



February 7, 2019

Rep. Jerrold Nadler
Chair
House Judiciary Committee

Rep. Doug Collins
Ranking Member
House Judiciary Committee

Re: Oversight Hearing on Family Separation Policy

Dear Chairman Nadler, Ranking Member Collins, and Members of the Committee:

On behalf of Amnesty International¹ and our more than two 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 ongoing oversight efforts by Congress, including efforts to publicly investigate and establish an exhaustive record of family separations by U.S. authorities 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.

Based on over a year of in-depth research on the US-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

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

of family separations conducted in 2017 and 2018, before, during and after the announcement of its so-called “zero-tolerance” policy. (*See id.* Chapter 3.4 at 42.)

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 did not meet the definition of the class.

Amnesty International’s report 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 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 (IPL) 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

² DHS 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

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

than included in the *Ms. L.* class action 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 FY2019,” 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 US-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

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

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>.

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 US 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 Maria (55), who was separated from her grandson with disabilities, Matheus (17), 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 California 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 six 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 the Brazilian mother, Valquiria, while she was in detention on her 39th birthday on May 10, 2018, three days before Mother’s Day. Nine months later, she remains in detention at the El Paso Processing Center. On March 17, it will be one 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 pointHow can a mother not have the right to be with her son?”

Valquiria is one of thousands of parents who were separated from their children by DHS but whose children were released to sponsors prior to the *Ms. L* class action lawsuit – thereby excluding her from class membership in the case and confining her to indefinite and arbitrary detention in a detention facility. She never would have been detained there in the first place had DHS followed its 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.

On January 31, 2019, Amnesty International visited Valquiria in detention at the El Paso Processing Center, nearly a year after she was separated from her son. Though she exhibited signs of extreme mental anguish, crying inconsolably during the interview, Valquiria still does not have access to psychological health care in a language she understands.

Based on government filings in the ongoing [multistate lawsuit](#) against the Trump administration for its family separations policy, Amnesty International has also found that some of the children separated from their families by DHS under the zero-tolerance policy turned 18 while in ORR custody and thus “aged out” of children’s shelters; they are now being held in 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.

III. Amnesty International’s policy recommendations

To Congress:

- Pass legislation banning the separation and detention of families with children.
- Demand full and unimpeded access to asylum data held by DHS, HHS, and in any interdepartmental information-sharing platforms to allow scrutiny of the true numbers of family separations prior to, during, and following the announcement of the zero-tolerance policy in 2018.

- Demand DHS provide exhaustive data (disaggregated by month, and Field Offices and/or sectors) on the 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.
- Demand DHS provide a full and similar reckoning of the 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 in previous official statistics provided by DHS.
- 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, even if the children were released to sponsors or were otherwise not *Ms. L* class members.
- 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.

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Sincerely,



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