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January 25, 2022

Via Electronic Submission

U.S. Dept. of Homeland Security
Interagency Task Force on the Reunification of Families
2707 Martin Luther King Jr. Ave. SE
Washington, DC 20528-0525

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

Dear Interagency Task Force on the Reunification of Families:

We write in response to your December 10, 2021, request for comments on how to minimize the separation of migrant parents and legal guardians and children entering the United States. During the Trump Administration’s “Zero Tolerance” policy, our government separated over 5,400 children from their parents.¹ Although this policy’s singular focus of terrorizing people was novel in its implementation, it relied on already existing laws that facilitated this practice long before and long after Zero Tolerance. Likewise, the long-lasting trauma and many accompanying issues that plague these children and parents alike continue regardless of this policy’s termination. We must acknowledge that ongoing harm, as well as the ongoing family separations that continue to happen today, despite the government’s professed end to it. It is time for the United States to actually stop separating families, to ensure separation does not occur again, and to remedy the harm that thousands of children and parents live with every single day.

The Texas Civil Rights Project (TCRP) is a 501(c)(3) legal advocacy organization with offices all across Texas.² TCRP is dedicated to defending the rights and dignity of all those in Texas in the courtroom, in partnership with our communities, and with meaningful policy changes. Since our founding in 1990, TCRP has fought for the rights of immigrants. We are lawyers and advocates for Texas communities, boldly serving the movement for equality and justice.

More specifically, TCRP’s Racial and Economic Justice Program is dedicated to advancing human dignity, protecting freedom of movement, and advocating on behalf of Texas border communities, in particular migrants. During the summer of 2018, TCRP was ground zero in responding to the human rights atrocities committed under the Trump Administration’s Zero Tolerance policies in McAllen, Texas. In the McAllen federal courthouse, we conducted intakes with hundreds of adults who were separated from their children, and we clearly remember walking into the courtroom

¹ Assoc. Press, *More than 5,400 children split at border, according to new count*, NBC NEWS (Oct. 25, 2019), <https://www.nbcnews.com/news/us-news/more-5-400-children-split-border-according-new-count-n1071791>.

² See *About TCRP*, TEXASCIVILRIGHTS.ORG (2019), <https://txcivilrights.org/about-us/>.



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every day, where the harm committed against these individuals was palpable. We worked with families to locate their children and reunite them and to advocate for an end to this practice. In addition to seeking legal remedies within our domestic legal system, we submitted a petition on behalf of five separated families to the Inter-American Commission on Human Rights, requesting protective measures and reparations for the families. And we underscored the extent of family separation in the media, even after Zero Tolerance was ended.³

TCRP has advocated for reunification on behalf of hundreds of families. We have produced two reports documenting our fight against family separations.⁴ Moreover, TCRP continues to do this work today, as we encounter newly separated families pushing through the trauma in order to locate their children. Families are still being separated at the border due to criminal prosecution of illegal entry and illegal re-entry. We continue to receive referrals from the federal public defender's offices when their adult clients have been separated from their children. In short, we have first-hand, direct knowledge of the continuing harms of family separation at the US-Mexico border.

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

Stop the Criminalization of Migration: The U.S. government must stop criminal prosecutions for unauthorized entry and reentry under 8 U.S.C. § 1325 (section 1325) and 8 U.S.C. § 1326 (section 1326).⁵ Migration offenses under sections 1325 and 1326 have become the most commonly prosecuted federal crimes.⁶ Not only do these prosecutions represent a huge waste of government resources, they also result in family separations as parents and legal guardians are separated from their children in order to be criminally prosecuted. A recent report also found that prosecutions under sections 1325 and 1326 result in myriad due process violations.⁷ In January 2021, the U.S. Attorney General released a memorandum formally rescinding Zero Tolerance for offenses under 8 U.S.C. §1325(a).⁸ The policy required that every case under §1325(a) was charged without regard for “individual circumstances,” such as asylum claims. However, this memo rings hollow—prosecutions under § 1325(a) continue to this day and families are still

³ Daniella Silva, *Migrant families still being separated at the border, report from Tex. group says*, NBC NEWS (Feb. 20, 2019), <https://www.nbcnews.com/news/latino/migrant-families-still-being-separated-border-report-texas-group-says-n973766>.

⁴ Laura Peña & Efrén Olivares, *The Real Nat'l Emergency: Zero Tolerance & the Continuing Horrors of Family Separation at the Border*, TEX. CIV. RIGHTS PROJECT (2019), <https://txcivilrights.org/wp-content/uploads/2020/05/FamilySeparations-Report-FINAL.pdf>; Sarah Abdel-Motaleb, Roberto Lopez, & Andy Udelsman, *Family Separations Continue In South Texas, Years After They Allegedly Ended*, TCRP MAG (Oct. 21, 2020), <https://news.txcivilrights.org/2020/10/21/family-separations-continue-in-south-texas-years-after-they-allegedly-ended>.

⁵ 8 U.S.C. § 1325 (West); 8 U.S.C. § 1326 (West).

⁶ *Rooted in Racism: The Human Impact of Migrant Prosecutions*, NAT'L IMMIGR. PROJECT OF THE NAT'L LAW. GUILD, (Dec. 2021), https://nipnl.org/PDFs/practitioners/practice_advisories/pr/2021_21Dec_Rooted-in-Racism-Report.pdf.

⁷ *Id.*

⁸ *Memorandum for All Federal Prosecutors*, OFF. OF THE ATT'Y GEN. (Jan. 26, 2021), <https://www.justice.gov/ag/page/file/1360706/download>.



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separated. Moreover, this memo does nothing to address the many separations that are still happening for prosecutions under 8 U.S.C. § 1326. Ending these prosecutions would be a significant step forward for the Biden Administration in achieving its stated goals of advancing racial justice and creating more humane immigration policies.

Public Acknowledgement and Compensation: The Biden Administration must take public responsibility for the family separations that occurred during the Trump administration. That means admitting wrongdoing in court and paying for the wrongs committed against those affected by these atrocities. In December 2021, the government wrongly broke off settlement negotiations with separated families.⁹ These settlement negotiations could have provided relief to hundreds of families who suffered trauma that continues to impact their lives. By halting these settlement negotiations, the government is forcing separated families to fight for relief in court and to relive their trauma. This will be a long drawn out, expensive process. To prevent further harm to these families, it's imperative that the Department of Justice settle lawsuits related to family separation and compensate these families for the harms they suffered. In the absence of clear consequences, future administrations will not hesitate to resurrect the intentional separation of families.

Remediation and Accountability for U.S. Customs and Border Protection: Many of the same federal agents who implemented the Zero Tolerance remain employed by the Department of Homeland Security. In particular, the new Chief of Border Patrol was responsible for implementing Zero Tolerance in the Rio Grande Valley in 2018.¹⁰ There must be an acceptance of responsibility and actions to ensure accountability within U.S. Border Patrol for those who participated in executing these human rights violations. Measures could include public accountability, training and therapy to address the trauma associated with human rights violators, and a commitment to have every officer who executed the policy undergo remediation.

End Detention and Immigration Enforcement Practices: The U.S. government should discontinue the practice of arresting and detaining individuals for lack of immigration status. This practice wasn't just the focus of the Trump Administration, but it is central to how our government enforces immigration laws— and almost always leads to some type of family separation. Family separation goes beyond recent migrant entries and Zero Tolerance. Families in the U.S. have been separated via targeted ICE raids, immigration detention, expedited removals, and deportations.¹¹ The Trump Administration exacerbated the culture of fear for migrant communities, and the Biden Administration policies have reinforced it. The Biden Administration must exercise all lawful authority and discretion to allow people to remain lawfully in the United States until Congress creates viable immigration options for noncitizens living in the United States.

⁹ See Priscilla Alvarez, *Just. Dep't breaks off settlement talks with families separated at US-Mexico border* (Dec. 16, 2021), <https://www.cnn.com/2021/12/16/politics/separated-families-negotiations/index.html>.

¹⁰ See Chief, U.S. Border Patrol Raul L. Ortiz, U.S. CUSTOMS AND BORDER PROTECTION (Aug. 17, 2021), <https://www.cbp.gov/about/leadership-organization/executive-assistant-commissioners-offices/chief-united-states-border-patrol#:~:text=In%20Memoriam-,Chief%2C%20United%20States%20Border%20Patrol%20Raul%20L,Ortiz> (Chief of CBP was in charge of the Rio Grande Valley sector, which includes McAllen, Texas, during Zero Tolerance).

¹¹ See Caitlin Dickerson & Zolan Kanno-Youngs, *Thousands Are Targeted as ICE Prepares to Raid Undocumented Migrant Families*, THE N.Y. TIMES (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/ice-families-deport.html>.



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TCRP has provided legal support and advocacy for separated families—but we have simply helped to undo some of the harm that was already inflicted. Thus, we urge the Task Force to consider our comments—mainly to end the criminalization of migration; to ensure that justice is served to separated families; to take active, preventive measures so history does not repeat itself.

Thank you for taking the time to review this comment.

Sincerely,

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