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January 25, 2022

Re: Comments in Response to DHS Notice Requesting Comments on “Identifying Recommendations To Support the Work of the Interagency Task Force on the Reunification of Families,” Docket Number DHS-2021-0051

Submitted via Regulations.gov

Dear Interagency Task Force on the Reunification of Families:

We write in response to your December 10, 2021 request for comments on how to minimize the separation of migrant parents and legal guardians and children entering the United States. As you know, during the Trump Administration’s “Zero Tolerance” policy, over 5,400 children were separated from their parents. This policy was designed to terrorize people and deter migration and has caused long-lasting trauma and behavioral issues for children and parents alike. From the selling of enslaved children to the capture and forced assimilation of Native American children, this policy was a continuation of our country’s long and shameful history of separating families. Family separations are unconscionable and must never happen again.

Founded in 1979, the Immigrant Legal Resource Center (ILRC) is a national non-profit resource center that provides training, consultations, publications, and advocacy support to individuals and groups assisting low-income persons with immigration matters. The ILRC works with a broad array of individuals, agencies, and institutions, including immigration attorneys and advocates, criminal defense attorneys, civil rights advocates, social workers, law enforcement, judges, and local and state elected officials. The ILRC is uniquely qualified to provide comments regarding ways to minimize family separation in light of its extensive expertise on immigrant youth issues. The ILRC publishes the only national manual on Special Immigrant Juvenile Status and Other Immigration Options for Children & Youth, which includes an entire chapter dedicated to the detention and deportation system for children and youth. In addition, the ILRC regularly trains immigration practitioners, pro bono attorneys, and other professionals including judges, law enforcement personnel, social workers, and criminal defense attorneys regarding immigrant youth issues, including special issues pertaining to unaccompanied immigrant children and detained youth. Our attorneys have also written extensively on issues affecting immigrant youth in the child welfare and juvenile justice systems and see how family separations play out in those contexts. The ILRC provides technical assistance on hundreds of unaccompanied immigrant youth issues every year to immigration practitioners throughout the United States.

- I. Comments in response to the request for input on the causes of family separations that occurred incident to the “Zero-Tolerance” policy of the Trump Administration.

The many, shameful family separations that occurred incident to the Zero-Tolerance policy of the Trump Administration were the result of the following inhumane policies and practices that must be addressed.

End Criminalized Migration: The U.S. government must stop criminal prosecutions for unauthorized entry and reentry under 8 U.S.C. § 1325 (section 1325) and 8 U.S.C. § 1326 (section 1326). Migration offenses under sections 1325 and 1326 have become the most commonly prosecuted federal crimes.¹ Not only do these prosecutions represent a huge waste of government resources, they also result in family separations as parents and legal guardians are separated from their children in order to be criminally prosecuted. A recent report also found that prosecutions under sections 1325 and 1326 result in myriad due process violations.² Ending these prosecutions would be a significant step forward for the Biden Administration in achieving its stated goals of advancing racial justice and creating more humane immigration policies.

Admit Wrongdoing and Compensate: The Biden Administration must take responsibility for the family separations that occurred during the Trump administration. That means admitting wrongdoing in court and paying for the wrongs committed against those affected by these atrocities. Separated families should not have to fight for compensation in court, which will inevitably require them to relive their trauma. Instead, the Department of Justice should settle lawsuits related to family separation and compensate these families for the harms they suffered. This will help ensure that future administrations do not implement similar policies designed to rip children away from their parents to deter migration. In the absence of clear consequences, future administrations will not hesitate to resurrect the intentional separation of families as a deterrence measure and the horrific results will be repeated.

Curb Enforcement and Detention: The U.S. government should discontinue the practice of arresting and detaining individuals for lack of immigration status. This practice was a focus of the Trump Administration and almost always leads to some type of family separation. The Biden Administration should exercise all lawful authority and discretion to allow people to remain lawfully in the United States until Congress creates viable immigration options for noncitizens living in the United States. Otherwise, family separations will continue to occur every day.

II. Comments regarding other policies, procedures, or regulations that may minimize the separation of migrant parents and legal guardians and children entering the United States.

Rescind Harmful Border Policies and Practices: The U.S. government must end border policies that force families to self-separate in order to keep their children safe. This includes the COVID-19 related closure of the southern border under Title 42, which public health officials have said has no public health basis,³ and the Migrant Protection Protocols (MPP), a Trump-era policy that has grave implications for asylum seekers' safety while they wait for a hearing to present their asylum cases. In addition to creating a human rights catastrophe, both Title 42 and MPP have led directly to family separations. Parents and guardians desperate to keep their children safe have made the devastating decision to send their children across the border alone in the hopes that they might find safety on the

¹ National Immigration Project of the National Lawyers Guild, *Rooted in Racism: The Human Impact of Migrant Prosecutions* (Dec. 2021), https://nionlg.org/PDFs/practitioners/practice_advisories/pr/2021_21Dec_Rooted-in-Racism-Report.pdf.

² *Id.*

³ For example, see Camilo Montoya-Galvez, *How Trump officials used COVID-19 to shut U.S. borders to migrant children*, CBS News (Nov. 2020), <https://www.cbsnews.com/news/trump-administration-closed-bordersmigrant-children-covid-19/>; Letter to HHS Secretary Azar and CDC Director Redfield signed by leaders of public health schools, medical schools, hospitals, and other U.S. institutions (May 2020), <https://www.publichealth.columbia.edu/public-health-now/news/public-health-experts-urge-us-officials-withdraworder-enabling-mass-expulsion-asylum-seekers>; and Letter to Acting HHS Secretary Cochran and CDC Director Walensky (Jan. 2021), <https://www.publichealth.columbia.edu/research/program-forced-migration-andhealth/letter-acting-hhs-secretary-cochran-and-cdc-director-walensky>.

other side of the border.⁴ Families should be able to exercise their legal right to asylum *together*. These border policies simply must be ended.

Expand the Interpretation of Family Unity: We encourage the U.S. government to view family unity through a broader lens and create and implement policies that keep children with trusted caregivers whether or not they are the child's parent or legal guardian. Many children migrate with non-parent caregivers who nonetheless are their primary caregiver or may be a safe alternative caregiver.

One way to operationalize expanded family unity would be to co-locate Department of Homeland Security (DHS) and Office of Refugee Resettlement (ORR) staff along with medical providers and language interpreters at the border. Once the determination is made that a child is unaccompanied but travelling with an immediate relative (e.g., siblings, grandparents, aunts, uncles, and cousins), safety screenings should be carried out at the border but with a presumption towards the maintenance of the family unit.

Locating ORR staff at the border to quickly assess non-parent caregivers will not only minimize family separations, it will also decrease the number of children being placed in government custody. Having fewer children in ORR custody would allow ORR to end its reliance on and permanently close inappropriate and harmful large-scale detention facilities, including influx and emergency intake sites (EIS). Additionally, this will allow ORR to refocus its limited resources on revamping family reunification capacity so that children do not spend long periods of time in government custody, and transitioning away from large-scale facilities to small, home or home-like shelter settings for unaccompanied children in exceptional cases where temporary government care may still be needed. ORR must shift its model of care away from large-scale detention facilities to small, home or home-like settings. Investments must also be made in community-based wraparound services in family-based placements.

Thank you for taking the time to review these comments. Should you have any questions, please do not hesitate to reach out to Rachel Prandini at rprandini@ilrc.org or (415) 321-8577.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. Prandini', written over a light blue grid background.

Rachel Prandini
Staff Attorney

⁴ See, e.g., Jack Herrera, *Biden Brings Back Family Separation – This Time in Mexico*, Politico (Mar. 20, 2021), <https://www.politico.com/news/magazine/2021/03/20/border-family-separation-mexico-biden-477309>.