383666.php>.
- [13] See U.S. Gov't Accountability Off., GAO-19-163, Unaccompanied Children: Agency Efforts To Reunify Children Separated From Parents At The Border at 14 (Oct. 9, 2018) www.gao.gov/assets/700/694918.pdf.
- [14] See HHS OIG REPORT JANUARY 2019 at 11.
- [15] See Joint Status Report, *Ms. L. v. U.S. Immigration & Customs Enf't ("ICE")*, No. 18-cv-00428-DMS-MDD (S.D. Cal. May 27, 2020) (of the remaining 500 children, the government provided incomplete information for over 100, and disputes class inclusion of the other 400).

- [16] The Steering Committee is still trying to contact families believed to be in the U.S. and in Central America, in order to confirm that they are in touch with (or reunited with) their children, and to screen for legal or protection needs. Families and advocates may call the following numbers to reach the Steering Committee: United States: 1-888-582-2853; Honduras: 800 2791 9210; Guatemala: 2375 0592; El Salvador: 2136 8300; Mexico: 800 269 1316; Other: +1 646-478-1535. See also Kids in Needs of Defense, Steering Committee in National Lawsuit Representing Separated Migrant Families Seeks Help in Locating Additional Separated Parents and Children, KIND (Mar. 3, 2020), <https://supportkind.org/press-releases/steering-committee-in-national-lawsuit-representing-separated-migrant-families-seeks-help-in-locating-additional-separated-parents-and-children/>.
- [17] See Maria Sacchetti, ACLU: U.S. has taken nearly 1,000 child migrants from their parents since judge ordered stop to border separations, Washington Post (July 30, 2019), https://www.washingtonpost.com/immigration/aclu-us-has-taken-nearly-1000-child-migrants-from-their-parents-since-judge-ordered-stop-to-border-separations/2019/07/30/bde452d8-b2d5-11e9-8949-5f36ff92706e_story.html.
- [18] See Beth Fertig, *Three Young Girls Were Separated at the Border from a Father with HIV*, WNYC, New York Public Radio (Sept. 3, 2019), <https://www.wnyc.org/story/three-young-girls-were-separated-border-father-hiv/>.
- [19] See 6 U.S.C. § 279(g) (2020); 8 U.S.C. § 1232 (2020).
- [20] Mot. to Enforce Prelim. Injun., *Ms. L. v. U.S. Immigration & Customs Enf't ("ICE")*, No. 18-cv-0428-DMS-MDD, (S.D. Cal. July 30, 2019).
- [21] Order, *Ms. L. v. United States Immigration & Customs Enf't ("ICE")*, 415 F. Supp. 3d 980, 998 (S.D. Cal. 2020).
- [22] *Id.*
- [23] See HHS OIG REPORT MARCH 2020 at 27-28; see also DHS OIG REPORT NOVEMBER 2019 at 20.
- [24] See Transactional Records Access Clearinghouse, Details on MPP (Remain in Mexico) Deportation Proceedings (Mar. 2020), <https://trac.syr.edu/phptools/immigration/mpp/>.
- [25] See Human Rights First, *Delivered to Danger: Trump Administration Sending Asylum Seekers and Migrants To Danger* (May 2020), <https://www.humanrightsfirst.org/campaign/remain-mexico>.
- [26] The closure of the border in response to the Covid-19 pandemic leading to the deportation of children before they can even gain access to an attorney, and without placing them in the custody of the Office of Refugee and Resettlement (ORR) is in violation of rights under the Trafficking Victim Protection Reauthorization Act (TVPRA). See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044; see also TRO Br. for Pet'r, *J.B.B.C v. Wolf*, No. 1:20-cv-01509-CJN (D.C. Cir. June 9, 2020); Kids in Need of Defense, Court Ruling Signals Problems for Trump's Summary Expulsions of Children, KIND (June 24, 2020), <https://supportkind.org/press-releases/court-ruling-signals-problems-for-trumps-summary-expulsions-of-children/>; Washington Office on Latin America, *U.S. Deportations During Global Pandemic Risk Spreading COVID-19*, WOLA (Apr. 9, 2020), <https://www.wola.org/2020/04/deportations-during-global-pandemic-risk-spreading-covid-19/>.
- [27] See Associated Press, *Judge Demands ICE Better Explain why it Won't Release Kids*, VOA News (May 22, 2020), <https://www.voanews.com/usa/judge-demands-ice-better-explain-why-it-wont-release-kids>.