



July 30, 2018

Senator Chuck Grassley, Chairman
Senator Dianne Feinstein, Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: July 31 hearing on “Oversight of Immigration Enforcement and Family Reunification Efforts”

Dear Chairman Grassley, Ranking Member Feinstein, and Members of the Committee:

On behalf of Amnesty International USA (“AIUSA”) and our more than one million members and supporters nationwide, we urge this Committee to press the administration to ensure that all agencies work to reunify separated families forthwith, and to ensure that all parents and all children have the opportunity to present their asylum claims before an impartial immigration judge.

The Rise and Rescission of Family Separation

In 2017, Homeland Security (“DHS”) started intensifying the practice of separating children from their parents at the southwest border. This DHS practice escalated after the Attorney General imposed a new “zero tolerance” initiative in April 2018 to require federal criminal prosecution of all irregular entrants, including families seeking asylum protection.

In May 2018, Amnesty International interviewed detained parents at immigration detention facilities near the US-Mexico border. These parents and guardians described how DHS agents had forcibly taken their children away.

As the number of separated children grew dramatically nationwide (to over 2500), the public’s anger over this cruel and inhumane policy grew and intensified. Prominent leaders called on the President to halt his family

separation policy. After receiving blistering criticism from both sides of the aisle, the President was forced into issuing a June 20 executive order that abandoned his policy of forcible family separation.

DHS's Attempts to Coerce Parents into Family Deportation

Even as the President ostensibly rescinded his family separation policy, the executive order mandated the detention of families for their duration of their immigration hearings. In addition, the administration has pursued policies aimed at deterring, detaining, deporting, and punishing asylum seekers and migrants. For those newly reunified families, the government has sought to deport the parents and children together, immediately upon reunification. There are troubling reports of DHS agents' coercing parents to waive their rights, including the parent's and child's rights to seek asylum and to fight their deportation cases.

For these newly reunified families, it is essential that the government provide adequate time for parents and guardians to make informed decisions about whether to fight their deportation cases, to leave their children in the U.S., or to make other arrangements. Many of these families have been separated for months and have suffered wrenching pain. Now after finally being reunified, these parents are being forced to make immediate decisions that will have permanent consequences for their children and families.

DHS's Pivot to Mass Family Detention as Alternative to Family Separation

For those families who refuse to give up their claims and insist on fighting their deportation cases, the administration is doubling down on detaining these families en masse in jail-like facilities. The administration has stated its intent to detain parents and children together until their asylum claims are resolved, but this would run afoul of the 1997 *Flores* settlement agreement that generally limits the detention of children to 20 days.

Since 2017, AIUSA has worked closely with several families detained at the family detention facility in Berks County, Pennsylvania. Many long-term residents of Berks have been diagnosed with PTSD.¹ Mothers at Berks are not permitted to sleep in the same bed as their children, and the families are awakened approximately every 15 minutes throughout the night with flashlights for bed checks.²

Family detention cannot and should not be the answer to this administration's self-created policy of family separation

Children should not be held in immigration detention, even when they are locked up with their parents. Family detention harms children, in particular those who have endured brutal violence, sexual abuse, death threats, and forced family separation. If children are detained, it should be in the least restrictive environment and for the shortest period necessary, only following an individualized assessment and judicial review, and adhering to the *Flores* Settlement Agreement.

DHS should release all detained families, using the least restrictive alternatives to detention (“ATDs”) that will ensure immigration court appearances. Community-based ATDs have been proven to be fair and cost-effective. [Alternatives to detention](#), such as conditional release, reporting requirements, bond, or financial deposits, should always be considered before resorting to immigration detention.

Community-based ATDs can be effective in supporting an asylum seeker while accomplishing the government’s interest in ensuring that person appear at

¹ Laura Benshoff, *Why Does a Berks County Facility Still Detain Immigrant Children?*, NEWSWORKS (Nov. 17, 2016), <http://www.newsworks.org/index.php/local/pa-suburbs/98962-why-does-berks-county-facility-still-detain-immigrant-children>.

² Laura Benshoff, *Why Does a Berks County Facility Still Detain Immigrant Children?*, NEWSWORKS (Nov. 17, 2016), <http://www.newsworks.org/index.php/local/pa-suburbs/98962-why-does-berks-county-facility-still-detain-immigrant-children>.

future immigration court hearings. ATDs have been shown to be significantly less expensive than holding people in immigration detention. The Family Case Management Program (“FCMP”), recently cancelled under this administration, was shown to be 99 percent effective in ensuring that asylum-seeking parents and children appeared for their immigration court proceedings. The program was set up to help families find legal representation, guiding them through the court system, and connecting them with other community resources.³ FCMP cost around \$12 per person, per day.

According to an official at the Department of Health and Human Services, the cost of holding migrant children who have been separated from their parents in newly created “[tent cities](#)” cost \$775 per person per night.

The Administration’s Practices of Zero Tolerance, Family Separation, Mass Family Detention, and Coercive Tactics Violate International Human Rights Standards

This administration’s policies of family separation and mass family detention are aimed at criminalizing and punishing people who flee to the U.S., many in search of refuge and humanitarian protection. These policies could result in asylum seekers, including children, being deported back to situations where they face a grave risk of being raped, beaten, and even killed.

International law requires that any person detained should be provided with a prompt and effective remedy before an independent judicial body to challenge the detention decision⁴, and that every decision to keep a person in detention should be open to review periodically.⁵ Immigration detention is only

³ Frank Bajak, *ICE Shuttles Detention Alternative for Asylum-Seekers*, U.S. News (June 9, 2017), <https://www.usnews.com/news/best-states/texas/articles/2017-06-09/ice-shuttles-detention-alternate-for-asylum-seekers>.

⁴ Article 9 (4), International Covenant on Civil and Political Rights.

⁵ UN Human Rights Committee, Communication No. 560/1993.

appropriate when authorities can demonstrate in each individual case that it is necessary and proportionate to the objective being achieved and on grounds prescribed by law, and that alternatives to detention would not be effective. The U.N. Working Group on Arbitrary Detention has called on governments to ensure that “alternative and noncustodial measures, such as reporting requirements, should always be considered before resorting to detention.”⁶

International law prohibits imposing penalties such as criminal prosecution on asylum seekers for irregular entry. U.S. law requires border officials to properly assess the asylum claims of individuals even if they enter the country irregularly. U.S. law also permits asylum seekers to present themselves at a port of entry, but DHS officials have turned away asylum seekers who seek to enter through these channels, making them endure days, even weeks, often in Mexican border towns where they face danger.

The U.S. government should fairly assess each individual’s claim to asylum, as required under U.S. and international law. The right to a fair, accessible asylum process before an impartial judge extends to both adults and children.

Amnesty International’s Policy Recommendations:

The American public and the courts have made clear that they will not tolerate the administration’s policy of separating families. Nor is it acceptable for the administration to swap out family separation with mass family detention.

Congress can no longer stand by as the administration aggressively pursues the galling policies of family separation, family detention, and coerced family deportation. Therefore, this Committee should press for:

(1) End to family separation

⁶ Report of the Working Group on Arbitrary Detention, 18 December 1998, E/CN.4/1999/63, paragraph 69. See Report of the Working Group on Arbitrary Detention, A/HRC/7/4, 10 January 2008, paragraph 53.

- a. A total halt to the DHS practice of separating families;
- b. Reunification of children separated from their parents, including those parents already deported.
- c. For the hundreds of parents already deported, the U.S. government must parole them back into the U.S. so they can make an informed choice about the family's immigration case and the child's care and custody.

(2) End to mass family detention

- a. An end to the DHS practice of mass family detention;
- b. An end to the Justice Department's "zero tolerance" policy of criminally prosecuting asylum seekers including families;
- c. Reject any additional funding requests for immigration detention;
- d. Release of all detained families into community-based ATDs;
- e. Robustly fund community-based ATDs, which have proven to be fair and cost-effective.

(3) End to coercive tactics aimed at immediate family deportation:

- a. An end to the DHS practice of coercing parents into acceding to the deportation of their families;
- b. Inspector General should conduct a prompt, independent investigation into alleged coercive tactics by DHS agents.

(4) Access to a fair asylum process for both parents and children

- a. Each newly reunified family must be given adequate time to consult with legal counsel to make an informed decision about whether to fight deportation, return to the home country, or make alternate arrangements;
- b. Safeguard longstanding protections embodied in the Flores settlement agreement;
- c. Investment in a fair, timely immigration court system including more funding for immigration judge teams and the Legal Orientation Program for detainees.

For more information, please contact Marselha Gonçalves Margerin at:
marselha@aiusa.org.

Sincerely,



Joanne Lin
National Director
Advocacy and Government Relations
Amnesty International USA



Marselha Gonçalves Margerin
Advocacy Director
The Americas
Amnesty International USA