

THE DEPARTMENT OF HOMELAND SECURITY'S
FAMILY SEPARATION POLICY: PERSPECTIVES
FROM THE BORDER

HEARING
BEFORE THE
SUBCOMMITTEE ON
BORDER SECURITY, FACILITATION,
AND OPERATIONS
OF THE
COMMITTEE ON HOMELAND SECURITY
HOUSE OF REPRESENTATIVES
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THE DEPARTMENT OF HOMELAND SECURITY'S FAMILY SEPARATION POLICY: PERSPECTIVES FROM THE BORDER

Tuesday, March 26, 2019

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON BORDER SECURITY,
FACILITATION, AND OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:06 a.m., in room 310, Cannon House Office Building, Hon. Kathleen M. Rice [Chairwoman of the subcommittee] presiding.

Present: Representatives Rice, Thompson, Correa, Torres Small, Higgins, Lesko, Joyce, and Guest.

Also present: Representatives Underwood and Jackson Lee.

Miss RICE. The Subcommittee on Border Security, Facilitation, and Operations will come to order. The subcommittee is meeting today to receive testimony on the Department of Homeland Security's family separation policy.

Today we are continuing the oversight we began at the full committee's level earlier this month during our hearing with Secretary Nielsen.

I thank our legal advocates and medical experts who have joined us this morning for their willingness to testify and share their first-hand knowledge of the current state of our Southern Border.

Last summer, the Department of Homeland Security, under the leadership of Secretary Nielsen, implemented a zero tolerance policy which resulted in the separation of thousands of families.

Despite knowing beforehand that this policy would immediately lead to family separations, DHS and specifically U.S. Customs and Border Protection, were completely unprepared and ill-equipped for the massive and delicate undertaking of sheltering thousands of separated children, with an unknown number of babies and toddlers.

To make matters worse, within days of this policy's enactment, it became abundantly clear that none of the Federal agencies involved had any systems in place to effectively keep track of and reunite separated family members.

The few systems that did exist were found to be severely deficient according to multiple reviews by the Government Accountability Office and the inspectors general of both DHS and the Department of Health and Human Services. This means that the re-

unification of family members was either an afterthought of this administration or simply not prioritized at all.

Due to their lack of preparations and planning, DHS has still failed to fully account for the total number of migrant children that were separated from their families over the past 2 years.

Even more shocking is that DHS still has broad authority to separate families based on a set of vague criteria, which agents can apply at their own discretion.

Like all of my colleagues, I am deeply committed to combatting human trafficking at our Southern Border. But the family separations that took place last summer had nothing to do with preventing human trafficking.

In fact, multiple former administration officials have openly acknowledged the zero tolerance policy was, first and foremost, an effort to deter unlawful immigration.

To me and to many of my colleagues on our committee, this means that any criteria or justification that this administration uses to separate families at the border today must be carefully scrutinized and subject to Congressional oversight.

Congress has a responsibility to continue questioning DHS's implementation of zero tolerance, its handling of families and children in its custody, its compliance with reunification efforts, and the standards used to determine if a family should be separated.

But DHS's family separation policy is just one element that we intend to examine today. Under the Trump administration, DHS has pursued increasingly restrictive immigration policies at our Southern Border that are having devastating humanitarian consequences. At various ports of entry, CBP has been regulating the number of asylum seekers, many of them families who can present themselves daily.

This metering practice has led to long wait lists and backlogs that have driven some families to seek access to our asylum process through other and often more dangerous means, such as traveling through remote areas of the border to find Border Patrol agents. These parts of the border are often not well-prepared or appropriately-resourced to handle families and unaccompanied children.

Meanwhile, other asylum seekers and families are being asked to remain in Mexico while their cases make their way through our immigration courts.

Secretary Nielsen and others in this administration are choosing to unilaterally reshape our asylum process. These so-called migrant protection protocols are putting already vulnerable people, including young, unaccompanied children, at greater risk.

We have laws and procedures in place to protect migrant children and families seeking asylum. There is a reason why these laws exist, and we need to ensure that our immigration process operates squarely within those boundaries.

Today's hearing is intended to give our Members an opportunity to hear from legal and medical experts who have been at the Southern Border for several years and who have seen first-hand how DHS screens and processes family units, manages detention facilities, and facilitates health care.

I look forward to hearing from each of our expert witnesses about their experiences and what they took away from their visits to the border.

Next week we are planning to visit the Texas-Mexico border, and your testimony today will help inform us of the various issues that we must explore while on the ground.

[The statement of Chairwoman Rice follows:]

STATEMENT OF CHAIRWOMAN KATHLEEN RICE

MARCH 26, 2019

Today we are continuing the oversight we began at the full committee level earlier this month during our hearing with Secretary Nielsen.

I thank our legal advocates and medical experts who have joined us this morning for their willingness to testify and share their first-hand knowledge of the current state of our Southern Border.

Last summer, the Department of Homeland Security, under the leadership of Secretary Nielsen, implemented a Zero-Tolerance policy, which resulted in the separation of thousands of families.

Despite knowing beforehand that this policy would immediately lead to family separations, DHS, and specifically U.S. Customs and Border Protection, was completely unprepared and ill-equipped for the massive and delicate undertaking of sheltering thousands of separated children, with an unknown number of babies and toddlers.

To make matters worse, within days of this policy's enactment, it became abundantly clear that none of the Federal agencies involved had any systems in place to effectively keep track of and reunite separated family members.

And the few systems that did exist were found to be severely deficient, according to multiple reviews by the Government Accountability Office, and the Inspectors General of both DHS and the Department of Health and Human Services.

This means that the reunification of family members was either an afterthought of this administration, or simply not prioritized at all.

Due to their lack of preparations and planning, DHS has still failed to fully account for the total number of migrant children that were separated from their families over the past 2 years.

Even more shocking is that DHS still has board authority to separate families based on a set of vague criteria, which agents can apply at their own discretion.

Like all of my colleagues, I am deeply committed to combating human trafficking at our Southern Border.

But the family separations that took place last summer had nothing to do with preventing human trafficking. In fact, multiple former administration officials have openly acknowledged the Zero Tolerance policy was first and foremost an effort to deter unlawful immigration.

To me, and to many of my colleagues on our committee, this means that any criteria or justification that this administration uses to separate families at the border today must be carefully scrutinized and subject to Congressional oversight.

Congress has a responsibility to continue questioning DHS's implementation of Zero Tolerance, its handling of families and children in its custody, its compliance with reunification efforts, and the standards used to determine if a family should be separated.

But DHS's family separation policy is just one element that we intend to examine today.

Under the Trump administration, DHS has pursued increasingly restrictive immigration policies at our Southern Border that are having devastating humanitarian consequences.

At various ports of entry, CBP has been regulating the number of asylum seekers—many of them families—who can present themselves daily.

This “metering” practice has led to long wait lists and backlogs that have driven some families to seek access to our asylum process through other and often more dangerous means, such as traveling through remote areas of the border to find Border Patrol agents.

These parts of the border are often not well-prepared or appropriately resourced to handle families and unaccompanied children.

Meanwhile, other asylum seekers and families are being asked to remain in Mexico while their cases make their way through our immigration courts.

Secretary Nielsen and others in this administration are choosing to unilaterally reshape our asylum process. And these so-called “Migrant Protection Protocols” are putting already vulnerable people—including young, unaccompanied children—at greater risk.

We have laws and procedures in place to protect migrant children and families seeking asylum. There is a reason why these laws exist, and we need to ensure that our immigration process operates squarely within those boundaries.

Today’s hearing is intended to give our Members an opportunity to hear from the legal and medical experts who have been at the Southern Border for several years and who have seen first-hand how DHS screens and processes family units, manages detention facilities and facilitates health care. I look forward to hearing from each of our expert witnesses about their experiences and what they took away from their visits to the border.

Next week, we are planning to visit the Texas-Mexico border and your testimony today will help inform us of the various issues that we must explore while on the ground.

I thank all of our witnesses for joining us this morning, and I now yield to the Ranking Member of the subcommittee, Mr. Higgins.

Miss RICE. I now recognize the Ranking Member of the subcommittee, the gentleman from Louisiana, Mr. Higgins, for an opening statement.

Mr. HIGGINS. I thank my colleague Chairwoman Rice, and I especially thank our witnesses for joining us today. My friends across the aisle will, perhaps, spend some time today criticizing strict enforcement of our immigration laws.

I believe what we should discuss are the loopholes in our immigration laws that fuel criminal organizations and their propaganda, responsible for convincing hundreds of thousands of vulnerable people from Central America to make the treacherous journey to our Southwest Border.

Human smuggling frequently can lead to sexual assault and sex trafficking, endangering the lives of thousands of women and children, because we have not invested enough resources in securing our Southwest Border.

To criminal organizations, the benefits clearly outweigh the consequences. They extort money, cash, and smuggling fees from migrants, while expanding their control of areas in Central America.

We know of the horrible conditions these families and children experience on their journey to our border, including the very real threat of separation, assault, sex trafficking, and labor trafficking that occurs at the hands of cartel smugglers and coyotes.

I am grateful for all of our witnesses who are joining us today to share your particular area of expertise. We appreciate your passion, your love for America and, by extension, the children that are entering our country illegally. It is quite a crisis.

I am grateful that Mr. Ballard could join us today as a witness to speak in more detail about human trafficking cases that exist due to a lack of security along our Southwest Border. We need enhanced security.

I know he will provide case examples from his law enforcement experience in the CIA and working for Homeland Security Investigations Unit. This is exactly what America needs to hear.

Our Nation is generous and compassionate. We accept over a million legal immigrants into our country every year. We are on track to shelter more persecuted individuals with asylum under this administration than the last. In fact, 5,638 people were grant-

ed asylum in 2018, compared to less than half that number in 2016.

Due to loopholes in our immigration laws, people attempt and illegally enter our country with the intent to stay or create an extreme backlog in our process.

These immigrants are told that once they step foot on U.S. soil, they can stay. This is what they are told by the cartels and the traffickers.

The truth is that most asylum claims prove to be illegitimate, and of further concern is the fact that about 40 percent of people requesting asylum in 2018 never filed an actual application.

That is 14,072 people who passed the credible fear screening—they are trained on how to pass credible fear screening and then decided they did not actually need to apply for asylum and likely disappeared into the interior of our country.

Criminal organizations tell migrants that children can be used as *de facto* visas, making them vulnerable targets for smugglers and human traffickers who know that after 20 days families and minors must be released into the interior.

We have seen major spikes in unaccompanied minors and family units over the last 5 years, incredible increases. We are now seeing the greatest number of families attempting to illegally enter our country in our Nation's history, and those numbers are only expected to rise.

Because my more liberal colleagues, many of whom I greatly respect and admire, continue to obstruct needed funding for enhanced border security, 84 percent of migrants are arriving between ports of entry and crossing illegally.

The reality is, every single day women are sexually assaulted on the journey to our Southwest Border, children do not receive adequate food, water, and shelter, and sometimes people are forced into labor or sex trafficking.

By failing to secure our border and fix legal loopholes, we are enriching the criminal cartels, making them more powerful in Central America and Mexico, and enabling them to exploit new victims. If Congress refuses to fix these loopholes and secure our border, we are complicit in this problem.

I continue to support an all-of-the-above strategy to secure our borders, including enhanced physical barriers, 21st Century technology and additional manpower. Front-line defenders have repeatedly testified before this committee about how this multi-layered approach works.

I encourage my colleagues to work together to ensure that more resources are provided to the Department of Homeland Security to secure our borders in a safe and humane, compassionate way.

Thank you, Madam Chairwoman, and I yield back.

[The statement of Ranking Member Higgins follows:]

STATEMENT OF RANKING MEMBER CLAY HIGGINS

MARCH 26, 2019

Thank you, Chairwoman Rice and thank you to our witnesses for joining us.

My friends on the left will spend much time today criticizing strict enforcement of our immigration laws. To be clear, that strict enforcement is no longer happening.

What we don't hear about as much are the loopholes in our immigration laws that fuel criminal organizations' propaganda responsible for convincing hundreds of thousands of vulnerable people from Central America to make the treacherous journey to our Southwest Border. Smuggling can easily turn into sexual assault and trafficking, endangering the lives of women and children along the way. Because we have not invested enough resources in securing our Southwest Border, to transnational criminal organizations, the benefits clearly outweigh the consequences we can deliver to them for facilitating this travel.

They extort thousands of dollars in smuggling fees from migrants, while expanding their control of areas in Central America. We don't hear about the horrible conditions these families and children experience on their journey to our border, including the very real threat of separation, assault, sex trafficking, and labor trafficking that occurs at the hands of cartels, smugglers, and coyotes.

I am grateful that Mr. Ballard could join us today as a witness to speak in more detail about human trafficking cases that exist due to a lack of security along our Southwest Border.

I know he will provide case examples from his law enforcement experience in the CIA and working for the Homeland Security Investigations unit within DHS. While these may be troubling to hear, they are exactly what America needs to hear.

Our Nation is a generous one. We accept over 1 million legal immigrants into our country every year and we are on track to shelter more persecuted individuals with asylum under this administration than the last—in fact 5,638 people were granted asylum in 2018 compared to less than half that number in 2016.

Due to loopholes in our immigration laws, people attempting to illegally enter our country for solely economic reasons are coming too, creating an extreme backlog in our process and causing those who truthfully need this aid to be in limbo for years. These migrants are told that once they step foot on U.S. soil, they can stay. The unfortunate truth is that most asylum claims prove illegitimate and of further concern is the fact that 40 percent of people requesting asylum in 2018, never filed an actual application. That's 14,072 people who passed a credible fear screening then decided they did not actually need asylum to remain in the United States, likely disappearing into our interior.

Criminal organizations tell migrants that children can be used as de facto visas, making them vulnerable targets for smugglers and human traffickers who know that after 20 days, families and minors must be released into the interior. We have seen major spikes in unaccompanied minors and family units over the last 5 years, a shift that coincides with policies and court decisions made under the Obama administration, specifically the extension of the *Flores* Settlement to families. We are now seeing the greatest number of families attempting to illegally enter our country in our Nation's history and those numbers are only expected to rise.

And, meaningfully, 84 percent of migrants are arriving between ports of entry and crossing illegally.

Once these migrants are apprehended, the cost of not only holding, but processing, caring for, and monitoring them is an enormous sum, which is even more alarming when you realize that a large number of their immigration hearings end with deportation orders. Our border agencies have diverted millions from their operational budgets to address these surge concerns, decaying our readiness.

The reality is every single day women are sexually assaulted on the way to our Southwest Border, children do not receive adequate food, water, and shelter, and sometimes people are tricked into being labor- or sex-trafficked. All because our border doesn't stop them from crossing illegally once they get here.

Last year the Border Patrol rescued over 4,300 people who were left for dead by smugglers or who were victims of the rugged terrain that encompasses our Southwest Border. Agents unfortunately also find skeletal remains of others that did not make it across.

Transnational criminal organizations control corridors where many smuggling routes pass through Mexico, making reaching our Southwest Border a question of "how much?" instead of "how?" Illegal immigration generates tens of millions of dollars for these criminal organizations every year.

By failing to secure our border and fix legal loopholes, we are enriching the criminal cartels, making them more powerful in Central America and Mexico, and enabling them to exploit new victims.

As a Congress that refuses to fix these loopholes and secure our border, we are complicit in this problem.

I continue to support an "all-of-the-above" strategy to secure our borders including enhanced physical barriers, 21st Century technology, and additional manpower. Front-line defenders have repeatedly testified before this committee about how this multi-layered approach works. It's time we start believing them.

I encourage my colleagues to work together to ensure that more resources are provided to the Department of Homeland Security to secure our borders in a safe and humane way.

Thank you and I yield back.

Miss RICE. Thank you, Mr. Higgins.

I now recognize the Chairman of the Homeland Security Committee, the gentleman from Mississippi, Mr. Thompson, for an opening statement.

Mr. THOMPSON. Thank you, Chairwoman Rice and Ranking Member Higgins for holding today's hearing.

Today we are joined by a panel of experts who have witnessed first-hand, how the Department of Homeland Security has put in place and carried out policies directly affecting migrant families and children seeking asylum on our Southern Border.

We must be clear. Though systematic challenges with detention conditions, due process and family screening protocols have been persistent over many years, the Trump administration is unique. No other administration has carried out a policy that deliberately separate migrant families, in some instances by default.

When they reach the border at the scale we have seen over the past 2 years, this policy is seriously inconsistent with, if not a complete break from, the policy put in place by U.S. Customs and Border Protection in 2015 to maintain family unity to the great extent operationally feasible, absent a serious threat to the safety of the child.

Last summer we saw the peak of these separations. I adamantly hope we do not see a repeat of this cruelty this summer. We now know that DHS put in place a family separation pilot program in 2017, prior to the rollout of its zero tolerance policy in 2018.

However, three independent oversight entities within the Government, the Government Accountability Office and the inspector generals of both DHS and the Department of Health and Human Services, have since found that none of the Federal agencies involved were prepared to adequately monitor families throughout the intake process or handle the number of children suddenly in their custody once their parents were criminally charged.

Whether this lack of preparation was incompetence or deliberate is what this committee intends to find out with certainty.

Real oversight of this family separation policy and how DHS and CBP are currently treating asylum-seeking families and children is long overdue. Whether DHS and CBP began to change their processes will go a long way in demonstrating their intentions.

Three of our witnesses here today can attest to the impacts of this lack of preparation, combined with other deterrent-only policies have had on migrant children and their families.

There have been a steady increase in the number of families and unaccompanied children presenting themselves to Border Patrol agents, and at ports of entry for months now. Unfortunately, I understand that necessary family separations continue today.

During my recent visit to the border, I saw at least one facility that is not at all appropriate for holding vulnerable populations, particularly small children, for extended periods of time.

I find it truly unfortunate that it took the death of two young children in CBP custody last December for DHS to begin con-

ducting more medical assessments and to request funding to more humanely handle families and children in their custody. There has to be a better way.

What we will discuss today will help the committee hold DHS accountable for its part in the trauma inflicted on these children and families.

I also look forward to hearing from our expert witnesses on how we can prevent any further harm from being carried out by the Federal Government on these families. The proposal and action carried out by DHS to date have proven inadequate, harmful, and deadly.

Committee Democrats intend to advocate for smart, effective, and humane alternatives to handling the humanitarian challenge. I thank our witnesses for informing our efforts by joining us today.

I yield back, Madam Chair.

[The statement of Chairman Thompson follows:]

STATEMENT OF CHAIRMAN BENNIE G. THOMPSON

MARCH 26, 2019

Today we are joined by a panel of experts who have witnessed first-hand how the Department of Homeland Security has put in place and carried out policies directly affecting migrant families and children seeking asylum on our Southern Border. We must be clear—though systemic challenges with detention conditions, due process, and family screening protocols have been persistent over many years, the Trump administration is unique.

No other administration has carried out a policy that deliberately separates migrant families—in some instances by default—when they reach the border at the scale we have seen over the past 2 years. This policy is seriously inconsistent with, if not a complete break from, the policy put in place by U.S. Customs and Border Protection in 2015 to “maintain family unity to the great extent operationally feasible” absent a serious threat to the safety of the child.

Last summer we saw the peak of these separations, and I adamantly hope we do not see a repeat of this cruelty this summer. We now know that DHS put in place a family separation policy pilot program in 2017 prior to the rollout of its zero-tolerance policy in 2018.

However, three independent oversight entities within the Government—the Government Accountability Office and the inspector generals of both DHS and the Department of Health and Human Services—have since found that none of the Federal agencies involved were prepared to adequately monitor families through the in-take process or handle the number of children suddenly in their custody once their parents were criminally charged.

Whether this lack of preparation was incompetence or deliberate is what this committee intends to find out with certainty. Real oversight of this family separation policy and how DHS and CBP are currently treating asylum-seeking families and children is long overdue. Whether DHS and CBP begin to change their processes will go a long way in demonstrating their intentions.

Three of our witnesses here today can attest to the impacts this lack of preparation combined with other deterrence-only policies have had on migrant children and their family members. There has been a steady increase in the number of families and unaccompanied children presenting themselves to Border Patrol agents and at ports of entry for months now. Unfortunately, I understand that unnecessary family separations continue today.

During my recent visit to the border, I saw at least one facility that is not at all appropriate for holding vulnerable populations—particularly small children—for extended periods of time. I find it truly unfortunate that it took the deaths of two young children in CBP custody last December for DHS to begin conducting more medical assessments and to request funding to more humanely handle families and children in their custody. There has to be a better way. What we will discuss today will help the committee hold DHS accountable for its part in the trauma inflicted on these children and families.

I also look forward to hearing from our expert witnesses on how we can prevent any further harm from being carried out by the Federal Government on these fami-

lies. The proposals and actions carried out by DHS to date have proven inadequate, harmful, and deadly. Committee Democrats intend to advocate for smart, effective, and humane alternatives to handling this humanitarian challenge, and I thank our witnesses for informing our efforts by joining us today.

Miss RICE. Thank you, Mr. Chairman.

Other Members of the committee are reminded that under the committee rules opening statements may be submitted for the record.

Additionally, I ask unanimous consent that the Members of the full committee shall be permitted to sit and question the witnesses, as appropriate. Without objection, so ordered.

I welcome our panel of witnesses. Our first witness, Ms. Jennifer Podkul, is the senior director of policy and advocacy at Kids in Need of Defense, or KIND.

Ms. Podkul is an international human rights lawyer, an expert on issues affecting immigrant children. Prior to joining KIND, she was a senior program officer at the Women's Refugee Commission, where she researched issues facing vulnerable migrants and advocated for improved treatment.

Next we have Ms. Michelle Brané, who is the director of the Migrant Rights and Justice Program at the Women's Refugee Commission. Ms. Brané is one of the Nation's foremost experts on U.S. asylum protections and detention policies for migrants.

She has more than 25 years of experience working on immigration and human rights issues, including serving as an attorney adviser for the Department of Justice Board of Immigration Appeals, where she specialized in asylum cases.

Next, we have Dr. Julie M. Linton, who is the co-chair of Immigrant Health Special Interest Group at the American Academy of Pediatrics.

Dr. Linton holds a B.S. in psychology from Duke University, an M.D. from the Perelman School of Medicine at the University of Philadelphia and completed her residency in pediatrics at Children's Hospital of Philadelphia. She has authored numerous publications and testified before Congress once before on the Department's family separation policy.

Finally, we have Mr. Tim Ballard, the founder and CEO of Operation Underground Railroad. Before founding OUR, Mr. Ballard worked as a special agent within the Department at Immigration and Customs Enforcement, Homeland Security Investigations.

While there, he was assigned to the Internet Crimes Against Children Task Force Program and deployed as an undercover operative for the U.S. Child Sex Tourism Jump Team to combat child sex trafficking rings.

He continues this work at OUR by supporting and training law enforcement agencies on best practices to liberate children from these trafficking rings.

Without objection, the witnesses' full statements will be inserted in the record.

I now ask each witness to summarize his or her statement for 5 minutes, beginning with Ms. Podkul.

**STATEMENT OF JENNIFER PODKUL, DIRECTOR OF POLICY,
KIDS IN NEED OF DEFENSE**

Ms. PODKUL. Thank you Chairman Rice, Ranking Member Higgins, and Members of the subcommittee.

I am here to represent Kids in Need of Defense, a National organization dedicated to promoting the rights of child migrants and ensuring that every child has access to high quality legal representation.

I am grateful the subcommittee is holding today's hearing to look at the systematic and intentional attacks this administration has launched against some of the most vulnerable people in the world, migrant children.

Before I begin recounting the ways in which recent policy changes have harmed children, I want to start by telling you a bit about some of our clients who, thanks to my dedicated colleagues, have legal status and are able to live safely in the United States.

I think it is important for all of us to have an understanding of who these kids are and not just think of them as numbers or statistics.

There is Jonathan, who came here from Guatemala, who is almost finished with high school and is planning on joining the Marines when he graduates.

There is Alicia, who came to the United States as a teenager and learned English incredibly quickly and then also graduated high school early.

Then there is Alejandra. She created a Nationally-recognized anti-bullying campaign when she was in high school. Then she secured a full scholarship to a prestigious college.

See, this is what happens when you give kids a fair chance. However, instead of dedicating resources to ensure that our system is able to efficiently process and fairly adjudicate the cases of children seeking protection, this administration has invested in malicious deterrence tactics.

When a child has fled torture, is being persecuted by criminals that even the police are afraid of or witnesses the murder of her close family members, they can't be deterred from fleeing. Draconian policies will only serve to make their lives worse and waste taxpayer money.

Family separation, one of the most high-profile methods of deterrence by this administration, has been condemned across the board. Yet separations are continuing to happen on a regular basis, and we don't know why.

There is still no public guidance on when CBP can separate a child from their parent. There is no requirement a licensed child welfare professional screen the child, and there is no way for a parent to challenge the separation if it was done in error.

KIND attorneys are still seeing cases which separations are not fully tracked, information about extended family members is not captured, and it is not clear the separation was truly in the best interest of the child.

Another harmful policy that has been the information-sharing agreement between DHS and ORR. The use of information obtained by ORR during the sponsor vetting process to conduct immigration enforcement against sponsors not only causes emotional

distress to the children, but it has resulted in a ballooning population of children held in ORR custody.

In violation of the spirit of the *Flores* Agreement, children are being held in unlicensed emergency facilities for months on end. Detention fatigue has resulted in many children giving up their valid claims for protection.

Children should not be used as bait for immigration enforcement. Compliance with the *Flores* Settlement Agreement and minimum standards of detention must be a priority for every agency that holds children.

Finally, in an attempt to deny any kind of access to our justice system, this administration has tried to slam the door completely on those arriving at our Southern Border. Children are being turned away and denied the right to ask for protection, both between ports of entry, as well as at the official ports. This is in violation of the law.

I have interviewed children and families sleeping on bridges and living in extremely dangerous conditions in Mexico all along the border from San Diego to Brownsville. Some are waiting for months to be able to present themselves and ask for protection.

If they are lucky enough to be processed, they are then put into freezing cold CBP facilities that are not appropriate for children and are not staffed with appropriate child welfare or medical professionals. This has resulted in children getting very sick and, as you know, some even dying.

Our enforcement system has not modernized to catch up with what has been a reality for many years now, that children make up a large percentage of the population that DHS is encountering. Enforcement methods used for single adult males are not appropriate for children in search of safety.

DHS must implement the directives set forth in their funding bill and stop using sponsor information for enforcement purposes. They must direct funding to ensure adequate medical treatment for children in DHS custody, and they must not continue to engage in efforts that preclude children's access to the United States.

Because deterrence won't work, we must instead focus on addressing the root causes of their migration. We must ensure our justice system offers due process and fair adjudications and that decisions reflect the best interest of the child. We must stop hurting children who are coming to us asking for help.

Thank you.

[The prepared statement of Ms. Podkul follows:]

PREPARED STATEMENT OF JENNIFER PODKUL

MARCH 26, 2019

Kids in Need of Defense (KIND) was founded by the Microsoft Corporation and the United Nations Refugee Agency (UNHCR) Special Envoy Angelina Jolie, and is the leading national organization that works to ensure that no refugee or immigrant child faces immigration court alone. We do this in partnership with over 600 law firms, corporate legal departments, law schools, and bar associations, which provide pro bono representation to unaccompanied children referred to KIND for assistance in their deportation proceedings. KIND has served more than 18,000 children since 2009, and leveraged approximately \$250 million in pro bono support from private-sector law firms, corporations, law schools, and bar associations. KIND also helps children who are returning to their home countries through deportation or voluntary departure to do so safely and to reintegrate into their home communities. Through

our reintegration pilot project in Guatemala and Honduras, we place children with local nongovernmental organization partners, which provide vital social services, including family reunification, school enrollment, skills training, and counseling. KIND also engages in broader work in the region to address root causes of child migration, such as sexual- and gender-based violence. Additionally, KIND advocates to change law, policy, and practices to improve the protection of unaccompanied children in the United States, and is working to build a stronger regional protection framework throughout Central America and Mexico.

INTRODUCTION

Family unity is a fundamental human right and central principle of U.S. immigration policy and international law.¹ The administration gutted this fundamental principle when it began separating families as a way to deter asylum seekers from seeking protection at the U.S./Mexico border. Families like that of Luisa, a 7-year-old child who was separated from her father after they entered the United States last summer.² The day after this separation, Luisa's mother and 10-year-old brother entered the United States and passed a credible fear interview, which placed them into removal proceedings during which they may assert their claims for asylum. Although Luisa's brother and mother were released, Luisa stayed in a detention facility. On her own, she could not have made a case for asylum because she did not know why her family came to the United States. When KIND spoke with Luisa, it was impossible to even conduct a legal assessment with her because she could not stop crying—she was so distraught by the separation that she simply sobbed during most of the meeting with an attorney.³

Additional policies of the administration have delayed the release of children in detention to their families—even children that had gone through the horror of having been separated from their parents. Two sisters KIND is working with remained in ORR custody for nearly 8 months after being separated from their father, who was then deported. The girls' mother submitted all necessary paperwork for the girls' release, but officials insisted for months that one particular individual, who periodically resided in the home, but traveled frequently for work, also submit fingerprints. In December, ORR suddenly changed its policy and no longer required the missing fingerprints. The girls were finally released the week before Christmas and able to reunite with their mother. The children remain very concerned about their father, who was deported and faces on-going threats to his safety.

These children belong with their families.

KIND recommends the following: First, the Trump administration must end the “Migrant Protection Protocol (Remain in Mexico)” policy as well as metering at ports of entry that leave children in dangerous conditions in Mexico while waiting to ask for protection. Second, family separations should occur only when they are in the best interest of children using public standards created by child welfare experts. Third, the Government should document the reason for separations, and allow parents to challenge separation decisions when they occur. Fourth, the Government should track all separated family members and provide that information to the child and their attorney. Fifth Homeland Security should hire licensed child welfare professionals to screen and provide adequate care for children in DHS custody. Finally, DHS should never use information obtained from the Office of Refugee Resettlement to vet a sponsor to conduct enforcement.⁴

We urge the committee to consider our recommendations and to hold the Trump administration accountable to do what Congress has mandated: Allow asylum seekers to apply for protection in the U.S. Border security policies should protect the integrity of our immigration system and our Nation's commitment to extending protection to those in need of safety—particularly children.

¹See U.N. International Covenant on Civil and Political Rights, art. 23, Dec. 16, 1966, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171; U.N. Convention on the Rights of the Child, art. 9, Nov. 20, 1989, 1577 U.N.T.S. 3. See also WILLIAM KANDEL, U.S. FAMILY-BASED IMMIGRATION POLICY, CONGRESSIONAL RESEARCH SERV. 2 (2014) (available at <https://trac.syr.edu/immigration/library/P9368.pdf>).

²*How You Can Help Separated Families and Ensure Protection for Children*, KIND (June 28, 2018), <https://supportkind.org/resources/how-you-can-help-end-family-separation-and-ensure-protection-for-children/>.

³Id.

⁴This practice was limited in the 2019 DHS appropriations bill. See, <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/documents/Summary%20of%20Conference%20Report.pdf>.

THE “MIGRATION PROTECTION PROTOCOL” POLICY MUST BE ELIMINATED

In December 2018, DHS Secretary Kirstjen Nielsen announced the Migrant Protection Protocols (MPP)⁵—or the “Remain in Mexico” policy—under which certain asylum seekers are forced to stay in Mexico pending their immigration proceedings in the United States.⁶ Relatedly, in November 2018, DHS and the U.S. Department of Justice issued an interim final rule that, coupled with a Presidential Proclamation issued shortly after, would bar migrants from seeking asylum if they cross the border between official ports of entry.⁷ Both policies disregard Congress’ express intent to allow asylum seekers to apply for protection, regardless of where they enter the country.⁸ They further violate international norms and treaties by which the United States is bound, including the 1951 Refugee Convention, which prohibits nations from expelling or returning refugees to a country where their lives would be threatened.⁹ In late January 2019, DHS formally implemented the Remain in Mexico policy turning back 240 migrants since that time.¹⁰

While the administration has asserted that the Remain in Mexico policy would not apply to unaccompanied children,¹¹ U.S. and Mexican officials are nonetheless preventing unaccompanied children from entering the United States to seek asylum. Moreover, at least 25 minors have been returned to Mexico under the new policy.¹²

During a research mission to Mexico, KIND learned that CBP agents have turned back unaccompanied children to Mexico after telling them that they can no longer seek asylum in the United States.¹³ Mexican officials are similarly blocking unaccompanied children from presenting themselves at U.S. ports of entry, with some Mexican officials even requiring migrants to pay thousands of dollars before letting them apply for asylum.¹⁴ Mexican officials also frequently transfer unaccompanied children seeking asylum in the United States to the custody of Mexico’s child welfare agency (DIF).¹⁵ Once in DIF custody, these children are informed that they may seek asylum in Mexico or be deported to their countries of origin.¹⁶ They are not informed of their right to seek protection in the United States.¹⁷ Fearful of deportation by Mexican officials, some unaccompanied children have chosen to hide

⁵ See Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration, Dept’t of Homeland Security (Dec. 20, 2018), <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration>; see also Memorandum on MPP Guiding Principles (Jan. 28, 2019) (hereinafter MPP Memorandum), <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>.

⁶ MPP Memorandum, supra note 4, at 1–2.

⁷ 83 Fed. Reg. 55934 (Nov. 9, 2018). The United States District Court of the Northern District of California issued an injunction against the measure. *East Bay Sanctuary Covenant v. Trump*, No. 3:18-cv-06810-JST (N.D. Cal. Nov. 19, 2018) (Order Granting Temporary Restraining Order).

⁸ See INA § 208, 8 U.S.C. § 1158(a)(1) (2008).

⁹ Nations are prohibited from expelling or returning a refugee to a country where “his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.” UNHCR, Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (Jan. 26, 2007), <https://www.unhcr.org/4d9486929.pdf>. The United States is bound to the 1951 Convention as a signatory to the 1967 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223.

¹⁰ Julia Ainsley, *Trump admin has turned back 240 asylum-seekers at border under ‘Remain in Mexico’ policy*, NBC News (Mar. 12, 2019), <https://www.nbcnews.com/politics/immigration/trump-admin-has-turned-back-240-asylum-seekers-border-under-n982246>.

¹¹ MPP Memorandum, supra note 4, at 1.

¹² Maria Verza, *US sending Central American migrant minors back to Mexico*, AP (Feb. 25, 2019), <https://www.apnews.com/8548e76bed794a9eb1f3b38d15e0601b>.

¹³ See KIND, *The Protection Gauntlet: How the United States is Blocking Access to Asylum Seekers and Endangering the Lives of Children at the U.S. Border* (Dec. 21, 2018) (hereinafter *The Protection Gauntlet*), <https://supportkind.org/resources/the-protection-gauntlet-how-the-united-states-is-blocking-access-to-asylumseekers-and-endangering-the-lives-of-children-at-the-u-s-border/>.

¹⁴ Emily Green, *Exclusive: Mexican Officials are Extorting Thousands of Dollars from Migrants Applying for Asylum*, Vice (Mar. 13, 2019), https://news.vice.com/en_us/article/kzdy4e/exclusive-mexican-officials-are-extorting-thousands-of-dollars-from-migrants-to-apply-for-asylum.

¹⁵ KIND, *The Protection Gauntlet: How the United States is Blocking Access to Asylum Seekers and Endangering the Lives of Children at the U.S. Border* 2–3, (Dec. 21, 2018) (hereinafter *The Protection Gauntlet*), <https://supportkind.org/resources/the-protection-gauntlet-how-the-united-states-is-blocking-access-to-asylumseekers-and-endangering-the-lives-of-children-at-the-u-s-border/>.

¹⁶ *Id.*

¹⁷ *Id.* at 3.

from Mexican officials or to cross the border between ports of entry—circumstances that increase the dangers facing vulnerable youth.¹⁸

Due to severe restrictions on the number of available U.S. asylum interviews, migrants must wait months to present their asylum claim at the border.¹⁹ In several cities on Mexico's northern border, migrants place their name on a non-governmental wait list and wait to be called by U.S. officials to present themselves.²⁰ Once called, the migrants can then present themselves for asylum at the U.S. border.²¹ Unaccompanied minors, however, are not permitted to place themselves on the wait list, impeding their ability to even make any asylum claim under the new Migrant Protection Protocol.²²

Unaccompanied children face grave danger in Mexican border towns, where they may be preyed upon by smugglers and human traffickers.²³ Last December, two unaccompanied youth were tricked, abducted, tortured, and killed in Tijuana.²⁴ A third child reported that he and his friends were kidnapped, tied to chairs, undressed, and tortured with scissors in an attempt to extort their relatives for money. Across our Southern Border there are children and babies sleeping in tents, on the streets, exposed to the elements and depending on volunteers for food. When they finally are allowed to present themselves to U.S. officials many are sick, dehydrated, and in need of medical attention. Despite horrendous incidences like this, Mexican officials continue to block unaccompanied children from accessing U.S. ports of entry.²⁵

FAMILY SEPARATIONS SHOULD OCCUR ONLY WHEN THEY ARE IN THE BEST INTEREST OF THE CHILD

On May 7, 2018, Attorney General Jeff Sessions announced the administration's Zero Tolerance Policy (ZTP), under which families arriving at the border would be separated. Parents would be held in adult detention facilities and prosecuted for illegal entry—despite exercising their lawful right to seek asylum—while children would be reclassified as unaccompanied children and placed in the custody of the Office of Refugee Resettlement (ORR). From May to July 2018, at least 2,700 immigrant and refugee children were separated from their parents after crossing into the United States seeking safety.

The American Civil Liberties Union (ACLU) filed a lawsuit—the *Ms. L v. Sessions* case—which resulted in a court injunction mandating reunification of children with their parents by July 26, 2018. With other direct legal service providers,²⁶ KIND formed a part of the Steering Committee ordered by the court, to provide legal expertise and input in the lawsuit and locate and interview the deported parents.

In response to the ZTP, KIND formed a dedicated Family Separation Response Team (FSRT). In addition to directly handling the legal cases of separated children and their families, the FSRT provides expert mentorship and training to pro bono attorneys and staff, collaborates in on-going coalition-building and litigation efforts, and works with partners across the United States to support families affected by the crisis. The team has also collaborated in the effort to locate deported parents in Central America. Additionally, KIND represented over 100 detained children who had been separated as part of this policy. The average age of these children was 10 years old.

In addition, KIND has now received approximately 280 additional referrals for released, separated children across our 10 field offices, including numerous children whose parents were deported. KIND is also assisting dozens of reunified family units.

Parents and children face lasting trauma as a result of their forced separations. In 2017, the American Academy of Pediatrics explained that detention stunts child

¹⁸ *Id.*

¹⁹ Fernanda Echavarrí, *Teens Fleeing Central American Gangs Are Stuck at the Border—and Fear for Their Lives*, Mother Jones (Mar. 7, 2019), <https://www.motherjones.com/politics/2019/03/unaccompanied-minors-asylum-seekers-central-america-tijuana/>.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Jack Herrera, *Five Takeaways from the Lawsuit Over Trump's Plan to Keep Asylum Seekers in Mexico*, Pacific Standard (Feb. 14, 2019), <https://psmag.com/news/five-takeaways-from-the-lawsuit-over-trumps-plan-to-keep-asylum-seekers-in-mexico>.

²⁴ Ed Vulhiamy, *Tricked, abducted and killed: the last day of two child migrants in Mexico*, The Guardian (Feb. 16, 2019), <https://www.theguardian.com/world/2019/feb/16/tijuana-migrant-child-murders-mexico-us-asylum>.

²⁵ Herrera, *supra* note 23.

²⁶ The Steering Committee approved by the Court in the *Ms. L* litigation includes the law firm Paul, Weiss as well as three non-governmental organizations: Justice in Motion, Kids in Need of Defense (KIND), and the Women's Refugee Commission (WRC).

development and causes severe psychological trauma, like depression and post-traumatic stress disorder.²⁷ Medical and mental health experts have concluded that the forced separation of migrant children who fled violence can have particularly harmful consequences, even if the separation is brief.²⁸ At the Port Isabel detention center, a father articulated the pain he felt being separated from his 9-year-old son, saying, “I haven’t seen my son in over 2 months—I don’t want anything from the United States other than my son.”²⁹ A mother who was separated from her 6-year-old son said, “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.”³⁰

Not only are family members physically separated, but their legal cases and experiences within the immigration enforcement system are also bifurcated. This raises serious due process concerns, and serious inefficiencies in a backlogged system, especially when individuals from the same family have the same claim for asylum. Children, in particular, may not know all the details or have important documents relating to their family’s asylum claim. When this happens, disparate results and incomplete information are far more likely to affect important immigration proceedings.

Children should not be separated from their parents barring instances in which separation legitimately protects the child and is in line with child welfare standards.

REASONS FOR SEPARATIONS MUST BE DOCUMENTED AND THE GOVERNMENT SHOULD TRACK ALL SEPARATED FAMILY MEMBERS

The uptick in family separations came after the Department of Justice (DOJ) and the Department of Homeland Security (DHS) implemented a “zero-tolerance” immigration policy in the spring of 2018.³¹ The policy directed DHS border officials to refer every individual apprehended near the border who did not present at an official port of entry to DOJ for criminal prosecution, even when individuals were primary caregivers to children and exercised their lawful right to seek asylum.³² Adults were taken to Federal detention facilities, while children were transferred into the care of ORR, which operates within HHS.³³ Once separated from their parents, DHS classified the kids as “unaccompanied.”³⁴

Even before the ZTP, the *New York Times* reported that, from October 2017 to April 2018, over 700 children were taken from their parents.³⁵ The latest HHS Inspector General’s report estimates that DHS separated thousands of children from 2017 to June 2018.³⁶ After the administration officially acknowledged the ZTP, a Customs and Border Protection (CBP) official testified that 639 parents traveling with 658 children were processed for prosecution in the span of 13 days in May alone.³⁷ As of December 2018, HHS had identified 2,737 children who had been separated from their parents under the policy and were required to be reunified under a June 2018 Federal court order.³⁸

Alarming, the HHS Inspector General’s report confirms what KIND has seen with its own caseload, which is that the Trump administration continues to separate families at the border. Even after President Trump announced an end to the ZTP, ORR received at least 118 newly-separated children between July 1 and November

²⁷ JULIE M. LINTON ET AL., AM. ACAD. OF PEDIATRICS, DETENTION OF IMMIGRANT CHILDREN 6 (2017).

²⁸ BETRAYING FAMILY VALUES, supra note 41, at 12.

²⁹ SilencedVoices, KIND, <https://supportkind.org/get-involved/silencedvoices/>.

³⁰ Id.

³¹ U.S. DEPT OF HEALTH & HUM. SERV., OFFICE OF INSPECTOR GENERAL, OEI-BL18-00511, SEPARATED CHILDREN PLACED IN OFFICE OF REFUGEE RESETTLEMENT CARE (2019), 1 (hereinafter INSPECTOR GENERAL REPORT).

³² Press Release, KIND & Women’s Refugee Comm’n, Family Separation at the Border (May 30, 2018) (on file at <https://supportkind.org/media/family-separation-at-the-border/>).

³³ INSPECTOR GENERAL REPORT, supra note 35, at 2.

³⁴ Press Release, supra note 36.

³⁵ Caitlin Dickerson, Hundreds of Immigrant Children Have Been Taken From Parents at U.S. Border, NYTIMES (Apr. 20, 2018), <https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html>.

³⁶ INSPECTOR GENERAL REPORT, supra note 35, at 1, 13.

³⁷ TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children: Hearing Before the Subcomm. on Border Security & Immigration, 105th Cong. (2018) (Statement of Richard Hudson, Deputy Chief of the Operations Program, Law Enforcement Operations Directorate, U.S. Customs & Border Protection).

³⁸ Miriam Jordan, Family Separation May Have Hit Thousands More Migrant Children Than Reported, NYTIMES (Jan. 17, 2019), <https://www.nytimes.com/2019/01/17/us/family-separation-trump-administration-migrants.html>.

7, 2018.³⁹ ORR often receives little or incomplete information about the reasons for such separations.

DHS MUST DEVELOP STANDARD GUIDELINES FOR THE CONTINUED SEPARATIONS

The HHS Inspector General's report notes that DHS only provides ORR with "limited information" about why a family has been separated.⁴⁰ Under current policies and practices, these decisions are arbitrary. They require no justification or documentation and do not call for the screener to have any child welfare expertise.⁴¹ The HHS Inspector General's report emphasizes that "[i]ncomplete or inaccurate information about the reasons for separation, and a parent's criminal history in particular, may impede ORR's ability to determine the appropriate placement for a child."⁴² It also notes that DHS does not consistently respond to ORR's requests for follow-up information about the reasons for a child's separation.⁴³ KIND continues to see cases in which neither ORR nor the attorney are notified that DHS separated a child from a parent. A parent can lose physical custody of their child without any judicial oversight and for reasons that are inconsistent with child welfare legal standards.⁴⁴ For example, while a parent may have a prior deportation order or an arrest warrant in the home country, that history may actually be the basis of the parent's asylum claim for government persecution, such as in the case of a parent fleeing an oppressive government regime.

KIND has seen several recent cases, post-ZTP, of children separated from their parents for unknown reasons. In one case, a father was separated from his teenage daughter and no information was given for the reasons for the separation. Moreover, KIND only found out this child had been separated from her father through interviews with the child. The separation was not noted in her file and no one from ORR flagged the separation for the attorney of record. Frequently in these cases, KIND attorneys have had to track down the location of the parents, and then begin the difficult task of communicating with them at an ICE detention facility, often several hundred miles away. Even when KIND attorneys are able to establish contact with the separated parent, the parent is typically given little to no information as to why they were forcibly deprived of their ability to remain with their child. There is currently no formal written document issued to parents outlining the reasons for the separation, and no vehicle for them to challenge any assertions being made against them. Moreover, even when the separations are recorded, it is taking almost a week for DHS to facilitate communication between the parent in their custody and the child.

Many children are also separated from extended family members like siblings or grandparents, or when CBP questions the veracity of the relationship between the adult and child. These separations are not recorded in the new DHS system. Therefore, if CBP does not believe an adult is the true parent of a child, the separation will not be recorded and there is no way for that parent to find their child and challenge the separation later. Many children travel with extended family members like grandparents or other relatives who may have cared for the children their entire lives but never obtained legal guardianship in the home country. CBP must separate these family members but they should be tracking these separations for the same reasons it is important to track children separated from their parents. The separation from extended family members may be just as emotionally traumatic as being separated from a parent and that adult may have important information related to the child's legal claim for protection.

DHS MUST ENSURE CHILD WELFARE PROFESSIONALS SCREEN AND CARE FOR CHILDREN IN THEIR CUSTODY

KIND recommends the government hire child welfare professionals at the border to supervise the protection of children and families and the circumstances in which family separations occur.⁴⁵ Further, immigration enforcement agents should be trained to consider family unity as a primary factor in charging and detention decisions.⁴⁶ Written standards should be drafted, in consultation with child welfare ex-

³⁹Id. at 11.

⁴⁰INSPECTOR GENERAL REPORT, *supra* note 35, at 11.

⁴¹KIND, WOMEN'S REFUGEE COMM'N & LUTHERAN IMMIGRATION SERV., BETRAYING FAMILY VALUES: HOW IMMIGRATION POLICY AT THE UNITED STATES BORDER IS SEPARATING FAMILIES 4 (2017) (hereinafter BETRAYING FAMILY VALUES).

⁴²INSPECTOR GENERAL REPORT, *supra* note 35, at 12.

⁴³Id.

⁴⁴BETRAYING FAMILY VALUES, *supra* note 45, at 7.

⁴⁵Id. at 2.

⁴⁶Id. at 1.

perts, describing protocols and procedures for determining when separation may be in the best interest of a child. Immigration enforcement agents should also receive training on how to apply the “best interests of the child” framework for when they believe a child’s separation from their parent is warranted.⁴⁷ These instances include when a parent has a conviction for a violent offense or child abuse or neglect offense. DHS should also consider ORR’s best interest recommendation. Family separation should be recorded and justified in writing, with an opportunity provided to the parent or child to challenge the separation. ORR, family members, and attorneys should be able to easily access this information. In order to ensure that accurate information is available, ORR must demand that DHS input detailed information about any separations going forward into the ORR portal in a rigorous and systematic way.

DHS MUST CONDUCT OVERSIGHT OF FACILITIES HOLDING MIGRANT CHILDREN

At a time when children, both accompanied and unaccompanied, make up a significant portion of all migrants processed at the Southern Border, this administration has actively sought to roll back *Flores* protections, which set out National standards for the Government’s treatment, detention, and release of children. In September 2018, it proposed regulations that would relax *Flores* standards for how kids in custody can be held and transported.⁴⁸

The proposed regulations would eliminate the vital third-party oversight and monitoring that is currently provided through judicial enforcement of *Flores*. As recently as July 2018, the supervising court found that the Government had breached the agreement in several ways, including by undertaking policies that “unnecessarily delay” the release of children to custodians.⁴⁹ In January 2019, it was reported that *Flores* counsel discovered facilities holding unaccompanied children operating without licenses.⁵⁰ *Flores* counsel recounted that ORR has failed to notify children and parents of their rights relating to securing children’s release from facilities, discouraged parents from seeking their children’s release by passing their information to ICE,⁵¹ and delayed background investigations of potential sponsors.⁵²

ORR remains the appropriate entity to care for migrant children—it has experience resettling refugees and child welfare expertise. It is not an immigration enforcement agency. However, third-party monitoring of facilities must be retained and protected, particularly at a time when there is enormous strain on ORR’s resources. Compliance with *Flores* must not be left to discretion, especially at a time when ORR policies result in higher and longer detention rates for children.

DHS SHOULD NEVER USE INFORMATION OBTAINED FROM THE OFFICE OF REFUGEE RESETTLEMENT TO CONDUCT ENFORCEMENT

The Homeland Security Act requires the Office of Refugee Resettlement to “coordinate and implement the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status.”⁵³ The TVPRA clarifies that ORR is to “promptly [place children] in the least restrictive setting that is in the best interest of the child.”⁵⁴ This requirement derives from the longstanding *Flores* Settlement Agreement (FSA), which provides that children should

⁴⁷Id. at 7.

⁴⁸Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, 83 Fed. Reg. 45486 (proposed Sept. 7, 2018) (to be codified at 45 C.F.R. pt. 410).

⁴⁹KIND, Comment Letter on Proposed Rule Relating to Apprehension, Processing, Care and Custody of Alien Minors and Unaccompanied Alien Children 29 (Nov. 6, 2018), <https://supportkind.org/wp-content/uploads/2018/11/KIND-Comments-DHS-Docket-ICEB-2018-0002-11.6.18.pdf>.

⁵⁰Graham Kates, *Migrant Children in U.S. Are Being Held in Unlicensed Shelters, Lawyers Say*, CBS NEWS (Jan. 24, 2019, 2:17 PM), <https://www.cbsnews.com/news/migrant-children-in-u-s-are-being-held-in-unlicensed-shelters-lawyers-say/>.

⁵¹A leaked internal DHS memo from December 2017 proposed a Memorandum of Understanding between ORR and ICE, under which the agencies would coordinate to place undocumented sponsors in removal proceedings. It anticipated that the policy would “result in a deterrent impact on ‘sponsors’ who may be involved with smuggling children into the United States” and 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 in custody longer.” Memorandum from Dep’t of Homeland Security (Dec. 2017) (on file at <https://www.documentcloud.org/documents/5688664-Merkleydocs2.html>). This policy took effect 4 months later.

⁵²Kates, supra note 56.

⁵³The Homeland Security Act, Pub. L. No. 107–296, 116 Stat. 2135 § 462(b)(1)(A) (2002).

⁵⁴8 U.S.C. § 1232(c)(2)(A) (2013).

be placed in the “least restrictive setting” in their best interests,⁵⁵ and directs that parents and legal guardians receive priority among potential sponsors, who may also include other immediate relatives, distant relatives, or unrelated individuals.⁵⁶

Although ORR has received information about a potential sponsor’s immigration status since 2005, it has not, until recently, shared immigration status information with other agencies for the explicit purpose of immigration enforcement, as immigration status typically is not relevant to evaluating whether the sponsor can adequately care for a child.⁵⁷ Instead, ORR’s policy has been to enable “the release of unaccompanied alien children (UAC) to undocumented sponsors, in appropriate circumstances and subject to certain safeguards.”⁵⁸ Rather than disqualifying potential sponsors, immigration status information has previously only been used “to ensure the safety and well-being of the child by making sure that there is an adequate care plan in place that takes all relevant aspects of the sponsor’s situation into consideration.”⁵⁹

In the summer of 2017, however, U.S. Immigration and Customs Enforcement (ICE) began using information gathered by ORR to initiate enforcement against sponsors—identifying individuals for enforcement based on their role as the designated or potential caretakers of unaccompanied children.⁶⁰ ICE arrested more than 400 people in its initiative targeting sponsors for smuggling.⁶¹ However, news reports indicated that the majority of those arrested were not charged with Federal smuggling crimes, but instead charged with violations unrelated to smuggling.⁶² Many of those arrested were not the suspects ICE had targeted, but merely present in the home of the potential sponsors when the agency arrived.⁶³ These actions stoked fear in immigrant communities and raised concerns among many about stepping forward to care for unaccompanied children in ORR custody. KIND issued a report in December 2017 documenting the stories of unaccompanied children and sponsors affected by DHS’s enforcement actions and the detrimental impacts of enforcement against sponsors on the well-being of children and due process.⁶⁴

In April 2018, information sharing between DHS and ORR was formalized through a Memorandum of Agreement (MOA) providing for the continuous sharing of information about unaccompanied children from the time of their apprehension through their release from custody, including information about potential sponsors and other adults in the home. Shortly after, DHS issued a notice in the *Federal Register* to modify its system of records to carry out the agreement.⁶⁵ That notice stated that ICE will use information about sponsors obtained through ORR to “identify and arrest those who may be subject to removal.”⁶⁶ At the same time, HHS pursued

⁵⁵ Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85–4544–RJK(Px) (C.D. Cal. Jan. 17, 1997), available at https://cliniclegal.org/sites/default/files/attachments/flores_v_reno_settlement_agreement_1.pdf [hereinafter *Flores* Settlement Agreement]. The *Flores* Settlement Agreement is the result of a class action against the Government by a class consisting of all immigrant children detained in custody of the Government. *Id.* at ¶10. This binding agreement sets standards for the detention and release of immigrant children to sponsors. See *id.* at ¶9.

⁵⁶ *Id.* at ¶14; 8 U.S.C. § 1232(c); *Sponsors and Placement: Release of Unaccompanied Alien Children to Sponsors in the U.S.*, ORR, <https://www.acf.hhs.gov/orr/about/ucs/sponsors> (last visited Sept. 23, 2018); U.S. Dept of Health and Human Services, Office of Inspector General, HHS’s Office of Refugee Resettlement Improved Coordination and Outreach to Promote the Safety and Well-Being of Unaccompanied Alien Children (July 2017) (“ORR releases most children to their parents or an immediate relative.”).

⁵⁷ *Sponsors and Placement: Release of Unaccompanied Alien Children to Sponsors in the U.S.*, ORR, <https://www.acf.hhs.gov/orr/about/ucs/sponsors> (last visited Feb. 25, 2018).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See KIND, Targeting Families 8 (Dec. 2017), https://supportkind.org/wp-content/uploads/2017/12/TargetingFamilies_December-2017_Final-v.2.pdf.

⁶¹ John Burnett, *ICE Has Arrested More Than 400 in Operation Targeting Parents Who Pay Smugglers*, NPR (Aug. 18, 2017), <https://www.npr.org/2017/08/18/544523231/arrests-of-undocumented-parents-sparks-debate-between-Federal-officials-and-immi>; Hannah Dreier, *Relatives of Undocumented Children Caught Up in ICE Dragnet*, ProPublica (Sept. 11, 2017), <https://www.propublica.org/article/relatives-of-undocumented-children-caught-up-in-ice-dragnet>; Uriel J. Garcia, *ICE Arrests Young Immigrant’s Sponsor Months After Feds Assured Him He’d Be Safe*, THE NEW MEXICAN, Sept. 9, 2017, http://www.santafenewmexican.com/news/local_news/ice-arrests-young-immigrant-s-sponsor-months-after-feds-assured/article_428366f5-6d03-552c-a277-93b83d3005e2.html.

⁶² Dreier, *Relatives of Undocumented Children Caught Up in ICE Dragnet*, supra note 13.

⁶³ See Garcia, *ICE Arrests Young Immigrant’s Sponsor Months After Feds Assured Him He’d Be Safe*, supra note 13.

⁶⁴ KIND, Targeting Families 8 (Dec. 2017), https://supportkind.org/wp-content/uploads/2017/12/TargetingFamilies_December-2017_Final-v.2.pdf.

⁶⁵ 83 Fed. Reg. 20844 (May 8, 2018).

⁶⁶ *Id.*

modifications to forms related to its sponsorship process to implement the MOA.⁶⁷ ORR's modified process included expanded fingerprinting and background check requirements, including for all potential sponsors and adult members of their households.

The MOA has impeded ORR's ability to promptly place unaccompanied children in the least restrictive setting by deterring potential sponsors for unaccompanied children. Potential sponsors have expressed fear of engaging with the agency's sponsorship and family reunification process due to both the expanded scope of the information collected as well as ICE's intent to use information it receives from ORR for immigration enforcement.⁶⁸ KIND has heard reports of individuals declining ORR's request to fill out necessary paperwork to serve as sponsors or withdrawing from the family reunification process after their applications have been submitted. Fear of enforcement has similarly compelled some potential sponsors and other household members to miss their fingerprinting appointments or to discontinue their applications. Moreover, the burdensome requirement that all adult household members submit information significantly delayed some reunifications.

Recent enforcement actions by ICE in the course of implementing the MOA have only compounded these fears. From July through November 2018, ICE arrested 170 potential sponsors of unaccompanied children in ORR custody.⁶⁹ Nearly 64 percent (or 109) of the individuals arrested had no criminal record.⁷⁰ Such actions have led to a decline in the number of individuals willing to sponsor unaccompanied children in ORR custody and delayed the release of children from ORR. Numbers of children in ORR custody have soared as children remain in care for longer, indefinite periods. In the fall and winter of 2018, the number of unaccompanied children in ORR's care reached historic levels—with nearly 15,000 children in care in mid-December 2018. The length of time in ORR care similarly ballooned as a result of the MOA and other policies—at one point with an average length of stay at longer than 70 days.⁷¹

Held indefinitely in ORR custody with no knowledge of when and to whom they may be released, unaccompanied children experience significant anxiety and distress. These impacts may be particularly significant for child survivors of trauma. In detention for months potentially without the emotional support of family members children may grow hopeless and decide to return to their countries of origin, even when they may have viable claims for humanitarian protection and face serious harm or death if deported. Detention fatigue not only affects children's physical and mental health, but it negatively impacts their ability to proceed with their legal cases.⁷²

CONCLUSION

Children and families seeking asylum in the United States are often escaping dangerous and violent conditions in their countries of origin. The opportunity of asylum seekers to pursue protection from harm is the very foundation of our country's asylum laws, and efforts to restrict access to humanitarian protection like the Remain in Mexico policy do nothing to make our country safer. Instead of restricting access to protection for unaccompanied children and families, the administration should ensure that all are provided due process and an opportunity to have their claims fully and fairly considered. We look forward to working with Members to en-

⁶⁷See, e.g., Administration for Children & Families, Sponsorship Review Procedures for Approval for Unaccompanied Alien Children, OMB No. 0970-0278, 83 Fed. Reg. 22490 (May 15, 2018); 83 Fed. Reg. 42895 (Aug. 24, 2018); 83 Fed. Reg. 52221 (Oct. 16, 2018).

⁶⁸See 83 Fed. Reg. at 20846 (noting among the purposes of DHS's proposed system of records change "[t]o screen individuals to verify or ascertain citizenship or immigration status and immigration history, and criminal history to inform determinations regarding sponsorship of unaccompanied alien children . . . and to identify and arrest those who may be subject to removal.").

⁶⁹Geneva Sands, CNN, *ICE arrested 170 potential sponsors of unaccompanied migrant children* (Dec. 10, 2018), <https://www.cnn.com/2018/12/10/politics/ice-potential-sponsors-arrests/index.html>.

⁷⁰Id.

⁷¹Jonathan Blitzer, *To Free Detained Children, Immigrant Families Are Forced to Risk Everything*, The New Yorker (Oct. 16, 2018), <https://www.newyorker.com/news/dispatch/to-free-detained-children-immigrant-families-are-forced-to-risk-everything> ("Officially, the H.H.S. claims that the average time is 59 days, but according to one of the department's own officials, who agreed to speak with me on the condition of anonymity, detained children now spend an average of 74 days in Federal custody, more than double what it was at the start of 2016.").

⁷²See, e.g. Julie M. Linton, Marsha Griffin, Alan J. Shapiro, Am. Academy of Pediatrics, *Detention of Immigrant Children* (May 2017), <https://pediatrics.aappublications.org/content/139/5/e20170483.short>.

sure our country's continued commitment to justice and to the protection of the most vulnerable.

Miss RICE. Thank you, Ms. Podkul.

I now recognize Ms. Brané to summarize her statement for 5 minutes.

STATEMENT OF MICHELLE BRANÉ, DIRECTOR FOR MIGRANT RIGHTS AND JUSTICE, WOMEN'S REFUGEE COMMISSION

Ms. BRANÉ. Thank you, Chairwoman and Members of the committee for giving me the opportunity to testify today. The Women's Refugee Commission has been monitoring immigration enforcement and border screening policies for almost 20 years.

Whether the policy we are discussing today was a zero tolerance policy with the primary focus of prosecution or an explicit family separation policy, the consequences are clear: Thousands of families seeking protection at our Southern Border were separated.

One of the many shocking realities we must face is that even after making a decision to implement a policy that they knew would result in the separation of thousands of families, no one in this administration, not DHS, not CBP, not ICE, no one did anything to create a system for the actual separations, for identifying and tracking separated children or minimizing trauma or for tending to their basic needs.

The actual process for separating families was chaotic, cruel, inefficient, and dangerous. In my opinion it was criminally negligent.

In June 2018, at the height of family separations, I spent 2 days at the border speaking with parents and children in CBP custody.

It is impossible to overstate the impact of seeing Government officials, performing as part of their daily job functions what can only be described as cruelty. Families were separated before my eyes with no explanation, no opportunity for goodbyes, no humanity.

In one case, I was speaking to a father and his 9-year-old daughter, when an officer interrupted to say, I have to take the girl. When I asked him why and where he was taking her, he said, I don't know, ma'am, to a shelter. I just have her on my list. The officer did not explain that this was a separation. In fact, he didn't even seem to be acknowledging it himself.

But this was a separation happening before my eyes. It was described only as being about, "taking her to the bus." The officer didn't even intend to give them an opportunity to say goodbye.

At the Ursula processing center, there were over 500 separated children in cages when I arrived. Several of the children were listed as being 1 or 2 or 0 years old, 0 years old. I asked to see some of these babies.

The officer told me that he couldn't find them. He said that he had called their names and they had not answered. I was incredulous. Of course, they did not answer. They were babies. I asked who was caring for these babies, and he told me he did not know.

Eventually, he brought me a toddler listed as being 2 years old. A 16-year-old girl was holding the child. She told me that she had found the child there in her cage.

When the toddler cried, no guards or officials helped. This 16-year-old girl, who had also been separated from her mother, found this toddler in a cage. When the toddler cried, she comforted her.

She changed her diapers. She helped her get in line for food and gave her bottles.

At night she sang the crying girl to sleep. She had been there for 3 days and she was worried about what would happen to this little girl when she was transferred away.

I eventually discovered that this toddler had been separated from her aunt and that Border Patrol had incorrectly recorded her name and her age. We will never know what would have happened to this child if I had not been there that day or if a 16-year-old girl had not met or cared for her.

What is worse is that we will never know what other cases like hers existed that day or on any other because DHS did not, and still does not, track separations.

Another child I met with was a 5-year-old boy. He was sobbing and inconsolable. He was clutching a rolled-up photocopy of his mother's ID. Someone must have given it to him before they separated them.

This piece of paper was the first indication I had seen in my 2 days in those facilities that indicated that anyone in Border Patrol cared at all about what was happening to these children.

These outrageous and traumatizing separations did not just happen to these families. This was not a natural disaster. This was an affirmative decision and instruction given by and to Government actors, and it was done to these families. Even today, separations continue and there is still no system in place for tracking families.

I thank the committee for holding this hearing, and for continuing to ask these critical questions. We must ask how this happened. Either the Government considered, but did not care, about the consequences of separation, or they did not even consider the consequences of their own policy, a conclusion that is just as shocking and disturbing in its negligence.

Why were policies to receive, process, and manage arriving families humanely not even considered? There must be consequences. It is essential in order to ensure that this does not happen again.

Thank you, again, and I am available later to answer questions about these stories and practices at the border.

[The prepared statement of Ms. Brané follows:]

PREPARED STATEMENT OF MICHELLE BRANÉ

MARCH 26, 2019

Thank you for this opportunity to testify about the Department of Homeland Security's Family Separation Policy, an extremely important matter that profoundly affects the lives of vulnerable migrant and refugee children and families seeking safety and our fundamental values as a Nation.

The Women's Refugee Commission is a non-governmental, non-profit organization that works to identify gaps, research solutions, and advocate for change to improve the lives of crisis-affected women and children.¹ The Women's Refugee Commission is a leading expert on the needs of refugee women and children, and the policies that can protect and empower them.² For over 2 decades, the Women's Refugee Commission has monitored immigration detention facilities and migrant children's facilities operated under what is now the jurisdiction of Immigration and Customs

¹ Women's Refugee Commission, <https://www.womensrefugeecommission.org/about>.

² Women's Refugee Commission, *Border Surge of Unaccompanied Children: Why They're Coming and What the Government Should Do* (2014), available at <https://www.womensrefugeecommission.org/news/press-releases-and-statements/2080-an-administration-made-disaster-the-south-texas-border-surge-of-unaccompanied-alien-minors>.

Enforcement (ICE), Customs and Border Protection (CBP), and the Office of Refugee Resettlement (ORR), and interviewed facility staff, local service providers, asylum seekers, and migrant children about the policies, practices, and conditions of custody that relate to the ability to access to protection. We have been monitoring border screening policies, including family separation, for over 4 years.³ The testimony submitted here is based on my observations, personal experience, and the Women’s Refugee Commission’s expertise and accumulated knowledge (in addition to the specific sources cited).

The Trump administration has implemented various policies designed to deter migrants—particularly migrant families and children—from seeking protection in the United States. In March 2017, then-Secretary of Homeland Security John Kelly announced that the administration was considering a policy of separating families in order to deter them from seeking asylum at the U.S.-Mexico border.⁴ While he quickly changed course and announced that the policy was temporarily off the table, discussion of how to deter families through separation continued. Unfortunately, even by March 2017, the administration was already separating families and in fact, increased the practice. By summer 2017, ORR and service providers noticed a marked increase in separated children arriving at shelters for unaccompanied children around the country.

In July 2017, the Department of Homeland Security (DHS) began a pilot⁵ of the now infamous “zero tolerance” policy that prioritized the criminal prosecution of immigration-related offenses in order to deter migrants. The pilot, which began in the El Paso area, continued until October or November 2017 before zero tolerance was expanded nationally in May 2018.⁶ Under zero tolerance, CBP was to refer any migrant attempting to cross into the United States without authorization, including asylum-seeking families and parents traveling with infant children, for criminal prosecution. Although then-Attorney General Sessions characterized the policy as applying to everyone, the policy was never applied universally. It was, however, applied to large numbers of parents. DHS authorities have said on many occasions that one of the objectives of the policy was to deter families from seeking protection at the U.S. border.⁷ CBP would select a parent for prosecution, and then generally transfer parents to U.S. Marshals custody and in doing so would separate them from their children. In most cases, CBP would then classify the children as unaccompanied and transfer them to ORR. For many months, WRC and many others had been warning the administration of the harm such a policy would cause to children, and of the complete lack of any systems in place to track separations, ensure follow-up, facilitate communications, and to reunify parents and their separated children.⁸

It is well-established that even after making the decision to implement a policy that would clearly result in the separation of thousands of families, and specifically a policy that was intended to separate families as a form of deterrence, the administration—DHS, and CBP in particular—did nothing to address the fact that they had no system in place for identifying and tracking separated children or minimizing trauma, let alone protecting their Constitutional rights to due process and family unity. Even with the increased separations and the formal policy of zero tolerance—that the administration knew based on both common sense and on the pilot that they implemented—would lead to massive separations, and even after public outcry over separations, including an extensive complaint that my own organization and others filed with DHS’s Office for Civil Rights and Civil Liberties (CRCL) and Office of Inspector General (OIG),⁹ no system was implemented to track separations. No

³ Women’s Refugee Commission, *Betraying Family Values; How Immigration Policy at the U.S. Border is Separating Families*, March 2017, <https://www.womensrefugeecommission.org/rights/gbv/resources/1450-betraying-family-values>.

⁴ Daniella Diaz, “Kelly: DHS is considering separating undocumented children from their parents at the border”, (March 7, 2017); <https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html>.

⁵ Department of Homeland Security, Office of the Inspector General, HHS–OIG Issue Brief, January 2019 OEI–BL–18–00511, <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf>.

⁶ *Ibid.*

⁷ Julia Ainsley, NBC News, Trump Administration Weighed Targeting Migrant Families, Speeding Up Deportation of Children, Jan. 17, 2019; <https://www.nbcnews.com/politics/immigration/trump-admin-weighed-targeting-migrant-families-speeding-deportation-children-n958811>.

⁸ Women’s Refugee Commission, *Betraying Family Values; How Immigration Policy at the U.S. Border is Separating Families*, March 2017, <https://www.womensrefugeecommission.org/rights/gbv/resources/1450-betraying-family-values>.

⁹ Women’s Refugee Commission, et al, Joint Complaint on Forcible Separations of Families by Customs and Border Protection, <https://www.womensrefugeecommission.org/rights/resources/1540-joint-complaint-on-forcible-separation-of-families-in-customs-and-border-protection-custody>.

system was implemented to identify children as having been separated when transferring them to ORR. No system was implemented to enable communication between parents and their separated children. No system was implemented for informing parents or children of what was happening and how they would ever find each other again. And no system was in place for reunifying families in any way, whether for deportation or release from criminal custody. This is undisputed in any serious way and was confirmed by the court in the case of *Ms. L et al. v. ICE*.¹⁰

Judges, prosecutors, and public defenders in criminal court were equally unaware of what was happening or what recourse was left to separated parents.¹¹ Federal criminal courtrooms were filled with hundreds of parents who were desperate for their children. Reports indicate that many had been told by CBP officials that they would never see their children again. Some were told their children would be sent for adoption. Many were falsely told by court authorities or CBP officials that the best way to get their children back was to plead guilty in criminal court and accept voluntary departure.¹² In numerous cases, parents were deported without their children. Although Secretary Nielsen recently testified before Congress that she believes all parents were given an opportunity to reunite with their children prior to deportation,¹³ the court in *Ms. L* created a steering committee to locate several hundred deported parents who had been separated from their children in order to determine their wishes. I also spoke to several of these parents who had been deported without their child even after begging to be reunited, pleading guilty, withdrawing their asylum claim, and accepting voluntary departure or agreeing to deportation.

Only in the spring of 2018, months after family separation had escalated and after direct intervention by advocates, did ICE post information for parents in detention on how to call a child from whom they had been separated. Even these efforts were deeply flawed. DHS's own Office of Inspector General found that information on how to call a separated child through the Department of Health and Human Services' (HHS) toll-free number was posted in one area of the Port Isabel Detention Center only after the June 20 Executive Order on family separation, and that fliers did not fully explain the instructions on how to place a call.¹⁴ Similarly, OIG found that CBP was inconsistent in providing parents who were referred for criminal prosecution with a DHS/HHS flier explaining how to obtain assistance in locating their child. In addition, those parents who were sent to U.S. Marshals custody during their criminal prosecution had no meaningful way to access any DHS/HHS hotlines as their facilities did not have the same phone capacities as an ICE facility might.

For those parents who did manage to contact an ICE or ORR hotline, which many did not, the hurdles for actually speaking with or making contact with their child were often insurmountable. These hurdles included: (1) Not reaching an ORR official and having little or no opportunity to leave a message or receive a return call, (2) not receiving meaningful information about the location and well-being of their child given ORR's policies to confirm parentage, or (3) not being able to schedule time to speak with their child while in ICE detention. These calls were not always free of charge, and WRC has reason to believe that even today ICE might not facilitate free calls between parents separated from their children. It is important to note that it was not until ordered to do so by the judge in *Ms. L v. ICE* that DHS began to make a concerted effort to ensure that parents were able to have at least one telephonic contact with their child. Even then, separated children were limited to 2 calls of 10 to 20 minutes each week. Some children were too young or too traumatized to be able to speak on the phone. And in a few cases, parents reported being put on the phone with the wrong child.

The numbers were not insignificant, but because DHS never tracked them, and is still not transparent about what they know, we have no accurate accounting of how many families were separated, nor do we know how many remain separated

¹⁰*Ms. L. v. U.S. Immigration & Customs Enforcement (Ms. L. v. ICE)*, No. 18–0428 (S.D. Cal. June 26, 2018). GAO report, <https://www.gao.gov/assets/700/694918.pdf>.

¹¹Debbie Nathan, Hidden Horrors of “Zero Tolerance”—Mass Trials and Children Taken from their Parents, May 29, 2018, *The Intercept*. Available at: <https://theintercept.com/2018/05/29/zero-tolerance-border-policy-immigration-mass-trials-children/>

¹²American Immigration Council (AIC) and American Immigration Lawyers Association (AILA), *The Use of Coercion by U.S. Department of Homeland Security (DHS) Officials Against Parents Who Were Forcibly Separated From Their Children*, (August, 2018), <https://aila.org/advocacy/press-releases/2018/complaint-re-coercive-tactics-on-separated-parents/the-use-of-coercion-by-us-department-of-homeland/>; See also Declarations in *Ms. L v ICE*, *ibid*.

¹³“DOJ Lawyers Contradicted Nielsen On Family Separations Within Hours Of Her Testimony,” March 7, 2019, *Talking Points Memo*. Available at: <https://talkingpointsmemo.com/news/doj-lawyers-contradicted-kirstjen-nielsens-testimony-on-family-separation-within-hours>.

¹⁴OIG Report, at page 13, <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>.

after all this time. What we have learned is: Between June and November 2017, at least 281 individuals in families were separated, with the children being transferred to ORR facilities; *The New York Times* reported that between October 2017 and April 20, 2018, ORR identified over 700 children placed in their care after separation from a parent at the border;¹⁵ And by June 2018, ORR identified 2,654 children in their care who had been separated from their parents by CBP at the border,¹⁶ and more than 400 of those parents had been deported without their children. More recent investigations have revealed additional children ORR failed to identify in June, and that there were likely thousands of separated children who had been released from ORR prior to the June accounting.¹⁷ This means that between the summer of 2017 to the time of the court order in 2018, there were, at a minimum, over 3,000 children, and potentially thousands more, who had been separated from a parent and placed into ORR custody.

In April 2018, again, many months after separations had first become official policy through the El Paso pilot and well after separations had been happening at an alarming rate, CBP began assigning families that were apprehended together a Family Unit Number which allowed CBP to identify families who arrived together. This was the first indication that someone considered the urgent need to track family members. However, the interest and effort was short-sighted and ineffective. The family unit numbers did not transfer with the child to ORR nor with the parent when they were transferred to ICE custody. The Family Unit Number and related data was deleted at the point of transfer, rendering it effectively useless both in notifying an individual ICE or ORR official assigned to a separated parent or child to know about the separation and in facilitating Government-wide tracking of family separation. To WRC's knowledge, no other effort was made to effectively track family separations on a comprehensive and systemic scale.

This policy had consequences far beyond what is evident on the face of it. Whether this was a policy intentionally designed to be as cruel as possible with the express purpose of traumatizing parents and children and separating them forever, or whether it constituted a criminally negligent failure to anticipate the consequences of the policy, the results were disastrous. Not only did the administration's policy to separate families cause lasting trauma and harm to thousands of children and their parents, these policies of separation and deterrence have not been effective in preventing parents from fleeing extreme danger to protect their children. The Trump administration has been intent on rolling back essential, long-established child welfare protections for children in an effort to deter the migration of families seeking protection. They have focused on family detention and family separation as two such policies, claiming that there is no other way to manage migrant families.¹⁸ However, both efforts have failed to deter migrants and in fact, have served only to traumatize and endanger children and harm families while also undermining pre-existing screening, management, and processing systems.

It is important to note that around the same time the Trump administration first began to forcibly separate families at the border in order to deter them from seeking protection, the administration ended one of its most effective programs—the Family Case Management Program (FCMP)¹⁹—that had been designed specifically to manage the compliance of and support families seeking protection while in their immigration proceedings. In addition to costing a fraction of the cost of detaining a family together in ICE or separately in ICE/ORR custody, FCMP was an alternative to detention program that was more than 99 percent effective in ensuring family appearances at ICE appointments and hearings, and also supported some parents during deportation. The program had been intended at minimum as a 5-year pilot but had only been in place for 1.5 years when the administration prematurely terminated FCMP in June 2017.

The crisis at the U.S. border is a crisis of political policies: Policies that are undermining border protection, and intentionally exposing children in Government custody to lasting and irreparable harm.

In June 2018, at the height of the family separation policy crisis and 1 week before President Trump's Executive Order, I spent 2 days at the border speaking with

¹⁵“Hundreds of Immigrant Children Have Been Taken From Parents at U.S. Border,” *The New York Times* (Apr. 20, 2018), <https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html?module=inline>.

¹⁶*Ms. L v ICE*, *Supra*.

¹⁷OIG Report, <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf>.

¹⁸Women's Refugee Commission, *The Harm of Family Detention*, <https://www.womensrefugeecommission.org/images/zdocs/WRC-harm-of-family-detention.pdf>.

¹⁹Women's Refugee Commission, *Family Case Management Program (FCMP) Background*, available at: <https://www.womensrefugeecommission.org/images/zdocs/Backgrounder-FCMP.pdf>.

parents and children in CBP custody under the *Flores* Settlement Agreement attorney access privilege. I spent 1 day at a Border Patrol station in McAllen, Texas where families are taken for initial processing, and another day at the Ursula Processing Center, also in McAllen. The Ursula Processing Center is a larger overflow center, also run by Border Patrol, where some children were taken for further processing as unaccompanied children after being separated from their parents, and where some families were taken for initial processing. Ursula was also sometimes used as a holding facility for children who are temporarily separated from their parent while the parent is sent for prosecution. What I witnessed at Ursula was as haunting as it was gut-wrenching, and is an experience that I will never forget.

I witnessed several families being separated. I heard with my own ears the cries of children. I heard parents and children being given false or misleading information about what was happening to them. No consideration was given by any Government actor for the well-being or basic human emotions of frightened children being taken from their parents, nor the desperate parents distraught at having their child ripped away from them. It is impossible to overstate the impact of seeing Government officials performing, as part of their daily job functions, what can only be described as cruelty.

The CBP station was cold, which is consistent with all my visits to CBP stations. Despite the over 100-degree temperatures outside, I wore a sweater and jacket inside the facility. Many of the children and parents I spoke to were still wearing wet clothes from having crossed the river or been caught in a rain storm the day before. Families were divided into male and female cells, and children over the age of 5 or 6 were separated from their parents of the opposite sex. Some of the children were held with other children, while others were held with other non-relative adults of the same sex.

I spoke to a mother and her 7-year-old son who had been placed in separate cells. They were reunified for the purpose of my interview with them. The child would not speak to me. He was almost catatonic—he just stared into space. When he occasionally answered his mother's questions, it was barely in a whisper. She was desperately worried about him and said that he had not eaten, not had anything to drink, or used the bathroom since they arrived 1½ days prior. He said that he was afraid to use the toilet in the cell where he was held with older boys and men. All of this was mumbled in whispers to his mother while laying limp in her arms. His clothes were still wet because they had been caught in a rainstorm when they were apprehended. He was shaking with cold. She begged me to ask the officers to let them be together. She said some mothers were allowed to be with their children and did not know why she and her son had been separated. She could talk of nothing else. Before I left, I was able to explain to the guards that the child seemed particularly traumatized and should at least be held in the same cell with his mother. He indicated that they would be separated eventually but when I left, I saw that they were together, at least temporarily.

In another case, I was interviewing a father and his 9-year-old daughter (who was also in wet clothes and shaking), when an agent knocked on the door and told us he had to take the girl. The father and daughter looked at me stone-faced. I asked the agent where they were taking her to which he responded, "I don't know, ma'am. To a shelter or processing center. I just have her on my list." I asked if he could wait a moment so that the father and his daughter could talk and say goodbye. They had been separated into separate cells since arriving at the station and had only had the brief time talking to me to be together. The officer simply responded by reiterating that he was just taking her to the bus to be processed. "I am not separating them ma'am, I am just taking her to the bus, to a shelter," he said. I explained to him what we all knew to be happening—that this 9-year-old girl was about to be separated from her father and taken to ORR custody. I explained this to the father and daughter and asked the officer to give them a moment to say goodbye or quickly exchange any words, the last they would share for an uncertain but long amount of time. It was clear that the officer had no intention of permitting them to say goodbye without my intervention. After about a minute, the guard opened the door again. The girl walked out. She hugged me. Then, I went back into the interview room with her father. He burst into tears.

No official took responsibility. No one admitted to what was happening in that facility. No one told the parents or the kids what was going to happen to them, but everyone detained there knew to be afraid. In some cases, children clung to their mothers or fathers but in many cases I saw them quietly and obediently follow instructions as they were led to separate cells. What struck me the most was the calmness—the stoic attitude of the children—until you were alone with them. The mothers wailed. Fathers tried to suppress tears. But most of the children who were over 5 just sat there. They did not cry. They barely moved.

When we arrived at the Ursula Processing Center the next day, the officials gave us a list with hundreds of names on it. These were the children in custody we were authorized to speak to pursuant to the *Flores* Settlement Agreement. On the day we visited, the facility had 1,200 people detained in it. It is a giant warehouse divided into what can only be referred to as cages. The adults were in the front—packed into chain-linked cages like sardines, lying side-by-side wrapped in mylar (foil) sheets. According to the lists, there were over 500 children who had been separated from a parent who were being held in cages in the back section. In some cases, the parent was also detained at Ursula (but usually held in a separate cage), while in others, the parents had been sent away for criminal prosecution or to ICE adult custody. Children filled the cages—sleeping on thin mats on the floor and wrapped in mylar blankets. Some children sat on the floor, others on benches. There were no toys, no books, and generally nothing for the children to do. Some televisions hung from the fencing in some of the cages, but they were not on when I was there. Children were not permitted to run around or play, and in fact were scolded by guards if they tried. The lights were on 24 hours a day, as in all Border Patrol facilities. Despite the summer Texas heat outside, the warehouse was extremely cold. There were no windows. The children had access to porta-potties set up in a central station in the middle of a set of cages. There was no plumbing in this section of the warehouse. There were tanks of water for washing hands, but the children told me that the water usually ran out by mid-morning. Air was piped in through large, loud HVAC tubing. One of the younger children I met with pointed at the tubes and said they were monsters.

Children in cages next to where we stood were looking at us through the fencing, curious as to who we were. I looked through the list we were given. I had to pick out which children I wanted to speak with. Several of the children were listed as being very young—1 or 2 years old. Others had their ages listed as zero. Zero. I asked who was caring for those babies and toddlers—the officers told me that they did not know. I asked to see some of these babies and speak to whoever was caring for them. They left with the list and came back a few minutes later. The officer told me they couldn't find them, that they had called their names, but they did not answer. I stared at him and told him that they were babies who, of course, would not answer when called. "I can't find them ma'am. I called their name, but they did not answer," he said. I insisted to the officer that there had to be someone caring for them who can respond on their behalf when called. "Who is taking care of these babies?" I asked. Again, the officer told me, "I don't know. They are probably with a relative or someone who is not responding when I call the name because it is not their name." I remained incredulous. I asked him to please bring a baby—any baby in custody—along with the person caring for them. But the officer insisted that I had to give him a name, so I picked several names and suggested that they approach adults caring for babies to see if they are the ones on the list. After a long wait, they brought me a child whose date of birth was listed as January 1, 2016, meaning the child would be 2 years old. This stood out because 1-1 is a DOB often used when the actual date is unknown. A 16-year-old girl was holding the child. When I asked her if she was the child's mother, she said "no," and told me that she did not know the child. When she arrived, after having been separated from her own mother, she was in a cage with several other girls her age. This toddler was in the cage with them. She followed the girls around, indicating for her diaper to be changed, for a bottle, for food. No official took any responsibility for the toddler who had apparently been separated from an adult. The girl said that other girls in the cage told her that the toddler was just 2 years old, and that this seemed right to her. The toddler did not speak Spanish. She seemed to only know a few words that she repeated, but the girls did not understand them. They assumed it was the indigenous language Quiché. The toddler just pointed, grunted, and cried. After the other girls were transferred away from the cage, the 16-year-old girl had been the one the child clung to. She taught other kids how to change diapers so that she had help. When the toddler cried, no guard or officials helped. At bedtime, the teenager put the toddler girl to sleep. At mealtime, she helped her get in line to get her food. She had been there for at least 3 days, but she told me it was hard to know because the lights were always on and there were no clocks or calendars. She told me she was worried about what would happen to and who would care for the little girl when she was transferred away from her.

After I brought this to the attention of the officials at the facility, they eventually looked into the toddler's case and discovered that the child had been separated from her aunt. Border Patrol had separated them 4 days earlier. The aunt was sent for prosecution and left the toddler behind—eventually transferring her to Ursula. Upon pressing, it was discovered that the aunt had also been transferred to Ursula. For 4 days this little girl's aunt had been asking what happened to the child. No

one would tell her. In the mean time, she was being held in a cage just yards away from her niece. Seeing her aunt transformed the little girl, who until now had been lethargic and nearly asleep in the teenager's arms. The toddler lit up and her entire demeanor changed. I learned from the aunt that Border Patrol had not only incorrectly recorded her name, but also had a date of birth that was off by several years. Indeed, the toddler was actually almost 4 years old. We will never know what would have happened to this child if I had not been there that day, or if a 16-year-old girl had never met nor cared for her. What's worse is that we will never know what other cases like hers—cases of incorrectly recorded biographical information, and of separation from a relative only a few cages or cells away—existed that day or on any other because DHS did not and still does not meaningfully track separations.

Later, I spoke to another 9-year-old. She sobbed as soon as I explained to her who I was and that I was there to understand how she was doing and how she was being treated. She could hardly speak. She did not want to talk about who she was, or where she came from, or what had happened to her. All she wanted talk about was that she had to find her mother. She said to me, "I have to hug her and tell her I love her. I need her to know I love her very, very much." She was obsessed with staying put at this facility. She was worried that she would be taken away to a shelter like other children who were being taken away, and she was concerned that if she moved from the place where we were—the last place her mother saw her—that her mother would not be able to find her again. "I don't want to be lost," she told me. Like so many children whose parents tell them that if they get lost or separated at a mall or fair to stay put because they will find them, this little girl was trying her best to do what she was supposed to do. But in this situation, no one knew how her mother would ever find her. Certainly, it appeared that the officials in charge had no plan for reunifying her with her mother. Based on what I had just observed, that 9-year-old little girl was right. She had every reason to think they might lose her.

In front of the desk where I was interviewing children, there was a cage filled with very young boys. As I waited for the next child to be brought to me, I went to the cage and spoke to them. I asked them how old they were: "5", "5", "10", "9", "5", "5", "5." I scanned my list of unaccompanied children, picked out a 5-year-old and asked to speak to him. The officer brought me a little boy, who grabbed my hand as soon as he saw me. We walked to the desk where I could talk to him and I lifted him onto the chair. He started to shake as the tears came. He just cried and cried, climbed onto my lap, hugged me, and cried for his mommy. He said there was a boy in the cage who was mean to him, that this boy was teasing him and saying he will never see his mother again. The boy was clutching a rolled-up piece of paper. It was a photocopy of the picture on his mother's ID. Someone must have made it and given it to him before they took her away. It was falling apart, and he was clutching it desperately. There was no way to expect this child to tell me about his situation, so I just comforted him as best I could. I could not tell him honestly that he would be with his mommy again—all I could say is that I thought they would take him to a place that was warmer than this warehouse with cages, where there would be people who would take care of him and help him find his mommy. When we finished, he walked back to his cage. The boy pointed to another boy in the cage to tell me he was the one who was mean to him. I told the guard and was told someone would look into it.

Later, after the children were called into line to get their dinner, I noticed another one of the 5-year-olds sitting on a bench crying. No one paid attention to the crying boy. I went to talk to him. He was shaking and saying something I could not understand though his sobs. I put my fingers through the fence of the cage he was in. He stopped crying and held my hand. He asked me where his daddy was. I told him that I did not know, but that his daddy was probably at court. He cried some more. He asked if he was going to go to court too, and if he would be alone. I did not have answers for him. I did not know what would happen. If he went to a children's shelter with ORR, he would likely go to court, and like so many children, he would go alone. Only if he was one of the lucky ones would he go to court accompanied by a relative or attorney. I asked him if he knew where he was going next and whether he knew anyone here in the United States—he said he did not.

Soon, several other boys gathered around the fence to talk to me. The boy repeated to me, "My father is in court," as if asking me a question. One by one the other boys said, "Mine too."

Each child and each parent in that facility, and all those who came before them and after them, had stories. They were all traumatized. The meaningless, confusing terms of who would go where, when, were dizzying. The response to almost any question was simply to refer to the matter as someone else's responsibility or a small step of a larger process. "I am just taking their information." "I don't know

where they are taking her daughter—I just know she needs to get on the bus.” “I am not separating her from her father, I am just taking her to the processing center.” “I don’t know why her 7-year-old son is being kept in a separate cell.”

The outrageous and traumatizing separations I have described and that we heard about all spring and summer of 2018 did not just happen to these families. This was not a natural disaster that happened. This was an affirmative decision and instruction given by and to Government actors and was done to these families. This reality was being implemented through the affirmative actions of officers right there in front of me; agents of the U.S. Government, representing all taxpaying residents.

And despite the public outrage, despite the Congressional efforts to monitor and conduct oversight, and despite a court injunction on separations and an order to reunify separated families, there is still no meaningful tracking or system to facilitate communication or reunification in place. Even today, ORR continues to receive traumatized children who have been separated without critical information²⁰ about the separations or the reasons for the separation, there continue to be problems with communication between separated children and their parents, and WRC continues to have cases brought to our attention of families being separated without cause.

I thank the committee for holding this hearing and for asking critical questions.

We must ask,

- “How did this happen?”

Whether the policy is called a “zero tolerance prosecution policy” or a “separation policy” is only part of the issue. Regardless of the policy’s name or even its official intent, there is no question that it resulted in the separation of thousands of children from their parents, and that it was clear from the start that this policy would result in these separations. It was clear that a physical separation would take place.

Judge Sabraw in *Matter of Ms. L* stated:

“The government readily keeps track of personal property of detainees in criminal and in immigration proceedings. Money, important documents, and automobiles to name a few, are routinely catalogued, stored, tracked, and produced upon a detainees’ release, at all levels—State, Federal, citizen, and alien. Yet the Government has no system in place to keep track of, provide effective communication with, and promptly produce children. The unfortunate reality is that under the present system migrant children are not accounted for with the same efficiency and accuracy as property.”²¹ “A practice of this sort implemented in this way is likely to be “so egregious, so outrageous, that it may fairly be said to shock the conscience.”²²

We must ask,

- “When deciding on such a policy, and when actually implementing such a policy, how is it possible that no procedures were implemented?” Either the Government considered but did not care about the consequences of separation—a shocking and disturbing conclusion—or, the Government did not even consider the consequences of the implementation of their policy—a conclusion that is just as shocking and disturbing in its negligence.

It appears that there was no plan. It appears that there were no guidelines for how to implement this policy. So, the question is then:

- “Why were no such plans made or guidance given, despite the existence of a pilot that tested this very practice, and that clearly resulted in a dramatic increase in family separations due to prosecutions?”
- “What did the administration, the Secretary of Homeland Security, the Commissioner of CBP, the Chief of Border Patrol, the chief of each Border Patrol station, and all the others in the chain of command, instruct their staff to do? How did they envision the policy would be carried out? What did they think would happen to these families?” and,
- “Why did they not take appropriate steps to ensure even the most basic due process and human considerations?”
- “Why, even after all the outrage and the difficulties in reunifying children and parents, why after a court order, are there still no policies in place to track separations?”
- “Why would DHS and the administration seek to replace the harm and cruelty of family separation with the equally inappropriate and wildly costly use of family detention, especially when such detention has not been able to comply with the most basic child protection standards set out in law, and especially when the administration knows it has cost-effective options proven to support families while ensuring their compliance with immigration requirements?”

²⁰ OIG report.

²¹ *Ms. L. v. U.S. Immigration & Customs Enforcement (Ms. L. v. ICE)*, Supra.

²² *Ibid.*

We must ask these critical questions and take action. Policies that uphold our values while protecting our borders and up-holding our commitments to human rights and due process can be implemented. But in order to achieve this, we must address this crime against our values as Americans. There must be consequences. We cannot let DHS's actions and implementation of these and similarly harmful policies go unchecked. It is essential in order to ensure that this does not happen again.

Miss RICE. Thank you, Ms. Brané.

I now recognize Dr. Linton to summarize her statement for 5 minutes.

STATEMENT OF JULIE M. LINTON, CO-CHAIR, IMMIGRANT HEALTH SPECIAL INTEREST GROUP, AMERICAN ACADEMY OF PEDIATRICS

Dr. LINTON. Chairwoman Rice, Ranking Member Higgins, and Members of the Homeland Security Committee, thank you for the opportunity to testify here today.

I am Dr. Julie Linton, a practicing pediatrician in Greenville, South Carolina, where my work is focused on the care of children in immigrant families. I am the co-chair of the American Academy of Pediatrics Immigrant Health Special Interest Group and co-author of the 2017 AAP Policy Statement, Detention of Immigrant Children.

On behalf of the American Academy of Pediatrics, or the AAP, and our 67,000 members, thank you for holding today's hearing. The AAP is nonpartisan and pro-children. Pediatricians care about the health and well-being of all children, no matter where they or their parents were born.

As pediatricians, we know that children do best when they are together with their families. After reading media reports in March 2017 that the Department of Homeland Security was considering a policy that would separate mothers from their children upon arriving at the U.S. border, we immediately spoke out against this proposed policy.

We subsequently wrote to DHS 6 times to urge the agency to reject such a policy. The AAP also issued roughly half a dozen statements about why family separation devastates the most basic relationship we know, the relationship between a child and a parent.

We have said repeatedly that separating children from their parents contradicts everything we stand for as pediatricians protecting and promoting children's health.

Today I will underscore the harmful effects of separation, processing, and detention based on what we know from the scientific literature and what I know from caring for patients.

Prolonged exposure to serious stress, known as toxic stress, can disrupt a child's brain architecture and adversely impact short- and long-term health. When little bodies are in a constant fight or flight response, stress hormones, such as cortisol, remain elevated, continuously activating the nervous system and suppressing the immune response.

A critical role of a parent or known caregiver is to buffer stress. Separation from a parent robs children of this buffer. Separated children can, thus, face immediate health problems, including physical symptoms like headaches and stomach pain, changes in body functions like, eating, sleeping, and toileting, behavior problems

like, anger, irritability, and aggression, and difficulty with learning and memory.

Children who have been separated may also experience feelings of mistrust, embarrassment, guilt, and shame.

In the long term, children who have been separated may be susceptible to chronic diseases, such as depression, post-traumatic stress disorder, diabetes, and heart disease.

I have personally witnessed the impact of family separation. In June 2018, I cared for an 8-year-old boy who, with his pregnant mother, had fled violence and direct personal threats in Central America to seek safe haven in the United States.

Since the zero tolerance policy was in effect at the time, I gently asked the boy and his mother if they had been separated at the border. With my question, a chilling silence arose. The boy began to breathe quickly and his mother tearfully whispered, 7 days.

For 7 days this boy and his pregnant mother did not know about the other's location or safety. Their separation was shorter than many children harmed by the zero tolerance policy and he still suffered the consequences.

That day in my office his mother reported he could no longer sleep through the night. He had trouble being away from her for even short periods of time. His mother shared that he was a shell of his previous self.

Children are not little adults. To untrained eyes they can appear quite healthy, even when their systems begin to shut down. Tragically, this was the case for Jakelin Caal Maquin and Felipe Gomez Alonzo who died in the custody of Customs and Border Protection in December.

The AAP, joined by 13 National medical and mental health provider organizations, wrote to Secretary Nielsen and Commissioner McAleenan, urging they take specific, meaningful steps to ensure that all children in CBP custody receive appropriate medical and mental health screening and necessary follow-up care by trained providers.

We urge our Federal agencies to apply a child-focused lens when considering policies that could have an impact on child health.

Additionally, children should not be placed in unlicensed facility whether run by HHS or DHS. The findings of the HHS Office of Inspector General about Tornio and family separation are alarming and should be addressed.

As separations continue to occur we must compel all Federal agencies to put the best interest of the child ahead of any other priority. Child welfare experts, not law enforcement agents, are best-positioned to make the determination of what is in a child's best interest.

It is critical that all reunified children receive appropriate medical and mental health care in the community to support healing from the traumatic experiences of family separation, processing, and detention.

Thank you for the opportunity to testify today.

[The prepared statement of Dr. Linton follows:]

PREPARED STATEMENT OF JULIE M. LINTON

MARCH 26, 2019

Chairwoman Rice and Ranking Member Higgins, thank you for the opportunity to speak here today. I am Dr. Julie M. Linton, a practicing pediatrician in Greenville, South Carolina, and my clinical work is focused on the care of children in immigrant families. I am testifying today on behalf of the American Academy of Pediatrics (AAP) where I serve as co-chair of its Immigrant Health Special Interest Group (SIG) and as a member of the executive committee for the AAP Council on Community Pediatrics. I am also a co-author of the AAP's 2017 policy statement entitled *Detention of Immigrant Children*. The AAP is a non-profit professional membership organization of 67,000 primary care pediatricians and medical and surgical pediatric subspecialists dedicated to the health and well-being of all infants, children, adolescents, and young adults.

The AAP is non-partisan and pro-children. Pediatricians care about the health and well-being of all children—no matter where they or their parents were born. The AAP supports comprehensive health care in a medical home for all children in the United States. As pediatricians, we know that children do best when they are together with their families. When we read media reports in March 2017 that the Department of Homeland Security (DHS) was considering a policy that would separate immigrant mothers from their children when they arrived at the U.S. border, we were compelled to immediately speak out against this proposed policy. We urged Federal authorities to 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.

We subsequently wrote to DHS 6 times to urge the agency to reject a policy that would separate immigrant children from their parents at the border. In addition to these letters, the AAP issued roughly half a dozen statements, and pediatricians across the country, myself included, penned countless op-eds about why family separation devastates the most basic human relationship we know—that of child and parent.

The AAP has said repeatedly that separating children from their parents contradicts everything we stand for as pediatricians—protecting and promoting children's health. In fact, 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. This type of prolonged exposure to serious stress—known as toxic stress—can carry lifelong consequences for children. Today I would like to speak more about the health effects of separation, both what we know from the scientific literature and what I know from caring for my patients. I will also emphasize the harmful impact of detention on the health and well-being of immigrant children and underscore the critical need to avoid retraumatizing children and families with detention or separation.

OBSERVATIONS OF PEDIATRICIANS

Writing about her experience visiting a “tender age” shelter run by the Department of Health and Human Services' Office of Refugee Resettlement (ORR) in April 2018, then-president of the AAP Dr. Colleen Kraft described a little girl:

“A toddler, her face splotched red from crying, her fists balled up in frustration, pounding on a play mat in the shelter for unaccompanied children run by the Department of Health and Human Services (HHS)' Office of Refugee Resettlement. No parent was there to scoop her up, no known and trusted adult to rub her back and soothe her sobs. The staff members at the center tried their best, and shared my heartbreak while watching this child writhe on the floor, alone.

“We knew what was wrong, but we were powerless to help. She wanted her mother. And the only reason she could not be with her mother was because immigration authorities had forcibly separated them when they crossed the border into the United States. The mother was detained, and the little girl was handed over to the shelter as an ‘unaccompanied’ child.”¹

The co-chair of AAP's Immigrant Health, SIG Dr. Marsha Griffin, and SIG member Dr. Rita Agarwal, told the story of a child they encountered during a visit to

¹Kraft C. Separating parents from their kids at the border contradicts everything we know about children's welfare. LA Times. <https://www.latimes.com/opinion/op-ed/la-oe-kraft-border-separation-suit-20180503-story.html>. Published May 3, 2018. Accessed February 1, 2019.

an ORR shelter for unaccompanied children in the spring of 2018. This child had been separated from her mother. They wrote:

“In a walled-in courtyard, we saw a 5-year-old girl chasing iridescent bubbles blown by two adults. Staff said she tried to run away any time she played outside, so she was limited to the courtyard. She would bite anyone who approached her, so she was kept away from other children and distracted with bubbles. Biting and seeking to run are signs of acute distress in a child of this age—a normal reaction to extreme fear. This girl did not need bubbles and a walled courtyard but rather her mother or her father to calm her—someone who could hold her and make her world right again.”²

EVIDENCE OF THE HARMS OF FAMILY SEPARATION

Studies overwhelmingly demonstrate the irreparable harm caused by breaking up families.³ We know that children who have been separated can have a host of health challenges, including developmental delays like those in gross and fine motor skills, regression in behaviors like toileting and speech, as well as constant stomach and headaches. Prolonged exposure to highly stressful situations—known as toxic stress—can disrupt a child’s brain architecture and affect his or her short- and long-term health. A parent or a known caregiver’s role is to mitigate these dangers. When robbed of that buffer, children are susceptible to a variety of adverse health impacts including learning deficits and chronic conditions such as depression, post-traumatic stress disorder, and even heart disease.

The Government’s practice of separating children from their parents at the border counteracts every science-based recommendation I have ever made to families who seek to nurture and protect their children’s physical, intellectual, and emotional development. Children, who have often experienced terror in their home countries and then additional trauma during the journey to the United States,⁴ are often re-traumatized through processing and detention in Customs and Border Protection (CBP) facilities not designed for children. This trauma is profoundly worsened by forced separation from their parents. It can lead to long-term mental health effects such as developmental delays, learning problems, and chronic conditions such as hypertension, asthma, cancer, and depression. Children who have been separated may also be mistrusting, questioning why their parents were not able to prevent their separation and care for them. A child may show different behaviors in response to exposure to traumatic events like separation from parents depending on their age and stage of development. Some of these signs of distress are listed in the chart below:⁵

Preschool Children	Elementary School Children	Middle and High School-Aged Youth
Bed wetting	Changes in their behavior such as aggression, anger, irritability, withdrawal from others, and sadness.	A sense of responsibility or guilt for the bad things that have happened.
Thumb sucking	Trouble at school	Feelings of shame or embarrassment.
Acting younger than their age.	Trouble with peers	Feelings of helplessness.

²Agarwal R, Griffin M. Taking immigrant kids from parents shows contempt for families. *Houston Chronicle*. <https://www.houstonchronicle.com/opinion/outlook/article/Taking-immigrant-kids-from-parents-shows-contempt-12963039.php>. Published June 3, 2018. Accessed February 1, 2019.

³Shonkoff JP, Garner AS. The Lifelong Effects of Early Childhood Adversity and Toxic Stress. *Pediatrics*. 2012;129(1):e232–46. Masten AS. Global perspectives on resilience in children and youth. *Child Dev*. 2014;85(1):6–20. Bouza A, Camacho-Thompson DE, Carlo G, et al. Society for Research in Child Development. The Science Is Clear: Separating Families Has Long-Term Damaging Psychological and Health Consequences for Children, Families, and Communities. <https://www.srcd.org/policy-media/statements-evidence/separating-families>. Published June 20, 2018. Accessed February 1, 2019.

⁴Kadir A, Shenoda S, Goldhagen J, Pitterman S. The Effects of Armed Conflict on Children. *Pediatrics*. 2018;142(6).

⁵The National Child Traumatic Stress Network. Effects. <https://www.ncstn.org/what-is-child-trauma/trauma-types/refugee-trauma/effects>. Published September 4, 2018. Accessed February 1, 2019.

Preschool Children	Elementary School Children	Middle and High School-Aged Youth
Trouble separating from their parents.	Fear of separation from parents.	Changes in how they think about the world.
Temper tantrums	Fear of something bad happening.	Loss of faith.
Aggressive behavior like hitting, kicking, throwing things, or biting.	Problems in relationships including peers, family, and teachers.
Not playing with other kids their age.	Conduct problems.
Repetitive playing out of events related to trauma exposure.		

DETENTION OF CHILDREN IS NOT A SOLUTION TO SEPARATION

Some have suggested that an alternative to separating families is to increase the use of Immigration and Customs Enforcement (ICE) family detention. However, family detention is neither a safe nor effective solution to address the forced separation of children and parents at the border. I co-authored the AAP Policy Statement entitled Detention of Immigrant Children, which recommends that immigrant children seeking safe haven in the United States should never be placed in ICE detention facilities. There is no evidence that any amount of time in detention is safe for children.⁶ In fact, even short periods of detention can cause psychological trauma and long-term mental health risks for children.⁷ Studies of detained immigrants have shown that children and parents may suffer negative physical and emotional symptoms from detention, including anxiety, depression, and post-traumatic stress disorder.⁸ Detention itself undermines parental authority and the capacity to respond to their children’s needs; this difficulty is complicated by parental mental health problems.⁹ Parents in detention centers have described regressive behavioral changes in their children, including decreased eating, sleep disturbances, clinginess, withdrawal, self-injurious behavior, and aggression.¹⁰

Specifically, detention of youth is associated with physical and mental health symptoms that appear to be caused and/or worsened by detention. A study of children ages 3 months to 17 years in a British immigration detention center revealed physical symptoms that included somatic complaints (e.g., headaches, abdominal pain), weight loss, inability to manage chronic medical problems, and missed follow-up health appointments including those for vaccinations, developmental and educational problems, and mental health symptoms including anxiety, depression, and reemergence of post-traumatic stress disorder.¹¹ In a systematic review that explored risk and protective factors for the psychological well-being of children and youth who were resettled in high-income countries, the authors indicate that adverse events during and after migration may be more consequential than pre-migration events. Specifically, the authors conclude that detention of immigrant children and youth is particularly detrimental to mental health and an example of trauma for which impact is cumulative.¹²

FIRST-HAND OBSERVATIONS AT CBP PROCESSING CENTERS AND FROM CHILDREN IN THE COMMUNITY

In November 2016, I toured the CBP’s Ursula Central Processing Center in McAllen, Texas as part of a team of pediatricians from the AAP and the Texas Pediatric Society. The building, hidden behind a fence, was a warehouse-like facility identifiable only with a white placard stating that this was property of the U.S. Government. Our CBP tour guide demonstrated empathy toward the detainees and recognized that the setting was not designed for children.

⁶ Linton JM, Griffin M, Shapiro AJ. Detention of Immigrant Children. *Pediatrics*. 2017;139(5).

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Lorek A, Ehntholt K, Nesbitt A, et al. The Mental and Physical Health Difficulties of Children Held within A British Immigration Detention Center: A Pilot Study. *Child Abuse Negl*. 2009;33(9):573–85.

¹² Fazel M, Reed RV, Panter-Brick C, Stein A, Mental health of displaced and refugee children resettled in high-income countries: risk and protective factors, *Lancet*, 379(9812):266–282 (2012).

Upon entering the holding area, we saw rows of children lying on mats on the floor, wrapped in silvery Mylar blankets. We saw clusters of children huddled in cages created by chain-link fences that extended toward the ceiling. Within this 55,000-square-foot space, there were four giant cages holding boys, girls, and mothers with young children. There was one small area that held adult men. The children ranged from infants to older adolescents. Most of the detainees appeared to be exhausted and frightened. Extremely bright lights shone from the high ceilings, the smell of porta-potties infiltrated the air, and the chilling sound of crinkling Mylar blankets echoed through the warehouse. The windowless environment was particularly disorienting because the lights were kept on 24 hours a day, 7 days a week, which we were told was for "safety reasons."

In the Ursula facility (as it is known), there are private toilets, showers, and a clean, dry change of clothes if detainees arrive before 7 p.m.; the detainees who arrive late sit in wet clothes until the morning. Old clothes, shoes, and other belongings, like backpacks and stuffed animals, are sealed away in individual plastic bags. Our guide told us 3 meals were provided each day.

The medical care we saw provided at Ursula was cursory at best and took place in the open, behind curtained screens. Detainees were checked for scabies, lice, and obvious signs of infectious disease, such as active chicken pox lesions. Vital signs (temperature, blood pressure, respiratory rate, heart rate) and height and weight were not routinely taken. Those who needed more detailed exams were taken to a small, cold "medical room." There was a small cabinet with over-the-counter medications, and pictures of infectious diseases adorned the walls. We were told that emergency responders were called for those who appeared ill or injured after presenting to CBP officials in the field.

We were not permitted to speak with children during our tour of the Ursula facility. However, I can speak to my patients' experiences who were processed at Ursula and other CBP facilities. As a pediatrician in both North and South Carolina, I have learned through taking medical histories from dozens of children who have been processed at Ursula, that children and families have been held there for up to 8 days. Although they are offered food, the sandwiches have at times been kept so cold that they were frozen. Several families have shared that their belongings have been "lost" during processing, including vaccination records and medical documents that they have brought from their countries of origin. Families have also shared with me their gratitude when treated kindly by CBP officials, and this gratitude is particularly striking given the conditions to which they are exposed.

Separation of children from siblings, parents, and caregivers are routine during processing. One set of siblings fled Central America with their mother after experiencing persecution in their community. When they presented to CBP officials to seek refuge and face processing, the younger child was held in one cage with her mother, and the older child, a teenager, was kept separately from her mother and sister for 3 days. After thousands of miles of travel with the proximity and support of her family, this child no longer had the buffering support of her family. When she recounted her story, she became tearful and withdrawn. She shared with me that she was incredibly frightened during the time in the processing center, unable to eat or sleep. Even this brief period of time in a CBP processing center was re-traumatizing for this child, placing her at risk for short- and long-term health effects.

CHILDREN ARE NOT LITTLE ADULTS

As pediatricians, we know that children are not little adults. Children's vital signs (breathing rate, heart rate, blood pressure) have different normal parameters than adults, and these parameters vary by age. When children begin to get sick, they present with subtle findings, and they tend to get sick more quickly. For example, children can become dehydrated more quickly than adults. They require greater amounts of fluid per pound of body weight than adults, and high fevers and fast breathing can cause children to lose fluid quickly. Children also need encouragement to drink when they are ill, and this encouragement is exceedingly difficult to provide to frightened children.

The flu can be particularly serious for children and can escalate quickly. Signs differentiating a child with mild illness from a child with severe illness are quite subtle. A child can be happily playing, even running around, while her body systems begin to shut down. When a child is having difficulty breathing, she may breathe more quickly or her ribs may pull in with each breath; these signs would often not be easily visible, especially not to an untrained eye. Additionally, children are more prone to muscle fatigue, including the breathing muscles, and are thus at greater

risk for respiratory failure.¹³ Even the dosing of common medications is different in children than it is in adults; rather than standard dosing, children are dosed based on their weight.¹⁴

Sepsis, for example, must be treated early in children. According to the Society of Critical Care Medicine (SCCM), sepsis is a complicated disease causing the body to be compromised by serious systemic infection leading to multiple organ failure.¹⁵ The importance of recognizing and treating sepsis early in children cannot be underestimated; each hour of delay in treatment dramatically increases mortality. Because sepsis can be so serious and so difficult to recognize in children, the SCCM has a separate set of guidelines for recognizing and treating sepsis in children that are different than for adults.¹⁶ For these reasons, it is essential that the individuals who interact with children apprehended at the border are trained to recognize signs and symptoms of distress and know when to urgently refer children to additional care.

AAP RECOMMENDATIONS

We urge Federal agencies to apply a child-focused lens when considering policies that could have an impact on child health and well-being. The deaths of 7-year-old Jakelin Caal Maquin and 8-year-old Felipe Gómez Alonzo while in the custody of CBP are tragedies that demand systematic improvements. AAP remains committed to working with Federal agencies to offer its expertise as medical providers for children, in an effort to protect and promote child well-being. In that vein, we offer the following recommendations:

1. Children should never be separated from their parents unless there are concerns for the safety of the child at the hand of the parent and a competent family court makes that determination. Nowhere is that more important than in the case of a child needing medical screening and treatment. Parents know their child's medical history and are often better able to share that history than the child him or herself. Separation from a parent is traumatic to children, causes stress, and has the potential to negatively impact the child's short- and long-term health.
2. Family detention threatens the health of children and their parents and is not a safe or effective solution to address the forced separation of children and parents at the border. The AAP has said that no amount of time in detention is safe for children.¹⁷
3. Instead of detention, AAP recommends the use of community-based alternatives for children in family units. Community-based case management should be implemented for children and families, thus ending both detention and the placement of electronic tracking devices on parents. Community release with case management has been shown to be cost-effective and can increase the likelihood of compliance with Government requirements.¹⁸ ¹⁹ ²⁰ We urge Congress to provide funding to support case management programs. AAP also advocates for expanded funding for post-release services to promote the safety and well-being of all previously-detained immigrant children and to facilitate connection and access to comprehensive services, including medical homes, in the community.
4. All immigrant children seeking safe haven in the United States should have comprehensive health care and insurance coverage, which includes access to qualified medical interpretation covered by medical benefits, pending immigration proceedings. Children and families should have access to legal counsel

¹³ Woollard M, Jewkes F. 5 Assessment and identification of paediatric primary survey positive patients. *Emergency Medicine Journal*. 2004;21:511–517.

¹⁴ Palchuk MB, Seger DL, Recklet EG, Hanson C, Alexeyev A, Li Q. Weight-based pediatric prescribing in ambulatory setting. *AMIA Annu Symp Proc*. 2006;2006:1055.

¹⁵ Weiss SL. Five Important Things to Know about Pediatric Sepsis. Society of Critical Care Medicine. <https://www.sccm.org/Communications/Critical-Connections/Archives/2018/Five-Important-Things-to-Know-About-Pediatric-Sepsis>. Accessed March 4, 2019.

¹⁶ Dellinger RP, Levy MM, Rhodes A, et al: Surviving Sepsis Campaign: International guidelines for management of severe sepsis and septic shock: 2012. *Crit Care Med*. 2013; 41:580–637.

¹⁷ Ibid.

¹⁸ Edwards, A. Measures of first resort: alternatives to immigration detention in comparative perspective. *The Equal Rights Review*. 2011;7:117–142.

¹⁹ U.S. Immigration Customs and Enforcement. Report of the DHS Advisory Committee on Family Residential Centers. <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>. Published September 30, 2016. Accessed February 1, 2019.

²⁰ Lutheran Immigration & Refugee Service, Women's Refugee Commission. Locking Up Family Values, Again. <https://www.womensrefugeecommission.org/resources/document/1085-locking-up-family-values-again>. Published October 28, 2014. Accessed February 1, 2019.

throughout the immigration pathway. Unaccompanied children should have free or pro bono legal counsel with them for all appearances before an immigration judge. As such, the AAP strongly supports the “Fair Day in Court for Kids Act”.

5. Because conditions at CBP processing centers are inconsistent with AAP recommendations for appropriate care and treatment of children, children should not be subjected to these facilities.²¹ The processing of children and family units should occur in a child-friendly manner, taking place outside current CBP processing centers and conducted by child welfare professionals, to provide conditions that emphasize the health and well-being of children and families at this critical stage of immigration proceedings.²²

6. CBP agents, including those who are not trained as EMTs or paramedics and those who work in remote areas along the border, should be trained to know how to identify the signs of a child who is in medical distress and needs immediate medical attention. Ideally, such training would be both on-line and in-person. While it may not be possible to provide pediatric medical training to all CBP agents, we can work to ensure that they are better prepared to identify a sick child and to get that child into appropriate care. We must also ensure that CBP provides its agents with necessary basic supplies such as oral hydration, food, first-aid kits, and other supplies that could be life-saving should those agents encounter a sick child. The AAP is pleased to support S. 412, the Remote, Emergency, Medical, On-line Training, Telehealth, and EMT (RE-MOTE) Act, which addresses many of these recommendations.

7. The Academy is urging CBP to ensure that all children under 18 years of age receive evidenced-based medical screening and care from professionals trained in pediatric care. We must have medical professionals who are trained in the care of children screening and treating vulnerable children who are in the custody of our government. CBP recently released an Interim Enhanced Medical Efforts Directive which states that all children under 18 years of age will receive a health interview and medical assessment. The success of the Interim Directive will be in how it is implemented.

Children who are identified as needing additional medical care should be immediately referred for evaluation and treatment, at a children’s hospital if there is one available. Procedures should be in place to ensure that when children need treatment, they are quickly able to receive appropriate care and have access to professionals trained in the care of critically ill children during transport.

8. Screening and treatment should occur in the child or parent’s preferred language so as to ensure the family is able to understand what is happening and accurately answer questions. This means that trained medical interpreters should be used in all clinical encounters with children and their families.

9. Sick children, children who have been hospitalized, or children with special health care needs should never be returned to a CBP processing facility. When a child is diagnosed with an illness in a pediatrician’s office or is discharged from an emergency room or a hospital, he or she is sent home to recover with plenty of rest and a parent to care for them. Parents of children being detained in CBP processing centers do not have that luxury; rather, the conditions in the centers themselves exacerbate children’s suffering, and without medical professionals who understand the signs and symptoms to look for to assess a child’s condition, these children are at further risk. A sick child should recover in the comfort of a home or child-friendly setting under the care of a parent or caregiver, not on a cold, concrete floor in Federal custody.

10. Independent oversight of locations in which children are temporarily housed, detained, or sheltered is critical. Licensure of those locations is important to ensure appropriate care and oversight. As these locations are selected, we encourage DHS and HHS to consider their remoteness as that can impact proximity and access to trained pediatric providers. The AAP has called for a thorough, independent investigation of the Government’s detention practices, including the appointment of an independent team comprised of pediatricians, pediatric mental health providers, child welfare experts, and others to conduct unannounced visits to Federal facilities including CBP processing centers, ICE family detention centers, and ORR shelters to assess their conditions for children, capacity to respond to medical emergencies involving a child, and to ensure that immigrant children receive optimal medical and mental health care.

²¹Linton JM, Griffin M, Shapiro AJ. Detention of Immigrant Children. *Pediatrics*. 2017;139(5).

²²Ibid.

These experts need unfettered access to sites where children are held in Federal custody to ensure that they receive suitable care while there.

11. We must remember that immigrant children are, first and foremost, children. Protections for children in law or by the courts exist because children are uniquely vulnerable and are at high risk for trauma, trafficking, and violence. The *Flores Settlement Agreement* (FSA) and the *William Wilberforce Trafficking Victims Protection Reauthorization Act* (TVPRA) provide critically important and necessary protections for children in the custody of the Federal Government. They are not “loopholes”. They are legal protections that account for the fact that children are uniquely vulnerable and need to be protected. The FSA set strict National standards for the detention, treatment, and release of all minors detained in the legal custody of the Federal Government. It requires that children be held in the least restrictive setting appropriate for a child’s needs and that they be released without unnecessary delay to a parent, designate of the parent, or responsible adult as deemed appropriate.

Pending regulations proposed by DHS and Health and Human Services (HHS) are inconsistent with the FSA by allowing DHS to expand family detention centers, increase the length of time children spend in detention, and create an alternative licensure process that undermines State child welfare laws and basic protections for children. Proposals, such as the pending regulations that would pave the way for the longer-term detention of children with their parents or to weaken Federal child trafficking laws like TVPRA, serve to strip children of protections designed for their unique circumstances. We urge Congress to reject these proposals.

CONCLUSION

As a pediatrician, my professional responsibility is to apply science to advocate for and support children’s health. Evidence affirms that parental separation and family detention are dangerous for the short- and long-term health of children.

It is critical that all children who have been reunited with their parents receive appropriate medical care to help them recover from the traumatic experience of separation from their families. As a pediatrician, I also know that children and families who have faced trauma, with trauma-informed approaches and community support, can begin to heal. As such, immigrant children seeking safety should have access to health care, education, legal representation, and other essential services that support their growth, development, and capacity to reach their full potential. We must continue to support all immigrant children and families seeking safe haven in the United States and treat them with dignity and respect.

Miss RICE. Thank you, Dr. Linton.

I now recognized Mr. Ballard to summarize his statement for 5 minutes.

STATEMENT OF TIM BALLARD, FOUNDER AND CEO, OPERATION UNDERGROUND RAILROAD

Mr. BALLARD. Thank you, Chairwoman Rice, Ranking Members Higgins, and Members of the subcommittee. My intention today is to focus on the millions of children who are caught in the horrific web of child trafficking. Many of these children are sexually exploited as subjects of child pornography and as victims of rape for money here in the United States.

Any conclusions I offer are based on real child trafficking cases that I have worked directly on over the past 17 years. I started in the CIA and then for 12 years I worked as a special agent and undercover operator for Homeland Security Investigations.

Ten of those years I worked combatting sex trafficking on the Southern Border. For the last 5 years I have served as the founder and CEO of the anti-trafficking organization Operation Underground Railroad.

Working hand-in-hand with law enforcement agencies in 20 countries and 22 States here, we have rescued over 2,000 victims and assisted in the arrest of nearly 1,100 traffickers.

Much of my work has been based on simple economics. The United States is one of the highest, if not the highest, consumers of child pornography in the world. We are the demand for child sex.

As such, traffickers around the world seek to bring children to the United States where they can sell them for sex and make a lot of money. My No. 1 personal and professional goal has been to keep these children out of the sick hands of American pedophiles.

I want to share one case in which we failed to do this. The victim was a foreign-born child around 12 years old, who we will call Lily. Lily was kidnapped south of our border.

She was then taken, along with several other children her age, and smuggled into the United States. Not through a port of entry but rather through parts of the Southern Border without significant barriers.

Lily's traffickers easily transported her to New York City where she and the other children were raped for money; Lily, 30 to 40 times a day for 5 years. She believes that she was raped in New York City over 20,000 times.

She eventually escaped and my foundation is now caring for her as she prepares to testify in Federal court against her captors. In accordance with U.S. laws as a survivor of sex trafficking in America, Lily has been granted legal status and we are helping her complete the process of becoming a U.S. citizen.

The U.S. Attorney's Office has requested that we not publicly share any more information until this case is completed, the trial is completed, later this year.

Recounting her experience, Lily has often asked me a simple yet profound question. Why was there no wall along the Southern Border for me? A wall would have saved me, she says. What is she talking about?

It is very simple, really. During a time of crisis or emergency any of us knows to call 9-1-1 because that number bridges the gap between bad guys trying to hurt us and good guys, police officers, who can help us.

Lily knows that strong barriers would have likely forced her captors to take their chances at a port of entry, thus placing her face-to-face with well-trained and well-equipped U.S. officers who are specifically looking for her, looking for victims of sex trafficking. I would have yelled out to one of them, Lily has told me regretfully. Instead, I was raped over 20,000 times.

Contrast that case with another case I worked. I was a lead agent on this case. The trafficker was an American named Earl Buchanan. He kept children, both little boys and girls, in San Bernardino, California where he lived and where he repeatedly raped them and filmed his rape of these children for his pornography collection.

On the night of July 3, 2006, Buchanan was attempting to smuggle a 5-year-old Mexican boy through the Calexico, California port of entry. Fortunately for the boy, he was coming from the Mexicali, Mexico region which is blocked by miles and miles of significant border barriers.

This compelled Buchanan to take his chances at the Calexico port of entry where a U.S. officer had the opportunity to look

Buchanan in the eye, recognize that something was off, then liberate that child and arrest Buchanan.

This led directly to the rescue of almost a dozen other children that were sex victims held by this American monster, who will now spend the rest of his life in jail.

As I compare these two cases and dozens just like them that I have added to my written testimony and submitted to this committee, my conclusion is that we have a much greater chance of catching human traffickers and liberating their victims at a port of entry than we do where there is no barrier.

I have been quite surprised of late to see politicians and others who are opposed to building barriers, hail the successes of drug seizures and rescues at the ports of entry and using those successes to say see? We don't need barriers. We have ports of entry. Bad guys come through ports of entries.

In fact we don't have ports of entry without walls. The walls and the barriers are the thing that compelled Buchanan to take the child into the port of entry in the first place.

From his vantage point on the night of July 3, 2006, with this poor child captive in his van, he only had one choice, the port of entry. That was thanks to barriers that existed where he happened to be working his evil works.

Currently with hundreds of miles of open border, too many traffickers have a choice. Sadly, we as a Nation are providing them that choice.

In the end, the boy was liberated and Buchanan was locked up. In Lily's case, the traffickers were liberated while she was locked up and raped thousands of times in our country. The difference? The boy had barriers to save him; Lily did not.

Paola Felix is a former Mexican Congresswoman and current senior Mexican administration official working on anti-trafficking policies directly from Mexican President Manuel Lopez Obrador. I work very closely with her to find children in Mexico who are en route to being smuggled into the United States.

Responding to the debate over barriers in this country, Felix declared, "It is very disappointing to me that people in the United States would ignore or downplay the many Hispanic children being smuggled into the United States outside of legal ports of entry and forced"—

Miss RICE. Mr. Ballard.

Mr. BALLARD [continuing.] "Into the hell of sex slavery."

Miss RICE. Mr. Ballard, I am sorry. You have to wrap up.

Mr. BALLARD. OK. I think my point has been made. I agree with all my colleagues on this panel. I just hope we give voice to all the other children who are being brought through barrier-less parts of the border. We need to focus on them as well and help them as well. Thank you.

[The prepared statement of Mr. Ballard follows:]

STATEMENT OF TIM BALLARD

MARCH 26, 2019

Chairwoman Rice, Ranking Member Higgins, and Members of the Border Security, Facilitation, and Operations Subcommittee, it's an honor to present this written statement. Human trafficking is real, it's tragic, and I am grateful this sub-

committee is willing to learn more and to understand more about this horrific practice occurring along our Southern Border.

The focus of my testimony will be on the children who are caught in this terrible web of human trafficking. Although I will discuss varying aspects of trafficking and border security, but I hope we will always bring the focus back to helping the rescuing the children who are the victims.

To that end, I strongly desire not to sound political or partisan in my tone or my substance. Regardless of ideology or party label, I believe every Member of this committee, and good people everywhere, can agree that human trafficking is a plague and an evil that must be eradicated. Because this is such an important and tragic issue, it's not fair and it's not right for these modern-day slaves to be caught in the middle of a political battle.

The conclusions I offer in this testimony are based on my professional experience as an anti-trafficking operator and based on actual cases that have occurred along our Southern Border. After starting my professional career with the CIA, I transferred to the Department of Homeland Security. At the DHS, I spent 12 years as a special agent and undercover operator for Homeland Security Investigations. For 10 of those years, I was combating sex trafficking on the Southern Border and became one of the country's foremost experts on the issue of trafficking through years of undercover work, research, and investigation.

Since leaving the Federal Government, I have continued the fight against human trafficking as the founder and CEO of the anti-trafficking organization Operation Underground Railroad, or O.U.R. Working hand-in-hand with law enforcement agencies around the world, Operation Underground Railroad has rescued 1,765 victims and assisted in the arrest of nearly 900 traffickers. O.U.R. continues the fight to end human trafficking with full-time operations in 20 countries and 22 States.

Through my experience as a Federal agent and as CEO of O.U.R., I have worked closely with the heads of every U.S. agency whose job it is to find and rescue children being trafficked across the Southern Border. These agencies under the jurisdiction of the Department of Homeland Security include Customs and Border Patrol, Immigration and Customs, and Homeland Security Investigations.

Our Federal agents who work our Southern Border are women and men of the highest integrity and dedication. Their efforts protect us daily from the myriad of different dangers found coming into our country. Our agents exist to protect, not to judge, not to discriminate, and not carry out a political motive. They follow the laws they have sworn to uphold and they deserve a debt of gratitude from each of us as they help keep us safe.

Part of the job of these Federal agents, as was my job for a decade, is to recognize and fight human trafficking. To understand just a little about the issue it important to understand that there are an estimated 40 million modern-day slaves world-wide with children making up an estimated 10 million of these victims.¹ These children may be sexually exploited through prostitution and child pornography, many victims are being forced into involuntary servitude, and many are used for the heinous practice of organ harvesting.

Traffickers use our Southern Border to bring slaves into our country for the sex industry because the United States is one of the highest consumers of child sex abuse content in the world.² The United States is also one of the wealthiest nations in the world, creating fertile ground for child traffickers who are trying to get their product to this lucrative illicit market.

The State Department has reported that roughly 17,500 people are smuggled into the United States annually, many of which are women and children that are forced into the commercial sex trade.³ About 10,000 children a year suffer the horrors of commercial sexual exploitation in the United States.⁴

The most recent data from the Department of Homeland Security should also cause alarm:⁵

- In fiscal year 2018, ICE made more than 1,500 human trafficking arrests with over 97 percent of those for sex trafficking.
- It's estimated that 20,000 children were illegally smuggled in the the United States just during the month of December 2018.
- Since 2017 there has been a 136 percent increase in illegal immigrants bringing children into the United States illegally.

¹ *Guardian*, Feb. 25, 2019.

² THORN website, Accessed March 4, 2019.

³ Trafficking in Persons Report, U.S. Department of State, June 14, 2004.

⁴ *Indianapolis Star*, Feb. 1, 2018.

⁵ U.S. Department of Homeland Security; DHS Press Release March 6, 2019, "Humanitarian and Security Crisis at Southern Border Reaches 'Breaking Point'."

- There has been a 314 percent increase in adults bringing children across the border who are not part of their family unit.
- In December 2018 5,121 children were recovered being brought into the United States illegally:
 - 4,766 of these children were recovered at barrier-less sections of the border outside points of entry.
 - Only 355 of these children were recovered at points of entry.

For those of us who are fighting to save children from being victims, we should be alarmed. These statistics are staggering and paint a realistic and tragic picture of what is really happening along our Southern Border.

Through my decade on the border as a human trafficking expert for the Federal Government, I participated in dozens of cases and operations that uncovered human trafficking rings and discovered human smuggling processes across the border. We were fortunate to rescue many victims and I'm proud that we put so many criminals behind bars.

There are many stories of survivors, those who were rescued, that must be told. The experiences of these survivors are horrifying, but their stories must be heard to help understand the reality of the battle we are fighting and their testimony must be used to help us formulate how we will proceed forward to stop the tragedy that is human trafficking.

To fight the human trafficking battle most effectively, we must put aside politics. Although critics reject the idea of a physical barrier along the Southern Border for a number of different reasons, my experience leads me to the conclusion that physical barriers are a tool that we must utilize in the fight against human trafficking. Walls, barriers, physical deterrents, it doesn't matter what they're called, they work. I know they work based on years of experience. Based on my professional career in this field, I know that we are more likely to effectively fight human trafficking if we close open border crossings and drive traffickers to points of entry.

At our points of entry, trained law enforcement officials have the ability to look into the eyes of traffickers and victims. They have technology, training, and instinct on their side to identify victims and hopefully rescue them.

One point-of-entry rescue I had the opportunity to be a part of took place at the Calexico port of entry. On July 3, 2006, my team and I rescued a 5-year-old boy who had been taken by American child pornographer Earl Buchanan. Buchanan sexually abused his victims, while filming his grotesque acts for distribution. Fortunately for this boy, and the 11 other children subsequently received justice from his torture, there is a significant border wall between Mexicali, Mexico and Calexico, California.

Buchanan was compelled to take his chances at the Calexico port of entry because of a large wall that runs along the border in this geographic location. This port of entry is armed with high-tech monitoring equipment and well-trained officers. Not surprisingly, Buchanan was singled out, arrested, and charged with kidnapping and sexual exploitation of a child. He was later convicted of Sexual Exploitation of a Child and Criminal Forfeiture (Case 06CR1612-H). The boy is now breathing free with a loving family in America, thanks to the wall, which did its job by driving Buchanan to a point of entry.

I compare this case and experience to a survivor who we will call "Liliana." Because Liliana's case is still pending, the U.S. Attorney's Office has requested that we not share too many details about this case until the trial is completed later this year, but we have been approved to share the following details regarding her experience.

Liliana was kidnapped at age 11 from her village in Central America. After 2 years of grooming her for commercial sex, she was taken by her captors across the Southern Border at a location where no wall existed. This wasn't extremely difficult as approximately 80 percent of the border is barrier-less.⁶ Lilian's traffickers easily transported her to New York City where she was sold and raped for money up to 30-40 times a day for 5 years. She eventually escaped this hell on earth and my foundation is now caring for her as she prepares to testify in Federal court against her captors. In accordance with U.S. laws, as a survivor of sex trafficking in America, Liliana has been granted legal status and will soon be a U.S. citizen.⁷

As we have Liliana and I have discussed her tragic plight and reflected on her horrific experience, she recently weighed in with her feelings on the current National debate surrounding physical barriers. "Had there been a wall for me," she declared, "my captors would have been forced to take me to a port of entry. A U.S.

⁶Arizona Republic, Sept. 20, 2017.

⁷Victims of Human Trafficking: T Nonimmigrant Status, U.S. Citizenship and Immigration Services website, Accessed March 2, 2019.

officer might have seen my distress. I might have yelled out to them. I am currently working with Homeland Security agents on my case. I love them. I think they would have rescued me at the port of entry.”

Liliana concluded, “I know many girls who came in like me . . . we know a wall could have saved us . . .”

Would Liliana have been rescued at a port of entry? In the spirit of complete honesty and complete transparency, we don’t know. But, would Liliana have had a greater opportunity to be rescued by trained law enforcement had physical barriers pushed her captors to a point of entry? The honest answer is “yes.” She would have had greater chance of being rescued, much like the 5-year-old boy with Earl Buchanan.

Several anti-trafficking cases I have personally worked along the border shine additional light on the issue of physical barriers. In March 2011, Homeland Security Investigations (HSI) obtained intelligence that U.S. resident Leonel Gonzalez was attempting to smuggle children into the United States from Mexicali, Mexico, for the purposes of selling them to Americans for sex. Information we received made it clear that because of the large wall separating Mexicali and the United States, Gonzalez was having a hard time figuring out a way to get the children in. HSI preempted his smuggling actions by sending undercover operators posing as American traffickers to negotiate for the purchase of the children. I personally led the undercover team on this operation. Thanks to the wall in place, it bought us time to coordinate with Mexican authorities, who arrested the Mexican traffickers and liberated the children who were being held in a house near the border. The U.S. Government arrested Gonzalez and charged him with 18 USC 1591(a) Sex Trafficking of Children (Case 11CR1192). He pleaded guilty to Foreign Travel in Aid of Racketeering Enterprise and went to jail.

In May 2012, our team at HSI along with local authorities, rescued a 14-year-old girl who had been smuggled into Texas outside of a port of entry. The American trafficker who kidnapped her and sold her for sex was later arrested and convicted (Case 12CR2259). Unfortunately, there was no significant wall or barrier that might have pushed the child to be brought through a port of entry, where her chances of being rescued before being sex trafficked inside the United States would have increased exponentially.

Based on my experience where there was a wall there was a greater chance of a successful outcome for good. With barriers in place, traffickers were either pushed to a port of entry or required to be stagnate as they planned for entry which created opportunities for us to execute operations that rescued children and put criminals behind bars.

These are just a few examples from one operator. There are hundreds of agents working the border each day that could also share their examples and case studies that would show similar results and outcomes. I believe the majority of my former colleagues would agree and their assessment of the need for the need of physical barriers would be the same as mine.

Please also note that these cases and examples I have provided span through the presidencies of George W. Bush and Barack Obama, hopefully illustrating this is not a partisan issue, but a human issue and a moral issue. For those of us who fight human trafficking, our desire for physical barriers is no stronger today than it was in 2006 or 2012 or 2016. This isn’t a political game to us. It’s a matter of life and death.

I’d also like to be clear on this important point. I know that smuggling takes place through our points of entry. I know that immigration laws are abused, that victims have fake passports and visas and airports are used as well for smuggling victims. I realize all of this. But, I also know based on my extensive experience along the Southern Border, working with every Federal agency that operates there, we are much more likely to slow the flow of trafficking into our country if it’s through a port of entry compared to a barrier-less border. And I know that barriers push people to points of entry.

Paola Felix backs up this claim regarding physical barriers. Paola Felix is a former Mexican congresswoman and current senior Mexican administration official working on anti-trafficking policies for President Andres Manuel Lopez Obrador. After studying what the so-called experts have said about how a wall does little to stop child trafficking into the United States, Felix declared, “It is very disappointing to me that people in the United States who claim to be anti-trafficking advocates would ignore or downplay the many Hispanic children being smuggled into the United States outside of legal ports of entry and forced into the hell of sex slavery. Mexican authorities have uncovered at least 19 different land-based smuggling routes where victims are taken and trafficked for sex in the United States. Downplaying the crisis with disinformation puts our children in grave danger. It

discourages U.S. officials from employing every tactic available to rescue them during the small window of time that they can—that is, while they are being crossed into the United States. After that they are gone, maybe forever.”

“Every tactic available.” I can’t agree with Mrs. Felix more. Why wouldn’t we use every tactic available to safe children from a life of slavery and sexual abuse?

Another argument for physical barriers is the sexual violence along our border that occurs among those who illegally cross barrier-less points of entry not under the control of a trafficker, but under the direction of a smuggler. A smuggler they have paid to bring them across the border, someone these soon-to-be victims are trusting to get them into the United States. *The New York Times* recently reported about this issue in a brilliant yet heart-breaking article titled, “‘You Have to Pay With Your Body’: The Hidden Nightmare of Sexual Violence on the Border.”

The *Times* accurately reported how migrant women, both young girls and grown women, are victims of violent sexual assault along the Southern Border often during their journey across the barrier-less regions of the border, or when they are picked up after crossing the border by smugglers on this side of the border. These women are often enslaved, beaten and raped by they very people these women trusted to bring them across the border. The *Times* reports, “. . . women making their way into American border towns have been beaten for disobeying smugglers, impregnated by strangers, coerced into prostitution, shackled to beds and trees and—in at least a handful of cases—bound with duct tape, rope, or handcuffs.”⁸

The stories of these women, who are just searching for a better life, are heart-wrenching. One woman by the name of Melvin was locked in a room on the U.S. side of the border for weeks where she was drugged and sexually abused. Melvin stated, “I think that since they put me in that room, they killed me . . . They raped us so many times they didn’t see us as human beings anymore.”⁹

Lucy, a 45-year Honduran told how she and other migrant women were led into a house in McAllen, Texas. There she was raped repeatedly over a series of days by multiple men. Lucy explains that, “Because I didn’t want to let them, they tied my feet together and my hands behind my back.”¹⁰

Another 45-year-old, a Guatemalan mother of 4, was kidnapped by armed smugglers after already crossing into the United States at barrier-less portion of the border. She tried to escape her captors by jumping from a car, however she was recaptured and held in a stash house for days. There she was raped by 6 men. The victim, Gladys, said “I thought it would be better if I died when I fell from the car.”¹¹

No one should be forced into the hell of sexual slavery or human bondage. Nobody should go through what all of these victims have had to endure. And based on my extensive experience fighting human trafficking both as a Federal law enforcement official and with O.U.R, I believe barriers along our border will be able to save children from slavery and significantly decrease the horrific sexual assaults along our border.

I believe barriers will be able to save thousands of lives. But just for a moment, I’d like to ask anyone reading this testimony to see the world through my eyes for a moment and focus on “the one.”

Let me explain: I realize that United States Senators who sit on this committee represent everyone that lives in their respective States. I realize that as Senators consider policy, they must view the needs of all 327 million Americans and the country at large.

But my view to the world is focused on “the one.”

What I mean by this is, I know there are an estimated 40 million slaves throughout the world. I know that even though I have dedicated my life to saving as many as I can, we won’t be able rescue all those who need rescuing. I know that we can’t stop all the attacks and sexual assaults. That’s the harsh reality.

But, what keeps me going and what keeps me motivated to fight this fight, is this simple fact:

To the one we do rescue, it means everything to them.

And “the ones” add up quickly. “Ones” turn into hundreds and hundreds turn into thousands and those thousands can turn into tens of thousands of lives saved.

So as a committee, as a United States Senator, and as a part of the human family, as you think about the human smuggling that occur at our Southern Border, I would ask you for a moment to please realize, we can save thousands, but also don’t forget “the one.” And to the one we do rescue, it means everything to them.

⁸*New York Times*, March 3, 2019.

⁹*New York Times*, March 3, 2019.

¹⁰*New York Times*, March 3, 2019.

¹¹*New York Times*, March 3, 2019.

In conclusion, I would plead with the esteemed Members of this committee, especially for those critical and in opposition of physical barriers along our border, to honestly consider the years of work and the experiences behind my conclusions. I would ask you to consider the conclusions of all the anti-child trafficking experts who have worked the Southern Border and who support the construction of physical barriers based on their extensive experience.

I will end this testimony as I started this testimony by reiterating that this should, in no circumstance, be a partisan issue. Human trafficking is a plague and an evil that must be eradicated. Because this is such an important and tragic issue, it's not fair and it's not right for these modern-day slaves to be caught in the middle of a political battle. Let us always keep our focus on victims and ultimately do what's right for them.

Miss RICE. I thank all the witnesses for their testimony.

I will remind each Member that he or she will have 5 minutes to question the panel. I will now recognize myself for questions.

Ms. Brané, I want to start with you. Secretary Nielsen testified before the full committee of this Homeland Security Committee, a couple of weeks ago. She testified that every single parent who had been separated from a child had been given the opportunity to take their child back with them before they were deported.

She testified that actually they were given that opportunity, I believe she said almost an exact quote, on multiple occasions. Is that true?

Ms. BRANÉ. No. I mean, in my experience I have spoken directly to parents who actually begged to have their children returned with them when they were deported but did not have that opportunity. In some cases, parents even signed voluntary removals and agreed to leave the country after being told that was the only way they would get their children back, and yet, they were still deported without their child.

Miss RICE. So that would not be an accurate, truthful statement?

Ms. BRANÉ. Correct.

Miss RICE. OK. Now, can you tell me, briefly can you explain, I know briefly, but I only have 5 minutes. Can you explain the family case management program and can you explain what DHS's justification was for ending it?

Ms. BRANÉ. The program was an alternative to detention that involved case managers assigned to families who were seeking asylum generally. The case manager worked with the family to ensure that they had a place to live, that they knew when their appointments were, when their hearing were, maybe connected them to pro bono attorneys if they could.

The program was by all accounts extremely successful. The Government itself found that it was 100 percent successful. Later studies have found that it was 99 percent successful in ensuring appearance to all hearings and appointments. It only costs about \$35 a day as compared to many hundreds and hundreds of dollars for detaining or separating families.

The administration terminated it early in June 2017 before it was intended to end. It had already been sort-of approved for many more years. They gave no reason as far as I know.

Miss RICE. Dr. Linton, before zero tolerance was formally announced, what actions did the AAP take to warn the Department of Homeland Security about the dangers of family separation?

Dr. LINTON. Given the limited time I will refrain from going through the entire time line of contacts, but we, as I mentioned in

my opening statement, communicated 6 times by letter regarding the concerns, as well as a number of statements that were made both in the press, as well as letters to the Department of Homeland Security specifically expressing our concerns beginning as early as March 2017.

Miss RICE. Ms. Podkul, it is my understanding, and tell me if this is accurate, that DHS has not hired any social workers or child welfare experts. Is that true?

Ms. PODKUL. I have seen 1 or 2 child welfare workers who were hired on contract to work in the Ursula facility, for example, when they have a baby there. But it has not been consistent and those people are not responsible for any of the important screening that takes place.

Miss RICE. Now, you also stated in your written testimony that ICE arrested more than 400 potential sponsors of unaccompanied minors. By the way, we know that that is the term given to kids who were taken away from their parents. They then became unaccompanied minors even though they weren't, for charges the agency claimed were related to Federal smuggling crimes.

New subsequent news reports have stated that these charges were not, in fact, related to smuggling. Are you aware of what these individuals were charged with?

Ms. PODKUL. We are not. Once the potential sponsor was taken by ICE and then detained by ICE and put into removal proceedings we are not sure what happened to them. What we do know is it resulted in children languishing in detention and not having anyone to provide care for them, at no cost to the Government, while they went through their court process.

Miss RICE. You also stated in your written testimony that migrants must wait months to present their asylum claims at the border. Has CBP or USCIS cut back, as far as you know, on the number of asylum claims they are processing at legal ports of entry? If they have, have they given any justification for that?

Ms. PODKUL. I don't know of any justification, but I can tell you just last week I was crossing the bridge in Brownsville, Texas and the agent who processed me, because I had a U.S. passport, said, you know, we used to just let them all come in and present themselves, you know? Right behind me was a huge encampment of 50 people sleeping in tents on the bridge.

Miss RICE. Dr. Linton, I just want to go back to you quickly for the last question. You have observed families and children staying in CBP custody longer than the 72-hour limit. How long are most families and children reporting being kept in CBP holding facilities since October 2018?

Can you just briefly give us some examples of the health implications of staying in those conditions for extended, and by the way, we are talking about cages with Mylar coverings, sometimes in wet clothing, separated from family members. Can you just give us a brief explanation?

Dr. LINTON. Yes, so the children that I care for in the community, previously in North Carolina and now South Carolina, report stays of anywhere between 2 days and 8 days in CBP processing facilities. That is in the past several months those are the numbers that I have heard from the families I take care of.

The conditions place the same risks that I discussed in my opening statement regarding the risks of toxic stress in the short term from being in the conditions of lights being on 24/7, which is incredibly disorienting, the cage-like fencing that extends from the floor to the ceiling and children lying on concrete floors with a mat and a Mylar blanket, include physical symptoms such as headaches and stomach aches, include changes in memory and learning and in the long run, place them at risk for complex medical problems such as depression, anxiety, heart disease, and diabetes.

Miss RICE. Thank you.

I now recognize the Ranking Member for his questions.

Mr. HIGGINS. Thank you, Madam Chairwoman.

America should be reminded that 20 years ago most individuals illegally crossing the border were single adult males from Mexico. They'd take temporary jobs in the United States and send their money home. They'd go back to Mexico.

Today the majority of apprehensions at the Southwest Border are families and unaccompanied children arriving from Central America because of a current legal precedent that it is the job of this Congress to fix. Unaccompanied minors and members of a family unit must be released into the United States after 20 days to await immigration proceedings.

As a result, 98.9 percent of families and 98.2 percent of unaccompanied children apprehended in fiscal year 2017, who originated outside of Mexico, remain in the United States. Family apprehensions for the first five units of fiscal year 2019 are 800 percent higher than the total number in 2013.

We all concur that we have to take care of the children that end up on American soil. But we should agree in a bipartisan manner that this is a problem that begins with trafficking far south of our border with Mexico.

Mr. Ballard, based on your experience do you think more children are separated in the process of attempting to reach our Southwest Border or by our Government once they get here? Are they separated from their families before they get here or when they get here?

Mr. BALLARD. I don't know exact numbers, but the separation of children before they get here is astronomical because we have policies that encourage cartels to take children and use them in the smuggling process because there is an incentive to have a child in your hand because of our current policies.

So I worry tremendously about these children who are being used as pawns. Then you understand the cartels are the ones who are doing the smuggling and they are smuggling these children, 80 percent to 90 percent of them are being recovered outside of our ports of entry. They are choosing to go outside.

What about the ones that didn't get recovered?

Mr. HIGGINS. Based on your professional experience, why are the children being brought across the Southwest Border between ports of entry instead of legally at ports of entry?

Mr. BALLARD. Because our ports of entry are armed with well-trained and well-equipped officers who are looking for children and looking for cases of abuse.

Mr. HIGGINS. Do you concur that enhanced physical barriers and enhanced technology to detect attempted crossings along our Southwest Border would help victims of human trafficking?

Mr. BALLARD. Absolutely. It would drive them to the ports of entry where there are good guys there to help them.

Mr. HIGGINS. I am a proponent of addressing this problem that we face with an all-of-the-above approach: Technology to detect an attempted illegal crossing, enhanced physical barriers to delay or deter an attempted illegal crossing, enhanced capacity to respond to that illegal crossing by increasing boots on the ground, all-weather roads and vehicles, and enhanced capacity to process these children of God that do end up on American soil after a treacherous and criminal journey, we need an enhanced capacity to process these human beings.

It is an incredible challenge because of the change in the demographic of the folks that are trying to cross into America illegally.

Ms. Linton, I respect your testimony, Madam, and I respect your passion and your love for children. But I would ask you, have you interviewed the children that have experienced trauma on the journey to our Southwest Border at the hands of criminal organizations, coyotes, and human traffickers?

Dr. LINTON. I believe you are referring to me?

Mr. HIGGINS. Yes, ma'am.

Dr. LINTON. Correct. So thank you for the question, Congressman. I take care of children who have experienced trauma in countries of origin and during the journey. At the time they arrive on our border is when the trauma should stop.

What I am witnessing in the kids that I take care of is that—

Mr. HIGGINS. Do you concur? I have limited time—

Dr. LINTON. They are re-traumatized.

Mr. HIGGINS. Do you believe that this Congress should provide the professional law enforcement men and women that are tasked with securing our Southern Border and protecting those who have illegally entered our country and processing these human beings, do you believe that this Congress should provide the necessary funding that has been requested by our border security professionals so that we can protect these children?

Dr. LINTON. As a pediatrician I have prioritized the health and well-being of every child in my care, and I believe that the trauma should only end when they arrive on our border and we should process every child with compassion, dignity, and respect.

Mr. HIGGINS. I concur, Madam, and I believe that my colleagues and I are responsible for providing the needed funding for border security in all phases so that we can serve these children of God entering our country illegally.

I think we should stop them before they get here by working closely together to provide the needed funding and enhanced technology and physical barriers that border security has requested.

Madam Chairwoman, thank you for indulging me. I yield back.

Miss RICE. Thank you, Mr. Ranking Member.

I now recognize Mr. Thompson for his questions.

Mr. THOMPSON. Thank you very much, Madam Chairman.

As a father and grandfather I am very concerned with how we treat children when they get to our border. We should not separate

them from their parents. We should not put them in cages. We should provide adequate medical and other care that they need.

As Americans, we are a Nation of laws. Our value system says that we should take care of people. Our laws say if you get here and ask for asylum it is not a go to the end of the line or remain in Mexico until your number is called. We have to accept you.

So part of what I hear from the witnesses, the majority of the witnesses, is that our system is not adequate. This hearing today is to talk about the separation policies and what perspectives we see from the border.

So I think it is clear that we have to fix it. Now for the record, we have never provided any less money than the Department has ever requested for anything. So it has never been that we haven't provided the money. We have always provided the money.

There are some 5,000 vacancies right now within CBP because Congress has been generous to fund them. We just have not been able to employ the people to do that.

So I think we need to at least put on record that if the children of God get to this border we have to clearly take care of them. Children should not be used as anything other than who they are, human beings.

So Dr. Linton, you have had experience with it. So is it your testimony before this committee that with the present policies in place children have a higher percentage of issues because the policies are inadequate and that those 67,000 members of your organization have already been on record expressing their concern?

Dr. LINTON. The American Academy of Pediatrics has expressed concerns about the current policies at the border that include separation of children from their parents without clear recognition that that child is at risk at the hand of the parent and without determination by a family court that that is justified.

We are on record with our concerns about detention and family detention centers. We are on record with concerns regarding the conditions in the current Customs and Border Protection processing centers.

Mr. THOMPSON. So for the record, those 6 letters, did they get responded to?

Dr. LINTON. We have had no meaningful engagement with DHS regarding family separation.

Mr. THOMPSON. Will you provide the committee with copies of those 6 letters that you sent to DHS?

Dr. LINTON. Thank you, Congressman. I would be happy to provide the committee with any record of the communications we have had with DHS.

Mr. THOMPSON. Thank you very much.

Ms. Brané, you have had experience working with migrants' rights and justice. What is your opinion of the present system with respect to family separation at the border?

Ms. BRANÉ. Well, I am extremely concerned that even after everything that we have described here today and all the public outcry, Congressional outcry and orders from a court, from Federal court, to my knowledge, there is still no system in place for tracking the separations of families.

We still, as Ms. Podkul testified, have seen families who are separated without proper information being given about why or any plan for how to reunify if that ends up being the proper outcome.

Mr. THOMPSON. Thank you.

Madam Chair, I think at the hearing you referenced we asked the Secretary to provide us some data on how many children we had in custody and what have you. It is my understanding that we have yet to receive the formal reply.

So I would like to go on record reaffirming the committee's interest in getting the information so if we have to do legislation we at least need to know from a statistical standpoint what we are addressing.

Miss RICE. I agree, Mr. Chairman.

Mr. THOMPSON. Thank you. I yield back.

Miss RICE. Thank you.

The Chair recognizes for 5 minutes the gentlewoman from Arizona, Mrs. Lesko.

Mrs. LESKO. Thank you, Madam Chairwoman. First for the record, I want to say when Secretary Nielsen came here she testified that of the children that were separated from their families under the zero tolerance policy only 6 children remained in ORR custody and there were legitimate reasons for that.

I do want to get to this, and I think all of you have compelling testimony. But I think what we are missing here is, what is the root of this problem? What is the cause of this problem?

I contend the cause of this problem is our loose immigration laws. Laws that are asylum laws that actually incentivize migrants to travel thousands and thousands of miles to get here with their children.

So my question actually, and I just want to add that Secretary Nielsen testified that these cartels are paid \$6,000 a person to come here. It is caused partially by our loose asylum laws that incentivize people to come here.

So my question to Ms. Podkul, would you support legislation that would revise our asylum laws so that this incentivization of cartels to bring children and women here that are getting raped, would you agree with legislation to curtail that?

Ms. PODKUL. I think it is really important that we maintain the protections that we have in our system now. What I would support is increased refugee processing in home country. There are a lot of kids who might be able to ask for protection in their home country and we could revise their case and that would avoid them having to make the dangerous journey here.

Mrs. LESKO. Thank you.

Mr. Ballard, thank you for your testimony. I guess from your experience I would like to know if you could contrast the treatment of children by cartels and smugglers as they are traveling thousands of miles versus the treatment they get once they get to the border and they are in United States' hands?

Mr. BALLARD. Yes. Well, I will answer that by saying, again, I agree with this panel, with my colleagues here, and in no way would I want to, you know, distract or detract from the plight of these children and what they are going through that are recovered.

However, from my experience talking to the children who didn't get recovered, who are largely, I think, are being ignored in this overall debate, I just gave you an example of one who was raped 20,000 times.

So she——

Mrs. LESKO. Awful.

Mr. BALLARD. They went through hunger and loneliness and all these horrible things outside of the care of CBP because they never got that opportunity. Instead, they were taken to the pedophiles of America and raped and abused in this way.

We are working on several cases like this that our prosecutors are prosecuting these trafficking rings right now. You know, the cartels you have to go to a cartel to smuggle. So in some cases your best case, as bad as it is, your best case is you get recovered by CBP, and it can be bad because of our policies that need to be fixed.

But much worse than that is the cartels flip them into a trafficking victim, which they do. We have reports of this. They abuse these children. They get them past the ports of entry and sell them for sex to our American pedophiles. We have to talk about this as well.

Mrs. LESKO. Thank you.

My next question is for Ms. Podkul. I believe you said in your testimony that you don't agree that our Government when they are vetting the sponsors of unaccompanied children, that if they find out that these sponsors are here illegally and that some of them may have committed crimes as well, that that should be turned over to ICE. Is that what you testified?

Ms. PODKUL. My point is when ORR does the vetting of sponsors what they are looking for is someone who is going to be safe and who is willing to care of that child while they go through our enforcement process. That is the priority.

So when ORR is looking at information, that information should really focus on the child welfare. I think ICE has its own mission of immigration enforcement but using children as bait for immigration enforcement is what I am concerned about.

I think ICE needs to figure out how they want to prioritize their limited resources and that ORR should stay in its lane and really focus on its mandate that Congress gave it, which is to prioritize child welfare and make sure——

Mrs. LESKO. So excuse me.

Ms. PODKUL [continuing]. Kids go through the courts.

Mrs. LESKO. So then that is a yes, that you don't want our Government, ORR, to basically if they find out that the sponsor is here illegally or has committed a crime to turn that over to authorities, correct?

Ms. PODKUL. I believe that information should not be used for immigration enforcement purposes. ORR should be making their decision based on what they think is in the best interest of the child. Then ICE has its own job to conduct and prioritize its own resources.

Mrs. LESKO. Thank you.

Miss RICE. So I just want to say, you know, I think it is important that we not conflate these two issues. Family separation is a completely separate issue from human trafficking.

Everyone who is sitting up here wants to address the issue of human trafficking, and I would, with the Chairman's indulgence, maybe in the future we could do a panel on that. But I think it is disingenuous to conflate the two when they really have nothing to do with each other.

Not every family unit that presents itself at a port of entry or in between a port of entry is a human trafficker. So I just think we need to make that clear.

The Chair recognizes for 5 minutes the gentleman from California, Mr. Correa.

Mr. CORREA. Thank you, Madam Chair and I thank the Ranking Member as well for holding this most important hearing. I would concur with you, Ms. Rice, that family separation, let us not mix that with other issues.

I think family separation is part of implementing a policy of keeping refugees away from this country. When we talk about loopholes that is really the law of the United States, which is our refugee law. You know, by separating families we are essentially saying don't come.

I just got back from Tijuana where I spent a few days looking at the refugee camps. What I found, Mr. Ballard, what you said about those sex victims, those children, you haven't even started to scratch the surface.

I saw girls as young as 4 years old being trafficked and in those brothels big, big business. Customers are the Americans coming across the border and doing whatever it is that they are paying to do. One young girl, 6 years old, for \$100 a night, she was used at brothels as much as they could use her. Terrible. You see this story repeated over and over again.

But let us not get caught up in the weeds here because a lot of refugees now in Tijuana, Mexico, a lot of non-governmental organizations going in to help, the churches, not only Catholic but others, other NGO's. You have got refugees from all over the world, OK?

You are not seeing this on the television sets anymore because a lot of them are essentially becoming very invisible, starting to get jobs in the area. But refugee crisis will continue to be the case.

I will tell you how much our Government is not really not recognizing this issue. Do you know what happens? You can walk up to the border and say I want to claim refugee status. Do you know what happens? There is a book. There is a book.

I walked up to them. I walked across the border, said, I want to come in. I want to see where that book is. I said, Who keeps this book? Nobody would answer the question.

I asked the U.S. consulate. I asked the Mexicans. Who keeps this sacred book? Nobody could answer. When I asked the U.S. consular general there she said we have no jurisdiction in Mexico.

Bottom line is a bunch of folks keep a book. If you walk up and say I want refugee status they will give you a number and a piece of paper and say come back when we call you.

This is about a legal process, a U.S. legal process that starts with somebody that has been unappointed, somebody out of the blue that is keeping this book.

I am running out of time, but Madam, I also, 2 weeks ago, went into Central America. I visited Guatemala, Honduras, El Salvador. The president of Honduras told me, Lou, the reason we have so many refugees is folks are looking for hope. They are looking for a job.

Says, the U.S. exports three things to this area: Drug money, gangs, and weapons. When I went and I started to visit their centers of training their youth to get a job in the area so they could have hope, that is what it is about.

I believe that contrary to my vote, contrary to my wishes, the President will build a wall between us and Mexico. I predict in 5 to 10 years we will be back debating the issue of drug smuggling and refugees. The bottom line is in Latin America today we have a refugee crisis.

It is Central America right now. We haven't even begun to look at Venezuela. There are about 2 million to 3 million Venezuelans right now in South America under refugee status.

Until we figure out in this country that for the last 200 years under President Monroe's famous Monroe Doctrine, we told the world the Americas are our jurisdiction. Stay away. The problem is we didn't finish our job: 1823, Monroe Doctrine, 200 years we forgot to administer. We forgot to work Central America on the economic side.

Madam Chair, this is not going away. We will build a wall. We will address security in this country, but it is not going to stop Fentanyl from coming in from China, cocaine from Colombia, and heroin from Mexico because there is just too much money in the business that will corrupt Mexicans. It will corrupt Canadians the way it corrupts Americans.

Finally, let me say when it comes to the issue of mixing refugees, drugs, cartels, it doesn't work. The president of Honduras told us that those big groups of folks coming over, OK, they are organized essentially by the same folks, because, like, one of our colleagues said, it is not \$6,000. It is \$6,000 to \$10,000 per person that they will charge you to smuggle you to the United States.

The way you get a discount is you all work together, you get together and you walk a few hundred miles to get to the United States. Then when they get here they find out that there is no line to come into the United States so they stay in Mexico. They stay in Tijuana.

Madam Chair, I would love to talk to you about my journeys to Central America this last month, but that is in another story in another time. I yield the remainder of my time.

Miss RICE. Thank you, Mr. Correa.

The Chair recognizes for 5 minute the gentleman from Mississippi, Mr. Guest.

Mr. GUEST. Thank you, Madam Chairman.

Mr. Ballard, first I want to thank you for your service to your country, both in CIA and working for the Department as it relates to the work you have performed across our border.

Two weeks ago, Secretary Nielsen was here. During her testimony before this committee she classified the current conditions along our Southwest Border and she said that she believed that there was a human trafficking crisis. Do you agree with her assessment?

Mr. BALLARD. Yes, I do.

Mr. GUEST. She also testified that she believed that there was a drug trafficking crisis. Do you believe that her assessment that there is a drug trafficking crisis across our Southwest Border?

Mr. BALLARD. Yes, I do.

Mr. GUEST. Finally, she testified that she believed that there was an immigration crisis along our border. Do you believe that as well?

Mr. BALLARD. Yes, I do.

Mr. GUEST. Now, I want to focus, Mr. Ballard, and the other witnesses, just specifically here today on human trafficking. You in your report I believe you properly describe human trafficking. You say, human trafficking is a plague and an evil that must be eradicated.

Because this is such an important and tragic issue it is not fair and not right for these modern-day slaves to be caught in the middle of a political battle. Then throughout your testimony you set forth what you believe is a method in which we can combat human trafficking.

You say on page 7 of your report, you say that barriers along our border will be able to save children from slavery and significantly decrease the horrific sexual assaults along our border.

You say on page 6 of your testimony, based on my extensive experience along the Southwest Border, working with every Federal agency that operates there, we are much more likely to slow the flow of trafficking into our country if it is through a port of entry compared to a borderless border. I know that barriers push people to points of entry.

On page 5 you say, with borders in place traffickers are either pushed to a port of entry or required to be stagnant as they plan for entry which creates opportunities for us to execute operations that rescue children and put criminals behind bars.

Then finally on page 4 you say, I know that we are more likely to effectively fight human trafficking if we close open border crossings and drive traffickers to ports of entry.

Mr. Ballard, is it your testimony that if we close our borders and we funnel all traffic through the ports of entry that you, based upon your experience and the work that you have done, you believe that this will be an effective tool in fighting our battle against human trafficking? Is that correct?

Mr. BALLARD. That is correct.

Mr. GUEST. I want to ask the other witnesses on this panel, Dr. Linton, and again, we are talking just on the human trafficking portion of this hearing. Do you believe that if individuals are forced to enter the country through ports of entry that we will be more effective in our ability to identify and fight human trafficking?

Dr. LINTON. As a pediatrician I can only comment that we support the protections as outlined in the Trafficking Victims Protection Reauthorization Act or TVPRA, that would recommend screen-

ing all children for human trafficking. But I can't comment on border security, thank you.

Mr. GUEST. All right. Would we have a more effective approach of screening all children that are entering if they are entering through a port of entry versus entering across the unsecured portion of our border?

Dr. LINTON. The majority of children that I take care of in my clinic are presenting themselves and asking for asylum when they arrive at our border.

Mr. GUEST. Same question to you, Ms. Brané. Do you believe the same thing, that if we are able to have individuals come across through ports of entry versus the unsecured portion of the border that we will do a better job?

Again, I am focusing only on human trafficking. So I just want to make sure that we are not clouding one issue with the other. Both are very important, but my questions are relating specifically to human trafficking. Do you believe that that would help us in our fight against human trafficking?

Ms. BRANÉ. Absolutely, and that is why I very strongly believe that we need to stop turning children away who present themselves at ports of entry. We currently have a system in which this administration is turning away people from ports of entry and telling them to wait or go away. That is resulting in driving them into much more dangerous situations and risk of trafficking.

Mr. GUEST. All right, but as far as what we are talking about or what specifically I am talking about, is where we have individuals who are bringing children into our country for the purpose of using them in the sex trafficking.

This human trafficking I believe, and I agree with Mr. Ballard, and I think each of the three of you would agree that anytime that one child enters the country and is forced into prostitution that that is a tragedy. That is a crisis and that is something that we as a country should do everything within our power to stop.

So I want to thank each of you for appearing before you today. I want to thank each of you for your testimony.

Madam Chairwoman, I yield back.

Miss RICE. OK. Thank you, Mr. Guest.

The Chair now recognizes for 5 minutes the gentlewoman from Illinois, Ms. Underwood.

Ms. UNDERWOOD. Thank you, Madam Chair. I am a nurse so when Secretary Nielsen testified 3 weeks ago I asked her about how family separation impacts children's health. When I asked her she claimed to be unaware of basic facts on the subject, like the concept of toxic stress.

I found it totally unacceptable that she came to the hearing completely unprepared to answer basic questions like the number of children currently in detention. She couldn't even tell us a time line of the investigations into the deaths of Felipe and Jakelin, the 2 children who died in CBP custodies.

So it has been almost 3 weeks and she looks all of us, the Members on the committee, in the eye and promised to provide us with all kinds of follow-up information, but I have yet to receive any word or follow-up from her office.

From a medical perspective, if you wanted to purposely design a policy to be cruel to hurt children, you would design it to look a lot like this administration's family separation policy.

So my questions are for you, Dr. Linton. Thank you for being here. You are here representing the American Academy of Pediatrics and so when Secretary Nielson was here she claimed, again, to be unaware of this toxic stress. But you are a pediatrician and so if you were on the panel with her how would you explain toxic stress?

Dr. LINTON. Thank you, Congresswoman. Toxic stress is serious, prolonged stress in the absence of a buffering support of a parent or loving caregiver. What we know about stress is that each of us responds to stress. I am stressed right now. My heart is racing.

[Laughter.]

Dr. LINTON. I probably have goosebumps. That is what we call tolerable stress. So there is positive stress, which is a wedding, very stressful but exciting, wonderful. There is tolerable stress where I have the loving support of my family to cope with. And there is toxic stress.

The family separation policy that was implemented by this administration was a form of toxic stress, which we know threatens the short- and long-term health of children.

Ms. UNDERWOOD. Can you describe for us the impact of family separation on the child's physical health?

Dr. LINTON. Yes. So we know that toxic stress in the short term can cause changes in body function, so children may have changes in their eating. They may not be hungry. Children will frequently have difficulty sleeping. They may wet the bed or even soil themselves.

They may have physical symptoms, headaches. They may have stomach aches. Their immune response is lowered when there is cortisol running through their bodies for such a long period of time so they would be maybe more susceptible to infection in that setting.

They also in the long run are at serious risk for problems such as depression, heart disease, diabetes—

Ms. UNDERWOOD. OK.

Dr. LINTON [continuing]. Post-traumatic stress disorder.

Ms. UNDERWOOD. Yes. So some of those you described are emotional and mental health challenges. So can you explain how those can be both immediate and long-term?

Dr. LINTON. Yes, thank you. So in the short-term you can see mental health difficulties both in terms of behavior, so you may have children who are frightened. They startle easily. They are afraid to separate from a loved one or a caregiver. They may be withdrawn. They may be depressed. They may be anxious.

Developmentally we see changes like developmental regression. So a child may not be able to speak in the same way that they could speak before. So I have seen children who have faced situations of toxic stress who lost their speech milestones.

We may see children have difficulty with memory. We may have children that are not able to pay attention, what looks like attention deficit hyperactivity disorder is, in fact, toxic stress and then the ability to concentrate.

In the long run with those kind of chronic responses we may see that children are at risk for depression, anxiety disorders, and post-traumatic stress disorders, to name a few.

Ms. UNDERWOOD. Thank you. So as you mentioned in your testimony, the toxic stress can cause permanent changes in the child's brain. So you talked about some short-term, medium- and long-term impacts, but can you discuss the brain changes that we might expect to see?

Dr. LINTON. Absolutely. So what we know about toxic stress is that when you have hormones that are not supposed to be running through the body all of the time, like cortisol, we know that they can disrupt the architecture of the developing brain. I can provide you with our policy statements on toxic stress for the record if that would be helpful, to go through the neuroplasticity and the neurobiology of toxic stress.

But what we see in behavior so that we see that children, as a result of those brain changes, have these behavioral symptoms, have these physical symptoms, have these emotional symptoms and over time are at very serious risk for chronic illness.

Ms. UNDERWOOD. Well, thank you, ma'am, so much for your work in the community and for your work with these children, who I am sure appreciate the therapeutic interventions that you and your colleagues do provide.

I also would like to thank the American Academy of Pediatrics for speaking out so boldly and with a clinical, evidence-based grounding in response to this National policy that has been rolled out that goes against American values in so many ways. Thank you for appearing here.

Madam Chair, I yield back my time.

Miss RICE. Thank you, Miss Underwood.

The Chair recognizes for 5 minutes the gentlewoman from New Mexico, Ms. Torres Small.

Ms. TORRES SMALL. Thank you all for being here on this important issue. Family separation should never be a solution for our broken immigration system. It is immoral. We know it results in traumatic and lasting effects on families, particularly the children.

Unfortunately, DHS continues to separate families at the border, even though the administration officially ended its family separation policy last June.

Ms. Podkul, under what circumstances is DHS continuing to separate a child from their family?

Ms. PODKUL. We don't know. CBP does not always give information about why they conducted the separation, what standards they decided to use and oftentimes they are doing it with no justification at all.

Ms. TORRES SMALL. Dr. Linton, in your earlier remarks you discussed recommendations for what to do regarding narrow circumstances involving danger to a child. Does the DHS ever communicate specific guidelines on how they would make such a determination?

Dr. LINTON. To my knowledge those guidelines do not exist and we would recommend that there be strict policy guidance that separation should never occur unless the safety of that child is at risk at the hand of the parent and a competent family court makes the

decision, just like we do with every other child when we have to consider whether they should be separated.

Ms. TORRES SMALL. How many children have been separated from their parents since the termination of the administration's zero tolerance policy?

Dr. LINTON. I know what we know from the reports from the OIG that we believe there were thousands more separated than the nearly 3,000 that we know about. But I am not able to comment beyond what has been reported publicly.

Ms. TORRES SMALL. Does anyone else have any better idea?

Ms. BRANÉ. Well, as I have said before, we don't know because they are still not keeping track.

Ms. TORRES SMALL. Dr. Linton, as a Member representing a border district I have seen first-hand that CBP facilities are not meant to handle the influx of children and families that we are currently seeing.

You discussed previously some recommendations for screening and follow-up care. How do you suggest CBP change its policies to adapt to the rise of family units and to ensure that these families are provided with quality medical care?

Dr. LINTON. I believe that every child who presents to our border upon arriving, having fled conditions of trauma in their countries of origin, and as we have discussed, may have faced trauma during the journey, the trauma should stop.

So we should have every child have access to being processed in child-friendly facilities, which is not the case of current CBP processing facilities. Children should have access to screening, comprehensive medical screening, mental health services, and should also have legal representation so that their cases can be fairly heard.

Ms. TORRES SMALL. Thank you. It is my understanding that when parents are separated from their child that they aren't being provided reasons for the separation. What is CBP's process for notifying parents that they will be separated?

Dr. Brané.

Ms. BRANÉ. To my knowledge there is no process and there continues to be no process. So it would be great to hear if they are developing something, but I have not heard of any plans to do so.

Ms. TORRES SMALL. Thank you. Are you aware of whether parents are given an explanation or any information?

Ms. BRANÉ. Generally from the cases I have heard of they have not, but again, I think that is on an individual basis. There is no policy in place so it may be inconsistent.

Ms. TORRES SMALL. Do you know what process parents can use to appeal the separation, particularly to explain charges on their criminal record issued by the government from which they are fleeing?

Ms. BRANÉ. To my knowledge there is no process.

Ms. TORRES SMALL. Given what you have seen from separated families, do you have recommendations on how this process could be improved?

Ms. BRANÉ. Developing any process would be a step forward. We have made several recommendations to the administration on how they could develop better policies. One of the most important is

putting child welfare professionals at Border Patrol stations and ports of entry to help with the screening and the care and the processing of these children.

Ms. PODKUL. If I may add, I mean, this sounds a little basic but even just keeping track of the separations and ensuring that the information goes to both the child and the parent so that they can maintain communication.

What we see is a child can't oftentimes move forward with their legal case because it is the adult who has all the information about their case, has the documents that are necessary, has important information.

Even when they have been able to keep track of the separations it is taking longer than a week to make sure that the child and the parent can speak again after the separation.

Ms. BRANÉ. If I could just add, I think what is really critical here is that there are some really basic common-sense steps that could be taken that have not been taken.

Ms. TORRES SMALL. Basic steps to save children and their families. Thank you. I yield the rest of my time.

Miss RICE. Thank you, Ms. Torres Small.

The Chair recognizes for 5 minutes the gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Let me thank the Chair and the Ranking Member for their courtesies. I really do appreciate it. My commitment to this committee is such that allowing me to question is much appreciated. Thank you so very much.

Let me thank all of the witnesses who are here. A little background, I am also on the Judiciary Committee and remember in desperate times the formulation of this policy to transfer the holding of children from the detention process of the immigration agencies in order to protect them.

With that in mind, we had no vision of thousands of children being held in facilities separated from guardians, parents, and others. I had the non-privilege of being at the border in the first coming of children unaccompanied, literally holding babies coming off buses. That is how desperate parents were, 2-year-olds, and this was no humor for the parents or no opportunistic opportunity for them.

Then I recently was in a very limited return of children to parents just in the last year during this recent thing. To each of you I am setting this precedent so you can see this landscape for you.

As we were in the room there was not a dry eye, but here is why the eyes were not dry. Because if you are a parent you want nothing more than to protect your children and for your children to see you as a protector.

So these children had come and they were playing with pretty, pretty toys and that mother would come in with a pillowcase of her belongings to come up to a 7-year-old, 8-year-old and to stand there and watch them play, sort-of waiting for them to look up to acknowledge.

As they looked up and acknowledged there was no reaction from the children. There was no breaking away and running toward this desperate mom who had come, had been through so much and had this pillowcase. I can see it right now. For those of us who are par-

ents the worst thing you can imagine is the disassociation of your child from you, the break of the bond.

So my question that I just came out of the Budget Committee to ask the deputy secretary of how many children there are right now? There are about 12,000 children being held. They are asking for \$2 billion to deal with this.

So I am going to Ms. Podkul and Ms. Brané and Dr. Linton, I come from Texas Children's Hospital territory and work a lot with pediatricians, but give me your sense of how this committee in its jurisdiction and all the other committees can be effective in trying to get children united with their parents, but more importantly, the effect?

I only have 1.35, so I am just going to call on you and just make your quick points that you made, but I just need to hear it again.

To Mr. Ballard, let me thank you. I have been a supporter. I don't know if you are talking about the underground railroad with Harriet Tubman, but in any event, certainly that was a historic moment in history.

But I am just going to ask Dr. Linton and Brané and Podkul based upon what I have given you. Thank you. Now it is down to 1.12, forgive me.

Dr. LINTON. Thank you, Congresswoman. I think the committee has an opportunity to ask for accountability in the processes that include family separation, ensuring that no child is separated without being at risk at the hand of a parent, as well as safe conditions in Border Patrol Protection processing centers, and not using detention as a solution.

Ms. JACKSON LEE. Health care at those facilities, would that be helpful?

Dr. LINTON. Health care should be available to every child who comes to our border and enters this country.

Ms. JACKSON LEE. On-site. Thank you, Doctor.

Yes, Ms. Brané? I hope I am pronouncing your name right.

Ms. BRANÉ. In addition to what Dr. Linton stated, I would say child welfare professionals at ports of entry and Border Patrol stations, facilities that comply with child welfare standards and licensing standards and a system for tracking and sharing information.

Ms. JACKSON LEE. Thank you.

Ms. Podkul.

Ms. PODKUL. You know, these are all changes that we have been recommending today that could be done today. They could be done by COB today, so I think this committee, you know, conducting oversight on the agencies to ensure that they are put into place is going to be very important in terms of making children safe.

Ms. JACKSON LEE. I have a second. Can someone comment on the separation factor that I just described when the children did not respond to that parent that came into the room?

Ms. Linton.

Dr. LINTON. When children are separated from their parents it is profoundly traumatizing to them and sometimes takes them time to heal from the trauma that was imposed by our policy of systematically separating them. Every child should be with his or her loving and supportive parent unless that child is at risk at the hand

of the parent and the family court determines that that child is not safe with that parent.

Ms. JACKSON LEE. Thank you.

Madam Chair, thank you and I yield back. Thank you very much.

Miss RICE. Thank you, Ms. Jackson Lee.

I recognize the Ranking Member for 2 minutes.

Mr. HIGGINS. Thank you, Madam Chairwoman. I would like to remind all concerned Americans that our law enforcement professionals on the border are dealing in many cases with families that are self-separating before they get to our Southwest Border.

We also have quite a significant concern with fraudulent family units. It is very challenging for law enforcement to deal with. As Americans with love and compassion for their children, these guys are doing their best. We need to provide them the funding that they requested.

My colleague stated earlier that family separation is immoral. Ms. Podkul, you stated in your submitted statement that family unity is a fundamental human right.

Ms. Brané, you stated that family separation policy is an extremely important matter that profoundly affects the lives of vulnerable migrant and refugee children and families. I think we would all concur that this is a serious concern.

I would ask you, Ms. Brané, have you interviewed any of the children, that 750,000 to 800,000 children, American children, that are separated from their parents that are incarcerated in American jails?

Ms. BRANÉ. I have not done so professionally, no.

Mr. HIGGINS. So—

Ms. BRANÉ. Other than—

Mr. HIGGINS. But you have interviewed many immigrant children?

Ms. BRANÉ. I have interviewed many immigrant children.

Mr. HIGGINS. All right. I would remind America that there are approximately 750,000 to 800,000 American families separated because their—

Miss RICE. With all due respect, Mr. Ranking Member—

Mr. HIGGINS [continuing]. Parents have committed crimes.

Miss RICE. I yielded the time because I thought it was gonna be on a relevant issue. It is not so we are going to end here.

I thank the witnesses for their valuable testimony and the Members for their questions. The Members of the subcommittee may have additional questions for the witnesses and we ask that you respond expeditiously in writing to those questions.

With that, I ask unanimous consent—

Mr. HIGGINS. Madam Chairwoman, I have a unanimous consent request.

Miss RICE. Yes.

Mr. HIGGINS. I ask unanimous consent to enter into the record the remarks of Secretary Nielsen from our recent full committee hearing regarding the specific circumstances where family separations may occur, very narrow and specific. I ask unanimous consent it be entered into the record.

Miss RICE. You want the entire statement?

Mr. HIGGINS. Well, I believe it is appropriate to enter her written statement which includes the details I am referring to.

Miss RICE. Oh, yes. Yes, because that will be taken also together with the testimony that she actually gave orally before this committee, which I think is just as relevant. So yes, that we will do. [The information referred to follows:]

EXCERPT SUBMITTED FOR THE RECORD BY HON. CLAY HIGGINS

[sic] may be connected with the Saudi government.

Madam Secretary, is this really happening, No. 1? Will you commit to provide this committee any and all documentation of this program, including training materials being shared with the Saudis and who is being trained?

Secretary NIELSEN. We are happy to provide you materials, ma'am, and come brief you. I am happy to have the TSA administrator—

Mrs. WATSON COLEMAN. All right, how long would I have to wait to get this information?

Secretary NIELSEN. That I can't answer, but what I can do is get you an answer today as to when we could be able to provide that to you.

Mrs. WATSON COLEMAN. Thank you. I don't know if I asked this—I was talking so fast. Do you continue to separate parents from children as they are coming across the border?

Secretary NIELSEN. In three instances, when the child is at risk, the adult accompanying them is not a parent or guardian, and the third instance is when the parent needs to go to a custodial environment.

Mrs. WATSON COLEMAN. So are any of these coming at the port of entry, seeking asylum?

Secretary NIELSEN. Some of—sure. Some of them might be claiming asylum, yes, ma'am.

PREPARED STATEMENT OF HONORABLE KIRSTJEN NIELSEN

MARCH 6, 2019

Chairman Thompson, Ranking Member Rogers, and distinguished Members of the committee: It is an honor to appear before you today.

I want to start by thanking the men and women of the Department of Homeland Security (DHS) for their exceptional service to our Nation. Last week, we celebrated the Department's 16th anniversary, and we marked the extraordinary progress that has been made to protect our Nation against a vast array of threats and hazards. In the past year alone, DHS has made notable strides and reached new milestones. For example, we:

- Responded decisively to record-breaking natural disasters and helped Americans rebuild when they needed our help the most;
- Prevented the hacking of U.S. elections and guarded against foreign interference in our democracy;
- Hardened our digital defenses, organized ourselves for the interconnected era with the Cybersecurity and Infrastructure Security Agency, and pushed for tougher consequences against cyber adversaries;
- Created a new hub—the National Risk Management Center—to identify and mitigate the most serious risks to our Nation's critical infrastructure;
- Thwarted terrorist plotting and helped bring dangerous individuals to justice;
- Launched new, sophisticated efforts to block terrorists and criminals from reaching the United States, including through our new National Vetting Center;
- Ramped up security measures to protect Americans against emerging threats—from weaponized drones to chemical and biological weapons;
- Reorganized our intelligence and science & technology organizations to better meet the needs of front-line defenders;
- Strengthened our campaigns against human trafficking and smuggling, child exploitation, drugs, and transnational criminal organizations;
- Raised the baseline of aviation security across the board—and around the world;
- Took decisive action to enhance school safety and security Nation-wide in order to stop attacks before they happen;
- . . . and much, much more.

We have also undertaken historic efforts to secure our borders and enforce our Nation's immigration laws. This is the subject of today's hearing, and this morning I want to outline for you the very real humanitarian and security crisis we face, how we are responding, and what's urgently needed from Congress to fix the situation.

The men and women of my Department will tell you that it is no easy task to secure the more than 7,000 miles of America's shared border with Mexico and Canada while facilitating legal trade and travel. Each day, dedicated DHS officers and agents inspect hundreds of tons of cargo for illegal substances or explosives, process thousands of individuals for admission, and patrol many miles of remote border. They do this in order to answer a crucial question: Who and what is coming into the country? This mission—safeguarding our territory—is one of the most critical charges of our Department and one of the most fundamental responsibilities of any government.

THE HUMANITARIAN AND SECURITY CRISIS AT OUR SOUTHERN BORDER

Let me start by saying, the United States leads the world in welcoming individuals fleeing persecution. In the 2017 calendar year, the United States granted asylum and refugee status to more individuals than any other country in the world. We welcome those who come to us legally, especially those who are truly fleeing persecution and who seek refuge in our country.

Illegal and uncontrolled migration, however, poses a serious and growing risk to U.S. public safety, National security, and the rule of law. This cannot be a partisan issue. Every Secretary of this Department has sounded the alarm about our unsecured border and highlighted the associated threats and consequences to our National security. Today we are seeing the results of a failure to act and a broken system.

Our Nation is facing a dire humanitarian and security crisis at our Southern Border. In the first 4 months of the fiscal year, we saw approximately 60,000 migrants each month cross illegally or present at ports of entry without documents. Moreover, the numbers are rising. In February, agents apprehended or encountered more than 76,000 aliens, a 31 percent increase over January, and CBP is forecasting the problem will get even worse this spring. The agency is now on track to apprehend more migrants crossing illegally in the first 6 months of this fiscal year than the entirety of fiscal year 2017. Our capacity is already severely strained, but these increases will overwhelm it completely.

What's different about the current migration flow is not just how many people are coming but who is arriving. For most of recent history, the majority of individuals arriving illegally or without documentation were single adults, who we could quickly detain and remove. This is how the immigration system is supposed to work. However, in recent years we have seen the proportion of vulnerable populations—children and families—skyrocket. Because of outdated laws and misguided court decisions, we are often forced to release these groups into the interior of the United States and we have virtually no hope of removing them.

The details here are critically important. Historically, illegal aliens crossing into the United States were predominantly single adult males from Mexico, and they were generally removed within 48 hours if they had no legal right to stay. Now over 60 percent are family units and unaccompanied alien children, and 60 percent are non-Mexican. Many of these families are from the Northern Triangle countries (Guatemala, Honduras, El Salvador) and claim asylum, so they are released into the United States—as required by the *Flores* court decision—while they await a court date that can be years away. Only 1 in 10 individuals from the Northern Triangle are ultimately granted asylum by an immigration judge. Unfortunately, when it comes time to remove the other 90 percent—who have been determined by an immigration judge to have no legal right to stay in the United States—they have absconded from their last known location. And we do not have sufficient resources to find and remove them.

Make no mistake: The problem is getting worse. The smugglers and traffickers have caught on, realizing this is a “free ticket” into America. As a result, the flow of families and children has become a flood. In the past 5 years, we have seen a 620 percent increase in families—or those posing as families—apprehended at the border. This last fiscal year was the highest on record. Children are being used as pawns to get into our country. We have even uncovered “recycling rings” where innocent young people are used multiple times to help aliens fraudulently gain entry. As a Nation, we cannot stand for this.

The phenomenon of large groups (which is defined as a group of 100 or more aliens apprehended together in a single event) of migrants organized into caravans

arriving along our Southern Border provides a window into the wide-spread challenges faced everyday by DHS personnel. For example, in fiscal year 2017, CBP encountered only two large groups. By fiscal year 2018, this grew to 13 groups. And this fiscal year through February 28, CBP has experienced 68 groups in the U.S. Border Patrol's El Paso, Rio Grande Valley, Tucson, and Yuma Sectors. This is not a manufactured crisis. It is real, it is serious, and it is overwhelming our front-line personnel.

Apprehending large groups places a tremendous strain on CBP's limited resources, pulling front-line personnel to conduct humanitarian efforts and drawing resources away from front-line enforcement, effectively placing border security at risk. Associated with the increase in large groups and caravans, we saw a 21 percent increase in the number of unaccompanied alien minors from the year prior, and a 40 percent increase in number of family units in fiscal year 2018 compared to fiscal year 2017. To make matters worse, we know that transnational criminal organizations (TCOs) are taking advantage of these large groups as a distraction in order to conduct criminal activity elsewhere on the border, as they know CBP resources will be tied up.

Today's migration flows have created a humanitarian catastrophe. Criminals are targeting vulnerable populations along the dangerous journey to our borders. In one study, more than 30 percent of women reported sexual assault along the way, and 70 percent of all migrants reported experiencing violence. Smugglers and traffickers are exploiting these migrants. They are forcing them into inhumane conditions, demanding large sums of money, and putting their lives in danger every day. Vulnerable populations—especially children—are coming into DHS custody sicker than ever before, arriving with illnesses and injuries. In recent weeks, an average of 56 aliens a day have required emergency medical care at the Southern Border.

The care of those in DHS custody is paramount, and the United States Border Patrol is doing everything in its power to handle this crisis, but our facilities along the Southern Border were not designed to support such large vulnerable populations. These facilities are short-term processing facilities, designed to hold individuals for 72 hours or less. I am grateful for the \$415 million in humanitarian assistance Congress provided in the most recent DHS appropriations bill. The bottom line is that Border Patrol stations built decades ago are not designed to handle this crisis and are not the best facilities to house children with their parents for extended periods.

This is also a public safety and National security crisis. TCOs are using this situation to line their pockets, fueling a rise in other illegal activity and the spread of violent crime into our country. The results are disturbing. Across the Nation, Immigration and Customs Enforcement (ICE) officers made approximately 266,000 arrests of aliens with various criminal charges or convictions in 2017 and 2018—which included roughly 100,000 charges or convictions for assault, 30,000 for sex crimes, and 4,000 for homicides. Many of these were individuals who came across illegally at our Southern Border.

DHS personnel have also witnessed an increase in the trafficking of illegal drugs into our communities. Alarmingly, CBP has reported that fentanyl smuggling between ports of entry at the Southern Border has more than doubled over our last fiscal year, from fiscal year 2017 to fiscal year 2018. Although these seizures represent just a quarter of fentanyl seizures along the border, the rate at which they have increased is concerning. Fentanyl was responsible for more than 28,400 overdose deaths of Americans in 2017. Just a few weeks ago, CBP made its largest fentanyl bust in U.S. history, seizing 254 pounds of fentanyl—enough for 115 million fatal doses—in a truck trailer compartment. These drugs are smuggled at and between ports of entry, but our officers and agents are not able to devote the full resources and attention they could to interdicting them because of the migration crisis that is taxing our resources.

A tough border security posture is essential to keep other potential threat actors out of the United States. There are thousands of individuals on the terrorist watch list that traveled through our hemisphere last year alone, and we work very hard to keep these individuals from traveling on illicit pathways to our country. While most terror suspects attempting to reach the United States do so by air, terrorist groups are clearly interested in exploiting deficiencies along our borders to enter the United States. We must vigilantly guard against any such efforts.

Moreover, last year alone, DHS encountered 3,000+ "special interest aliens" (SIAs)—individuals with suspicious travel patterns who could pose a National security risk—at our Southern Border. Foreign partners throughout the Western Hemisphere continue to share their concerns with me about the growing volume of SIAs. Often these partners lack the ability to determine the identities and intentions of

such individuals before they cross international borders and make their way toward our own.

RESPONDING TO THE CRISIS

DHS is grateful that Congress was finally able to pass a budget for the Department, but the crisis is getting worse and our current funding neither provides adequate resources nor the additional authorities that our DHS personnel need to gain full operational control of our border. Congress has repeatedly failed to give DHS the resources needed to confront this situation and to handle the influx of aliens, drugs, and other illicit traffic into our country. That is why I strongly support the President's decision to unlock additional funding for physical barriers, including resources from the Department of Treasury and the Department of Defense.

Moreover, I applaud the President's decision to declare a National emergency. This is a crisis—pure and simple—and we need to respond accordingly. We cannot stand idly by as our border security is further compromised and our immigration laws are exploited. Now is the time to act and to uphold our fundamental responsibility to our citizens and our Nation to safeguard U.S. territory. Although we may disagree on solutions, I hope there can be a consensus that the current system requires immediate attention.

Despite these challenges, DHS personnel have worked hard to keep our communities safe and have done their best to uphold our Nation's laws. Our agents, officers, and enlisted personnel—those from CBP, ICE, USCIS, USCG, and beyond—have done an extraordinary job of prioritizing the highest threats and risks in their operating areas and going after them. Whether they are apprehending illegal aliens, interdicting smugglers, conducting life-saving rescues of migrants, or arresting dangerous individuals sneaking between our ports of entry—the work by our DHS personnel on the border is imperative to our continued security and prosperity as a Nation. DHS is taking an end-to-end approach to the humanitarian and security crisis at our Southern Border. Below are examples of the actions we have been taking:

Constructing Border Barriers and Leveraging Technology.—The United States has long built barriers along its Southern Border, first in 1909 and regularly since then according to need. DHS is now constructing the first new border wall in nearly a decade, which will improve our ability to impede and deny illegal entry. Since the first barriers were constructed in San Diego in 1991, U.S. Border Patrol field commanders have continued to advocate for border wall and the enduring capability it creates to prevent illegal entry while allowing additional time for agents to respond. At the same time, we are aggressively pursuing the deployment of new technology at our borders to increase the situational awareness of our agents and officers and to detect illicit activity.

Deploying the U.S. Military.—DHS is grateful for the robust involvement of Department of Defense (DOD) and National Guard personnel who have been deployed to support our border security mission. Every administration since President Ronald Reagan has sent troops to the border, and other Presidents before him, including President Woodrow Wilson who deployed 150,000 guardsmen to secure our Southern Border in 1916. Our Nation's troops and enabling personnel are assisting with surveillance, force protection, logistics, medical response, and much more. Already these deployments have enabled thousands of drug interdictions and apprehensions of illegal aliens. We are continuing to work closely with DOD on expanding barrier protections, as well as exploring additional ways to collaborate to ensure CBP personnel are freed up to perform their border security mission effectively and supported in crisis conditions.

Amplifying Regional Cooperation.—As Secretary, I engage almost weekly with my counterparts in Mexico and the Northern Triangle governments of Central America to work toward addressing the migration crisis at the source. Last month, I met with security ministers from the Northern Triangle in El Salvador to discuss an action plan to deal with the crisis. I am pleased to report we reached a breakthrough and agreed to negotiate a Memorandum of Cooperation (MOC) to address the smuggling, trafficking, irregular migration, and formation of caravans. These efforts will include a whole-of-Government approach to addressing the security-related drivers of migration and improving border security in the region. Our joint statement, which outlined a clear path toward increased collaboration between the United States and Northern Triangle, emphasized four areas of increased collaboration: Combatting Human Trafficking and Migrant Smuggling, Countering Organized Crime and Gangs, Expanding Information and Intelligence Sharing, and Strengthening Border Security. I look forward to reporting back to Congress on the signing of the final regional MOC.

Instituting the Migrant Protection Protocols.—Late last year, we announced a major milestone—the Migrant Protection Protocols (MPP)—to address the urgent humanitarian and security crisis at the Southern Border. We have begun to implement MPP, which relies on long-standing statutory authority to allow us to return migrants to Mexico to await the conclusion of their U.S. immigration proceedings while ensuring they receive all appropriate humanitarian protections. Ultimately, MPP will allow us to focus more attention on individuals legitimately fleeing persecution, dissuade those who intend to file false claims, and bring order to a chaotic flow.

Protecting Vulnerable Populations.—At my direction, DHS personnel have put in place new policies, procedures, and resources to protect children and families. This includes surging medical assistance to the Southern Border to deal with the arrival of large groups and sick individuals, as well as protocols to ensure that unaccompanied alien children are not held with individuals who could pose a danger to them while in DHS custody. We have also doubled-down on our efforts to crack down on human smuggling and trafficking, including the abuse of children. And every day the extraordinary men and women of CBP go above and beyond the call of duty to save lives of migrants in trouble, including women, children, and infants found abandoned in the desert by smugglers. These rescue missions, which take place between ports of entry in remote locations on our Southern Border, are extremely difficult but also demonstrate our commitment to upholding America’s values and rescuing those who need our protection.

Combating Transnational Criminals.—DHS is stepping up its efforts to dismantle TCOs. We have reached agreements with governments in the region to increase action against TCOs, including through greater intelligence sharing, integrated units of U.S. personnel and partner agencies, joint investigations, and more. Here at home, we have also worked with other departments and agencies to take a more holistic approach to combating TCOs, including improving interagency coordination structures to take down nefarious groups with greater precision and coordination.

Countering Illegal Drug Smuggling.—DHS continues to seize thousands of pounds of illegal and dangerous drugs, including fentanyl, as they are smuggled into the United States. We are deploying additional technology and resources at the Southern Border both at and between ports of entry to help detect and disrupt drug-smuggling activity. This also includes deeper cooperation throughout the U.S. Government and with regional partners to find and bring drug smugglers to justice and dismantle cartels.

Confronting Asylum Fraud.—DHS is putting in place important measures to reduce asylum fraud and frivolous filings. For example, we have implemented a “Last In, First Out” approach, which means we prioritize the most recently filed applications when scheduling affirmative asylum interviews. The aim is to deter individuals from using our Nation’s large asylum backlogs solely to obtain employment. By cutting down on asylum fraud, we will be able to devote more attention to applicants who are legitimately fleeing persecution and require U.S. protection under our laws.

Increased Local Cooperation.—DHS recognizes the inordinate impact that the surge of illegal migration has had on our border communities, and we have stepped up cooperation to enlist State and local officials in our border security efforts. For instance, DHS has doubled the number of 287(g) agreements with local law enforcement to enlist their voluntary cooperation on immigration enforcement. At the same time, we have increased available funds for Southwest Border localities to provide assistance on border protection through grant programs. DHS is also working with partner agencies in States, and especially with county, local, and Tribal agencies to share information, provide resources, and build communication capacity.

A COMPREHENSIVE SOLUTION

Despite all of our efforts, DHS cannot fix this crisis on its own. That is why I respectfully request, and will continue to ask, that Congress pass legislation to fix outdated laws and gaps in our authorities. These legal impediments hamper enforcement of the law, weaken border security, and endanger both the American public and the illegal aliens making the dangerous journey to the Southwest Border. They are also “pull” factors that drive illegal migration and undermine the territorial integrity of the United States. Only Congress has the Constitutional authority to enact immigration law. We are, therefore, completely dependent on Congress to change the outdated statutes that impede our ability to enforce the law and that handicap our ability to keep America safe.

There are several key legislative reforms that we need to address this crisis. Among other actions, we ask Congress to do the following:

Promote Family Unity.—One of the main challenges is the inability of DHS to keep families together during the immigration proceedings. In 1997, the Immigration and Naturalization Service (INS) entered into the *Flores* settlement agreement relating to detention of minors and their release. Since that time, litigation on this agreement has continued, and multiple court decisions interpreting the agreement have impeded the United States Government's ability to maintain custody of minors and, now, based on the most recent interpretation, families. The provisions of the settlement agreement should be superseded by legislation. Legislation on this issue should be focused on allowing us to keep families together during their immigration proceedings and promoting a uniform standard of care and accommodation for minors in custody, while ensuring our laws are enforced.

Ensure the Safe and Prompt Return of Unaccompanied Alien Children (UAC).—We must also update our laws to ensure that all UACs who are not victims of trafficking or persecution (regardless of their country of origin) can be returned home and reunited with their families. Current law has created a financial incentive for TCOs, smugglers, and traffickers to transport UACs to and across our border. The result is that children are exploited by criminals for their own gain, and are put in danger. We must stop this exploitation and ensure the safe and prompt removal of UACs. Government officials in Central America continue to express to me their urgent desire to have their children returned home, not harbored in the United States. This requires a legislative fix.

Crack Down on Asylum Fraud and Protect Those Who Need It.—We have requested that Congress reform asylum standards to deter fraud and otherwise ensure that those truly eligible for protection have prompt access to the judicial system to adjudicate their claim. Specifically, Congress should legislate a standard that requires that it is more probable than not that the statements made by the alien in support of the alien's claims are true. Reforming this standard helps promote the adjudication of meritorious asylum claims by ensuring those who are statutorily ineligible for asylum are not found to have a credible fear of removal.

Safeguard Americans from Dangerous, Criminal Aliens.—We also need Congressional assistance to update laws that allow criminal aliens to circumvent the removal process. Right now, the system is broken, and because of a series of misguided court decisions, DHS is forced to release dangerous criminal aliens from custody and is unable to remove others from the United States even when they have been convicted of serious criminal offenses. Specifically, we must clarify the definition of "conviction" in the Immigration and Nationality Act to address aliens who receive post-conviction relief or sentence modifications for the purpose of flouting immigration consequences. In addition, we must remedy U.S. Courts of Appeals and U.S. Supreme Court decisions, including *Mathis v. United States*, 136 S. Ct. 2243 (2016), that have made it increasingly difficult for ICE to remove convicted aliens on criminal grounds of removal.

We must also urgently close loopholes created by the U.S. Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). This decision generally requires that DHS release a criminal alien ordered removed who has been detained for 180 days after the period for removal began unless DHS can show that there is a significant likelihood that removal can be effectuated in the reasonably foreseeable future. The result is that we have been forced to release dangerous individuals—including those responsible for terrible crimes—back into the population. We must close loopholes created by the *Zadvydas* decision to give DHS authority to keep dangerous criminal aliens who are subject to final orders of removal off our streets and keep our communities safe. Finally, for the safety and security of the American people, Congress should ensure that DHS has full authority to detain and remove alien criminal gang members, alien gang associates, and aliens who participate in gang-related activities. We must be able to safeguard Americans from aliens associated with criminal gangs, including detaining and removing violent gang members such as MS-13.

CONCLUSION

Make no mistake: Despite the challenges DHS faces, we welcome those who come to us legally—including those who are truly fleeing persecution. America is a beacon of hope and freedom to the entire world, and we welcome more immigrants every year than any other nation on earth. Nevertheless, we must be able to uphold our values and the rule of law while also maintaining our security.

That is why I call for common-sense solutions—including physical barriers, fixes to outdated laws, and the resources needed to bring order to the chaos. Today, I implore Congress to listen to the solutions offered by those who see this security crisis up close. The humanitarian crisis can no longer be ignored. The security crisis can-

not be wished away. We must change the status quo now. It will require bold action to address gaps in our border security that are being taken advantage of every day.

I thank this committee again for its leadership on this issue, and I look forward to your questions.

Mr. HIGGINS. Thank you, Madam Chairwoman.

Miss RICE. With that, I ask unanimous consent to insert materials from Amnesty International into the hearing record.

[The information referred to follows:]

LETTER FROM AMNESTY INTERNATIONAL

March 25, 2019.

Rep. KATHLEEN RICE, Chair,
Rep. CLAY HIGGINS, Ranking Member,
*Committee on Homeland Security, Subcommittee on Border Security, Facilitation,
and Operations.*

Re: Amnesty International Statement for March 26 Hearing on “The Department of Homeland Security’s Family Separation Policy: Perspectives from the Border”

DEAR CHAIRWOMAN RICE, RANKING MEMBER HIGGINS, AND MEMBERS OF THE COMMITTEE: On behalf of Amnesty International¹ and our more than 2 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 on-going oversight efforts by Congress, including efforts to publicly investigate and establish an exhaustive record of the administration’s separation of families and children 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

Undercounting of Families Separated

Based on over a year of in-depth research on the U.S.-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 of family separations conducted in 2017 and 2018, before, during, and after the announcement of its so-called “zero-tolerance” policy.

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 were released from ORR custody before the injunction in *Ms. L.* was issued. In March 2019, the *Ms. L.* class definition was expanded to include the potential “thousands” of children released from ORR custody prior to the court’s initial order, though, as of this writing, the remedy for this class is yet to be ordered.

Separations Justified on Vague and Spurious Grounds

Amnesty International’s report further 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

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

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 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 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 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-

²DHS 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 than initially included in the *Ms. L.* 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 fiscal year 2019,” 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 U.S.-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 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>.

called “fraud” (including non-parental relationships, such as grandparents; or subjective doubts about the validity of the relationship).

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 U.S. 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 55-year-old Maria, who was separated from her 17-year-old grandson with disabilities, Matheus, 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 Cali-

ifornia 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 6 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 a Brazilian mother, Valquiria, while she was in detention on May 10, 2018, 3 days before Mother's Day. Ten months later, she remains in detention at the El Paso Processing Center. March 17 marked 1 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 point . . . How can a mother not have the right to be with her son?"

Valquiria should never have been detained at an adult detention center; rather, DHS should have followed its own 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.

The trauma of detention has impacted separated families and children in another way: Government submissions in on-going litigation have revealed that some of the children separated from their families by DHS under the zero-tolerance policy turned 18 while in ORR custody and were thus transferred to adult 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. The practice of transfers of 18-year-olds to adult facilities has been described by children and advocates alike as traumatic, and is likely doubly so for children and youth previously who have already been subjected to the irreversible pain of family separation.

III. AMNESTY INTERNATIONAL'S POLICY RECOMMENDATIONS

To Congress:

- Pass legislation banning the separation and detention of families with children.
- Continue to demand full and unimpeded access to the following data to allow scrutiny of the true numbers of family separations prior to, during, and following the announcement of the zero-tolerance policy in 2018:
 - 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.
 - 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 to date in official statistics provided by DHS.
 - Information contained in any DHS-HHS interdepartmental information-sharing platforms related to separated families and children.
- 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.

- 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.
- 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[.]

Sincerely,

CHARANYA KRISHNASWAMI,

Advocacy Director, The Americas, Amnesty International USA.

BRIAN GRIFFEY,

Regional Researcher/Advisor, Americas Regional Office, Amnesty International.

Miss RICE. Without objection, the subcommittee record shall be kept open for 10 days.

Hearing no further business, the subcommittee stands adjourned.
[Whereupon, at 11:38 a.m., the subcommittee was adjourned.]

APPENDIX

QUESTION FROM RANKING MEMBER CLAY HIGGINS FOR JULIE M. LINTON

Question. Dr. Linton, currently, CBP has a National set of guidelines for detainment that explicitly mentions family unity, entitled the National Standards on Transport, Escort, Detention, and Search (TEDS) that we released in 2015. You were asked about CBP's explicit guidelines for separation. In your oral testimony, you responded that to your knowledge, "those guidelines do not exist, and we would recommend that there be strict policy guidance that separation should never occur unless the safety of that child is at risk."

Were you aware of these guidelines?

Answer. The AAP has said repeatedly that separating children from their parents contradicts everything we stand for as pediatricians—protecting and promoting children's health. In fact, 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. This type of prolonged exposure to serious stress—known as toxic stress—can carry life-long consequences for children. Children should never be separated from their parents unless there are concerns for the safety of the child at the hand of the parent and a competent family court makes that determination. As such, the AAP strongly supports S. 292, the Keep Families Together Act (and its House counterpart H.R. 541) which prohibits separation of families at the border without good cause, as determined by a State official or a child welfare expert. This legislation is critically important for ensuring that a decision as consequential as separating a child from his or her parent or family members is made with the best interests of the child in mind and by a trained and qualified expert in child welfare.

QUESTIONS FROM RANKING MEMBER CLAY HIGGINS FOR TIM BALLARD

Question 1. Mr. Ballard, do you agree with the Chairwoman of the subcommittee that "family separation is a completely separate issue from human trafficking" and that "they really have nothing to do with each other"?

- Do you think the two issues are mutually exclusive?
- From what you've seen in the field, how common is it for human traffickers to use the guise of a "family unit" to bring children into the United States?
- Are human traffickers more or less likely to pose as a family unit if detained between ports of entry? What about at ports of entry?

Answer. Response was not received at the time of publication.

Question 2. Mr. Ballard, U.S. Customs and Border Protection (CBP) recently shared with Congress that they have discovered more than 3,100 fraudulent family units attempting unlawful entry along our Southwest Border since April 2018. They interview the members of the family unit, check for fraudulent documents, and run fingerprints on the migrants they process, but there doesn't seem to be enough checks in place to make sure the adults are biological parents or the legal guardians of the children. This poses a major child safety risk.

- Based off your experience, what do you think CBP can be doing to enhance their ability to ensure that migrants who present themselves as a family unit are actually a legitimate family unit?

Answer. Response was not received at the time of publication.

