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November 6, 2018

Ms. Debbie Seguin
Assistant Director
Office of Policy
U.S. Immigration and Customs Enforcement
Department of Homeland Security
500 12th Street SW
Washington, DC 20536

Submitted via: www.regulations.gov

Re: RIN 1653–AA75, 0970–AC42, DHS Docket No. ICEB-2018-0002 Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, 83 Federal Register 45486 (Sept. 7, 2018)

Dear Ms. Seguin:

In response to the proposed regulations, "Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children," published in the Federal Register on September 7, 2018, we are submitting these joint comments of our clients, the American Immigration Council (the "Council") and the American Immigration Lawyers Association ("AILA"), who are partners in the Dilley Pro Bono Project ("DPBP"), which every year provides legal services to thousands of asylum-seeking mothers and children detained in the South Texas Family Residential Center in Dilley, Texas.

Statement of Interests

The Council is a non-profit organization that works to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants.

AILA is a voluntary bar association of more than 15,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Since 1946, AILA's mission has included the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of the U.S. immigration laws.

Together, the Council and AILA have extensive experience in operating direct service pro bono programs based in facilities housing detained families--initially, during 2015, in Artesia, New Mexico and more recently (through the Dilley Pro Bono Project) at the South Texas Family Residential Center in Dilley,

Texas ("STFRC").[1] The Council and AILA also train and support their members in providing direct representation to minors, both in federal custody and after release. Some AILA members work with children on a daily basis as staff members in legal services organizations; others are in private practice and also represent children and families, often on a pro bono basis. Collectively, the Council's and AILA's members and volunteers have represented thousands of detained or formerly detained children and their family members.

Through their experiences representing detained immigrants and developing related immigration policy, the Council and AILA have gathered extensive data concerning conditions experienced by minors in detention, the physical and mental health impacts detention has on them, and the challenges they face in presenting their substantive claims. The Council and AILA appreciate the opportunity to offer these comments in response to the Notice of Proposed Rulemaking.

Introduction and Background

The proposed regulations referenced above (the "Proposed Regulations") were promulgated on September 7, 2018 by the Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) (together, the "Agencies"). The Proposed Regulations purportedly seek to implement the Flores Settlement Agreement,[2] which was originally approved by the Court on January 28, 1997. The FSA by its terms provides that it will terminate "45 days following Defendants' publication of final regulations implementing t[he] Agreement."[3] For the decades that the FSA has been in effect, none of the relevant agencies (whether the legacy Immigration and Naturalization Service (INS), DHS, HHS or the Office of Refugee Resettlement (ORR)) made drafting regulations for the protection of *Flores* class members a priority.

The effort to draft regulations has come only now, following failed attempts by the U.S. government (the "Government"), through litigation, to eliminate key protections for children provided by the FSA. Most importantly, in the ongoing *Flores* litigation itself, the Government recently sought, among other things, to have the Court declare that the FSA's 20-day limit[4] on the detention of minors in federal facilities

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1 In Spring 2015, the Council and AILA, in conjunction with the Refugee and Immigrant Center for Education and Legal Services (RAICES) and Catholic Legal Immigration Network, Inc. (CLINIC) created the CARA Pro Bono Project, which provided legal services to detainees at STFRC. In January 2017, CARA was renamed the Dilley Pro Bono Project to reflect a new partnership among the Council, AILA, CLINIC and Texas RioGrande Legal Aid, Inc. (TRLA).

2 Stipulated Settlement Agreement, *Flores v. Reno*, No. CV85-4544-RJK (Px), hereinafter ("FSA").

3 FSA ¶ 40.

4 The FSA (as amended) requires that, within 20 days of a child being in federal immigration detention, the child must be released to a parent or relative or other appropriate sponsor, or, if that is not possible, then placed into a program licensed by a State child welfare agency (a "licensed program"). FSA ¶ 14. Children who have crossed the U.S. border together with a parent (or legal guardian) ("Accompanied Children") generally have been detained with the parent at a federal family residential center ("FRC"), and, if the Government complies with the FSA's 20-day rule, the child and parent are released within 20 days. Children who have not crossed with a parent or legal guardian ("Unaccompanied Children") generally are placed in State-licensed facilities from which, under the FSA, whenever possible, a child should be released to a parent or other relative, or, if even that is not possible, then to another appropriate sponsor, or, if that is not possible, then the child will be held until reaching the age of eighteen. *Id.*

would be inapplicable to children who were detained with a parent ("Accompanied Children") (that is, the Government sought to have the 20-day limit apply only to children *not* accompanied by a parent ("Unaccompanied Children" or "UACs")). The *Flores* Court flatly rejected the Government's request.[5] The Proposed Regulations, if adopted, would grant the request. Notably, the Agencies concede that the Proposed Regulations are being issued not to protect children and minimize the period of their detention (which were the goals of the FSA), but rather because the Agencies want to implement a new policy of keeping children in federal "family residential centers" (FRCs) until the resolution of their and their parents' immigration proceedings[6]--a process that can take months and sometimes years.

The Proposed Regulations have been issued against a backdrop of the highest number of detained children ever, for the longest periods in detention ever, and in conditions reflecting widespread, decades-long violations of the FSA relating to protections for detained children's safety and welfare while in detention. There are 12,800 children currently in immigration detention, which is up from 2,400 children who were in detention in May 2017.[7] Children (including those held in State-licensed programs and in FRCs) are held in detention an average of 59 days, which is up from 35 days in 2016 and 48 days in 2017.[8] The evidence of conditions not meeting the minimal standards set by the FSA include, just in 2018, the death of an 18-month old child from an infection she acquired (and for which she received only

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[5] The Court found that the "plain and unambiguous" language of the FSA clearly covered all children, whether accompanied or unaccompanied. *Flores v. Johnson*, 212 F. Supp. 3d 864, 872 (C.D. Cal. 2015), *affirmed in part, overruled on other grounds*, 828 F.3d 898 (9th Cir. 2016). We note also that, as part of the executive order that claimed to end family separation, President Trump also put into motion a request to the courts to extend the time a child can be held in detention beyond the current 20-day limit under the FSA. *See* Charlie Savage, *Exploring Trump's Executive Order on Family Separation*, NY Times (June 20, 2018), https://www.nytimes.com/2018/06/20/us/politics/family-separation-executive-order.html.

[6] The Government states that the usual option when detaining families at the border is to "detain the family unit together at an appropriate FRC during their immigration proceedings. The practical implications of the FSA . . . have effectively prevented the Government from using [this] option for more than a limited period of time." Proposed Regulation [hereinafter ("PR")] § IV.C.1 at 45492. "This rule [(*i.e.*, the Proposed Regulations)] would allow for detention [of children and their parents] at FRCs for the pendency of immigration proceedings . . . ." PR § IV.C.1 at 45493.

[7] Caitlin Dickerson, *Detention of Migrant Children Has Skyrocketed to Highest Levels Ever*, NY Times (Sept. 12, 2018), https://www.nytimes.com/2018/09/12/us/migrant-children-detention.html?ftag=MSF0951a18. Notably, the increase in the number of children in detention is not due primarily to an influx of more migrant children, but to the Government's new policies that opt for keeping children in detention for prolonged periods. *See* Tal Kopan, *The Simple Reason More Immigrant Kids Are In Custody Than Ever Before*, CNN (Sept. 14, 2018), https://www.cnn.com/2018/09/14/politics/immigrant-children-kept-detention/index.html (citing HHS spokesman Kenneth Wolfe and other officials). Among the policies the Government has adopted that have led to the higher numbers of children detained and the longer periods of detention have been (i) the "zero tolerance" policy pursuant to which *all* persons crossing the border, even if seeking asylum, are arrested and put in detention; and, as Kopan reports, (ii) a new policy to fingerprint relatives who come forward to sponsor the release of detained children (which discourages these relatives to do so as they oftentimes are themselves undocumented or not yet through their own immigration proceedings), even though, according to officials, relatives already were being effectively screened for things like criminal records and history of abuse without inquiry into their immigration status; and (iii) an alleged practice of intentionally retaining a child in custody until he or she reaches the age of 18 and becomes subject to stricter adult detention policies.

[8] Department of Health and Human Services, Administration for Children and Families, Justification of Estimates for Children and Families (FY 2019) at 68; *see also* Kopan, *supra* note 7 (citing HHS spokesman Kenneth Wolfe).

minimal medical care) while detained in an FRC, as well as sexual abuse of children in another FRC and forced overmedication with psychotropic drugs of children at a State-licensed children's shelter.[9]

The Agencies cite a "crisis at the Southern border" as the motivation for policies that they intend to serve as a disincentive to immigration.[10] We observe, however, that, first, net immigration to the U.S. is at historic lows;[11] second, the vast majority of the immigrants at the Southern border are validly seeking asylum pursuant to U.S. and international laws;[12] and, third, it has been judicially established that immigration policies cannot be based on an objective of disincentivizing immigration.[13]

The Council and AILA oppose the Proposed Regulations on four separate grounds:

1. ***The Proposed Regulations do not "implement" the FSA--and therefore do not fulfill the Government's stated purpose for their adoption***. To the contrary, the Proposed

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[9] *See Flores v. Sessions*, No. 85-cv-04544, at *31–32 (C.D. Cal. July 30, 2018) (holding that the government cannot drug immigrant children without consent); Joel Rose, *A Toddler's Death Adds to Concerns About Migrant Detention*, NPR (Aug. 28, 2018), https://www.npr.org/2018/08/28/642738732/a-toddlers-death-adds-to-concerns-about-migrant-detention; *E.D. v. Sharkey*, 2017 U.S. Dist. LEXIS 74088 (E.D. Pa. 2017) (describing "institutional sexual assault" by staff member at Berks County Residential Center); Caroline Chen & Jess Ramirez, *Immigrant Shelters Drug Traumatized Teenagers Without Consent*, ProPublica (July 20, 2018), https://www.propublica.org/article/immigrant-shelters-drug-traumatized-teenagers-without-consent.

[10] *See* PR § IV.C.1 at 45492-94. *See also* Dara Lind, *Half the People Caught by Border Patrol are Now Children or Families*, Vox (Oct. 23, 2018, 4:00 PM), https://www.vox.com/policy-and-politics/2018/10/23/18014998/families-border-asylum-caravan.

[11] For example, the number of Mexican migrants apprehended at the U.S. border in 2015 dropped to the lowest level in nearly 50 years, according to U.S. Border Patrol data. This change came after a period in which net migration of Mexicans to the U.S. had fallen to lows not seen since the 1940s. Ana Gonzalez-Barrera, *More Mexicans Leaving Than Coming to the U.S.--Net Loss of 140,000 From 2009 to 2014*, Pew Research Center (Nov. 19, 2015), http://www.pewhispanic.org/2015/11/19/more-mexicans-leaving-than-coming-to-the-u-s/?_sm_au_=iVVTrPZDWfvPHN1Q. Apprehensions in 2017 were even lower than those in 2015. John Burnett, *Arrests for Illegal Border Crossings Hit 46-Year Low*, NPR (Dec. 5, 2017) https://www.npr.org/2017/12/05/568546381/arrests-for-illegal-border-crossings-hit-46-year-low.

[12] By law, asylum-seekers have the right to seek asylum once they are on U.S. soil. 8 U.S.C. § 1158(1). Notably, the Government has stated that asylum-seekers who cross the border at official border crossings will be deemed to be "legal" immigrants and will have their asylum applications processed; however, "in several cities along the border, asylum seekers who follow those instructions are turned away…." Robert Moore, *At the U.S. border, asylum-seekers fleeing violence are told to come back later*, Washington Post (June 13, 2018), https://www.washingtonpost.com/world/national-security/at-the-us-border-asylum-seekers-fleeing-violence-are-told-to-come-back-later/2018/06/12/79a12718-6e4d-11e8-afd5-778aca903bbe_story.html?utm_term=.2868751b6e79. In fact, the Council currently is challenging U.S. Customs and Border Protection's turning back of asylum-seekers who seek to cross at official ports of entry all along the U.S.-Mexico border. The class action lawsuit challenges CBP's widespread use of unlawful practices, including threats of family separation, among other practices, and alleges an official policy that formalizes this unlawful conduct. *See Al Otro Lado, Inc. v. Nielsen*, No. 3:17-cv-02366-BAS-KSC (S.D. Cal.); American Immigration Council, *Challenging Customs and Border Protection's Unlawful Practice of Turning Away Asylum Seekers*, https://www.americanimmigrationcouncil.org/litigation/challenging-customs-and-border-protections-unlawful-practice-turning-away-asylum-seekers.

[13] *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164 (D.D.C. 2015).

Regulations, on their face, clearly violate both the terms and the spirit of the FSA--most critically, by eliminating the FSA's core requirement of *expeditious release of children from detention* and replacing it with a scheme that permits *prolonged (indeed, indefinite) detention of children*. Further, the Proposed Regulations eliminate due process protections for children mandated by the FSA (most importantly, by severely limiting the potential for a child to be released from detention on parole). In addition, the Proposed Regulations eviscerate the FSA's minimal standards relating to the conditions for children in detention (by subjecting the current requirements to exceptions when they represent an operational "burden"). Moreover, the adoption of regulations that contravene the FSA, which is a Consent Decree with the force of law, would constitute impermissible rulemaking.

2. ***The indefinite detention of children (which, the Government has acknowledged, the Proposed Regulations are being promulgated to facilitate) is unnecessary and would be patently inhumane.*** While the Government has not cited any information relating to the impact of detention on children, there is substantial, compelling evidence that even a short period of detention, let alone prolonged detention, has devastating, often lifelong effects on children.

3. ***The Proposed Regulations provide for the Agencies to license <u>themselves</u> to house detained children--which is a recipe for a new low in conditions for children in detention***. This self-licensing scheme (which is being invoked to permit the intended new policy of prolonged detention of children) eliminates the protections for children associated with the FSA's requirement of licensing by State agencies with child welfare experience. We note that, even while the FSA has been in effect (with its State-licensing and other requirements, as well as judicial oversight of the Government's compliance), there have been widespread, decades-long violations of these requirements--making *self*-licensing, with no judicial oversight, particularly problematic. Notably, the conditions for children in detention have ranged from poor to horrifying.

4. ***The Proposed Regulations contemplate resumption of a family separation policy--which is unnecessary and would be shockingly cruel.*** The family separation approach has been recently utilized by the Agencies with devastating effect on children and their families; was flatly rejected by the courts as almost certainly unconstitutional; and provoked one of the most intense and widespread public outcries that has ever occurred in response to an immigration policy. Moreover, there is no evidence that the policy had the intended effect of disincentivizing immigration--and, in any event, it has been judicially established that disincentivizing immigration is not a valid basis for an immigration policy.

The FSA is grounded in the truism–which has been generally recognized by our Government throughout its history, and which is enshrined in international and human rights laws–that children in the custody of the Government have a "particular vulnerability [as] minors" and need and deserve "special protection."[14] This universal principle stands regardless of a child's skin color or place of birth, whichever official

[14] FSA ¶¶ 11, 12.A.

documents a child may or may not possess, and whatever other policies or politics the Government wishes to advance.

As discussed, keeping children in indefinite detention does not implement the FSA but directly contravenes it. The Proposed Regulations would undoubtedly lead to conditions that exacerbate--rather than protect against--the inherent risks of detention for children who are especially vulnerable due to both their age and the trauma they have already suffered.[15] Prolonged detention of children is plainly unnecessary, as there are proven, effective, low-cost alternatives;[16] and, most critically, prolonged detention of children would be patently inhumane.[17]

I. THE PROPOSED REGULATIONS CLEARLY DO NOT "IMPLEMENT" THE FSA AND THEREFORE CANNOT JUSTIFY ITS TERMINATION.

The FSA provides that it will terminate "45 days following defendants' publication of final regulations implementing t[he] Agreement."[18] The Government states in the Proposed Regulations that their "primary purpose is to 'implement[ ] the Agreement,' and, in turn, to terminate the FSA."[19] The Agencies assert that the ways in which the Proposed Regulations do *not* implement the FSA reflect merely "minor modifications" intended to "ensure the Government continues to comply with the underlying goals of the FSA."[20]

However, the Proposed Regulations clearly and unambiguously *do not implement the FSA* or comply with its underlying goals. Most importantly, the Proposed Regulations (i) allow for the indefinite detention of children, which is the opposite of the FSA's core requirement that children be expeditiously released from detention; (ii) eliminate key due process protections that the FSA mandates for children in detention (including by (a) limiting a child's right to parole solely to an urgent humanitarian medical need and (b) permitting the redesignation of a child from "unaccompanied" to "accompanied"); and (iii) eliminate specific protections required by the FSA that ensure a minimum standard of conditions for children in detention.

Because the Proposed Regulations directly conflict with the terms and the spirit of the FSA in every material respect, if adopted they would *not* terminate the FSA--and thus they would not fulfill the purpose for which the Government has stated they are intended. Moreover, adoption of the Proposed Regulations

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[15] *See* the discussion at Sec. III.B. below, which reflects that even now, under the FSA, the Government has a very poor record with respect to the care of migrant children in detention; and the discussion at Sec. II.C. below, which reflects the devastating effects of detention on children.

[16] *See* the discussion at Sec. II.A below with respect to alternatives to detention.

[17] *See* the discussion at Sec. II.C. below with respect to the effects of detention on children.

[18] FSA ¶ 40.

[19] PR § IV.B.2 at 45491. "The primary purpose of this action is to promulgate regulations that would ultimately lead to the termination of the FSA, as provided for in FSA paragraph 40." PR, § IV.C.2 at 45494. We note that, with termination of the FSA, the Court's oversight of the Government's actions--which has been critical to date for any accountability for FSA compliance and which has resulted recently in the appointment of a Special Monitor--also would terminate.

[20] PR § V at 45495.

would constitute improper rulemaking as the FSA is a Consent Decree (with the force of law) and agencies cannot promulgate regulations that are contrary to law.

A. The Proposed Regulations Allow for the Indefinite Detention of Children, Which is the Opposite of the FSA's Core Requirement that Children be Expeditiously Released from Detention.

The core principle and requirement of the FSA is that migrant children taken into detention should be released from detention as "expeditiously" as possible. The FSA provides that minors taken into custody must be "expeditiously process[ed]."[21] The section of the FSA entitled "General Policy Favoring Release," provides clearly and unambiguously that "the [Government] shall release a minor from its custody without unnecessary delay" (absent certain limited circumstances).[22] Moreover, while a child is detained, the FSA requires that "the [Government], or the licensed program in which the minor is placed, shall make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor...," and requires that such efforts "shall continue so long as the minor is in [Government] custody."[23]

The original FSA provided that a child could not be held in detention in an "unlicensed program"[24] for longer than three days or, under some circumstances, five days;[25] and that thereafter the child had to be released to a parent or relative, or if that were not possible, then placed into a program licensed by a State child welfare agency (a "licensed program").[26] If the Government faces an "emergency" or a major "influx" of minor children at the border, however, then the three- or five-day timeframe does not apply and the release must be effected "as expeditiously as possible."[27] In 2014, the Court acceded to the

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[21] FSA ¶ 12.A.

[22] *Id.* at ¶ 14. The only exceptions to expeditious release are the unusual circumstances where there is a particular reason that detention is "required either to secure [the child's] timely appearance before the [Agencies] or immigration court, or to ensure the minor's safety or that of others." *Id.* at ¶ 14.

[23] *Id.* at ¶ 18.

[24] *Id.* at ¶ 12.A. The FSA defines a "licensed program" as "any program, agency of organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors…[and that] meets those standards for licensed programs set forth in Exhibit I [to the FSA]." *Id.* at ¶ 6.

[25] *Id.* at ¶ 12.

[26] The child's release must be to the "least restrictive setting" possible–with priority given, first, to release to a parent or other family member and then to a "licensed program" or, "when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility," then to another suitable adult or entity seeking custody of the child. *Id.* at ¶¶ 11, 14; FSA Exhibit 1 at 2.

[27] FSA ¶ 12.A.3. The term "emergency" is defined as follows: "[A]ny act or event that *prevents* the [transfer] within the time frame provided." *Id.* at ¶ 12.B. The FSA provides that "such emergencies include natural disasters (e.g., earthquakes, hurricanes, etc.), facility fires, civil disturbances, and medical emergencies (e.g., a chicken pox epidemic among a group of minors)." *Id.* The phrase "influx of minors into the United States" is defined as follows: "[T]hose circumstances where the [Government] has, at any given time, more than 130 minors eligible for placement in a licensed program…, including those who have been so placed or are awaiting such placement." *Id.* The FSA requires that, "[i]n preparation for an 'emergency' or 'influx,'…the [Government] shall have a written plan that describes the reasonable efforts that it will take to place all minors

Government's request that a time period of up to 20 days be considered "expeditious" in light of the then increased numbers of arriving children. The 20-day period was set based on the Agencies' representation to the Court that that is the amount of time required for the Government, "in good faith and in the exercise of due diligence," to screen family members or others to whom a child could be released.[28]

These provisions reflect the FSA's emphasis on (a) release of children in detention "without delay"--even during times of "emergency" or an "influx" of children, and (b) licensing of facilities that house children by State agencies with child welfare experience and expertise. By contrast, the Proposed Regulations expressly provide for *indefinite detention* of Accompanied Children in FRCs (which are *not* State-licensed) pending resolution of the long process of their and their parents' immigration proceedings.[29] As noted, the Proposed Regulations only parrot the Agencies' failed request, made in June 2018 and rejected by the *Flores* Court the following month, for modification of the FSA to permit the detention of children for up to the entire pendency of their and their parents' immigration proceedings.[30] Such proceedings typically take many months and can take years, depending on the availability of counsel, the complexity of the case, and steadily increasing court backlogs.[31]

Thus, the Proposed Regulations, which purport to materially *implement* the FSA, clearly seek to accomplish the *material modification* of the FSA that the *Flores* Court rejected. In denying the Defendants' request for relief from the FSA, the *Flores* Court stated: "Defendants now seek to hold minors in indefinite detention in unlicensed facilities, which would constitute a fundamental and material breach of the parties' Agreement [(*i.e.*, the FSA)]."[32] For this reason alone, the Proposed Regulations should not be adopted.

B. The Proposed Regulations Eliminate Key Due Process Protections for Children in Detention.

Another foundational principle of the FSA is that the Government must accord basic due process to children in immigrant detention. Indeed, the *Flores* litigation arose due to a concern that children were not

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as expeditiously as possible," including the identification of potentially available "licensed programs." *Id.* at ¶ 12.C.

[28] *See Flores v. Lynch*, 212 F. Supp. 3d 907, 914 (C.D. Cal. 2015).

[29] PR § IV.C.2 at 45493 ("This rule would allow for detention [of children and their families] at FRCs for the pendency of immigration proceedings…."); PR § V.A at 45497 (stating that the proposed rule would allow DHS "to detain minors together with their parents or legal guardians throughout the removal process … [and if] necessary … to maintain custody for more than a brief period.").

[30] *Compare Flores v. Sessions*, No. 85-cv-4544 (Def.'s Mem. of Points in Support of Ex Parte Application for Relief from the Flores Settlement Agreement) (C.D. Cal. June 21, 2018) (requesting court modify the FSA to allow the Government to (1) hold children and parents together in FRCs, and (2) exempt FRCs from the state licensing requirement), *with* PR § IV.C.2 at 45494 (stating that the purpose of the proposed rule is to "allow for detention of families together in federally-licensed programs").

[31] *See* "Immigration Court Backlog Tool," *TRACImmigration*, http://trac.syr.edu/phptools/immigration/court_backlog/ (last visited Nov. 2, 2018) (hereinafter, "TRAC") (showing the average length of immigration proceedings across all immigration courts is 710 days) (choose "immigration" under "charge type," then "average days" under "what to tabulate").

[32] *Flores v. Sessions*, 2018 U.S. Dist. Lexis 115488, at *8 (C.D. Cal. July 9, 2018).

being extended basic due process rights in the immigration detention process. The Proposed Regulations, however, eliminate key due process protections for children. The Proposed Regulations (i) severely limit the potential for children to be granted a release from detention on parole; and (ii) allow for children who are initially designated as Unaccompanied Children to be re-designated as Accompanied Children (eliminating for them the special protections afforded to the former designation).

- ***Limiting the potential for children to be granted parole.*** The FSA provides that the Government must release a child from detention "without unnecessary delay" so long as there is an appropriate person (as specified in the FSA) to whom the child can be released.[33] The FSA specifies six types of persons who are appropriate persons to whom a child could be released and specifies the order of preference.[34] By contrast, the Proposed Regulations provide that, prior to a child's obtaining a credible fear determination (or after being found not to have a credible fear and not yet having been deported), the child can be released *only in the very limited circumstance* that a determination has been made with respect to the specific child (on a case-by-case basis) that she has a "medical necessity" requiring humanitarian release.[35] There is no clarification as to what kind of medical necessity situation would qualify.

  Further, the Proposed Regulations provide that, when that limited circumstance exists, the child can only be released if the release is to a parent or legal guardian.[36] Thus, for example, regardless of the severity of the child's medical condition, the child could not be released to another close relative, such as an adult sibling or a grandparent. This inflexible standard strips from the officer in closest contact with the child the ability to exercise any discretion to act in the child's best interest under the particular circumstances.

- ***Permitting redesignation of "Unaccompanied Children."*** The Proposed Regulations also would impact due process protections currently afforded to children in that they provide for continual revisiting, and at times altering, of the designation of a child as either Unaccompanied or Accompanied.[37] Under the current process, a designation is

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[33] FSA ¶ 14. The only exception is if continued detention is required "to secure [the child's] timely appearance before the [the Agencies] or the immigration court, or to ensure the minor's safety or that of others…." *Id.*

[34] The child shall be released, "in the following order of preference, to: "(A) a parent; (B) a legal guardian; (C) an adult relative ([sibling], aunt, uncle, or grandparent); (D) an adult individual or entity designated [(in a specified way)] by the parent or legal guardian…; (E) a "licensed program"…; or (F) an adult individual or entity seeking custody, in the discretion of the [Government], when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility." *Id.*

[35] PR § 5.A at 45502. The only other basis for release is that release would serve a "law enforcement need" of the Government. *Id.*

[36] *Id.* at 45503.

[37] PR § V.B at 45505 (the Proposed Regulations "would make clear that ORR's determination of whether a particular person is a UAC is an ongoing determination that may change based on the facts available to ORR."). The Proposed Regulations provide that a child's UAC status must be revisited and reassessed each time the immigration officials encounter the child (such as when the child attains any type of legal status or when a parent or legal guardian has been found to be physically present in the U.S. and available to assume custody of the child). If, for example, an UAC is reunited with a parent who takes custody of the child, the child would be

made only once, near to the time that the child first encounters U.S. Customs and Border Protection (CBP).[38] Even just creating a process of frequently re-examining a child's designation, as proposed, would introduce uncertainty and instability into the current system.

Even more importantly, any change in designation from Unaccompanied (UAC) to Accompanied would eliminate a number of benefits that flow from UAC status--and, in some cases, after the minor has made decisions or taken actions based on having been first designated as an UAC. For example, under the FSA, UACs are detained in "licensed programs," which are less restrictive settings than FRCs, where Accompanied Children and their parents are held.[39] Also, UACs automatically receive an exception to the one-year filing deadline otherwise applicable to asylum applications. In addition, UACs are subject to the jurisdiction of the Asylum Office of the U.S. Citizenship and Immigration Services (USCIS) rather than the Executive Office for Immigration Review (EOIR), and so are entitled to a non-adversarial interview by an asylum officer specially trained in interviewing child applicants (rather than the contested evidentiary hearing, including cross-examination, that Accompanied Children are subjected to)--which is especially critical in cases where the child is not represented by legal counsel.[40] Also, under Asylum Office jurisdiction, UACs obtain a speedier timetable for their proceedings.[41]

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redesignated as an Accompanied Child--and would immediately become subject to the one-year filing deadline, adversarial hearing process, and multi-year delay in receiving an initial adjudication, regardless of the parent's ability to provide practical support to the child and irrespective of whether the child is able to find legal counsel to assist her.

[38] If a child arrives in the U.S. *without* a parent or legal guardian, she is designated as Unaccompanied; and if a child arrives in the U.S. *with* a parent or legal guardian, she is designated as Accompanied. 6 U.S.C. § 279(g) (2012). The designation, once made, does not change, regardless of changes in the child's circumstances. For example, the child could reach the age of majority, or be reunited with a parent, but generally, if previously designated as Unaccompanied, that designation would continue to apply to the child until the conclusion of her immigration proceedings.

[39] Unaccompanied Children are held in a licensed program pending reunification with a parent or other qualified sponsor (or, if there is none, then until the adjudication of their immigration matter). If no relief is granted in the child's proceedings, she is deported to her home country. If relief *is* granted (and there still is no appropriate adult to whom she can be released), she stays in a licensed program until reaching the age of majority and then is released into the U.S. FSA ¶¶ 14, 19.

[40] *See generally J.E.F.M. v. Holder*, No. 2:14-cv-01026 (W.D. Wash. filed July 9, 2014), *sub. nom. F.L.B. v. Lynch*, 2016 U.S. Dist. LEXIS 82653 (W.D. Wash. 2016) (class certification granted in part) (class action lawsuit alleging due process and statutory right to appointed counsel for unrepresented children in immigration proceedings).

[41] *Compare* U.S. Citizen & Immigration Servs., *USCIS Asylum Division Quarterly Stakeholder Meeting* at 3-4 (Aug. 7, 2018) (stating that more than half of USCIS asylum applicants were interviewed within 43 days of filing and it is standard practice to issue a decision within two weeks of the interview), *with Immigration Court Backlog Surpasses One Million Cases*, TRACImmigration (Nov. 6, 2018), http://trac.syr.edu/immigration/reports/536/ ("Pending [Immigration Court] Cases Represent More Than Five Years of Backlogged Work").

C. The Proposed Regulations Eliminate Specific Protections Provided in the FSA That Ensure a Minimum Standard of Conditions for Children in Detention.

Another foundational principle of the FSA is that the Government should be required to maintain a minimum standard for the conditions for children while they are held in detention. The Agencies contend that the Proposed Regulations "materially parallel [the FSA's] standards and protections" and "codify[] the current requirements for complying with the FSA [and subsequently enacted laws]."[42] However, to the contrary, the Proposed Regulations significantly modify most of the key protections provided for in the FSA, and in some cases completely eviscerate those protections.

The very genesis of the *Flores* litigation was the documented, repeated, severely substandard conditions for migrant children held in detention at that time.[43] The FSA provides, as a matter of "general applicability," that "all minors in…custody [must be treated] with dignity, respect and special concern for their particular vulnerability as minors." Specifically, the FSA requires that facilities in which minors are held must be "safe and sanitary," consistent with minors' "particular vulnerability" and that "every effort must be taken" to ensure the children's well-being.[44]

The FSA mandates certain (albeit minimal) requirements for facilities where children are detained: there must be "access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor." Further, the Government must immediately "segregate unaccompanied minors from unrelated adults" (for example, children should not have to sleep in beds next to adult strangers)--and, if segregation is not possible immediately, then it must be accomplished within 24 hours.[45]

Although the text of the FSA relating to the specific requirements for a minimum standard of conditions of detention has been reproduced in the Proposed Regulations (almost verbatim, as the Proposed Regulations emphasize[46]), critically, *exceptions have been added that clearly and completely swallow the rules*. Just two key examples are as follows:

Contact between a child and her parents following their arrest together. The FSA requires that, following the arrest of a child with family members, the Government will provide for "contact" between the child and the family members who were arrested with the child.[47] While there are no specified requirements as to how much contact, what kind of contact, or when the contact will occur, the

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[42] PR § III.C at 45488.

[43] *See* Rebeca M. López, *Codifying the* Flores *Settlement Agreement: Seeking to Protect Immigrant Children in U.S. Custody*, 95 MARQ. L. REV. 1635, 1647 (Summer 2012) (describing pre-*Flores* conditions of "prolonged detention of [] vulnerable unaccompanied children in inhumane conditions," such as being "placed in cells with unrelated adults of both sexes, detained in penal-like settings, and [being] victims of abuse by guards and other prisoners.").

[44] FSA ¶ 12.A.

[45] *Id.*

[46] *Id.* (representing that the Proposed Regulations modify the FSA only in "limited cases").

[47] FSA ¶ 12.A.

Government apparently views this minimalist requirement as too onerous. The Proposed Regulations thus provide that the Government need not comply with this requirement if doing so "place[s] an undue burden on agency operations."[48] We observe that providing any contact at all creates some level of "burden on agency operations" and there is no guideline provided as to what would constitute an "undue" burden. With a specified exception based on any "undue burden" on an agency's operations, it is easy to imagine that contact with other family members in this context might rarely, if ever, occur.

Not housing unaccompanied minors with unrelated adults. The FSA requires that a child in detention who is not accompanied by her parent will not be housed in detention with unrelated adults; and provides, further, that if "such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours."[49] The Proposed Regulations provide that these rules do not apply (that is, unaccompanied minors *can* be housed with unrelated adults for more than 24 hours, and without *any* limit) "in the case of an emergency or other exigent circumstances." "Emergency" is defined in the Proposed Regulations as "an act or event…that prevents timely transport or placement of minors, *or impacts other conditions* provided by this section"[50] (emphasis added). The breadth of the definition of "Emergency"[51] eviscerates the protection--clearly, *any* act or event arguably "impacts" the "condition" at issue (that is, impacts in some way the ability to house an unaccompanied child with unrelated adults).[52] For good measure, the Agencies also added the exception for "other exigent circumstances" (which is not defined and, thus, could mean, presumably, *any* additional inconvenience whatsoever that the facility chooses to rely upon as justification).

The Proposed Regulations' elimination, for all practical purposes, of these and other specific protections required under the FSA reflects, again, that the Proposed Regulations do not implement the FSA but, rather, provide for the opposite of what the FSA mandates.

D. The Adoption of Regulations that Contravene the FSA Would Constitute Impermissible Rulemaking.

The FSA is a court-approved Stipulated Settlement Agreement that was voluntarily entered into by the Government and the *Flores* plaintiffs, with the parties agreeing that the Agreement is a Consent Decree.[53]

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[48] PR § V at 45500.

[49] FSA ¶ 12.A.

[50] PR § VII at 45525. It is somewhat unclear what "conditions provided by this section" refers to, as the section in which the definition appears is a section containing definitions for defined terms. Presumably, the intention is that the phrase refers to the conditions at issue in the section in which the term "emergency" appears (in this case, the conditions relating to segregating Unaccompanied Children from unrelated adults in detention housing).

[51] Notably, the Government concedes in the Proposed Regulations that the breadth of the definition is intentional. "The definition of 'emergency' is flexible and designed to cover a wide range of possible emergencies." PR § V.A at 45496.

[52] We take this opportunity to make, separately, the unsettling observation that neither the FSA nor the Proposed Regulations prohibits the housing of Accompanied Children with unrelated adults. Thus, for example, a typical room in an FRC consists of a number of sets of bunk beds, with children sleeping next to adults to whom they are not related (as long as their parent is also housed in the same room).

[53] *Flores v. Johnson*, 212 F. Supp. 3d 864, 870 (C.D. Cal. 2015).

As a Consent Decree, the FSA has the force of law. A government agency cannot promulgate regulations that contravene law.[54] As the Proposed Regulations clearly contravene the FSA, their adoption not only would not fulfill the purpose for which the Government contends they are intended (*i.e.*, to implement the FSA), but also would constitute improper rulemaking.

II. INDEFINITE DETENTION OF CHILDREN IS UNNECESSARY AND PATENTLY INHUMANE.

The very reason for the FSA was to provide for expeditious release of children from detention because prolonged detention of children is both unnecessary and patently inhumane.

A. There Are Tested, Effective, Low-Cost Alternatives to Prolonged Detention of Children.

The Agencies ignore several more humane, low-cost options that have been very effective in ensuring that families released from detention appear at their immigration hearings and comply with removal orders. These have included a Family Case Management program that required family members to supervise a detainee's release (but which was discontinued by the Government in 2017); release with an ankle monitor; release on bond; as well as other programs. Each of these alternatives to detention has proven to be effective in ensuring widespread compliance, "with approximately 99 percent of the program's participants successfully attend[ing] their court appearances and ICE check-ins."[55] Each of these alternatives involves a miniscule financial cost to the Government as compared to detention (on the order of $4-5 per day per person rather than $319 per day per person held in family detention).[56] These effective and cost-saving alternatives should not be rejected out of hand. We note that these (or other) alternatives are not even mentioned in the Proposed Regulations despite the fact that ICE already places nearly 90,000 people across the country on alternatives to detention.[57]

B. Prolonged Detention of Children Will *Not* Be a "Disincentive" to Immigration.

The Agencies state that they do not wish to return to the policy of release of families crossing the border together pending their immigration proceedings, because such a policy would encourage parents "to enter the United States illegally with juveniles or make the dangerous overland journey to the border with

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[54] 5 U.S.C. § 706 (1966).

[55] Aria Bendix, *ICE Shuts Down Program For Asylum Seekers*, The Atlantic (June 9, 2018), https://www.theatlantic.com/news/archive/2017/06/ice-shuts-down-program-for-asylum-seekers/529887/.

[56] *See DHS Immigration and Customs Enforcement Congressional Justification for FY 2018* at 131, available at https://www.dhs.gov/sites/default/files/publications/CFO/17_0524_U.S._Immigration_and_Customs_Enforcement.pdf (indicating the cost of family detention beds); Policy Brief, *The Real Alternatives to Detention, National Immigrant Justice Center* 1 (June 18, 2017), https://www.immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-06/The%20Real%20Alternatives%20to%20Detention%20FINAL%2006.17.pdf (comparing the costs of immigration detention beds with the daily cost of ATD programs).

[57] By the end of fiscal year 2017, ICE had enrolled 83,993 individuals into an "Alternative to Detention" program (ATD). DHS/ICE Budget Overview, FY 2019 Congressional Justification, at 147-149.

juveniles, a practice that puts juveniles at significant risk of harm."[58] Indeed, the Proposed Regulations, while acknowledging that "it is difficult to definitively prove a causal link given the many factors that influence migration," suggest that the Government's decision after 2014 to place families in detention (rather than to release them) during the pendency of their immigration proceedings, "helped stem the border crisis, as it correlated with a significant drop in family migration."[59]

Based on the thousands of discussions DPBP has had with asylum-seekers from Central America who were detained at STFRC, it is clear that these families will risk everything to seek asylum in the U.S. because they view the alternative of staying in their home country as almost certainly leading to their imminent death.[60] The policy of releasing migrant families pending their immigration proceedings (as was the Government's policy until 2014)[61] coincided with an increase in migration due to worsening conditions in Central America. Although, as noted in the Proposed Regulations, there was a dip in immigration from 2014-2015, that dip presumably would have continued if harsh detention policies (such as a family separation policy) were effective in disincentivizing immigration. Instead, after 2015, when families generally were no longer released at the border, the numbers of families apprehended at the Southwest border surged (to 77,674 family units in 2016–and stayed roughly at that level in 2017 and, despite the family separation policy, increased to a record high in 2018).[62] A "disincentive" that is neither legal nor effective surely should not be the linchpin of a new policy.

C. There Are Severe, Often Lifelong Adverse Psychological Effects on Children from Even Short-Term Detention.

Detention facilities are extremely stressful environments.[63] The Council, AILA and DPBP have witnessed the extensive damage that detention does to children and their parents. In Exhibits B & C, we provide just a few examples of the severe psychological trauma and physical harm that routinely results from family detention. We note, also, that a systematic review of studies investigating the impact of immigration detention on the mental health of children and adults found that "high levels of mental health problems in detainees" was reported in all ten of the studies reviewed. Anxiety, depression, post-traumatic stress

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58 PR § IV.C.1 at 45493.

59 *Id*. The drop was from 68,445 family units apprehended at the southwest border in 2014 to 39,838 such family units in 2015. *Id.*

60 *See* the Declaration of Shaylyn Fluharty, Managing Attorney of the Dilley Pro Bono Project, attached as Exhibit A.

61 *Flores v. Johnson*, 212 F. Supp. 3d 864, 874 (C.D. Cal. 2015) ("It is uncontroverted that, prior to June 2014, ICE generally released children and parents upon determining that they were neither a significant flight risk nor a danger to safety.").

62 *See* PR § IV.C.1 at 45,493; U.S. Customs & Border Protection, *Southwest Border Migration FY2018*, https://www.cbp.gov/newsroom/stats/sw-border-migration (Oct. 23, 2018) (in fiscal year 2018, the number of family units apprehended at the Southwest border exceeded 100,000 for the first time ever).

63 Raul Reyes, *America's Shameful 'Prison Camps'*, CNN online (July 23, 2015), https://www.cnn.com/2015/07/23/opinions/reyes-immigration-detention/ (describing immigration detention facilities as "prisons and jails"); Jamie Ducharme, *Separating Kids from Parents Can Cause Psychological Harm. But Experts Say Detaining Them Together Isn't Much Better*, Time (June 21, 2018), http://time.com/5317762/psychological-effects-detaining-immigrant-families/.

disorder (PTSD), self-harm and suicidal ideation all were commonly reported. Further, there was a strong correlation between the length of time in detention and the severity of distress. [64] Another study found that suicidal ideation became common in more than half of the young detained immigrants studied; that a third of children who previously had never engaged in self harm began to do so; and that detention was the cause of the stress.[65] Moreover, while there was some evidence for an initial improvement in mental health occurring subsequent to release, longitudinal results show that "the negative impact of detention persists."[66]

The conditions of detention not only cause psychological harm themselves, but they also exacerbate previously experienced trauma. Jodi Berger Cardoso, Assistant Professor of Social Work at the University of Houston, has found that arriving immigrant children have an average of eight traumatic life events, "a clinical category that includes experiences like kidnapping, sexual assault, and witnessing violent crimes."[67] Further, "[a]bout 60% of those [children] met the criteria for PTSD (posttraumatic stress disorder) and 30% for depressive disorder."[68] Numerous forensic evaluations of the DPBP clients detained at STFRC recognized that most of them already were severely traumatized when they arrived in the U.S. and that the detention itself was an additional, independent, and severe stressor.[69]

In addition, family detention provides unique mental health challenges for immigrant children because of the effect of detention on their parents.[70] Children rely on their caregivers to help them understand the world, and to formulate responses to it.[71] "For young children, witnessing a threat to their caregiver has been identified as the most potent predictor of PTSD."[72] Thus, witnessing their parents languish in detention and suffer their own mental health conditions magnifies the mental health challenges for

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64 Katy Robjant, Rita Hassan & Cornelius Katona, *Mental Health Implications of Detaining Asylum Seekers: Systematic Review*, 194 BRIT. J. OF PSYCHIATRY 306 (2009)).

65 Kevin Loria, *Trump Now Claims Migrant Children will be Reunited with their Families. Here are the Lifelong Psychological Consequences These Kids Face.*, Business Insider (June 21, 2018), https://www.businessinsider.com/how-family-separation-and-detention-affect-children-2018-6?utm_source=copy-link&utm_medium=referral&utm_content=topbar&utm_term=desktop. *Id.* (*citing* Robjant, *supra* note 65).

66 Robjant, *supra* note 65.

67 Loria, *supra* note 28.

68 *Id.*

69 *See* Exhibit B & C hereto, which provides a short summary of psychological evaluations performed on certain detained persons at STFRC. We note, for example, the Psychological Evaluation of "Celia," at 5 (Exh B.) ("Detention has the effect of creating an environment that forces Celia to re-experience her trauma on a daily basis, which serves to re-traumatize her."); and the Psychological Evaluation of Cecilia, at 3 (Exh C.) ("[Cecilia's] daughter cries every night. After her daughter goes to sleep she herself weeps every night. She cannot sleep. It is a mixture of awful memories and dread about being trapped in this prison.").

70 Ducharme, *supra* note 48.

71 Sarah Mares & Jon Jureidini, *Psychiatric Assessment of Children and Families in Immigration Detention -- Clinical, Administrative and Ethical* issues, 28 AUSTL. & N.Z. J. PUB. HEALTH 520, 521 (2004).

72 Loria, *supra* note 28.

immigrant children. Further compounding the problem, mental health services in family detention facilities are limited, and typically the availability falls below even ICE's own guidelines.[73]

III. THE FEDERAL GOVERNMENT'S PROPOSED FAMILY RESIDENTIAL CENTER SELF-LICENSING REGIME ELIMINATES THE PROTECTIONS FOR CHILDREN ASSOCIATED WITH THE FSA'S REQUIREMENTS FOR STATE LICENSING.

Another critical way in which the Proposed Regulations do not implement the FSA--but, rather eliminate key protections for children provided under the FSA--is that the Proposed Regulations permit the Agencies to, in effect, license themselves. The Proposed Regulations acknowledge that the self-licensing provision is a "notable change" to the FSA.[74] Moreover, clearly, self-licensing does not reflect a "guiding principle" of having "special concern for the[] particular vulnerability [of] minors."[75]

The FSA mandates that children "shall" be placed with a "licensed program," that is, a "program, agency, or organization that is *licensed by an appropriate State agency* to provide residential, group, or foster care services for dependent children" when release to a parent or guardian is not possible.[76] While the FSA seeks the release of children from federal residential facilities "as expeditiously as possible,"[77] the Proposed Regulations would enable the Government to self-license federal family residential centers as a means to detain children indefinitely.[78] History indicates that allowing the Government to self-license would be a recipe for disaster.

A. The lack of availability of State licensing for an FRC underscores that the housing of children with unrelated adults is contrary to basic child welfare standards.

The Agencies justify their proposed licensing scheme (of federal government licensing itself to house detained children) by pointing out that it is very difficult to accomplish licensing of federal FRCs by State agencies because few States have agencies that establish standards and provide licenses for facilities that house children together with parents. We observe, however, that family homeless shelters, for example, house parents and children and are State-licensed. The critical feature of FRCs that results in a lack of licensing is that each family is not housed in its own separate space; rather, children are *housed in the same room* with unrelated adults. The reason that State licensing is not available to FRCs is that the arrangement violates a basic child welfare standard. Indeed, in Texas, courts have found that altering the

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[73] Julie M. Linton, *et al.*, *Detention of Immigrant Children*, 139 PEDIATRICS 1, 5 (2018). We note that all medical providers at STFRC are employees of U.S. Immigration and Customs Enforcement (ICE) and that ICE accords no confidentiality to detainees' information.

[74] PR § V at 45495.

[75] PR § III.C.2 at 45494.

[76] FSA ¶¶ 6, 14, 19 (emphasis added).

[77] FSA ¶ 12.C.

[78] The Government never specifies how long children will be detained in FRCs under the Proposed Regulation, but admits that "this rule may result in additional or longer detention for certain minors," PR § III.C at 45488, and that the proposed "alternative licensing process that would allow FRCs to be considered 'licensed programs' under FSA paragraph 6, and thus suitable for detention…for longer periods of time than they are currently used," PR § V at 45495.

State regulations to allow for licensing of facilities in which children sleep in rooms with unrelated adults would be impermissible as it is contrary to the best interest of the child and the intent of the State legislature.[79]

Thus, the Agencies' emphasis on the lack of licensing for facilities housing children with their parents highlights that self-licensing by the federal government simply would be the equivalent of no licensing. Also highlighted is the fact that children who are detained with their parents in FRCs are not, even under the FSA, protected by basic licensing-type standards set by appropriate agencies. The only counterweight to this problem is that, at least, under the FSA, the detention in federal facilities has been limited to 20 days.[80] The risk to children would be heightened exponentially if the detention period were not time limited.

B. The Government has a long history of non-compliance with its own standards for conditions of detention, despite engaging third-party operators.

There has been extensive media coverage detailing substandard living conditions in many ICE detention facilities.[81] Indeed, the Government *itself* has identified numerous occasions of non-compliance. For example, the DHS Office of the Inspector General reported on September 27, 2018 that "serious issues relating to safety, detainee rights, and medical care" were identified at the Adelanto ICE Processing Center.[82] These issues included staff "not taking seriously the recurring problem of detainees hanging

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[79] *See Grassroots v. TDFPS*, No. D-1-GN-15-004336, at *3 (353rd Dist. Ct., Travis County, Tex. Sept. 30, 2015).

[80] As discussed below, however, Accompanied Children are currently being held in FRCs far longer than 20 days. According to ICE data released pursuant to a Freedom of Information Act request, the average length of detention in Berks County Family Shelter during fiscal year 2017 was 58 days. See Tara Tidwell Cullen, *ICE Released Its Most Comprehensive Immigration Detention Data Yet. It's Alarming*, National Immigrant Justice Center (Mar. 12, 2018), https://immigrantjustice.org/staff/blog/ice-released-its-most-comprehensive-immigration-detention-data-yet. The Government has attempted to justify this lack of compliance with the FSA by arguing that the litigation against family separation was settled on the basis that families would not be separated. Therefore, the Government asserts, it cannot release the children without the parents under the settlement terms. We observe that what the Government really means is that, under the settlement, it cannot do what it wants to do (keep the parents in detention) without also releasing the children–so it simply keeps the children in detention and claims that it "has to" do so.

[81] *See, e.g.*, Michael Garcia Bochenek, *US Family Detention Centers Not 'Like Summer Camp'*, Human Rights Watch (Aug. 1, 2018), https://www.hrw.org/news/2018/08/01/us-family-detention-centers-not-summer-camp ("[D]etention is traumatic ... destructive … and dangerous -- ICE has a long and terrible history of providing subpar medical care[] for adults and children."); Alfonso Gonzales, *Why We Need to End Family Detention--Again*, Politico (Mar. 30, 2015), https://www.politico.com/magazine/story/2015/03/family-detention-centers-border-crisis-116521 (describing the Karnes detention center as a place "where there have been widespread reports of sexual abuse, psychological violence from guards, [detainees are] fed rotten or otherwise inedible food and being deprived of adequate medical treatment.").

[82] Dept. of Homeland Security Office of Inspector General, OIG-18-86, Management Alert -- Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California (Sept. 27, 2018) at 2.

bedsheet nooses,"[83] and routinely placing detainees in disciplinary segregation without a panel hearing or "opportunity to appeal, thereby violating the detainee's right to due process."[84]

The DHS Office of Inspector General this year found that the existing internal inspection system "do[es] not ensure adequate oversight or systemic improvements in detention conditions; certain deficiencies *remain unaddressed for years*." In fact, ICE facilitates chronic non-compliance through a waiver system, which "allow[s] facilities to exempt themselves from standards that ICE deems critically important, including those related to health, safety, and security."[85] In one situation documented by the DHS Inspector General, ICE allowed a facility to commingle detainees of different custody levels because compliance, the facility asserted, could only be achieved at "overwhelming expense … [and] may prove to be an undue burden upon the facility."[86] Thus, in adult facilities, operational concerns have given rise to exceptions that swallow the rules, and the Proposed Regulations forecast the same in a self-licensing model with responsibility for children.

Another glaring illustration of the dangers of leaving the Government to provide oversight of itself is the debacle that resulted from the Government's implementation of its Zero Tolerance Policy in Spring 2018. According to the Government's own report, the Government was "not fully prepared to implement the Zero Tolerance Policy" or to "deal with certain effects" of the policy. The report chronicles numerous problems in connection with the implementation--from not having a sufficient technology system to track immigration information, to encouraging asylum-seekers to come to ports of entry to make their asylum claims and then restricting their entry ("which may have led [the asylum-seekers] to [make] illegal border crossings").[87]

As discussed, the FSA recognizes the "particular vulnerability of minors"[88] and endeavors to advance their health, safety, and expeditious release. Any regulations attempting to "satisfy the basic purpose of the FSA," as the Proposed Regulations purport to do, would implement a licensing system that prioritizes health, safety, and security standard compliance. But the Proposed Regulations instead provide that children can be detained in a facility "for the time needed to complete immigration proceedings" as long as "DHS employs an outside entity to ensure that the facility complies with family residential standards established by ICE." This purported "alternative licensing scheme" for FRCs (under an unknown, unnamed entity) compares *unfavorably* with the inspection system already used for oversight of ICE adult detention facilities, which, as noted, has failed. Most ICE facilities are operated by private contractors with substantial experience in adult correctional facilities. The notion that the Agencies could do better on their own for children and families, without even a model to build on, is untenable.

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83 *Id.* at 3.

84 *Id.* at 5.

85 Dept. of Homeland Security Office of Inspector General, OIG-18-67, *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements* (June 26, 2018) at 13.

86 *Id.*

87 Dept. of Homeland Security Office of Inspector General, OIG-18-84, *Special Review--Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy* (September 27, 2018) at 2, 6.

88 FSA ¶ 11.

C. The Agencies have failed repeatedly to comply with the FSA, reflecting that they are a poor steward for FSA protections.

The proposal for self-licensing in the Proposed Regulations comes against a backdrop of a long history of repeated failures (including very recently) by the Agencies to comply with the terms of the FSA. As just one blatant example, DPBP has reported to the Council and AILA that there have been numerous families held in detention for approximately *two years* (a rather blatant violation of the *20-day* rule). In addition, the Agencies have repeatedly sought modifications of the FSA, and have on numerous occasions asserted interpretations of the FSA that would eliminate or minimize the FSA's protections for children. Regulation of the Agencies by the Agencies themselves would almost certainly lead to a new low in detention center conditions for children–conditions which are seriously problematic even now, without self-regulation, and without termination of the FSA and the Court oversight that goes with the FSA.

We note, for example, the following (just since 2015):

(i) In July 2015, the *Flores* Court found the DHS to be in breach of the FSA and rejected the DHS's request to modify the FSA. On appeal, the Ninth Circuit affirmed the lower court's refusal to amend the FSA and rejected the Government's argument that the FSA applied only to unaccompanied minors and not to children in family detention centers with a parent.

(ii) In June 2017, the U.S. Court of Appeals for the Ninth Circuit affirmed the District Court's order appointing a special monitor for detained migrant children after concluding that children continued to be held longer than 20 days in secure, unlicensed facilities in defiance of the FSA (and of the Court's previous orders). The Court found that almost all Rio Grande Valley sector facilities in which children and adults were held had unsafe and unsanitary conditions, with inadequate food, inadequate access to clean drinking water, inadequate hygiene, cold temperatures and inadequate sleeping conditions.

(iii) In July 2017, the U.S. Court of Appeals for the Ninth Circuit affirmed an order granting the motion of a plaintiff class to enforce the FSA by granting migrant children held in detention the right to a bond hearing before an immigration judge. The court also rejected the Government's contention that the Homeland Security Act and the Trafficking Victims Protections Reauthorization Act had terminated certain requirements in the FSA for unaccompanied migrant children (a claim that the Government makes again in the Proposed Regulations and cites as a key reason why the Proposed Regulations should be adopted).

(iv) In July 2018, the *Flores* Court denied the Government's *ex parte* application for relief from the FSA, stating: "Defendants seek to light a match to the *Flores* Agreement and ask this Court to upend the parties' agreement by judicial fiat."[89]

(v) Also in July 2018, the *Flores* Court found that conditions at the Government's Shiloh Residential Treatment Center in Manvel, Texas violated the FSA. The Court ordered all children removed from the facility and ultimately appointed an independent Special

[89] *Flores v. Sessions*, No. 85-cv-04544, at *3 (C.D. Cal. July 9, 2018) (Order Denying Defendants' "*Ex Parte* Application for Limited Relief from Settlement Agreement").

Master to monitor the Government's compliance with the FSA. The allegations reviewed by the Court included abuse and overmedication with psychotropic drugs against the children held there. The Court ordered the Government to obtain parental consent or a court order before giving children psychotropic drugs except in emergency circumstances as described in the Texas Family Code.

IV. THE PROPOSED REGULATIONS CONTEMPLATE A RETURN TO THE SHOCKINGLY CRUEL AND LIKELY UNCONSTITUTIONAL POLICY OF FAMILY SEPARATION.

Another critical way in which the Proposed Regulations do not implement the FSA (but, again, provide for the very opposite) is that they contemplate a renewal of the Government's failed family separation policy. Family separation represents the very opposite of the FSA's focus on the best interests of the child taking into account children's extreme vulnerability--as well as its provisions on reunification of families and preference for release of a detained child to the parent. Moreover, the Government's family separation policy implemented during Spring 2018 was found by the courts to have been likely unconstitutional, as well as "brutal, offensive, and…shock[ing] the conscience."[90]

A. The Proposed Regulations Clearly Contemplate Family Separation.

The Proposed Regulations state that they are intended to provide maximum optionality for the Agencies with respect to the detention of parents and their children who cross the border together. DHS has "three primary options," according to the Proposed Regulations--one of which is to "detain the parent... and either release the juvenile … or transfer [the juvenile] to HHS to be treated as an UAC."[91] This option is the family separation option--i.e., detention of a parent and treating the child (although she was accompanied by a parent) as a UAC who will thus be detained separately in a facility for UACs. The Proposed Regulations, the Agencies state, "would, when finalized, . . . allow for the full range of options at each stage of proceedings"[92]—that is, the range of options available to the Agencies expressly includes the family separation option.

Indeed, whenever there is a reference in the Proposed Regulations to detaining families together in detention, the statement is a *qualified* one. There are many references to "family detention," but they

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90 *Ms. L. v. U.S. Immigration & Customs Enf't*, 302 F. Supp. 3d 1149, 1167 (S.D. Cal. 2018). Judge Dana Sabraw (a former President George W. Bush appointee) wrote in his decision: "The government actors responsible for the 'care and custody' of migrant children have, in fact, become their persecutors. . . . These allegations sufficiently describe government conduct that arbitrarily tears at the sacred bond between parent and child, and is emblematic of the exercise of power without any reasonable justification in the service of an otherwise legitimate governmental objective . . . . Such conduct . . . is brutal, offensive, and fails to comport with traditional notions of fair play and decency. At a minimum, the facts alleged are sufficient to show the government conduct at issue 'shocks the conscience' and violates Plaintiffs' constitutional right to family integrity." *Id.* at 1166-67.

91 PR § IV.C.1 at 45492. The other two options are (i) parole of the parent and child together–which the Government makes clear it strongly opposes, *see id.* at 45,493; and (ii) the preferred option of indefinite detention of the parent and child together which would be possible if the desired termination of the FSA were effected.

92 PR § IV.C.1 at 45492.

never appear without a qualifier such as "family detention *as appropriate*"[93] or the "ability to use family detention when it will be an *effective tool*" (emphases added).[94] This phraseology underscores that "family unity" will be the objective only as and when the Government views that option as being preferable *for its purposes* as compared to the family separation option.[95]

In addition, since the Proposed Regulations were issued, the Government has expressly confirmed that it does indeed seek to reinstate a family separation policy.[96] One option being seriously considered (which is referred to as the "binary option") is that the "government [would] detain asylum-seeking families together for up to 20 days, then give the parent a choice--stay in family detention with their child for months or years as their immigration case proceeds, or allow children to be [separated from the parents]…."[97] This "binary option" is essentially a choice between (a) a child being taken from her parent

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93 *See, e.g.*, PR § IV.C.1 at 45493; PR § IV.C.1 at 45494; PR § VI.A.4 at 45520.

94 *See, e.g.*, PR § VI.A.4 at 45520 ("Without…this rule, family detention is a less *effective* tool to meet the enforcement mission of ICE"); § IV.C.1 at 45494 (referring to DHS's desire to be able "to *effectively* use family detention") (all emphases added). We would note that the Council and AILA have long taken the view that family detention, which is both unnecessary and inhumane, should never (or only very rarely) be considered appropriate or an effective tool. *See, e.g.*, the Complaint filed with DHS's Office of Civil Rights and Civil Liberties (CRCL), by the Council, AILA and the Women's Refugee Commission, on the serious mental health impact of family detention on children and mothers. AILA Doc. No. 15062536 (June 30, 2015), https://www.aila.org/advo-media/press-releases/2015/impact-family-detention-mental-health/complaint-mental-health-family-detention.

95 We note that, in other contexts, legislators have recognized, and taken action to avoid, the inherent conflict of interest when an agency has a dual role as both the party making the determinations about a child's detention status and also being the safe-keeper of the child's well-being while in detention. This conflict was the motivating force behind the transfer of responsibility for custody of Unaccompanied Children from ICE to ORR (so that ICE was not both the child's "protector" and "deporter" at the same time). This inherent conflict (although arguably particularly acute in the case of Unaccompanied Children) is relevant in the context of Accompanied Children as well. Indeed, the Council and AILA are aware of numerous instances in which ICE has been unable to make appropriate, individualized, child welfare-based choices regarding placement of children that are required by the FSA (such as whether a child is a flight risk or a danger to others). Through DPBP, the Council and AILA are aware that ICE's blanket approach, which is that all children currently must be detained, has led to children being kept in detention who were amputees with no arms, had serious seizure disorders, had cerebral palsy, were actively suicidal after having been detained for several months, and had been in detention for two years. In addition, an 8-1/2 months pregnant mother was kept in detention (and lost her baby).

96 *See, e.g.*, Philip Rucker, *Trump Says He is Considering a New Family Separation Policy at U.S.-Mexico Border*, Washington Post (Oct. 13, 2018), https://www.washingtonpost.com/politics/trump-says-he-is-considering-a-new-family-separation-policy-at-us-mexico-border/2018/10/13/ea2f256e-cf25-11e8-920f-dd52e1ae4570_story.html?utm_term=.67fa33e1ef7d (President Trump confirmed that "he is considering a new family separation policy at the U.S.-Mexico border because he believes the administration's earlier move to separate migrant children from parents was an effective deterrent to illegal crossings"); Phil Helsel, *Trump Suggests Support for Family Separation, after Earlier Practice Caused Outcry*, MSNBC (Oct. 13, 2018, 6:58 PM), https://www.nbcnews.com/politics/politics-news/trump-suggests-support-family-separations-after-earlier-practice-caused-outcry-n919866 (quoting the president as saying "I will say this: If they feel there will be separation, they don't come.").

97 Nick Miroff, et al., *Trump administration weighs new family-separation effort at border*, Washington Post (Oct. 12, 2018), https://www.washingtonpost.com/local/immigration/trump-administration-weighs-new-family-separation-effort-at-border/2018/10/12/45895cce-cd7b-11e8-920f-

(who is left in detention), being treated as an Unaccompanied Child, and being detained--for what should be a maximum of 20 days--in a facility that is licensed by a child welfare agency, or (b) a child being detained with her parent, but indefinitely and in a facility that is not licensed as being suitable for children. The choice necessarily contravenes at least one of the twin objectives of the FSA of (i) providing for appropriate conditions while a child is detained and (ii) prompt release from detention to one's family.

Thus, while the Proposed Regulations are cloaked in the narrative that the Government's objective is to "keep families together" and "maintain family unity," the Proposed Regulations would accommodate--and, indeed, clearly contemplate-- a return to a family separation policy.

B. The Proposed Regulations, in Contemplating a Family Separation Policy, Do Not "Implement" *Flores* But Reflect Its Opposite.

As discussed in Section I.C. above,[98] the FSA generally requires that the Government "treat[] all minors with . . . special concern for their particular vulnerability as minors"[99] and that "every effort must be taken [by the Government] to ensure . . . the well-being" of minors held in detention.[100] The FSA requires specifically that, with respect to any child in immigration detention who is not in detention with a parent, under whatever circumstances, the Government (or the non-Government detention facility, as applicable) must make "continuous efforts on its part toward family reunification and the release of the minor . . . ." and "[s]uch efforts at family reunification shall continue so long as the minor is in [Government] custody."[101]

It goes without saying that nothing about forcibly separating a child from a parent could be considered to reflect a special concern for children's particular vulnerability as minors, nor an effort to ensure the well-being of children. It goes without saying that forcibly separating a child from a parent is the very opposite of making continuous efforts to achieve family reunification.

C. A Return to a Family Separation Policy Would Be Unnecessary, Improper, and Shockingly Inhumane.

Further, according to the Government's own report on the family separation policy, the Government violated the FSA by holding separated children "for long periods of time in facilities intended solely for short-term detention." Specifically, hundreds of children were held more than the permissible 72 hours in CBP custody (about a quarter of the children were detained in CBP holding cells for over five days; and one child was in CBP custody for 25 days), with very limited access to clear drinking water, food and hygiene products.

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dd52e1ae4570_story.html?utm_term=.c36628e64404 ("In addition to considering 'binary choice' and other options, officials have proposed new rules that would allow them to withdraw from [the FSA] that bars ICE from keeping children in custody for more than 20 days").

98 *See* Sec. I.C. above.

99 FSA ¶ 11.

100 *Id.* at ¶ 12.A.

101 *Id.* at ¶ 18.

Even the Government does not contend that family separation is *necessary*, or even appropriate, other than as a deterrent to immigration,[102] and, as discussed, the courts have rejected the concept that migrant families can be detained--let alone separated--for the purpose of deterrence.[103] Further, based on the Council's and AILA's extensive, personal experience with detained families, it is clear that deterrence is a faulty premise. Asylum-seeking parents leave their homes and everything they own and know for a dangerous journey and uncertain future only out of the sheer desperation that comes from fear of imminent death in their home countries. They view themselves as having no choice but to try to get themselves and their children here so that their asylum claims can be heard and decided.[104]

We note that the DHS's own Advisory Committee on Family Residential Centers, in its 2016 report, issued a unanimous recommendation that "…detention is generally neither appropriate nor necessary for families—and that detention of the separation of families for purposes of immigration enforcement or management are never in the best interest of children." The Committee's recommendation was clear-cut: Do not separate children from parents in order to keep the parents in detention.[105] The UNHCR, in a 2012 declaration of "The Rights of All Children in the Context of International Migration," wrote: "[R]egardless of the situation, detention of children on the sole basis of their migration status or that of their parents is a violations of the children's rights, is never in their best interests and is not justifiable."[106] We note that the American Academy of Pediatrics has formally adopted a position that "children in the custody of their parents should never be detained, nor should they be separated from a parent…."[107]

The courts flatly rejected the previous family separation policy.[108] The widespread public outrage about the Government's family separation policy during summer 2018–one of the most vociferous, widespread reactions to any immigration policy in recent years–is a reflection that family separation is a failed, unnecessary and improper concept. In response to the pressures of judicial rulings and public outcry

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[102] *See* PR § IV.C.1 at 45493 ("It is important that family detention be a viable option … [because] [t]he expectation that adults with juveniles will remain in the United States outside of immigration detention may incentivize [immigration].").

[103] *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164 (D.D.C. 2015) (civil detention "for the sake of sending a message … appears out of line with [] Supreme Court decisions" because "the Court has declared such 'general deterrence' justifications impermissible.").

[104] *See* the discussion above at Sec. II.B.; *see also* Exhibit A [Fluharty Decl.].

[105] DHS Advisory Comm. on Family Residential Centers, *Report of the DHS Advisory Committee on Family Residential Centers* (Sept. 30, 2016) at 10 (stating that family separation "raises serious concerns and violates the best interests of the child–which requires prioritizing family integrity and the maintenance of emotional ties and relationships among family members.").

[106] Comm. on the Rights of the Child, *Report of the 2012 Day of General Discussion: The Rights of All Children in the Context of International Migration* at 10 (Sept. 28, 2012), United Nations Human Rights, https://www2.ohchr.org/english/bodies/crc/docs/discussion2012/2012crc_dgd-childrens_rights_internationalmigration.pdf.

[107] Julie M. Linton, et al., *Policy Statement: Detention of Immigrant Children*, Am. Academy of Pediatrics (Apr. 2017), http://pediatrics.aappublications.org/content/pediatrics/139/5/e20170483.full.pdf.

[108] *See Ms. L v. ICE*, No. 180428 (S.D. Cal.); *Dora v. Sessions*, No. 01938 (D.D.C.); *MMM v. Sessions*, No. 1832 (S.D. Cal).

against the family separation policy, the U.S. President issued an Executive Order formally ending the policy and purportedly adopting "a policy of this Administration to maintain family unity."[109]

Family separation is a starkly inhumane policy. It has been referred to as "an unmitigated moral catastrophe."[110] It has been compared to "kidnapping by the government"[111] and policies that were implemented in Nazi Germany.[112] The President of the American Psychological Association, in response to the family separation policy, issued a letter decrying that the Government's continuing to "place the mental and physical health of migrant children and their families in jeopardy."[113]

According to the U.S. Government Accountability Office report issued in October 2018, during the family separation policy implemented from approximately April through June 2018, 2,654 children were forcibly taken from a parent.[114] These children were transported to detention facilities throughout the country, without the parent being told where or when (or even *if*) he or she would ever be reunited with the child. Over 100 of these children were the age of four or less.[115] Many were left to "advocate" for themselves in the legal process, including appearing at interviews and hearings that affected their right to be in the country, the possibility of their being reunified with their parent, and the possibility of their

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[109] E.O. 13841 § 1, 83 Fed. Reg. 29435 (June 20, 2018).

[110] Dan Desai Martin, *White House Seeking to Reinstate Family Separation Policy*, The National Memo (Oct. 15, 2018), http://www.nationalmemo.com/white-house-seeking-to-reinstate-family-separation-policy/.

[111] *See* Patrick Timmons, *Trump Child Separation Policy Akin to Kidnapping - Senior Texas Official*, The Guardian (June 20, 2018), https://www.theguardian.com/us-news/2018/jun/20/trump-family-separation-policy-texas-el-paso.

[112] *See, e.g.*, Harriet Sinclair, *Former CIA Chief Compares Trump Administration to Nazi Germany Over Border Policy*, Newsweek (Nov. 1, 2018), https://www.newsweek.com/former-cia-chief-compares-trump-administration-nazi-germany-over-border-policy-980348.

[113] Jessica Henderson Daniel, PhD, *Statement of APA President Regarding Administration's Proposal to Detain Child Migrants Longer Than Legally Allowed* (Sept. 6, 2018), https://www.apa.org/news/press/releases/2018/09/detain-child-migrants.aspx.

[114] U.S. Gov't. Accountability Office, GAO-19-163, UNACCOMPANIED CHILDREN: Agency Efforts to Reunify Children Separated from Parents at the Border (2018) at 26 [hereinafter ("GAO Report")]. We note that the number of children who were separated could be higher than the number reported by the Government. *See* Tal Kopan, *Administration 'Discovers' More Separated Children--Have Others 'Fallen Through the Cracks'?*, San Francisco Chronicle (Oct. 26, 2018), https://immigrationcourtside.com/category/courts/usdc-sdca/judge-dana-sabraw/mmm-v-sessions/ (stating that Government officials conceded in a court filing that the Government "failed to recognize that 14 children in its care for months had been separated from their families at the Mexican border . . . The disclosure raises fresh questions about whether the administration neglected to account for additional children after separating them from their parents under its 'zero tolerance' immigration policy . . . Two recent government reports faulted the administration's tracking efforts, and one said officials feel no obligation to find children who were released to other homes before a judge ordered an accounting of the youths, suggesting the total separated under the policy may never be known.").

[115] GAO Report at 26.

release from detention.[116] Some were coerced into signing forms voluntarily waiving their rights.[117] The children's suffering was unimaginable.[118]

Four-hundred and thirty-seven children were still not unified with a parent or other relative as of September 10, 2018.[119] At least 64% of these children[120] likely have been *permanently orphaned* by the Government as their parents were deported during the separation and now, due to the government's essentially non-existent record keeping[121] on the basic question of which children belonged to which

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[116] Christina Jewett & Shefali Luthra, *Immigrant Toddlers Ordered to Appear in Court Alone*, USA Today (June 27, 2018), https://www.usatoday.com/story/news/nation/2018/06/27/immigrant-children-deportation-court/739205002/ (describing a three-year-old climbing on the table during his legal proceedings); Tal Kopan, *Kids in Immigration Court: A Maze With Life and Death Consequences*, CNN (July 1, 2018), https://www.cnn.com/2018/06/30/politics/children-in-court/index.html ("[T]here is no minimum age. Toddlers and infants do, in fact, appear before judges in the system to defend themselves against deportation.").

[117] For example, five-year-old Helen, an asylum-seeker from Honduras, was separated from her grandmother (after the family separation policy was purportedly ended). Helen requested an immigration judge, but later, "with assistance from officials," filled out a form to withdraw her request. Helen remained in detention, separated from her family, until a pro bono attorney was able to navigate "a complete maze" just to discover where Helen was being held. Soon thereafter, Helen was transferred to foster care. Helen's family and attorneys publicized her case and organized a petition; each time a new signature was added, ORR officials received an email. Ten thousand people signed the petition. Helen was finally returned to her family after the Government had detained her for more than two months. *See* Sarah Stillman, *The Five-Year-Old Who Was Detained at the Border and Persuaded to Sign Away Her Rights*, The New Yorker (Oct. 11, 2018), https://www.newyorker.com/news/news-desk/the-five-year-old-who-was-detained-at-the-border-and-convinced-to-sign-away-her-rights. *See also* the Complaint (Aug. 23, 2018) filed by the Council and AILA, with CRCL and OIG, on behalf of numerous parents who were separated from their children and who were subject to explicit and implicit coercion while in DHS custody. https://americanimmigrationcouncil.org/advocacy/illegal-and-systematic-practice-coercing-separated-families-must-be-investigated

[118] *See* Exhibit D (which contains letters written by detainees at STFRC, describing the impact of being separated from their children).

[119] GAO Report at 33.

[120] *Id.*

[121] Nick Miroff, et al., *'Deleted' Families: What Went Wrong With Trump's Family-Separation Effort*, Washington Post (July 28, 2018), https://www.washingtonpost.com/local/social-issues/deleted-families-what-went-wrong-with-trumps-family-separation-effort/2018/07/28/54bcdcc6-90cb-11e8-8322-b5482bf5e0f5_story.html?utm_term=.05ba5d88bf56 ("Compounding failures to record, classify and keep track of migrant parents and children pulled apart by President Trump's 'zero tolerance' border crackdown were at the core of what is now widely regarded as one of the biggest debacles of his presidency."); Jonathan Blitzer, *The Government Has No Plan For Reuniting The Immigrant Families It Is Tearing Apart*, The New Yorker (June 18, 2018), https://www.newyorker.com/news/news-desk/the-government-has-no-plan-for-reuniting-the-immigrant-families-it-is-tearing-apart ("No protocols have been put in place for keeping track of parents and children concurrently, for keeping parents and children in contact with each other while separated, or for eventually reuniting them."); Lydia Wheeler, *Watchdog Sues Trump Administration Over Family Separation Records*, The Hill (Oct. 26, 2018), https://thehill.com/homenews/administration/413405-watchdog-sues-trump-administration-over-family-separation-records (reporting Citizens for Responsibility and Ethics (CREW) lawsuit against the Government, which alleges "rarely has a records management failure had such catastrophic consequences: DHS ripped thousands of children away from their parents, failed to make and preserve adequate documentation of individuals taken into custody, and, consequently, has been unable to reunify each of the families it separated").

parents and how to subsequently reach parents who were deported, the Government now is unable to find the parents who were deported.[122] Most of these children and their parents now will simply have to live the rest of their lives without each other.

Even if these outrageous record-keeping and other abuses were corrected in the context of a new family separation policy, the fact of family separation itself takes a devastating human toll. We note that, in connection with issuing the Proposed Regulations, the Government has not conducted or cited a single study or expert on the impact of separation of families. Rather, the Government completely ignores the abundant evidence (in addition to the dictates of basic common sense) that family separation has both short-term and long-lasting severely traumatic effects on parents and, especially, on children.[123] This fact reveals that the Agencies' true purpose in the proposed Regulations is not to do what is best for the children as the FSA mandates, but rather what is expedient for them in achieving their (already judicially rejected) policy goals.

The Council, AILA and DPBP themselves have extensive first-hand experience observing the trauma that adults and children have experienced through family separation. In Exhibit F, we have summarized a small number of examples of the suffering of mothers and children who were separated under the family separation policy in effect over Spring 2018. These are not abstract "stories" but the real, lived experiences of real adults and children whose psychological well-being will be affected for the rest of their lives. As a country, we should not resume this path.

It shocks the conscience that, having terminated its family separation policy, the Government would seek to reintroduce it just a few months later--under the guise, no less, of Proposed Regulations purportedly being issued to foster "family unity" and to implement *Flores*. \Such a cynical approach, with such an inhumane result, with the unnecessary suffering of innocent children as its centerpiece, surely is, as it was the first time, beneath our great nation.

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[122] "The unfortunate reality," the court wrote in *Ms. L v. ICE*, "is that…migrant children [were] not accounted for with the same efficiency and accuracy as *property*…[that is] routinely catalogued, stored, tracked and produced upon a detainee's release…[such as] money, important documents, and automobiles, to name a few." No. 180428, at *14-15 (S.D. Cal.). *See also* the Dept. of Homeland Security Office of Inspector General, OIG-18-84, *Special Review--Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy* (September 27, 2018), which reports that the Government had no system in place to track the families it was separating, that fewer families might have been separated if officials had not wished to avoid "additional paperwork" to track them; and that "pre-verbal children" (*i.e.*, babies and toddlers) were not given "wrist bracelets or other means of identification, nor did the [Government] fingerprint or photograph most children during processing to ensure that they [could] be easily linked with the proper file."

[123] *See* Kevin Loria, *Trump Now Claims Migrant Children will be Reunited with their Families. Here are the Lifelong Psychological Consequences These Kids Face.*, Business Insider (June 21, 2018), https://www.businessinsider.com/how-family-separation-and-detention-affect-children-2018-6?utm_source=copy-link&utm_medium=referral&utm_content=topbar&utm_term=desktop (discussing studies and testimonials by experts documenting the significant psychological impact of family separation); *see generally* Johayra Bouza, et al., *The Science is Clear: Separating Families has Long-term Damaging Psychological and Health Consequences for Children, Families, and Communities*, Society for Research in Child Development (June 20, 2018), https://www.srcd.org/sites/default/files/documents/the_science_is_clear.pdf (describing the terrible mental health impacts of family separation).

CONCLUSION

As evidenced by the terms of the Proposed Regulations themselves, the Agencies do not truly intend to "implement" the FSA through the Proposed Regulations but rather seek to *circumvent* the FSA and avoid further judicial oversight. Specifically, the Agencies wish (i) to implement a policy of prolonged detention of children--in facilities which the *Flores* Court found long ago, and has steadfastly maintained over decades, are unsatisfactory for children beyond a short period of time, and (ii) at the same time, to effectively eviscerate the basic due process and living condition protections provided by the FSA for children while they are in detention.

The policy of prolonged detention of children that the Agencies seek to effect is wholly unnecessary and would be inhumane. Alternative policies that comply with the FSA are clearly available. These alternatives have proven to be effective in ensuring compliance with immigration court appearances, and at far lower cost than prolonged detention.

The Government's new desired policy would be effected through the Proposed Regulations by permitting the Agencies, on their own authority, to transform their federal immigration facilities (FRCs) into "licensed programs" (although the FSA required licensing by State agencies with experience, expertise and authority in child welfare protocols--which federal agencies lack).

Put simply, the Proposed Regulations *permit* (indeed, are adopted for the very purpose of authorizing) precisely what the FSA *prohibits*. Rather than "implementing the FSA," the Proposed Regulations are simply an attempt to eliminate the key requirements of the FSA so that the Government will no longer have to comply with it. That is the *opposite* of "implementation" of the FSA. The Proposed Regulations thus do not at all fulfill their stated objective; and consequently should not be adopted. Moreover, their adoption would lead to a shameful new low in our treatment of immigrant children.

Sincerely,

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP

Gail Weinstein

On behalf of:

AMERICAN IMMIGRATION COUNCIL

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Exh.

A

Declaration of Shalyn Fluharty

I, Shalyn Fluharty, declare and state pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the following is true and correct:

1. I am an attorney licensed to practice law in the State of California since 2010. My practice has focused on representing detained unaccompanied immigrant children and detained immigrant families before the Executive Office of Immigration Review and the Department of Homeland Security.

2. I currently serve as the Managing Attorney of the Dilley Pro Bono Project in Dilley, Texas. The Dilley Pro Bono Project is a partnership among the American Immigration Council (the "Council"), American Immigration Lawyers Association ("AILA"), Catholic Legal Immigration Network, Inc. ("CLINIC"), and Texas RioGrande Legal Aid, Inc. ("TRLA"). The Dilley Pro Bono Project, through a non-traditional pro bono model centered on teams of volunteer lawyers, provides direct legal representation to thousands of women and children every year who are detained at the South Texas Family Residential Center ("STFRC") in Dilley, Texas.

3. I am above the age of 18 years. I make this Declaration based on my own personal knowledge, and could and would competently testify to the matters contained herein if called upon to do so.

4. I submit this Declaration in support of the Council's and AILA's joint comments in response to the proposed regulations, "Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children," published in the Federal Register on September 7, 2018.

5. As the Managing Attorney of the Dilley Pro Bono Project, I have provided legal services to more than 25,000 asylum-seeking mothers and children who have been detained at STFRC. Most, if not all, of the families detained at STRFC are in expedited removal proceedings and are seeking humanitarian relief in the United States. I am the attorney of record for the vast majority of these families before the Asylum Office within United States Citizenship and Immigration Services (USCIS) and the Executive Office for Immigration Review (EOIR).

6. I have personally met with thousands of mothers and children detained at STFRC. Almost all of them have explained to me that they had no choice but to flee their home country and travel to the United States in search of safety. Almost all of them have described to me horrific experiences that they survived, death and other threats that they received, and harms that await them should they be forced to return.

7. It is exceedingly clear to me that the vast majority of the families with whom I have met left risked everything--including leaving everything and everyone they knew (sometimes, and most devastating to them, their children who could not make the journey with them), endured the extreme hazards of the journey to the United States, faced the possibility of harsh treatment by U.S. immigration officials at the border, and risked the possibility of ultimately not being successful with their asylum claim--because they had no alternative. To stay meant they faced imminent death.

Dated: November 6, 2018
Dilley, Texas

Shaylyn Fluharty

Exh.

B

[redacted]

TO: Maria E. Andrade, Attorney at Law

FROM: Margaret Bassett, LPC-S
Director, Expert Witness Initiatives
Institute on Domestic Violence & Sexual Assault
The School of Social Work
The University of Texas at Austin

RE: Celia Primero Ismalej

DATE: February 18, 2015

Introduction:

I have prepared this independent assessment of Celia Primero Ismalej's application for asylum. In preparation for this report, I interviewed Ms. Primero for two hours on February 10th, 2015 at the Karnes City Residential (Detention) facility. Additionally I read case notes provided to me by Attorney Maria E. Andrade and reviewed current literature. This report documents findings that support theories and research related to trauma and the impact of detention.

I have over 25 years of experience working in the field of family violence and sexual assault. I have worked directly with thousands of victims in residential settings, non-residential settings and in the criminal justice system. I am currently director of expert witness initiatives at the University of Texas at Austin School of Social Work in the Institute on Domestic Violence and Sexual Assault (IDVSA).

I am licensed by the Texas State Board of Examiners of Professional Counselors, (LPC-S), #17008.

The interview with Ms. Primero consisted of a bio-psycho-social-history social work assessment with an emphasis on gathering a history of direct physical and nonphysical violence that was directed toward Ms. Primero by members of her extended family, in addition to the continued threat of future harm/death. Specifically I was asked to provide my expert professional opinion on the impact this violence had on Ms. Primero as well as the impact of detention on her mental health. My review and summary are included in this report.

History and chronology of targeted violence

Celia fled [redacted] June of 2014 with her 10 month old son, [redacted]. She arrived in the United States in August of 2014 and has been detained since.

46

Celia was forced to flee her home due to increasing threats to her life and the lack of safety or protection in her community and surrounding villages and towns. Celia has no confidence in the police and in fact when she did go to them, there was no measurable follow through.

Celia grew up experiencing what could be described as a "reign of terror" acted out against she and her family by extended family members on her father's side. Celia's father, [redacted] is from [redacted]. He married [redacted], who was from [redacted] a more indigenous population. [redacted]'s family did not accept [redacted] nor did they accept their children. [redacted] raised her children in her customs which caused them to be seen as "different" by [redacted] family.

Celia talked about the violence and abuse she suffered growing up. [redacted] would hit and harass Celia and her siblings. They would call them names and throw dirt on them when they found them in the river. [redacted] Celia was not able to avoid [redacted] they all washed and bathed in the same river and went to the same schools.

[redacted]

In [redacted] attempted to kill [redacted] They had sticks and machetes. Some man [redacted] saw what was happening and intervened. [redacted] and Celia's [redacted] were able to escape and run to the home. Celia reports that she witnessed her mother being attacked afar from her home and was very scared. [redacted] Celia also reports that [redacted] was suicidal after this attack, made statements that she couldn't stand it anymore and that it would be better if she killed herself. She asked Celia to take care of the younger siblings. Celia's [redacted] talked her mother from committing suicide. Celia says that her mother changed after this, "she was different after that. She just cried and cried all the time". She deteriorated even more after [redacted] was killed in [redacted]

In [redacted] Celia married [redacted]

In [redacted] She pushed [redacted] to the ground, broke her container, grabbed her by the hair

and began to hit her. [redacted] had a bloody nose. [redacted] and [redacted] filed a police report however the officer only gave [redacted] a warning, [redacted] No charges were ever made.

In [redacted] Celia was walking with her son [redacted] in her arms. [redacted] saw her and began to yell insults at her. She pointed at [redacted] and yelled "throw out that thing" then grabbed [redacted] from Celia's arms and threw him to the side. Celia bent to pick up [redacted] and [redacted] hit her in the head with a rock. Celia was able to run to [redacted] home. Celia needed medical attention and received 2 stitches as a result of this beating. Celia filed a police report and was given an appointment. Celia showed up for the appointment and they waited "half a day" for [redacted] to appear. She never showed. The police told Celia they would send she and [redacted] another appointment notice but they never did. Celia reported that everybody knew the police wouldn't follow up.

In [redacted] was killed in a hit and run motorcycle accident. The truck that hit him never stopped and as far as Celia knows there was never an investigation. Celia believes that [redacted] family is responsible for [redacted] death based upon statements [redacted] made after his death.

In [redacted] Celia reports that [redacted] threatened to kill a man. Within a year that man died. [redacted] was put in jail for a week and then released. Celia believes that [redacted] killed this man. Celia believes when [redacted] family says they will do something, that they will follow through with it.

[redacted] The police officer only took Celia and [redacted]'s contact information and told them the report was over. Celia believes [redacted] was never contacted. [redacted] returned within a month and attempted to physically assault both of them again. He told them that he would kill them, that he would come in the middle of the night and kill them. [redacted] would return to the home sporadically and it was always to fight. Celia talked with [redacted] told Celia there was nothing he could do, [redacted]. At this point [redacted] began talking with Celia about fleeing to the United States.

In [redacted] Celia came to the US alone but was deported. When she returned to [redacted] she moved in with her mother in [redacted]

[redacted] They beat him and stole his bike from him. After that [redacted] was afraid to go to work because they would kill him. [redacted] couldn't leave the house. Celia reports that [redacted]

threatened [redacted] Celia reports that [redacted] was always around and that she and [redacted] were afraid to go anywhere. [redacted] decided to come to the United States. [redacted] told Celia to stay home as much as possible to be safe. After he had settled in the United States, [redacted] sent for Celia and that was when she was detained.

On [redacted] threatened Celia again. [redacted] This scared Celia who believes that [redacted] will kill her.

On [redacted] told Celia (in Spanish) "Oh good. Now I can make good on the threat that I should have carried out before. Now for sure I am going to kill you. You made a complaint against me and I will kill you when you least expect it." Celia believes that [redacted] will follow through with the threat and kill her.

A few days before Celia left for the United States, [redacted] killed an old man, the grandfather of one of the gang members. Celia reports that the police did nothing, adding "they only respond to money."

On [redacted] Celia left for the United States with her youngest son [redacted] and was detained upon arrival. She and [redacted] have been in a detention center for the last 7 months.

In December 2014, while in detention, Celia called her mother. [redacted] told her that [redacted] had been beaten up by [redacted] and that they were asking him where Celia was. [redacted] needed medical care as a result of the beating.

Cummulative trauma

The cumulative trauma that Celia has experienced as a result of the targeted violence directed toward she and her immediate family throughout her life is readily apparent. In describing her life in [redacted] Celia reports that she "lived in fear." She was not able to walk alone, she always had to go with someone. After the birth of her children, Celia became even more fearful and desperate to protect them. Not only did Celia believe that [redacted] would kill her, but she lives in a constant state of fear that they will kill her mother and/or her other son. When asked how the violence impacted her Celia replied "I am not able to forget what happened, I am always having nightmares of them [redacted] killing my mom and my son, even when I am awake."

When asked to describe physically how the violence has impacted her Celia reports "I mostly don't sleep. I get up and assure myself my son is ok. I sit on the bed and think about what happened to me and to my family. I can't sleep. I have bad headaches and my chest weighs very heavy, my heart is painful." Celia reports that there are moments when she is alone that she will cry and at times she will get dizzy and her eyesight goes away, usually when she is overcome with fear for her family and her son. She reported that she went to the Dr. and was told that was "normal" and to just not be upset.

[1] Families celebrate the first-, seventh-, and fourteenth-year anniversaries of the death of a family member. The soul will be remembered with music at a happy social gathering. Pecilcer, Sergio Navarrete, From Maya Achi Marimba Music in Guatemala(Temple University Press)

Emotionally Celia showed a constricted affect and removal of association that is consistent with an individual experiencing trauma or stressor related disorder, such as PTSD. (DSM V, 2014). Celia identified emotional and physical symptoms of anxiety, depression and unease that impact her on a daily basis.

Detention aggravates Celia's preexisting trauma

Detention has the effect of creating an environment that forces Celia to re-experience her trauma on a daily basis, which serves to re-traumatize her. When asked what would be different if she was not in detention she talked about making her own food, cleaning, taking care of her children. She would be able to buy her own food instead of having to ask for what she needs, "it bothers me to have to ask for everything. Usually I won't ask for things. I sit in my room so my son can play." She is in a constant state of fear and anxiety- what will happen to her, what will happen to her children. She is experiencing intrusive memories, night terrors, and physical symptoms. She expresses a sense of agency when she considers someone else, for example talking about being able to buy her own food so she can feed her son- but has no real sense of future. The impact of detention on Celia is to create a situation that exacerbates the trauma she is already struggling with.

It can be argued that detention provides for women and children's basic needs; food and shelter. It is equally true that detention disempowers women and children. This lack of control over their future places women and children in positions of uncertainty, fear and isolation. At a minimum this can lead to depression and anxiety. Detention is neither developmentally nor socially appropriate for children. Additionally, parents who are detained may become too depressed and anxious to provide adequate care for their children. Over time, if they are denied appropriate treatment, their symptoms may worsen. This has the potential to impair their ability to care for their children. The negative emotional impact of detention has been well documented in the literature. Numerous studies have shown that women who are detained are more likely to develop psychiatric symptoms including depression, post-traumatic stress and anxiety (Coffey, Kaplan, Sampson, and Tucci, 2010; Robjant, Hassan and Katona, 2009; Steel, Silove, Brooks, Momartin, Alzuhairi & Susljik, 2006). minimization of time spent in detention is strongly recommended. The isolating and controlled environment of detention is re-traumatizing Celia and furthering her symptoms of PTSD. Continuing to be detained prevents Celia from receiving much-needed services and support from mental health professionals and from her husband, [redacted] and other family members in the United States.

Women like Celia who are trauma survivors are psychologically vulnerable thus at increased risk of developing mental health problems in response to being detained. Longer detention tends to aggravate symptoms and increases the likelihood of long term mental health problems. Even short-term detention can negatively impact women, an impact that lasts after they have been released. The fear, uncertainty and lack of control over her life that Celia lives with while being detained mimics the fear, uncertainty and lack of control she experienced in Guatemala.

Diagnosis

The Diagnostic and Statistical Manual of Mental Disorders 5th edition, (DSM-V) is a reference manual that mental health professionals and physicians use to diagnose mental disorders. In the chapter Trauma and Stressor Related Disorder is a diagnoses of Posttraumatic Stress Disorder (PTSD) that captures the symptoms I observed in Celia during my interview with her. Celia identified multiple

traumatic events; big T events, such as [redacted] threats to her life and that of her family, physical assault and witnessing life threatening violence directed toward her parents. Celia also identified little t events, such as the cumulative impact of chronic bullying with the occasional escalation to more severe violence- and the inability to escape. Her responses of withdrawing and staying in her room are reinforcing negative alterations in how she thinks and how she feels. Her method of coping is to withdraw and dissociate- physically remove herself and emotionally remove herself, as if she were an outside observer. [redacted]

Conclusion

I understand that Celia will be involved in a court hearing. While it is important to recognize that Celia has shown signs of survivorship in her life and taken steps toward self-preservation, it is equally important to recognize that she is not free from the cumulative harm she has suffered nor is she free from the threat of death in her home country. Relevant to her presentation in court, Celia's trauma is likely to affect her ability to recall events, cause her to disassociate herself from particularly traumatic events and/or struggle with exact dates and chronology of events in retelling painful memories. I found Celia to be sincere in her beliefs that her life is at risk. When asked what she thinks will happen if she returns to her home she says she will be killed. This terrifies her and causes her "much sorrow to think that my children will grow up without a mother." I also found that Celia presented in a manner consistent with others I have worked with that have suffered ongoing trauma, and otherwise present symptoms one would expect after having personally suffered traumatic events .

Respectfully submitted February 18, 2015

Margaret Bassett LPC-S

Margaret Bassett LPC-S
Director Expert Witness Initiative
The School of Social Work &
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The University of Texas at Austin

Exh.

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THE FOLLOWING REPORT IS CONFIDENTIAL AND SHOULD BE ONLY READ BY THOSE REPRESENTING OR THOSE CONDUCTING A HEARING RE: THE BELOW NAMED PERSON

PSYCHIATRIC EVALUATION:

Conducted November 20, 2014
At the Federal Law enforcement Training Center
Artesia Family Detention Center
Artesia, New Mexico

RE[redacted]

[redacted] is a 20 year old woman incarcerated in Artesia with her five year old daughter [redacted]. [redacted] is her only child. She was born and raised in San Francisco de Menendez in El Salvador. She worked in a factory making socks. More recently she was living in the municipality of San Juan Opico in a house with her sister and the sister's husband. The father of her daughter lives in Maryland in the United States.

She fled El Salvador because her life and the life of her daughter were being threatened by gang members who were demanding sex.

Her sister had offered to let her live with her and her husband. Soon after moving in with them she and her daughter found themselves witnessing his constant abuse of her sister. The husband was an alcoholic and beat her sister in front of them. He did this over and over again. It was a torment. He harangued her when he wasn't beating her. Her daughter told [redacted] they should leave. "Why do we have to watch my aunt get beaten like this?" [redacted] did not have a way to live on her own. Then the husband began to try and touch her. She would push him away and refuse his overtures. He told her he would tell her sister that she wanted sex with him. He told her her sister would believe him.
This was very difficult for her. she had been raped at 13 years old and when she told her mother her mother did not believe her. This experience six years before was still very much an issue for [redacted] So the husband's threat was reactivating her old trauma. She still refused him. He told her she would have to pay rent. He then began to verbally assault her. He told her she was worthless. He often yelled. Then one night when he was drunk as he often was he came into the room where she and her daughter slept. He got in bed with them and she pushed him away and told her sister what he was trying to do.
The sister got mad at her. Her husband told his wife that [redacted] had started it. The sister believed her husband. She told [redacted] to leave. Her experiences as a 13 year old were repeating themselves. She begged her sister to believe her. She asked her to get the truth from her husband. The husband finally admitted his role to [redacted]'s great relief. Nevertheless the husband finally kicked [redacted] and her daughter as well as her sister out of the house.

She felt quite frightened. What would she do? They found temporary shelter. Soon another man with tattoos and fancy clothes was asking her to sleep with him. He was a gang member. she refused him. He kept pressuring her and she kept refusing. He told her she would regret it. He told her there was nothing she could do about it. He knew where her daughter went to school, where she was dropped off. He told her he would get her and that she could not stop him.
She was frantic. She searched for alternatives and decided to come to the US. A friend was in a similar situation. She had been raped and was pregnant from the rape. Her life too was being threatened. The police had held the rapist for a day and then released him. The police would not help. The two of them decided together to come to the US. They asked immigration for help. they took buses together and when they got to the border they crossed the river and turned themselves into immigration hoping to get help. Unfortunately their reception was unfriendly and abusive. They were put in a cold cell for a few days before being transferred to Arizona. Her daughter became very sick and eventually was sent to the hospital. She had a high fever, a cough, a urinary infection, and was getting sicker. She was not admitted but was given a prescription. The immigration officers took the medicine and only sporadically gave her a pill to give her daughter. This was quite distressing. The water tasted bad; it had alot of chlorine in it. The children wouldn't drink it because it burned their throats. [redacted] asked for milk for her daughter. Initially the officers told her milk was only for babies. She eventually was able to get milk for her child. The officials treated them like they were lesser than they. When she first got to Artesia she felt better because they had a bed, were fed regularly and could take showers.
Her daughter was still sick. She couldn't eat and was vomiting. The guards were mean in Artesia. They told them they were bad, dirty. Early on they would be yelled at for turning on a light or not making their beds. This improved eventually. Their bond was set at $20,000. It was way, way more than she could find any way to pay. They realized that many of the people who came after them were getting lower bonds or at least bonds they could pay and they were subsequently released. This left her trapped. Her daughter asked her many questions about why they couldn't go. When she tried to reassure her daughter the daughter would tell her she was a liar. Her daughter has not been eating anything but chips and cookies.
During the interview [redacted] is quiet and at first just answers questions. As she got into telling us about what happened to her she spoke more rapidly. As she was able to see that her interviewers cared about her state she became quite emotional. Her sensorium and intellect are quite intact. She does not display any psychotic symptoms. Her mood and affect are quite depressed. Her thinking about her future is quite hopeless and pessimistic.

ASSESSMENT:

[redacted] her daughter is getting more aggressive and having fights with other children. This behavior she had never seen her daughter have before this imprisonment.
[redacted] is very sad. she doesn't want to do anything. She is upset all the time. She says this with tears flowing down her cheeks. Her head hurts.
she is not suicidal as she was when she was raped at 13, but she is very depressed.

Her daughter cries every night. After her daughter goes to sleep she herself weeps every night. She cannot sleep. It is a mixture of awful memories and dread about being trapped in this prison. She eats not at all and then finds herself eating frantically. She demonstrates psychomotor retardation and agitation. She reports feeling exhausted. She feels worthless and hopeless. She feels extremely guilty about what her daughter is having to go through. Sometimes during the interview she is crying so hard she can hardly talk. It feels like her head will explode. All of these are signs of a worsening depression. While [redacted] definitely has longstanding issues this depression is a result of being trapped and imprisoned in the prison in Artesia.
She is definitely depressed.

She also meets the criteria for Post Traumatic Stress Disorder

Criterion A requires that she be exposed to death or threats of death, actual or serious injury, actual or threatened sexual violence. She has been threatened with death as has her daughter. She has been raped at 13 years old and again in her recent history she has been threatened with sexual violence and had to repulse an attempted rape. She has watched her sister sustain physical harm and been subjected to it herself.
She definitely meets Criterion A

Criterion B is about re-experiencing the trauma.
She has recurrent, intrusive and involuntary memories of the traumas she has had.
She has traumatic nightmares.
She has had dissociative episodes I am sure although I had a difficult time explaining them to her in order to ascertain if she had. Oftentimes patients are not aware of dissociation. She did say that not infrequently her mind would be in one place and her body would be in another -clearly dissociation.
The interview was an exposure to reminders of her trauma and she was quite distressed throughout the interview.
She demonstrated physiologic reactivity throughout the interview.
She needs only one item but endorsed and demonstrated all five definitely meeting Criterion B

Criterion C concerns avoidance
She describes efforts to avoid these memories and feelings and does at time succeed.
She note that anything that reminds her of these traumatic experiences she tries to avoid as well.
She meets Criterion C

Criterion D concerns alteration in cognition and affect.
She has some inability to recall some of the trauma but mostly she remembers.
She now demonstrates very clearly a belief that she will be trapped and never escape which augments the already dreadful limbo she is in.
She has blamed herself and feels quite guilty about things that she had no control over causing.
She expressed and demonstrated her fear, terror, dread, pain and guilt throughout the

interview.
She has remarkably less interest in usual activities of daily life. This symptom is quite exacerbated by the depression she is suffering from.
She definitely feels alienated from others.
She has affect that is constricted is two ways. She doesn't feel good positive emotions very often if at all. She has a hard time expressing painful feelings in most settings.
She has all seven symptoms in Criterion D, where only two are needed.

Criterion E addresses alterations in arousal and reactivity.
While she says she is not irritable her daughter definitely is and I suspect that this is a reflection of her own anger and irritability.
She denies current self-destructive thoughts. But she did mention that she sometimes wished she were dead.
She has hypervigilance.
She affirms that she has an exaggerated startle response.
She has problems concentrating.
She has profoundly impaired sleep.
She has all five items for Criterion E, needing only two.

She has had these reactions for over a year. The symptoms have impaired her ability to function and she does not use drugs or alcohol. She thus meets Criteria F, G and H.

[redacted] has severe Post Traumatic Stress disorder

SUMMARY: [redacted] is a courageous woman who has fled El Salvador where the safety and life of her daughter and herself were in immediate danger. The anarchy, gang rule and lack of honest and effective policing make these situations more critical. As a result of this she has been through she has significant Post Traumatic Stress disorder.
In addition she has a very troubled child and she herself is in a full blown depressive episode which is worsening because there is not a viable way out. She needs release as soon as possible. Her bond appears to me to be unreasonable and quite destructive to her mental health.

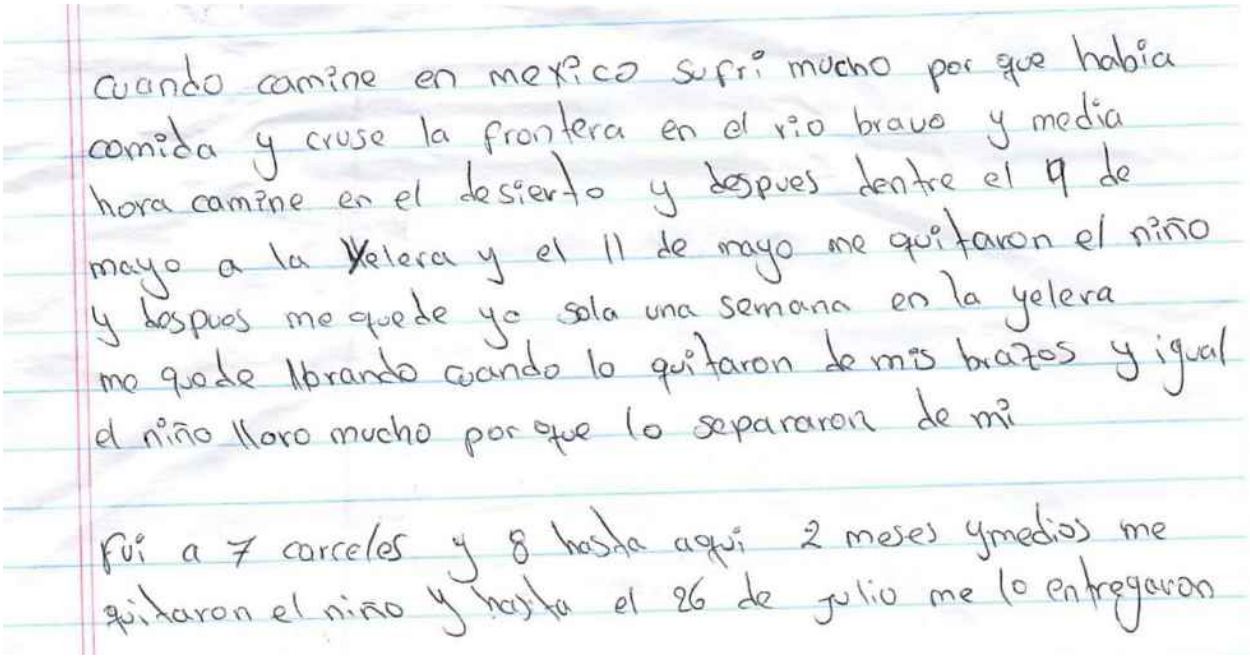
Respectfully submitted,
November 24, 2014

Arnold Lane Leckman MD
alleckman@earthlink.net
505-254-7510

Exh.

D

CARMEN'S STORY

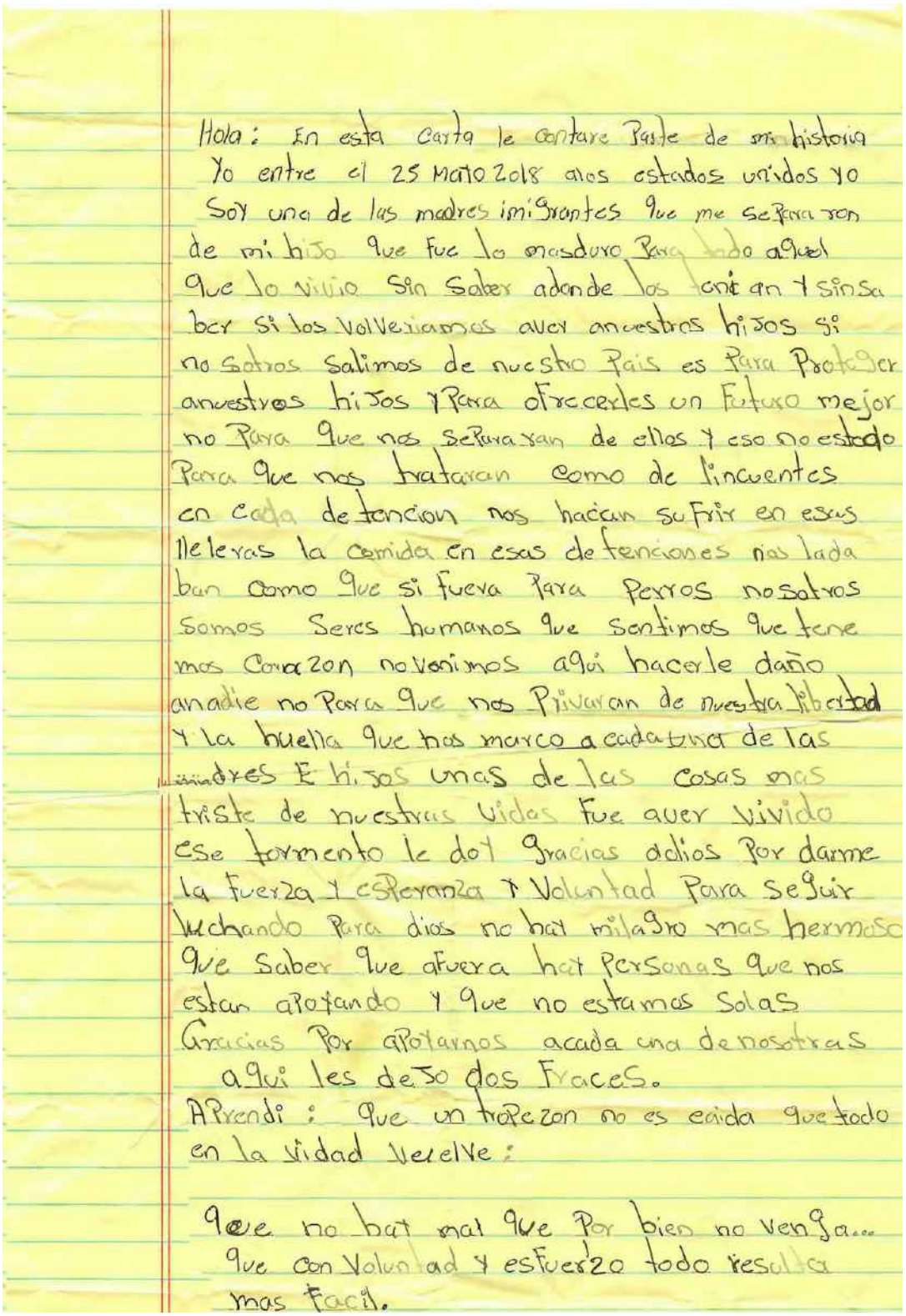


cuando camine en mexico sufri mucho por que habia comida y cruse la frontera en el rio brave y media hora camine en el desierto y despues dentre el 4 de mayo a la Yelera y el 11 de mayo me quitaron el niño y despues me quede yo sola una semana en la yelera me quede llorando cuando lo quitaron de mis brazos y igual el niño lloro mucho porque lo separaron de mi

fui a 7 carceles y 8 hasta aqui 2 meses ymedios me quitaron el niño y hasta el 26 de julio me lo entregaron

When I was walking in Mexico I suffered a lot because there was no food and I crossed the border through the Rio Grande and walked in the desert for half an hour and then on May 4th I entered the "icebox" and on May 11th they took my child and then I was alone in the "icebox" for a week. I was crying when they took my son from my arms and he was crying a lot too because they separated him from me. I went to 7 jails, 8 including here. I was separated from my son for two and a half months until July 26 when they gave him back.

MARIA'S STORY



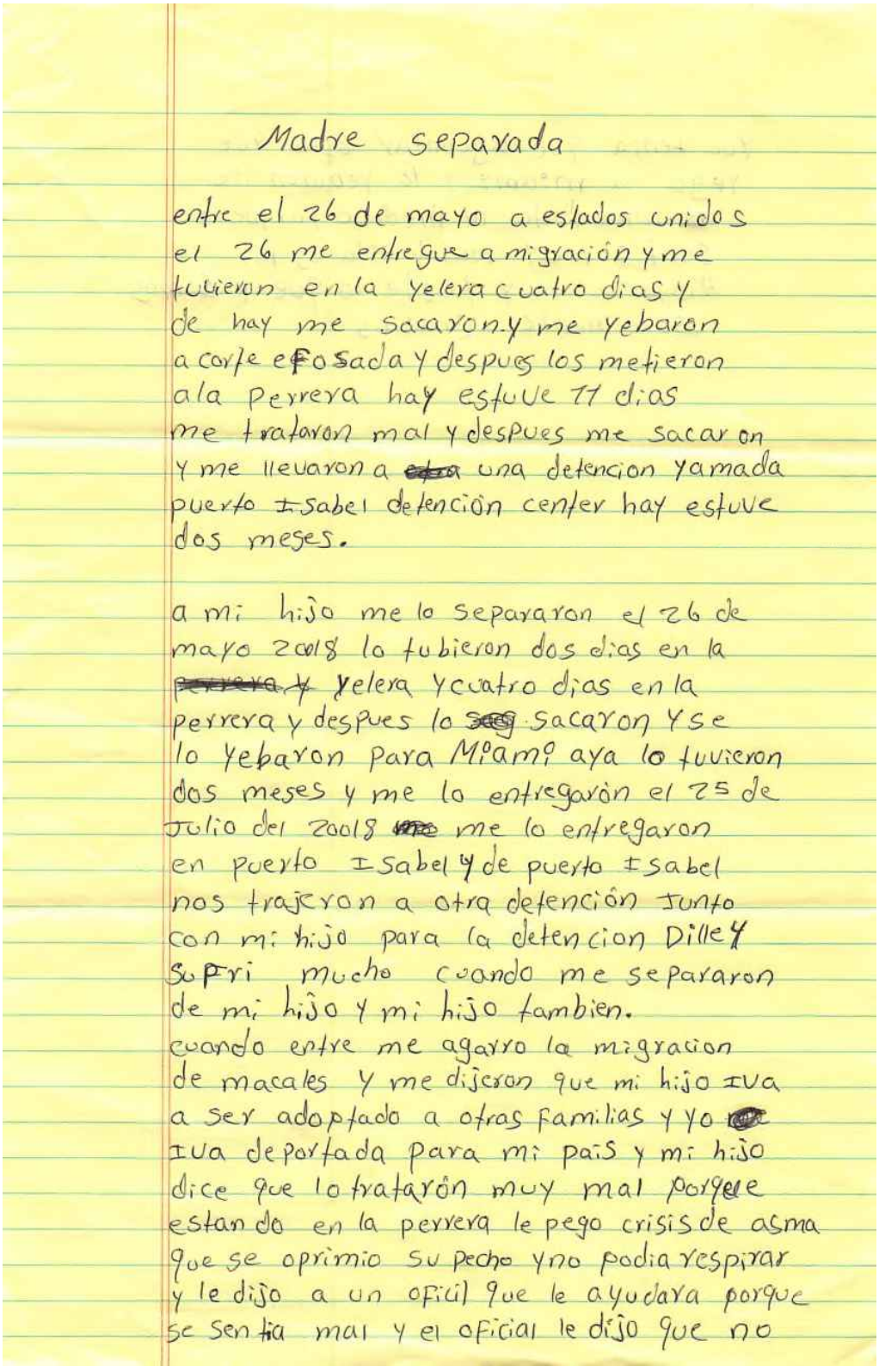
Hola: En esta carta le contare Parte de mi historia
Yo entre el 25 Marzo 2018 a los estados unidos yo
Soy una de las madres imigrantes que me separaron
de mi hijo que fue lo mas duro Para todo aquel
que lo vivio sin Saber adonde los iban y sinsa
ber si los volveriamos aver a nuestros hijos si
no sotros salimos de nuestro Pais es Para Proteger
a nuestros hijos y Para ofrecerles un Futuro mejor
no Para que nos separaran de ellos y eso no estaba
Para que nos trataran como de lincuentes
en cada detencion nos hacian sufrir en esas
Ilegeras la comida en esas detenciones nos lada
ban como que si fuera Para Perros nosotros
somos Seres humanos que sentimos que tene
mos Corazon no venimos aqui hacerle daño
a nadie no Para que nos Privaran de nuestra libertad
y la huella que has marco a cada una de las
madres E hijos unas de las cosas mas
triste de nuestras vidas fue aver vivido
ese tormento le doy Gracias a dios Por darme
la fuerza y esperanza y Voluntad Para seguir
luchando Para dios no hay milagro mas hermoso
que saber que afuera hay Personas que nos
estan apoyando y que no estamos Solas
Gracias Por apoyarnos a cada una de nosotras
aqui les deso dos Fraces.
APrendi: que un trapezon no es caida que todo
en la vidad vuelve:

que no hay mal que Por bien no venga...
que con Voluntad y esfuerzo todo resulta
mas Facil.

Hello: In this letter I will tell you part of my story. I entered the U.S. on May 25, 2018. I am one of the immigrant mothers who were separated from our children. This was the most difficult thing I have ever lived, not knowing where they had them and without knowing if we would see our children. We left our county to protect our children and to offer them a better future, not so that they would separate us from them and not for them to treat us like criminals. In each detention center they made us suffer. In the “icebox” they brought us food as if we were dogs. We are human beings with feelings and a heart. We don’t come here to harm anyone or for them to take away our freedom. The mark left on each of us the mothers and children from having lived this torment is one of the saddest things in our lives. I thank God for giving me the strength, hope, and will to keep fighting. There is no more beautiful miracle than knowing that outside [of detention] there are people who are supporting us and that we are not alone. Thank you for supporting each of us. Here I leave you two sentences:

I learned that a trip is not a fall. And that there is no bad that doesn't come for a good reason, that with will and effort everything gets easier.

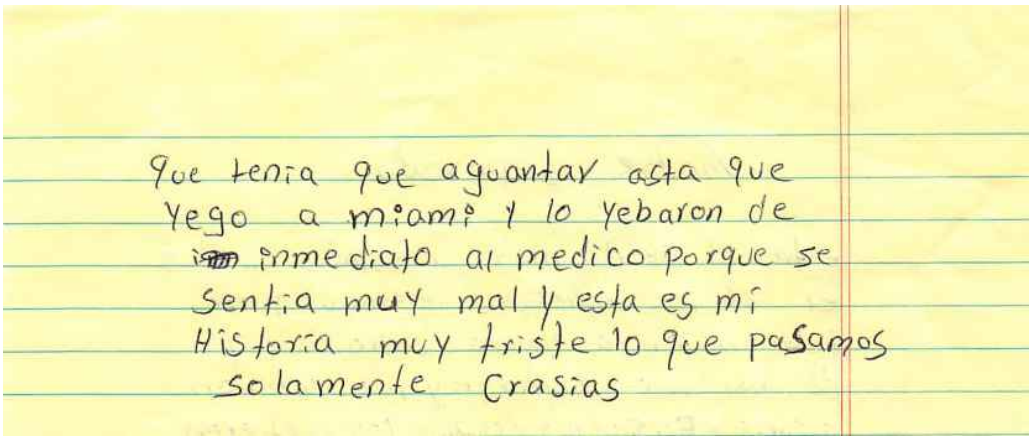
CRISTINA'S STORY



Madre separada

entre el 26 de mayo a estados unidos el 26 me entregue a migración y me tuvieron en la yelera cuatro dias y de hay me sacaron y me yebaron a corfe efo sada y despues los metieron ala perrera hay estuve 11 dias me trataron mal y despues me sacaron y me llevaron a ~~esta~~ una detencion yamada puerto Isabel detención center hay estuve dos meses.

a mi hijo me lo separaron el 26 de mayo 2018 lo tubieron dos dias en la ~~perrera y~~ yelera y cuatro dias en la perrera y despues lo ~~seg~~ sacaron y se lo yebaron para Miami aya lo tuvieron dos meses y me lo entregaron el 25 de Julio del 2018 ~~me~~ me lo entregaron en puerto Isabel y de puerto Isabel nos trajeron a otra detención Junto con mi hijo para la detencion Dilley Supri mucho cuando me separaron de mi hijo y mi hijo tambien. cuando entre me agarro la migracion de macales y me dijeron que mi hijo iva a ser adoptado a otras familias y yo ~~no~~ iva deportada para mi pais y mi hijo dice que lo trataron muy mal porque estando en la perrera le pego crisis de asma que se oprimio su pecho y no podia respirar y le dijo a un oficial que le ayudara porque se sentia mal y el oficial le dijo que no

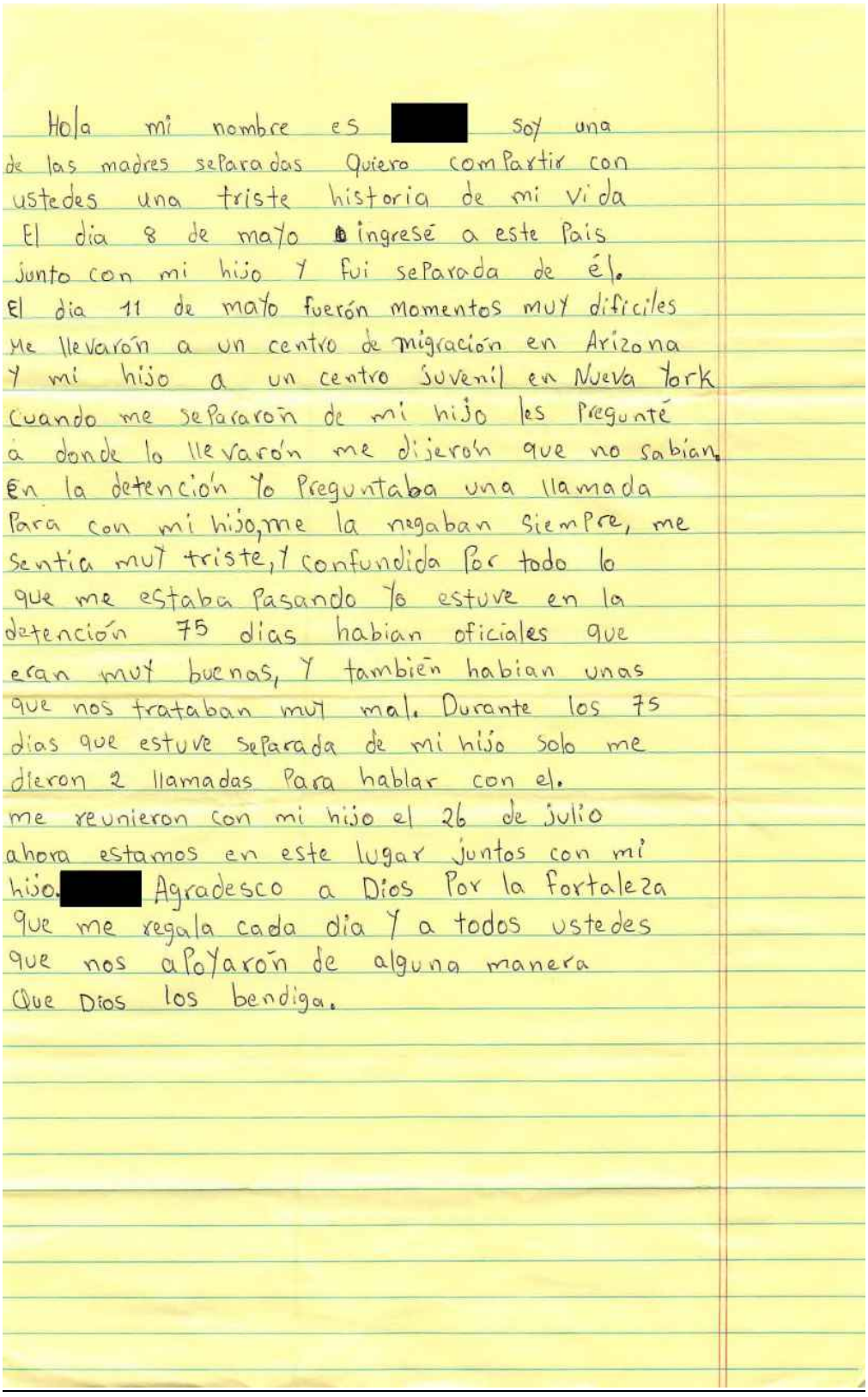


I entered the U.S. on May 26 and turned myself into immigration that day. They kept me in the "icebox" for four days and from there they took me to court handcuffed. Afterwards they put me in the "dog pound." I was there 11 days. They treated me badly. After that they brought me to Port Isabel Detention Center where I was for two months.

They separated my son from me on May 26, 2018. They kept him in the "icebox" for 2 days and 4 days in the "dog pound" and then took him to Miami. They kept him there for two months and gave him back to me at Port Isabel on July 25, 2018. From Port Isabel they took us to another detention center in Dilley. I suffered a lot when they separated us and so did my son.

When I entered the U.S., immigration [officials] in McAllen, TX detained me and told me that my son was going to be adopted by another family and that I was going to be deported to my country. My son says that they treated him very badly because in the "dog pound" he had an asthma attack. He felt pressure on his chest and could not breathe. He asked an official for help because he didn't feel well and the official told him that he had to wait until he arrived in Miami. When he arrived them took him straight to the doctor because he felt very sick. This is the very sad story that we lived. Thank you.

ROSA'S STORY



Hola mi nombre es [redacted] soy una de las madres separadas Quiero compartir con ustedes una triste historia de mi vida El dia 8 de mayo ingresé a este Pais junto con mi hijo Y fui separada de él. El dia 11 de mayo fueron momentos muy dificiles me llevaron a un centro de migración en Arizona Y mi hijo a un centro juvenil en Nueva York cuando me separaron de mi hijo les Pregunté a donde lo llevaron me dijeron que no sabian. En la detención Yo Preguntaba una llamada Para con mi hijo, me la negaban siempre, me sentia muy triste, Y confundida Por todo lo que me estaba Pasando Yo estuve en la detención 75 dias habian oficiales que eran muy buenas, Y tambien habian unas que nos trataban muy mal. Durante los 75 dias que estuve separada de mi hijo solo me dieron 2 llamadas Para hablar con el. me reunieron con mi hijo el 26 de julio ahora estamos en este lugar juntos con mi hijo. [redacted] Agradesco a Dios Por la fortaleza que me regala cada dia Y a todos ustedes que nos apoyaron de alguna manera Que Dios los bendiga.

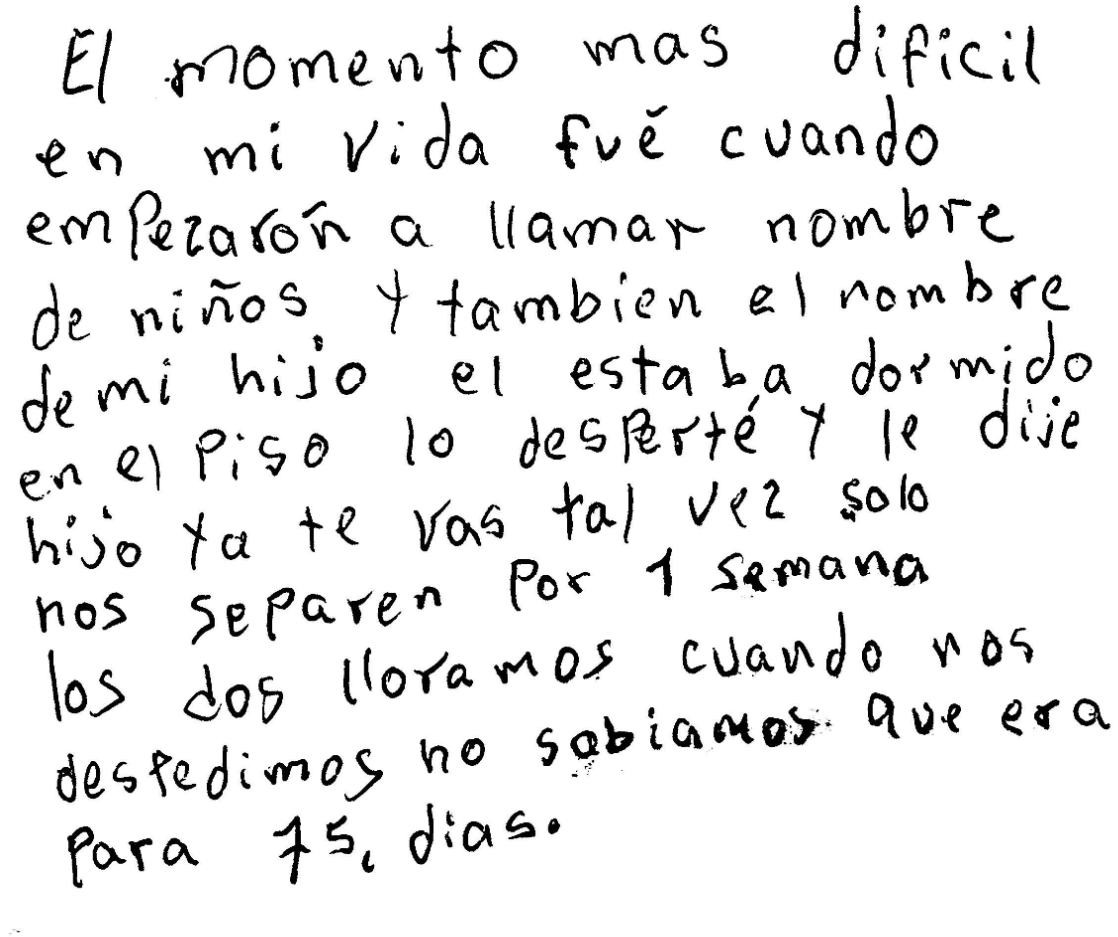
Hello, I am one of the separated mothers. I want to share with all of you a sad story from my life. On May 8 I entered this country with my son and was separated from him. May 11 was very difficult. They took me to an immigration detention center in Arizona and my son to a juvenile shelter in New York. When they separated me from my son I asked them where they were taking him. They told me that they didn't know. In the detention center I asked for a call with my son, but they always denied me one. I felt very sad and confused because of everything that was happening to me. I was in that detention center for 75 days. There were some officials who were very good, but also others who treated us very badly. During the 75 days that we were separated I was only given 2 calls with my son. They reunified me with my son on July 26 and now we are in this place together. I thank God for the strength that He gives me each day and to all of you who supported us in some way. May God bless you.

ANNA'S STORY

Hola me llamo [redacted] entre el 5 de
Junio a los estados unidos estuve dos
dias en la teLera de La teLera me
Trasladaron Para el condado ai me
Tuvieron diez dias despues me
Trasladaron Para otra carcel se llamaba
montana me Tuvieron 9 dias despues
me Trasladaron Para otra carca llamada
otero estuve 55 dias detenida me
entregaron ami hijo despues de aberme
entregado A mi hijo me Trasladaron
Para un centro detencion con mi hijo
Aki llebo un mes de estar todavia
no e Podido llegar con mi familia
Espero Pronto estar con ellos juntos
no a sido facil Auer estado separada
de mi hijo haora estamos juntos
y Espero que Pronto salgamos de
Ahi i esto sea solo un mal recuerdo

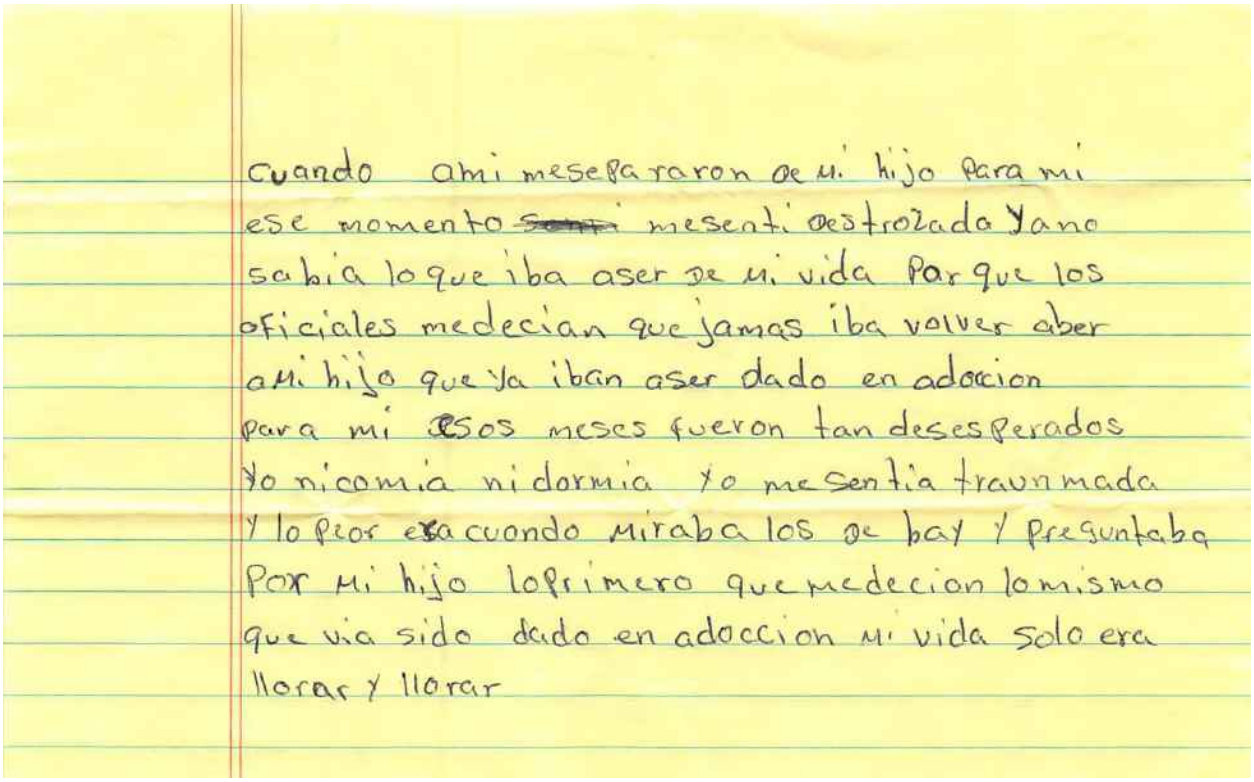
I entered the U.S. on June 5 and spent 2 days in the “icebox.” They transferred me to the country jail and detained me for 10 days there. Then they transferred me to a detention center called Montana for 9 days and then another one called Otero for 55 days. Then they gave me back my son and transferred us to a detention center together. We have been here for a month and I still have not been able to go to my family. I hope that soon I can be with them. It has not been easy to be separated from my son. Now that we are together I hope that soon we will get out and this will only be a bad memory.

ELBA'S STORY


El momento mas dificil
en mi vida fuĕ cuando
empezaroń a llamar nombre
de niños y tambien el nombre
de mi hijo el estaba dormido
en el piso lo desperté y le dije
hijo ya te vas tal vez solo
nos separen por 1 semana
los dos lloramos cuando nos
despedimos no sabiamos que era
para 75, dias.

The most difficult moment of my life was when they started to call children's names and they called my son's name and he was asleep on the floor. I woke him up and told him, "Son, you are going, maybe for only a week." We both cried when we said goodbye. We didn't know it was for 75 days.

SANDRA'S STORY


Cuando ami mesepararon de mi hijo para mi
ese momento ~~Sentí~~ mesenti destrozada Yano
sabia lo que iba aser de mi vida Porque los
oficiales medecian que jamas iba volver aber
a mi hijo que ya iban aser dado en adoccion
para mi esos meses fueron tan desesperados
Yo nicomia ni dormia Yo mesentia traumada
Y lo peor esa cuando miraba los de bay Y preguntaba
Por mi hijo loprimero que medecian lomismo
que via sido dado en adoccion mi vida solo era
llorar Y llorar

The moment when they separated me from my son I felt destroyed. I didn't know what was going to happen to my life because the officials told me that I would never see my son and that he was going to be given up for adoption. Those months were so desperate. I didn't eat or sleep. I felt traumatized and the worst was when I asked for my child the first thing they said was that he had been given up for adoption. I just cried and cried.

ELENA'S STORY

Yo ingrese A los estados unidos un 29 de mayo con mis 2 hijos venimos con un ProPosito nunca nos imaginamos que seriamos separados tanto tiempo y que con los dias nos trataran tan mal mis hijos estaban lejos de mi no sabia si estaban bien si comian o dormian he sufrido mucho mi deseo era darles lo mejor amis hijos como madre soltera ICE nos hizo mucho daño sicologicamente no Podemos dormir bien Porque mi niña Pequeña Piensa que nos van a volver A separar le doy Gracias A mi Dios Porque me dio y me sigue dando Fuerzas Para Seguir Adelante y no Perder mi Fe que saldremos de este lugar juntos.
A mi me trataban mal mi color como que les daba risa ellos me decian que si yo manchaba ERa lo mas duro que Podia Pasar Gracias A mis ABogados de cara que Dios los Puso en nuestros caminos Para darme aliento y decirnos que yo y mis hijos somos bellos y que todos somos iguales Creo que los que tienen hijos no les gustaria Pasar Por lo que Pasamos y se los digo de todo corazón no le deseo eso A nadie que Dios me los Bendiga y Gracias Por Pensar en nosotros nunca los olvidaremos

"Todo lo Puedo en cristo"

I came to the U.S. on May 29 with my two children 2 children with a goal. We never imagined that we would be separated so long and would be treated so badly. My children were far from me and I didn't know if they were okay, if they were eating or sleeping. I have suffered a lot. My wish is to give the best to my children as a single mother. ICE harmed us a lot psychologically. We can't sleep well because my little girl thinks they are going to separate us again. I thank God because he gave me and continues to give me strength to continue and I don't lose my faith that we will get out of this place together.

They treated me badly because of my color. They laughed at me and they said that I was stained. It was the most difficult thing that could happen. I thank the Dilley lawyers that God put them in our paths to give me encouragement and tell us that my children and I are beautiful and that we are all equal. I believe that everyone who has children wouldn't want to go through what we went through, and I say with all my heart that I wouldn't want this to happen to anyone. May God bless you and thank you for thinking of us. We will never forget you. Everything is possible with Christ.

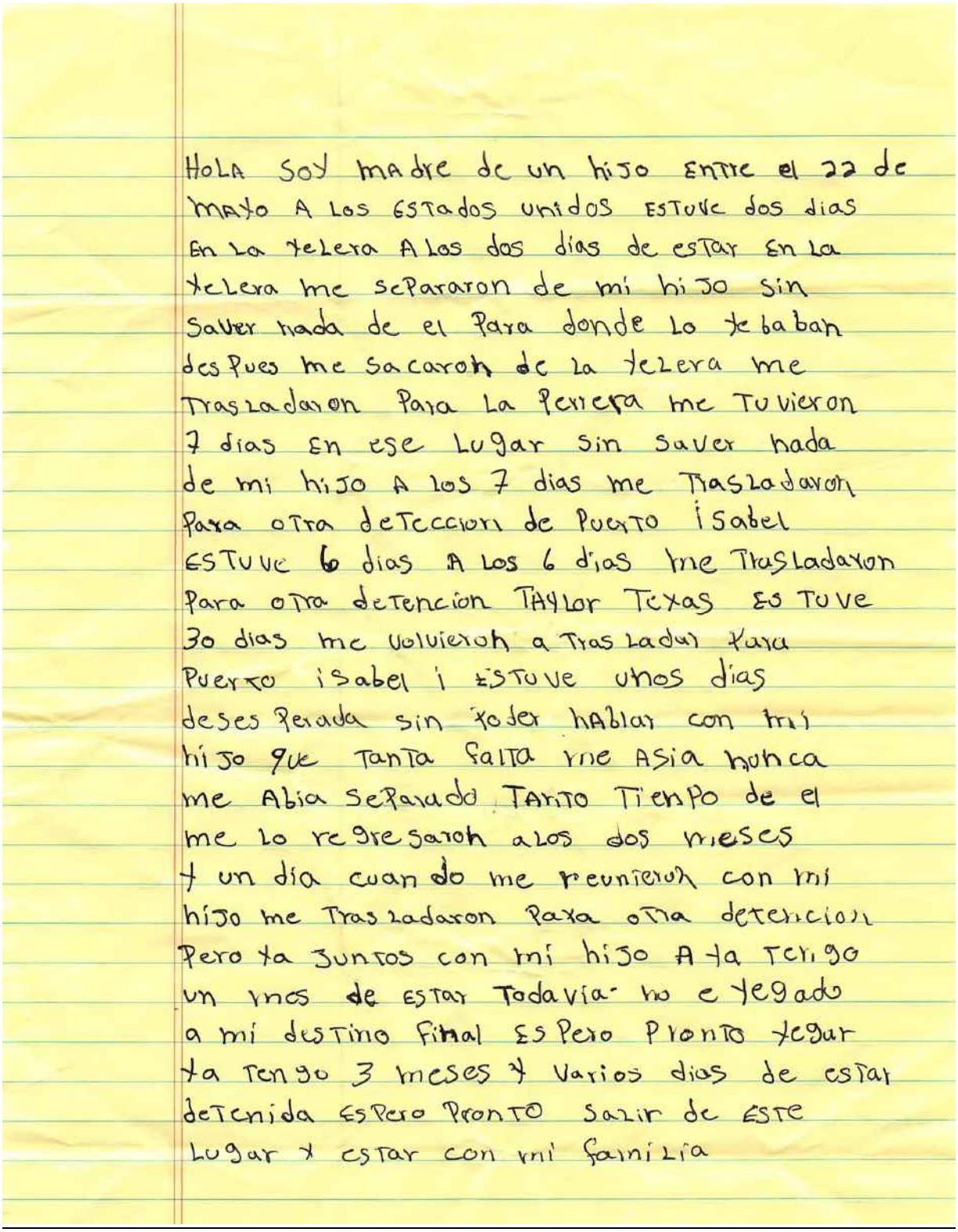
VALERIA'S STORY

vendiciones
soy una madre [redacted]. estoy en una casa.
de detencion. Oren por Mi vida. Me siento.
Muy triste. porque, an pasado mucho tiempo.
Sufriendo. durante mi tiempo de Viaje.
esperando que Dios aga un Milagro. en.
ayudarnos. Soy Honduras. Sufri violacion domestica
estoy muy dañada. Mi vida a sido un fracaso
No e podido alcanzar Mi meta en llegar donde.
Mi hermana que esta en Mayami florida. y Mi
familia. esta Sufriendo por Nosotras con Mi
hija. que estamos en esta detencion solo pido
a Dios fuerza. y poder de poder estar con Mi
hermana. es nuestro viaje. fue muy terrorozo
Sufrimos mucho aguantar ambre. Sueño alimentacion.
Mis pies dañados. con espinas vrajados. heridos.
ya Sin fuerza. Cuando emigracion Nos [redacted]
agarro y pedimos acilo en EE.UU.
espero nos tengan en Oracion. Gracias de una.
joven Hondoreña.
El dolor mas grande fue cuando me quitaron
a mi hija de mi que nunca nos viemos separado
fueron sesenta y dos dias sin mi hija ella en un
albergue y yo en una carcel de tejas ha sido
tan dolosera esta historia pero le pido a
Dios que nos ayude a seguir adelante. Le doy
gracias a todos los abogados por
ayudarnos a que no fueramos deportadas
Dios nos mande angeles que acompañen
al rededor de nosotros de cada una de las
familias.

Gracias a nuestro Señor Jesucristo.
Que nos da la vida el aire el agua
y todo lo que nos rodea.

Blessings. I am a mother in a detention center. Pray for my life. I feel very sad because I spent a lot of time suffering during my trip, hoping that God make a miracle and help us. I am from Honduras. I suffered domestic rape, I am very damaged. My life has been a failure. I haven't been able to achieve my goal of arriving at my sister's house in Miami, FL. and my family is suffering because we are in detention. I just ask God for strength and to be with my sister. Our trip was terrifying, we suffered a lot and went hungry. I dreamt about food. My feet were injured with spines. I didn't have strength when immigration detained us. I hope you have us in your prayers. Thank you from a young Honduran. The greatest pain was when they took my daughter…we had never been separated, 62 days without my daughter, her in a shelter and me in jail in Texas, this story has been so painful but I ask God to help us continue. I thank all the lawyers for helping us to not be deported, God sent us angels to accompany me. From us each one of the families. Thank God Jesus Christ that gives us life, air and water and everything around us.

SOFIA'S STORY



HOLA SOY MADRE DE UN HIJO ENTRE EL 22 DE MAYO A LOS ESTADOS UNIDOS ESTUVE DOS DIAS EN LA HIELERA A LOS DOS DIAS DE ESTAR EN LA HIELERA ME SEPARARON DE MI HIJO SIN SABER NADA DE EL PARA DONDE LO HABAN DESPUES ME SACARON DE LA HIELERA ME TRASLADARON PARA LA PERRERA ME TUVIERON 7 DIAS EN ESE LUGAR SIN SABER NADA DE MI HIJO A LOS 7 DIAS ME TRASLADARON PARA OTRA DETECCION DE PUERTO ISABEL ESTUVE 6 DIAS A LOS 6 DIAS ME TRASLADARON PARA OTRA DETENCION TAYLOR TEXAS ES TUVE 30 DIAS ME VOLVIERON A TRASLADAR PARA PUERTO ISABEL I ESTUVE UNOS DIAS DESESPERADA SIN PODER HABLAR CON MI HIJO QUE TANTA FALTA ME ASIA HASTA ME HABIA SEPARADO TANTO TIEMPO DE EL ME LO REGRESARON A LOS DOS MESES Y UN DIA CUANDO ME REUNIERON CON MI HIJO ME TRASLADARON PARA OTRA DETENCION PERO YA JUNTOS CON MI HIJO A YA TENGO UN MES DE ESTAR TODAVIA NO E LLEGADO A MI DESTINO FINAL ESPERO PRONTO LLEGAR YA TENGO 3 MESES Y VARIOS DIAS DE ESTAR DETENIDA ESPERO PRONTO SALIR DE ESTE LUGAR Y ESTAR CON MI FAMILIA

Hello, I am a mother of a son. I entered the U.S. on May 22. I spent 2 days in the “icebox” before they separated me from my son without knowing anything about him or where they had taken him. They transferred me to the “dog pound” where they kept me for 7 days, still knowing nothing of my son. They translated me to another detention center called Port Isabel. After 6 days they transferred me to another detention center in Taylor, Texas where I spent 30 days. They transferred me back to Port Isabel where I spent desperate days without being able to speak to my son who I missed so much. I had never been separated from him for so long. They returned him to me after two months and transferred us to another detention center where we have been for a month. I still have not arrived at my final destination. I hope to arrive soon as I have been detained for three months and several days detained. I hope to get out of this place soon and be with my family.

MARCELA'S STORY

El 17 de junio de 2018 entre a estados Unidos
con la esperanza de encontrar apoyo y seguridad en
este pais, pero lo que me encontre al llegar a
este pais al lado de mi hijo fue una pesadilla,
tras benir huyendo de estorciones de mi pais
por lo cual yo tome la desicion de hacer
este peligroso viage.
El dicsisicte de junio de este año, Cuando migración
nos detuvo, rapidamente fuimos trasladados a las hicleras
donde fui separada de mi hijo de una manera inhumana.
Un oficial de migracion dijo que mi hijo seria llevado
a un alvergue micntras se solucionaba mi situación
luego fui traslada a la perrera sin toner información de mi hijo
yo pedia información a los oficiales sobre mi hijo lo cual
ellos se negaban a darme. al llegar a lugar llamado perera
nos esposaron y nos torturaban sicologicamente diciendo
que ya no veriamos a nuestros hijos los cuales pasarian
a manos del gobierno, luego nos llevaron con un juez
y nos dijeron que teniamos que declararnos culpables
por haber entrado a este pais, luego fui trasladada
a Puerto Izabel nos trataron de una manera inhumana
Como delincuentes Cuando lo unico error fue haber
entrado a este pais pidiendo ayuda, estube incomunicada
con mi hijo tratando de saber de el y nadie nos daba
respuesta alguna. Solo resibiamos insultos de los oficiales
ellos nos ponian sobrenombres y se burlaban de nosotros
al vernos llorar por nuestros hijos. estube un mes separada
de mi hijo.
El 18 de julio me entregaron a mi hijo luego fuimos
trasladados a Dilley ya tengo 36 dias de estar detenida
en este lugar con mi hijo y no se resuelve nuestra
situación lo cual creo que ya seria tiempo que nos
dejaran en libertad por que ya fue mucho el castigo
tanto para nosotras las madres como para nuestros hijos.

On June 17, 2018 I entered the United States with the hope of finding support and safety in this country, but what I found upon arriving with my son at my side was a nightmare. I made the decision to make this difficult journey because I was fleeing extortions in my country.

On June 17 of this year, immigration detained us and quickly transferred us to the "icebox" where I was separated from my son in an inhumane manner. An immigration official said that my son would be taken to a shelter while my [legal] situation was resolved, then I was transferred to the "dog pound" without any information about my son. I asked the officials for information about my son but they refused to give it to me. After having arrived at the "dog pound" they handcuffed us and tortured us psychologically saying that we wouldn't see our children again as they had been transferred to the custody of the government. Then they took us in front of a judge and told us that we had to plead guilty of having entered this country. Then I was transferred to Port Isabel. They treated us in an inhumane manner like criminals when the only mistake we made was to enter this country asking for help. I had no communication with my son and was trying to get information about him, but no one gave us any answers. We only received insults from the officials. They gave us nicknames and made fun of us when they saw us crying for our children. I was separated from my son for a month.

On July 18 they returned my son to me and we were transferred to Dilley. I have now been detained here over 40 days with my son and our situation has not been resolved. I believe that it is time that they let us free because we, both mothers and children, have been punished a lot.

ISABELLA'S STORY

mi Esperiencia fue muy Poro muy
triste Cuando llege a Este paiz
me arrebatarón Lo que mas quéro. a mi hija
me destrosarón mi Corazón se me termino
La vida En Eso momento mis Fuerzas
se terminarón Empeso para mi una
tortura Fueron 2 meses de tribolacion
y angustia sin mi hija
x En Cada Carsel que. pase fue. triste
dolorozo traumante creyendo que nunca
La boluería a ber
Holera, Porrera, Laredo, La soy - Pirsa
no quiero bolber a ningun lugar mas
de esto
Lo que mas me duele que mi niña
Le vino su periodo mestrual Cuando
Yegamos a la Holera x yo sin poder ayudarla
Fue La primera bes fue un tormento
Cuando me grito de largo emtre Las
Rojas que su pantalon Estaua lleno de
sangre x yo sin poder ayudarla
Fueron 2 meses asta que me la debolvieron
Puede tener paz de nuevo me bolvio
La alegria y para Ella tanvien
Ella no dormia, dise solo En un Cuarto
Sola Le dava miedo yo nunca me auia
apartado de Ella dormiamos Juntas
siempre.

Poro Dios es grande. x me La debolvio
Pusos unos abogados muy amorosos
y personas afuera para que Intercedieran
por Los niños y Las madres separadas
y Dios Contesto. gracias Dios Los
bendiga.

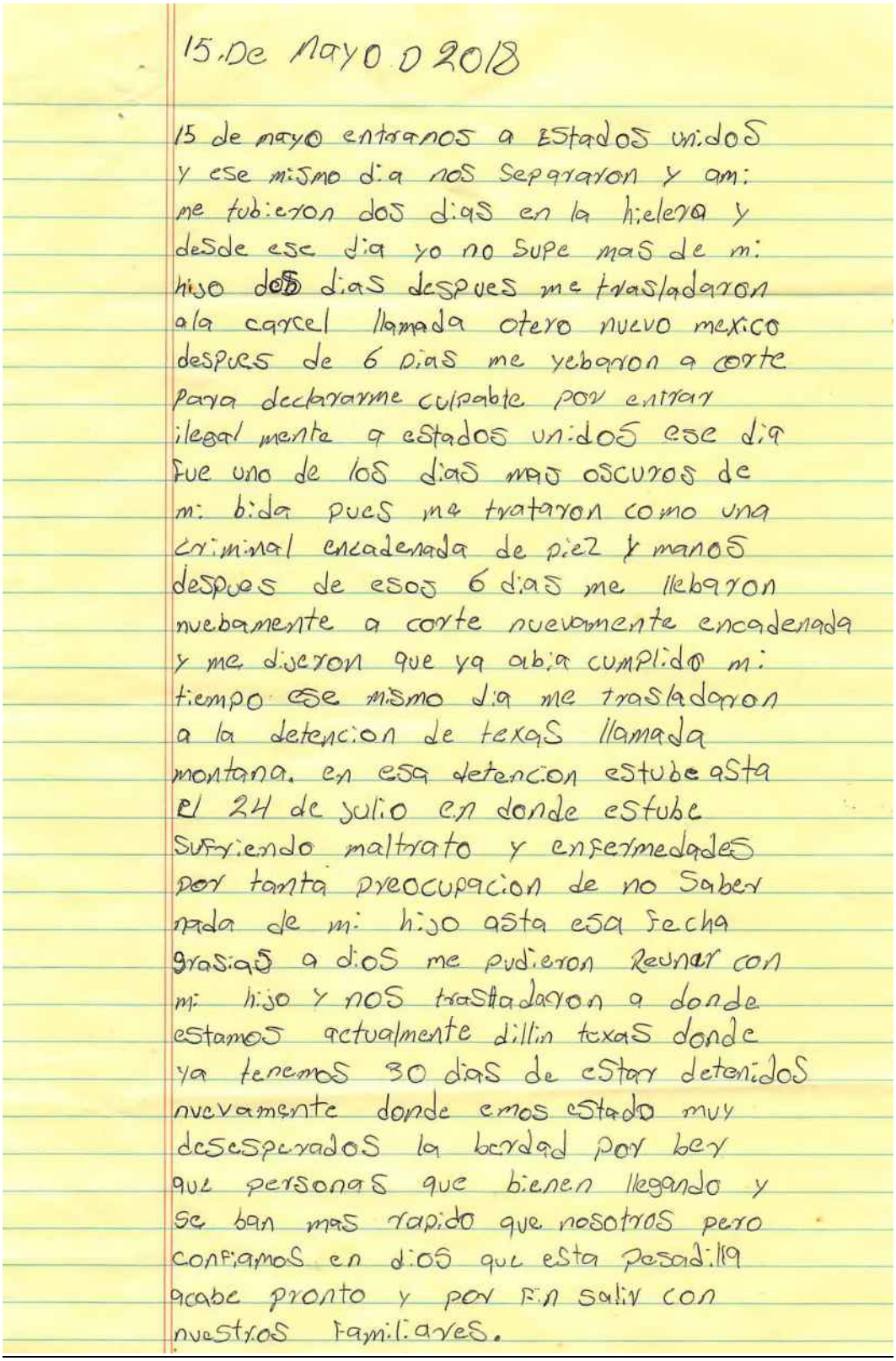
My experience when I arrived in this country was very very sad. They arrested who I most love, my 12-year-old daughter. They destroyed me heart. My life ended in that moment. My strength ended. That started for me the torture of 2 months of tribulation and anguish without my daughter. In each jail I was in it was sad, painful, traumatizing believing that I would never see her again. “Icebox,” “dog pound,” Laredo, Lasalle, Pearsall... I never want to go back to any of those places.

What hurts me the most is that my daughter got her period for the first time when we arrived at the icebox and I was unable to help her. It tormented me. She yelled to me from against the chain-linked fence that her pants were filled with blood and I was unable to help her.

It took two months for them to give me back my daughter. I can have peace now that they gave her back. I am happy and so is she. She didn't sleep; she says she was in a room alone and she was afraid. I had never been apart from her. We always slept together.

But God is great and they gave her back to me. He put some very loving lawyers here and people outside who interceded for the separated children and mothers and God answered. Thank you, may God bless you.

MARIANA'S STORY



15. De Mayo D 2018

15 de mayo entramos a Estados unidos y ese mismo dia nos separaron y am: me tubieron dos dias en la hielera y desde ese dia yo no supe mas de mi hijo dos dias despues me trasladaron ala carcel llamada otero nuevo mexico despues de 6 dias me yebaron a corte para declararme culpable por entrar ilegal mente a estados unidos ese dia fue uno de los dias mas oscuros de mi bida pues me trataron como una criminal encadenada de piez y manos despues de esos 6 dias me llebaron nuebamente a corte nuevamente encadenada y me dieron que ya abia cumplido mi tiempo ese mismo dia me trasladaron a la detencion de texas llamada montana. en esa detencion estube asta el 24 de julio en donde estube Sufriendo maltrato y enfermedades por tanta preocupacion de no Saber nada de mi hijo asta esa fecha grasias a dios me pudieron Reunar con mi hijo y nos trasladaron a donde estamos actualmente dillin texas donde ya tenemos 30 dias de estar detenidos nuevamente donde emos estado muy desesperados la berdad por bey que personas que bienen llegando y se ban mas rapido que nosotros pero confiamos en dios que esta pesadilla acabe pronto y por fin salir con nuestros familiares.

My 16-year-old son and I entered the United States on May 15 and that same day they separated us. They kept me two days in the “icebox” and from that day I didn't know anything about my son. Two days later they transferred me to a jail Otero, New Mexico. After six days they took me to court to plead guilty for having entered the United States illegally. That day was one of the darkest days of my life because they treated me like a criminal with my hands and feet chained. That same day they transferred me to a detention center in Texas called Montana. I was in that detention center until July 24. I suffered mistreatment there and sickness from worrying so much from not hearing anything from my son until that date.

Thank God they reunified me with my son and transferred us to where we are right now in Dilley, Texas where we now have over 30 days detained. The truth is that we are desperate here because there are people were are arriving and they leave more quickly than us but we trust God that this nightmare will end soon and we will finally get out to be with our families.

We thank God first for having given us such kind-hearted people to support us in our cases without pay and for having so much patience and treating us with so much friendliness. We are eternally grateful. Also thank you to the people who are fighting for our rights outside detention with protests and lawsuits because it isn't fair what they are doing to us who come with the illusion of a better life but they have treated us as the worse criminals but we trust in God that the laws will soon chance so that someday there is fair treatment for all. We also want to thank the people who have worried so much about us and who sent us letters. Seriously this has helped us enormously to not give up and keep fighting to someday get out of here with our heads held high because we haven't done anything wrong but they have tried to beat us down but I know that God is with us and if He is with us there is no one and nothing in this world that can defeat us.

LUCINA'S STORY

Jennifer Florian

El 18 de mayo de 2018 entre a Estados Unidos
Con mi hija de 11 años.

Salimos de nuestro pais huyendo de la violencia de parte del papá de mi hija el cual amenazaba constantemente con matarme y quemar mi casa.
el dia que cruzamos el rio que fue el 18 de mayo fui detenida por un oficial de migración el cual nos llevo hacia las hieleras cuando llegamos a ese luga vi algunas madres con sus hijos pequeños llorando y se acerco un oficial a mi y me dijo, mira lo que estan haciendo con ellos lo mismo haremos con tigo para que aprendas que cuando se llega a una casa se entra por la puerta no por las ventanas ni por las cercas, te quitaremos a tu hija ella sera entregada al gobierno y tu seras deportada a tu pais y eso sera para que aprendas la lección, yo le dije que no podia ocer eso por que era inhumano lo que hacia, le suplique que no me la quitara que ya habia sufrido mucho mi hija, que había padecido de Cancer, y que aunque tenía 4 años de ser sobrevivicante de esa dura enfermedad ella todabia necesitaba algunos cuidados, El oficial empezo a reirse y hablaba en ingles con otro oficial y me arrebato a mi hija ella me sujetaba fuerte y lloraba pero a ellos no les importo. Despues de tres días de estar en la hielera fui trasladada a la perrera donde realmente ~~luego~~ fuimos tratados peor que un animal, nosotras estendiamos las manos para recibir una galleta y ellos nos las tiraban, nos decian puercas y nos pateaban para que nos levantaramos y al llegar la noche ellos le subian al aire acondicionado ahi estube 6 dias.
luego fui trasladada a una prision federal de maxima seguridad en washinton, nos llebaron esposadas de piez y manos y encadenadas de la cintura, Cuando llegamos a esa prision. Estube un mes en ese lugar y cuando recibia visita de abogado al regresar a la selda me

I entered the United States with my 11-year-old daughter on May 18, 2018. We fled our country due to violence from my daughter's father, who threatened constantly that he would kill me and burn down the house. The day that we crossed the river we were detained by an immigration official who took us to the “icebox.” When we arrived there I was some mothers with small children crying.

An official approached me and told me, "Look what they are doing to those mothers. We will do the same to you so that you learn that when you arrive to a house you go in the door, not through the windows or over the fence. We will take your daughter and turn her in to the government and you will be deported to your country and all this will be so that you learned your lesson." I told him that he could not do this because it was inhumane, I begged him not to take my daughter because she had already suffered a lot. I explained that she had suffered from cancer and that even though she had now been a survivor for four years, she still needed special card. The official started to laugh and spoke in English with another official and grabbed my daughter. She clung on to me and cried but they didn't care.

After three days in the “icebox” I was transferred to the dog pound where we were really treated worse than animals. We would reach our hands out for a cracker and they would throw it. They called us pigs and would kick us to make us get up in the morning and at night they would raise the air conditioning. I was there 6 days. Then I was transferred to a federal maximum-security prison in Washington, they handcuffed our feet and hands and put a chain around our waist when we arrived there. I was there for a month and when I returned to my cell after receiving a visit from a lawyer I had to take off my clothes for the officials to examine me.

After a month there I was transferred to Tacoma where I asked for information about my daughter. They gave me a phone number but no one ever picked up. In my desperation of not hearing from my daughter I asked for my deportation so that they would give me my daughter. After a month in Tacoma I was transferred to Port Isabel like a dangerous criminal, with chains on my hands and feet.

On July 23 they gave me my daughter back thanks to the fight of all the people who united from our pain and the lawyers who fought for us. Then we were transferred to Dilley and we have been here more than a month but I know the group of lawyers that are fighting for our freedom and the people outside will win us our freedom and this nightmare will just be a bad memory.

CAMILA'S STORY

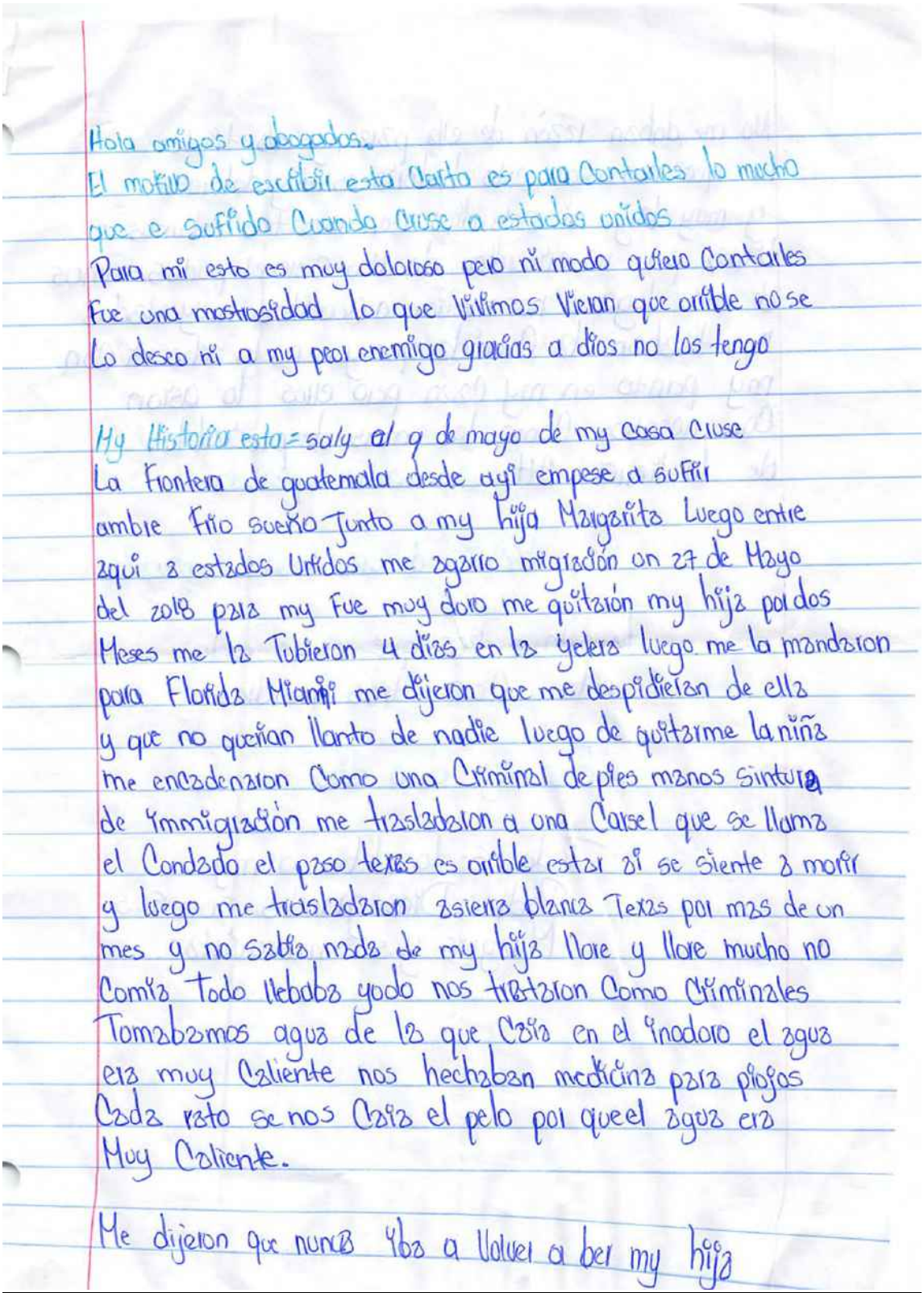
Hola Yo soY una madre seParada
Yo entre el 1Primero d mayo aqui
a estados unidas Y cuando entre
a migracion me Yebaron a unaYelera
dond migracion me arrebato mi
hija d tansolo 8 años sin exs
Plicación alguna solo medijeron
que mela hiban aquitar y yo Pregunt
q si cuand me la hiban a debolber Y
medijeron q no savian Y medijeron
que me desPidiera d mi hija Porque
saber cuand me encontror con mi
hija otra bes Y elsiguiente dia que
me rrebaton mi hija me Yebaron a
corte me es Posaron d manos
Ylos Pies Y d la sintura Y hobligaron quenos
de clararamos culPables Y criminales
solo Por aber crosar el rrio bravo Y
des Pues dela corte nos Yebaron auna
cársel dond nos trataron como
Perros la comida que nos daban
era un Pan con jamon Crudo Yelado
Y esa Carsel dond nos tenian era
como unaYelera con mucho frio

Hello I am a separated mother. When I entered the United States on May 1st immigration took me to the icebox where they grabbed me daughter who is only 8 years old without any explanation. They only told me that they were going to take her and I asked if they were going to give me her back and they told me that they did not know and they told me to say goodbye to her because who knew when I could see her again. The next day they took me to court and handcuffed my hands and feet and chained my waist and obligated us to plead guilty for having crossed the Rio Grande. After court, they took us to a jail called Port Isabel where they treated us like dogs. The food they gave us was bread with cold and undercooked ham. That jail was so cold all the time it was like an icebox. I was there two months before they reunified me with my daughter and brought me to another detention center in Dilley, Texas. Now my daughter and I have been detained here for over six weeks and we are tired of being locked up. We want our freedom.

In jail they insulted us, treated us like dogs, didn't give us food or water. We have suffered a lot. What the president did to us cannot be described. What does he gain from making so many people suffer in this way? What would he do if they took his child and didn't tell him where they were and made him a prisoner and gave him dog food like they gave us in Port Isabel? They sent my daughter to Chicago but first they had her in the icebox for 5 days. If my daughter had been separated from me another month she might have died. They gave her back to me very skinny and with only the clothing she had on when they took her from me. My daughter has suffered a lot and we do not deserve what they have done to us. Thank God now we are together and she is now recuperating. I am very grateful to God because despite everything that we have suffered we will get out successfully.

Sincerely, Separated mother Camila and her daughter Lisa

GABRIELA'S STORY



Hola amigos y abogados.
El motivo de escribir esta Carta es para Contarles lo mucho
que e sufrido Cuando Cruse a estados unidos
Para mi esto es muy doloroso pero ni modo quiero Contarles
Fue una mostrosidad lo que vivimos Vieran que orrible no se
Lo deseo ni a my peor enemigo gracias a dios no los tengo

Hy Historia esta = saly el 9 de mayo de my Casa Cruse
La Frontera de guatemala desde ayi empese a sufrir
amble Frio sueño Junto a my hija Margarita Luego entre
aquí a estados Unidos me agarro migración on 27 de Mayo
del 2018 para my Fue muy doro me quitaron my hija por dos
Meses me la Tubieron 4 dias en la yelera luego me la mandaron
para Florida Miami me dijeron que me despidieran de ella
y que no querian llanto de nadie luego de quitarme la niña
me encadenaron Como una Criminal de pies manos Cintura
de Immigración me trasladaron a una Carsel que se llama
el Condado el paso texas es orrible estar si se siente a morir
y luego me trasladaron asierra blanca Texas por mas de un
mes y no sabia nada de my hija llore y llore mucho no
Comia Todo llebaba yodo nos trataron Como Criminales
Tomabamos agua de la que Caia en el Inodoro el agua
era muy Caliente nos hechaban medicina para piojos
Cada rato se nos Caia el pelo por queel agua era
Muy Caliente.

Me dijeron que nunca Yba a Volver a ber my hija

Hello friends and lawyers,

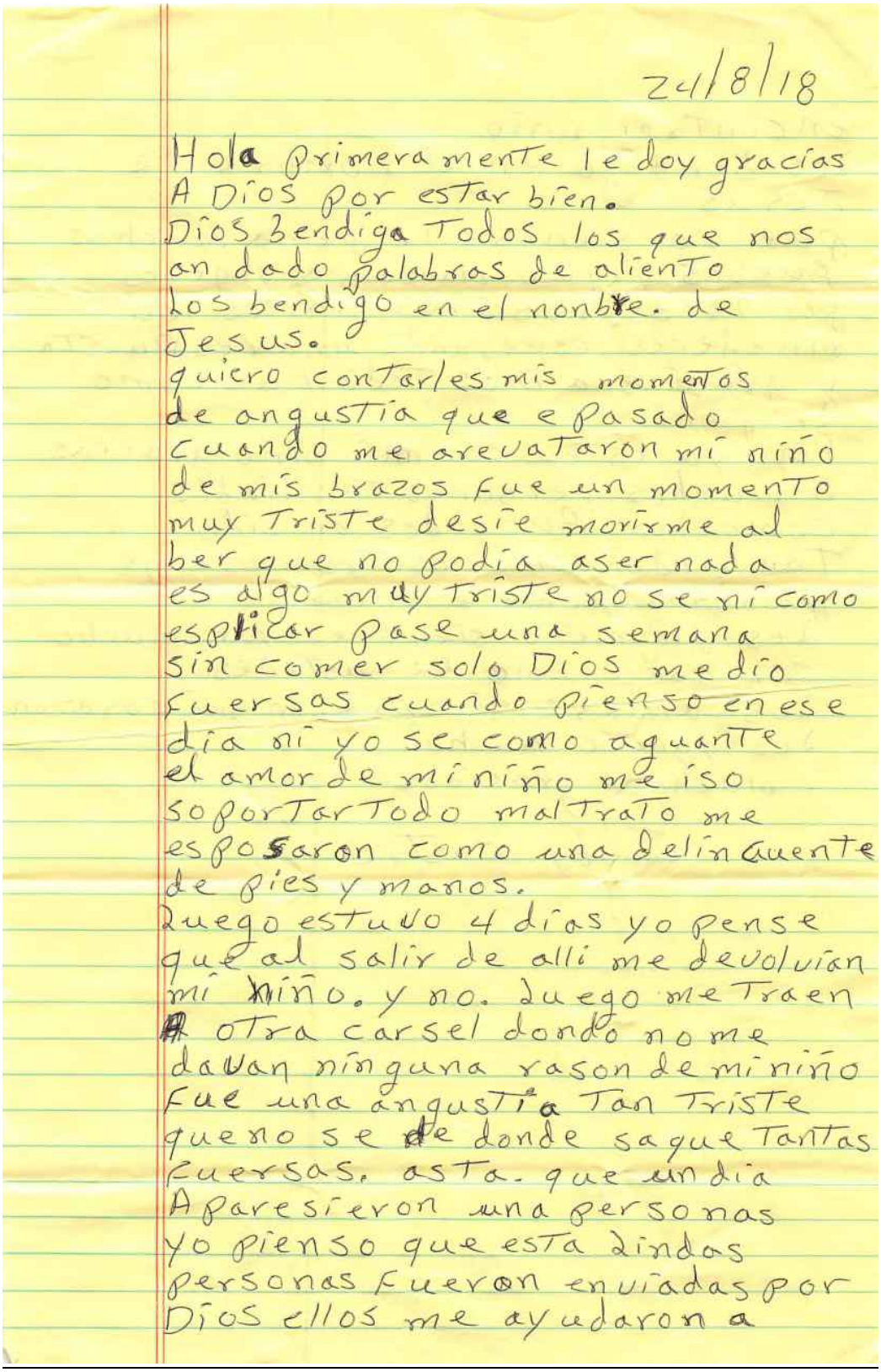
My motive in writing this letter is to tell you all how much I suffered when I entered the United States. For me it is very painful but that's okay, I want to tell you. You will see that what we lived was a horror. I wouldn't wish it even on my worst enemy.

My story is that I left my house on May 9 and crossed the border of Guatemala. From there I started to suffered hunger, cold, exhaustion with my daughter. Then I entered the United States and immigration detained me on May 27, 2018. For me it was very difficult when they took my daughter for two months. They had her in the "ice box" for four days and then they sent her to Miami, Florida. They told me to say goodbye to her and that they didn't want tears from anyone. Then they took my daughter. They chained my hands, feet, and waist like a criminal. Immigration transferred me to a county jail in El Paso, Texas. It is horrible being there. You feel like you are going to die. Then they transferred me to Sierra Blanca, Texas for more than a month and I didn't know anything about my daughter. I cried and cried and didn't eat much. They treated us like criminals. We drank water from the toilet. The water was very hot. They put medicine on us for fleas. Our hair would fall out because the water was so hot.

They told me that I was never going to see my daughter again. They didn't give me any news of her. It was very sad for me. What they did to us is very painful and the story is very long. We are only alive because of God. Only because of God's mercy we got out of there. They put us in freezing room, they threw us food I wouldn't even give to my puppy at my house but they did it to us as if we were the most despised creatures on earth.

From a separated mother…I ask God that this doesn't happen to other mothers. It is very hard. I owe everything to God the Father who is great with his miracles and wonders.

DANIELA'S STORY



24/8/18

Hola primeramente le doy gracias
A Dios por estar bien.
Dios bendiga Todos los que nos
an dado palabras de aliento
los bendigo en el nombre. de
Jesus.
quiero contarles mis momentos
de angustia que e pasado
cuando me arevataron mi niño
de mis brazos fue un momento
muy Triste desie morirme al
ber que no podia aser nada
es algo muy triste no se ni como
esplicar pase una semana
sin comer solo Dios medio
fuersas cuando pienso en ese
dia ni yo se como aguante
el amor de miniño me iso
soportar Todo maltrato me
esposaron como una delincuente
de pies y manos.
Luego estuvo 4 dias yo pense
que al salir de alli me devolvian
mi niño. y no. luego me Traen
otra carsel donde no me
davan ninguna rason de miniño
Fue una angustia Tan Triste
queno se de donde saque Tantas
fuersas. asta. que un dia
Aparesieron una personas
yo pienso que esta lindas
personas fueron enviadas por
Dios ellos me ayudaron a

Hello, first I give thanks to God that I am okay. God bless all that have given us words of support. I bless you in the name of Jesus.

I want to tell you my moments of anguish that happened to me when they grabbed my son from my arms. It was a very sad moment. I wanted to die seeing that I couldn't do anything. It is something very sad. I don't even know how to explain it. I went a week without eating. Only God gave me strength. When I think of that day I don't know how I endured it. My love for my son made me tolerate all the mistreatment. They cuffed my hands and feet like a criminal. I was there for four days and I thought when I left there I would be with my son but no. They brought me to another jail where they didn't give me any news of my son. It was anguish. I was so sad that I don't know where I found any strength. One day some people arrived. I think that those lovely people were sent by God. They helped me to find my son. I bless them in the name of Jesus. I had asked God many times to send me angels. In total we were 100 women waiting for an answer and thank God everything happened as I asked.

Today I am with my child. Thank you to all the wonderful people like the lawyers who have been so wonderful to us. I don't have words to explain. I promise to always pray a lot for each one of you. I will keep you always in my heart. I love you a lot and thank you very much.

LAURA'S STORY

Mi PEQUEÑA HISTORIA

De [redacted], Y también les agradezco por apoyarme en mi caso. Ustedes fueron que nos dieron las fuerzas para seguir luchando Mil gracias ABOGADOS Y ABOGADAS

Paso a los siguientes,

Cuando nos agarró la migración es ai empezó todo lo que viví, Pues ellos nos trataron mal nos gritaban, ellos no les importaban que nosotros sufriamos de hambre y de sueños, los primeros días nos daban 2 tiempos de comida, Cuando queriamos tomar agua del chorro del baño tomabamos, nos daban comida desabridas hasta los perros le dan buena comida, por nosotras nadie nos defendía sufrí mucho en cada carcel donde pasé, nos gritaban no podíamos platicar con nadie, si platicabamos nos (del) reportaban y nos llamaban la tención, Me llevaron en enchachada de las manos, Pies y Cintura. nos trataban Como Criminal, Y mi hija no sabra nada de mí hasta los 35 días tuve l Mi Tra llamada, Con ella, es ai e supé donde estaba ella. Tanto le pedía a mi Dios por ella, y le agradezco que si escuchó mi oración,

My Little Story

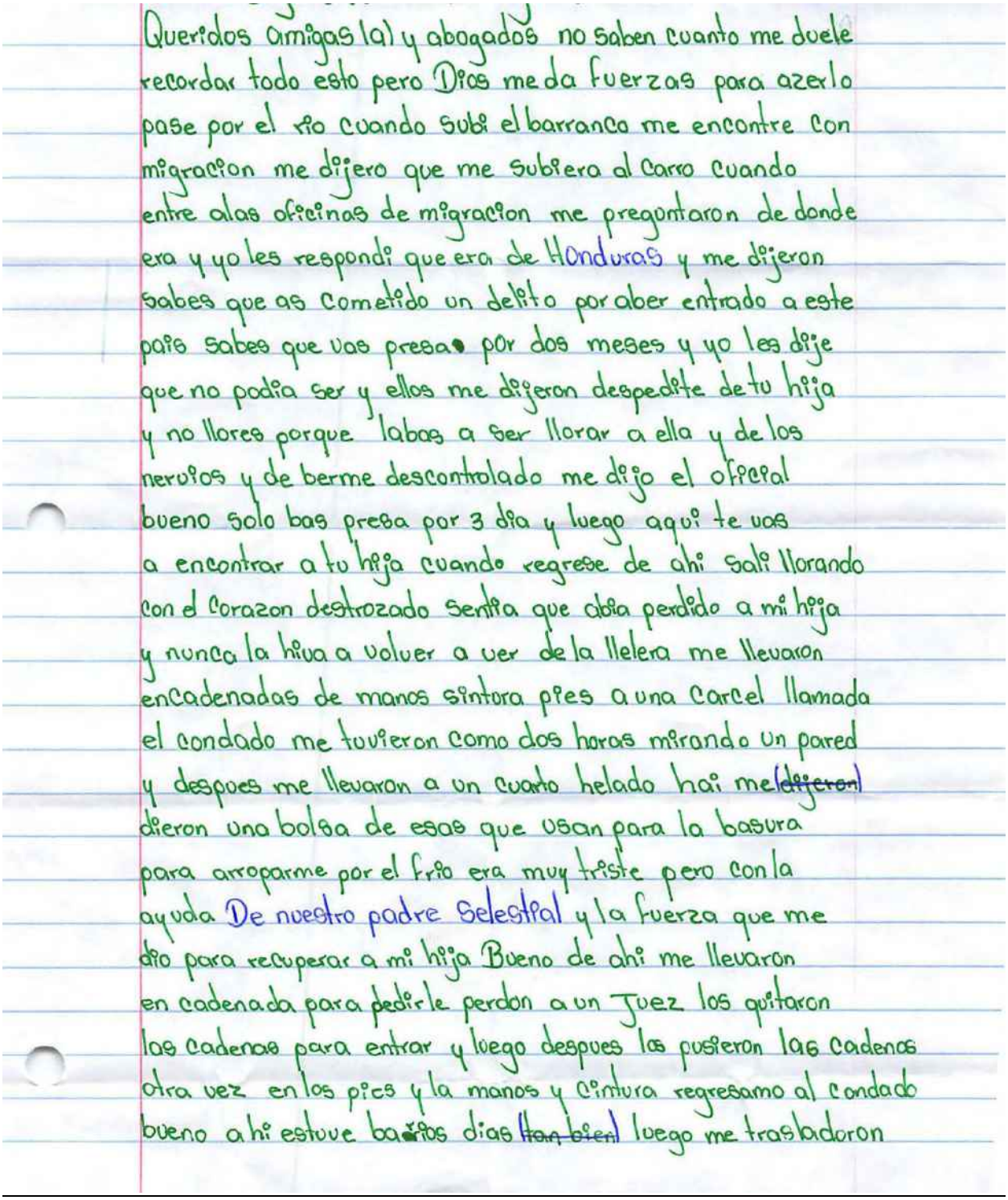
I thank you for supporting me in my case, you all were what give me strength to keep fighting. Many thanks, lawyers.

I continue to my story.

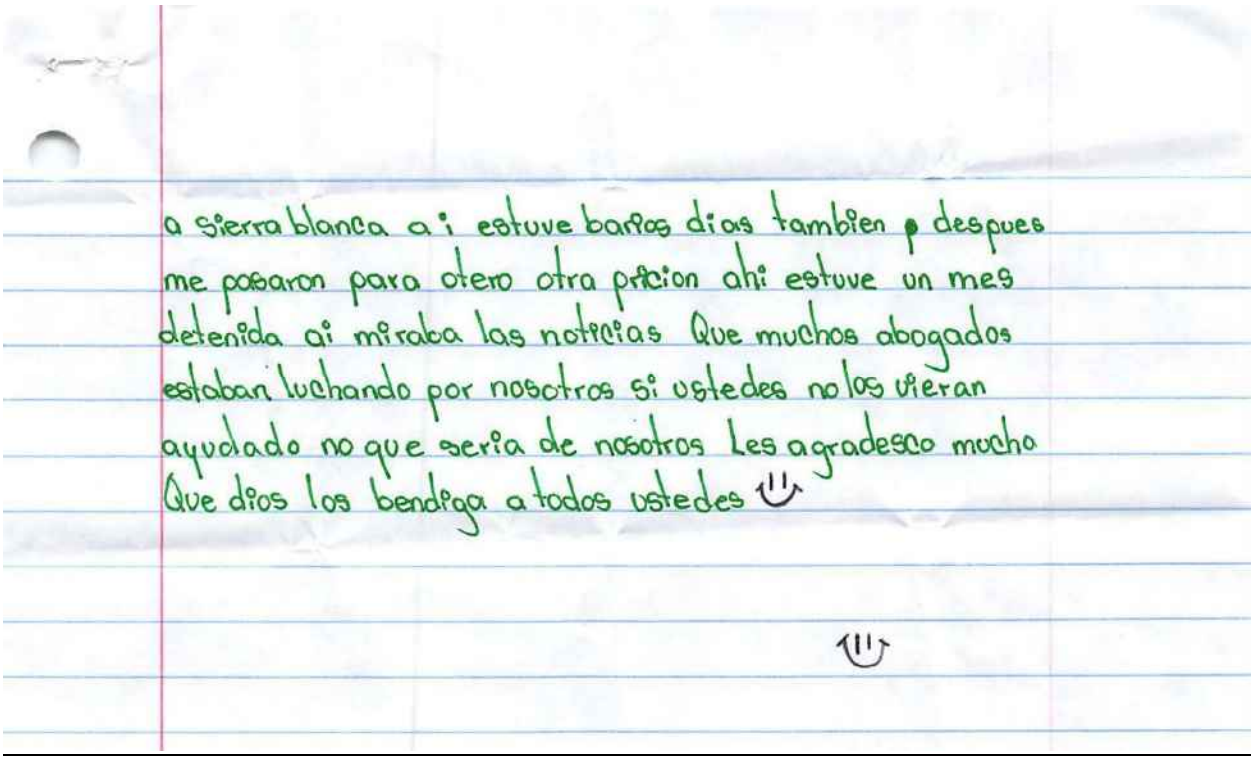
When immigration detained us that is when everything I lived started. They treated us very badly. They yelled at us. They didn't care that we were suffering from hunger and exhaustion. The first days they gave us two meals. When we wanted to drink water we got it from the bathroom faucet. They gave us tasteless food worse than what you would give a dog. No one defended us. I suffered a lot in each jail I was in. They yelled at us that we couldn't talk to anyone. If we talked, they reported us and scolded us. They took me chained at the hands, feet, and waist like a criminal and my daughter didn't hear anything about me until after 35 days I had my first call with her. That is when I learned where she was. I asked God so much to take care of her, I thank Him that He listened to my prayers. When they reunified me with my daughter I cried bitterly, because I thought that they were going to deport me and I am still here. I thank God the Father who is in heaven, because my God guided me and my daughter.

This is the listen that I wrote, what I lived when I was separated from my daughter. Thank you.

CARLA'S STORY



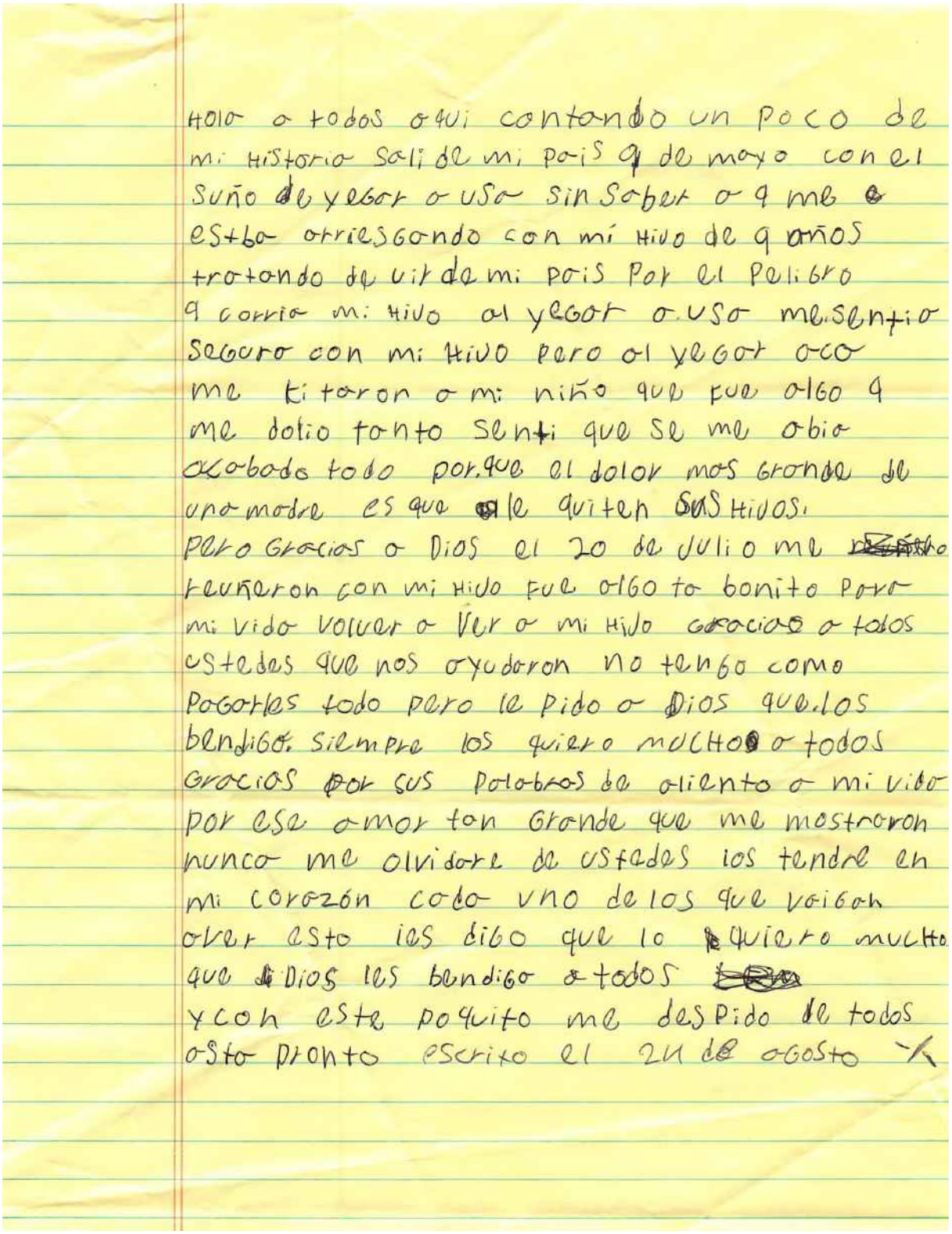
Queridos amigas (a) y abogados no saben cuanto me duele recordar todo esto pero Dios me da fuerzas para azerlo pase por el rio cuando subi el barranca me encontre con migracion me dijero que me subiera al carro cuando entre alas oficinas de migracion me preguntaron de donde era y yo les respondi que era de Honduras y me dijeron sabes que as cometido un delito por aber entrado a este pais sabes que vas presa por dos meses y yo les dije que no podia ser y ellos me dijeron despedite de tu hija y no llores porque labas a ser llorar a ella y de los nervios y de berme descontrolado me dijo el oficial bueno solo bas presa por 3 dia y luego aqui te vas a encontrar a tu hija cuando regrese de ahi sali llorando con el corazon destrozado sentia que abia perdido a mi hija y nunca la hiva a volver a ver de la llelera me llevaron encadenadas de manos sintora pies a una carcel llamada el condado me tuvieron como dos horas mirando un pared y despues me llevaron a un cuarto helado hai me ~~dijeron~~ dieron una bolsa de esas que usan para la basura para arroparme por el frio era muy triste pero con la ayuda De nuestro padre Selestial y la fuerza que me dio para recuperar a mi hija Bueno de ahi me llevaron en cadenada para pedirle perdon a un Juez los quitaron las cadenas para entrar y luego despues las pusieron las cadenas otra vez en los pies y la manos y cintura regresamo al condado bueno ahi estuve ~~ba~~ 8 dias ~~ban bien~~ luego me trasbadaron


a sierra blanca a i estuve barios dias tambien y despues
me pasaron para otero otra prision ahi estuve un mes
detenida ai miraba las noticias Que muchos abogados
estaban luchando por nosotros si ustedes no los vieran
ayudado no que seria de nosotros Les agradesco mucho
Que dios los bendiga a todos ustedes

Dear friends and lawyers. You don't know how much it hurts me to remember all this but God gives me strength to do it. I crossed the river and when I climbed the bank I saw immigration. They told me to get in the car and when I entered into the immigration office they asked me where I was from and I responded Honduras. They asked me if I knew that I had committed a crime for having entered this country and that I would be detained for two months. I said that that was not possible. They told me to say goodbye to my daughter and not to cry because I would make her cry. After seeing me so nervous and losing control of my emotions the official told me that I would only be detained for three days and then I would be with my daughter again. When I left there I was crying with my heart destroyed. I felt that I had lost my daughter and would never see her again. From the "ice box" they took me chained at the hands, waist, and feet to the country jail. They had me looking at the wall for about two hours and then took me to a freezing room where they gave me a trash bag to wrap myself in because of the cold. It was sad but I had the help of our heavenly Father and the strength that He gave me to get my daughter back. From there they took me chained to ask a judge for forgiveness. They took off the chained to enter and then put them back on my hands, feet, and waist. We went back to the county jail. I was there for several days and then they transferred me to Sierra Blanca. I was there for several days and then they took me to Otero Prison. I was detained there for a month. I saw there on the news that many lawyers were fighting for us and if all of you hadn't helped I don't know what would have become of us. I thank you a lot. May God bless all of you.

A separated mother.

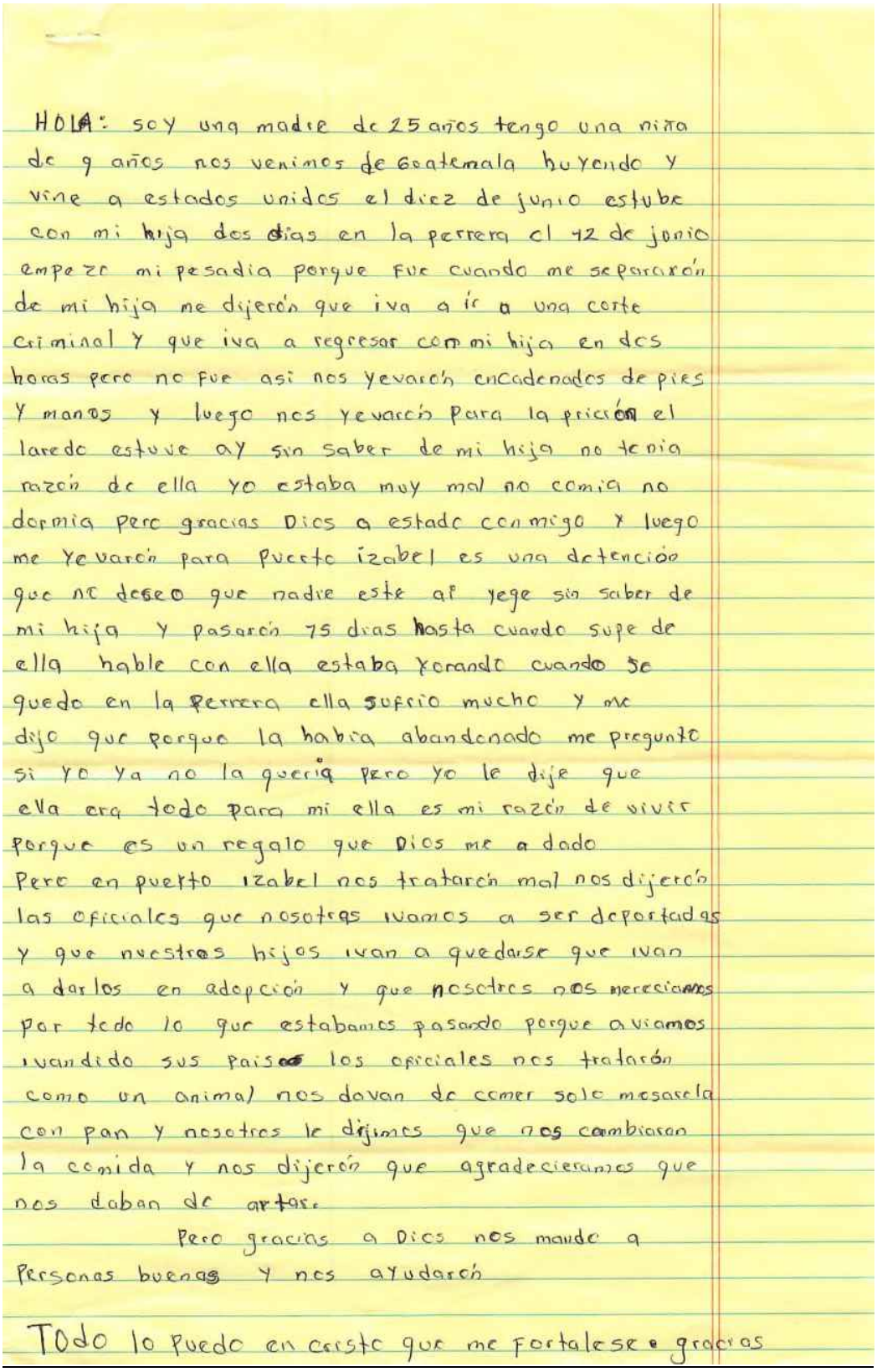
ELSA'S STORY



Holo a todos aqui contando un poco de mi historia Sali de mi pais q de mayo con el Suño de yegar a usa sin saber a q me a estoy arriesgando con mi hijo de 9 años tratando de vir de mi pais por el peligro q corria mi hijo al yegar a usa me sentia seguro con mi hijo pero al yegar aca me quitaron a mi niño que fue algo q me dolio tanto senti que se me abia acabado todo porque el dolor mas grande de una madre es que le quiten sus hijos. Pero Gracias a Dios el 20 de julio me reuñeron con mi hijo fue algo tan bonito para mi vida volver a ver a mi hijo gracias a todos ustedes que nos ayudaron no tengo como pagarles todo pero le pido a Dios que los bendiga. siempre los quiero mucho a todos gracias por sus palabras de aliento a mi vida por ese amor tan grande que me mostraron nunca me olvidare de ustedes los tendre en mi corazón cada uno de los que vaigan aver esto les digo que lo quiero mucho que Dios les bendiga a todos y con este poquito me despido de todos asta pronto escrito el 24 de agosto

Hello everyone, Here I will tell a little of my story. I left my country on May 9 with the dream of arriving in the U.S. without knowing what I was risking with my 9-year-old son, trying to flee my country because of the danger my son was in. After arriving in the U.S. I felt safe with my son but they took my son and it was something that hurt me so much I felt that everything had ended for me because the greatest pain a mother could feel is that they take her children but thank God on July 20 they reunited me with my son it was something so beautiful for my life to see him again. Thank you to all of you that helped us. I don't have a way to pay you but I ask God that he always bless you. I love you all a lot. Thank you for your words of support for my life, for this love so great that you have shown me. I will never forget you and have each one of you in my heart. To each person who sees this I tell you that I love you a lot and may God bless each of you and with this little story I say goodbye to all. See you soon. Written August 24.

ALMA'S STORY



HOLA: soy una madre de 25 años tengo una niña de 9 años nos venimos de Guatemala huyendo y vine a estados unidos el diez de junio estube con mi hija dos dias en la perrera el 12 de junio empezo mi pesadia porque fue cuando me separaron de mi hija me dijeron que iva a ir a una corte criminal y que iva a regresar con mi hija en dos horas pero no fue asi nos yevaron encadenados de pies y manos y luego nos yevaron para la pricion el laredo estuve ay sin saber de mi hija no tenia razon de ella yo estaba muy mal no comia no dormia pero gracias Dios a estado conmigo y luego me yevaron para Puerto izabel es una detencion que no deseo que nadie este ai yege sin saber de mi hija y pasaron 15 dias hasta cuando supe de ella hable con ella estaba yorando cuando se quedo en la perrera ella sufrio mucho y me dijo que porque la habia abandonado me pregunto si yo ya no la queria pero yo le dije que ella era todo para mi ella es mi razon de vivir porque es un regalo que Dios me a dado Pero en puerto izabel nos trataron mal nos dijeron las oficiales que nosotras ivamos a ser deportadas y que nuestros hijos ivan a quedarse que ivan a darlos en adopcion y que nosotros nos merecianos por todo lo que estabamos pasando porque aviamos ivandido sus paises los oficiales nos trataron como un animal nos davan de comer solo mosarela con pan y nosotros le dijimos que nos cambiaran la comida y nos dijeron que agradecieramos que nos daban de artas.

Pero gracias a Dios nos mando a Personas buenas y nos ayudaron

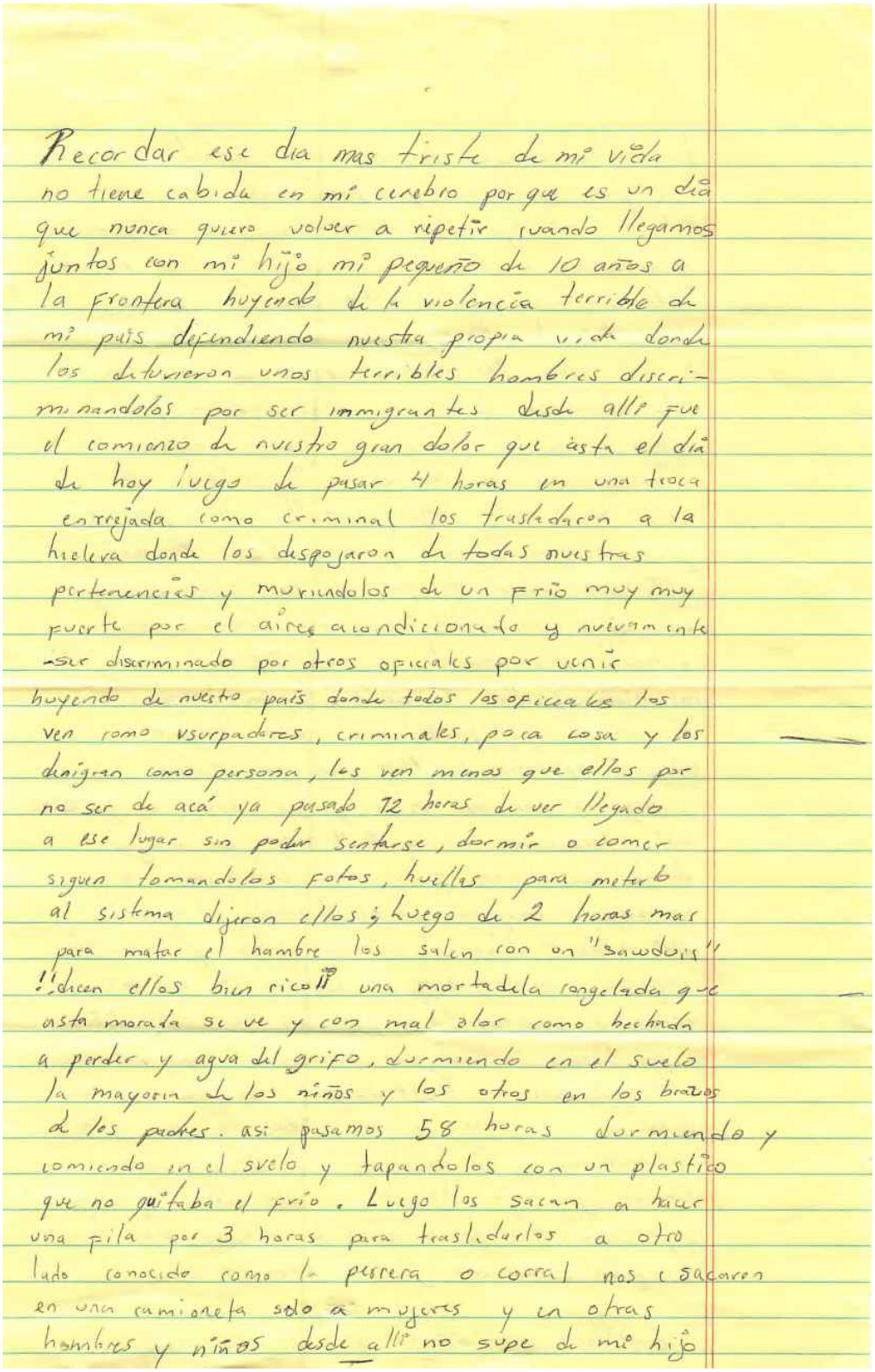
TODO lo puedo en cristo que me fortalese • gracias

Hello. I am a 25-year-old mother. I have a 9-year-old girl. We fled Guatemala and came to the United States on June 10. I was in the "dog pound" for two days with my daughter. On June 12 my nightmare started because that was when they separated me from my daughter. They told me that I was going to go to a criminal court and that I would be back with my daughter in 2 hours but it wasn't like that. They brought us chained at the feet and hands and then they took us to prison in Laredo. I was there without knowing of my daughter. I had no news of her. I was in a very bad state. I did not eat or sleep but thankfully God was with me and then they took me to a detention center called Port Isabel. I don't wish anyone to have to go there. I was there without knowing of my daughter for 15 days, when I finally spoke to her. She was crying when she stayed behind in the "dog pound." She suffered a lot. She asked me why I had abandoned her and asked if I didn't love her anymore but I told her that she was everything to me and she is my reason for living because she is a gift that God gave me. In Port Isabel they treated us badly. The officials told us that we were going to be deported and that our children were going to stay and be given up for adoption and that we deserved everything that was happening to us because we had invaded their country. The officials treated us like animals. They gave us food that was just cheese and bread. We asked for a change in the food and they told us we should be thankful for what we got.

But thank God they sent us good people who helped us. Everything is possible in Christ who gives me strength. Thank you.

Drawing – "God" "Love" "Thank you Lord for giving us good people in my life and on my path" "Call to me and I will answer you. God is great."

LUNA'S STORY



Recordar ese dia mas triste de mi vida no tiene cabida en mi cerebro porque es un día que nunca quiero volver a repetir cuando llegamos juntos con mi hijo mi pequeño de 10 años a la frontera huyendo de la violencia terrible de mi país defendiendo nuestra propia vida donde los detuvieron unos terribles hombres discriminandolos por ser immigrantes desde allí fue el comienzo de nuestro gran dolor que ásta el día de hoy luego de pasar 4 horas en una troca encrejada como criminal los trasladaron a la hielera donde los despojaron de todas nuestras pertenencias y muriendolos de un frio muy muy fuerte por el aire acondicionado y nuevamente ser discriminado por otros oficiales por venir huyendo de nuestro país donde todos los oficiales los ven como usurpadores, criminales, poca cosa y los denigran como persona, los ven menos que ellos por no ser de acá ya pasado 72 horas de ver llegado a ese lugar sin poder sentarse, dormir o comer siguen tomandolos fotos, huellas para meterlo al sistema dijeron ellos; luego de 2 horas mas para matar el hambre los salen con un "sandwich" !!dicen ellos bien rico!! una mortadela congelada que asta morada se ve y con mal olor como hechada a perder y agua del grifo, durmiendo en el suelo la mayoria de los niños y los otros en los brazos de los padres. asi pasamos 58 horas durmiendo y comiendo en el suelo y tapandolos con un plastico que no quitaba el frio. Luego los sacan a hacer una fila por 3 horas para trasladarlos a otro lado conocido como la perrera o corral nos sacaron en una camioneta solo a mujeres y en otras hombres y niños desde allí no supe de mi hijo

Remembering that saddest day of my life doesn't fit into my brain because it is a day that I never want to repeat. When I arrived at the border with my daughter, my little one, 10 years old, fleeing terrible violence in my country, defending our own lives when some terrible men detained us, discriminating against us for being immigrants. That was when our great pain began. After spending four hours behind bars in the back of a truck like a criminal, they transferred us to the "ice box" where they confiscated all of our belongings. We felt that we were dying of the very very strong cold from the air conditioning and again were discriminated against by other officials for having fled our country. All of the officials saw us as imposters, criminals, worthless people and they denigrated us as people. They see us as less than them for not being from here. 72 hours after arriving to that place without being able to sit down, sleep, or eat, they were still taking photos of us and fingerprints to put in the system they said. After two more hours to satisfy our hunger they came out with sandwiches which they say were very good. A frozen piece of ham that looked purple, with a bad smell like it was going bad, and tap water, most of the children sleeping on the floor and the rest in their parents' arms. We spent 58 hours like this sleeping and eating on the floor and covering ourselves with plastic that didn't get rid of the cold. Then they made us stand in line for 3 hours to transfer us to another area known as the "dog pound" or "pen". They put only the women in a van and in others the men and the children and from then on I didn't hear anything from my son. The ICE officials transferred me with the great lie that my son would be where we were going. I excitedly entered looking for my son but he was not there. There were only women in cages, in another area men and in another, children. There I saw me child about 20 meters from me behind a metallic fabric. My son was crying to be with me and I was also crying. A voice yelled at me "Ma'am, get away from there!" Then they gave me another plastic blanket and a thin mat to spend 8 days there without knowing why they didn't reunite me with my son, eating only apples and water, asking each official for my child and them not telling me anything. An ICE official told me they were taking me to a shelter with my son. When I asked for my son they told me he was already there waiting for me. The trip took 4 hours and they took me to a county jail for men and women, then after 4 days to another prison for women in Laredo, without hearing anything from my son and I cried an ocean of tears. They transferred me again to Port Isabel. After 62 days of not knowing anything of my son I saw him and they gave him back to me and then transferred us to Dilley together. We have been here for 30 days and we continue to suffer without being able to enjoy our freedom or be with our family.

Fight for us, thank you to CARA!

Exh.

E

Statement on the Impact of Parent-Child Separation on Parents' Ability to Effectively Participate in Asylum Proceedings

This statement was prepared by members of the Stanford Early Life Stress and Pediatric Anxiety Program (ELSPAP) and Human Rights in Trauma Mental Health Program (HRTMH), part of Stanford's Department of Psychiatry and Behavioral Sciences. ELSPAP is a multidisciplinary team with expertise in childhood trauma and posttraumatic stress. We aim to address the impact that trauma has on child development and family functioning through three core components: research, clinical work, and community outreach. HRTMH advances and applies the impact of trauma on survivors of human rights abuses with an eye towards informing transitional justice and judicial processes.

Parents/caregivers who have been separated from their children while presenting for political asylum are required to participate in typical asylum proceedings, including credible fear interviews. However, the trauma of separation/disruption is likely to negatively impact parents'/caregivers' ability to effectively participate in this process. The current statement provides a review of the psychological theory, literature, and empirical evidence relevant to this issue.

Impact of Parent-Child Separation/Disruption on Attachment

Attachment is a scientifically researched life milestone that ensures the psychological and physical well-being of the attached individual (Bowlby, 1982). Humans are biologically pre-programmed to form attachments with others (especially children and parents/caregivers) because it guarantees survival. A secure attachment, in which caregivers are available and receptive to their child when needed (Ainsworth et al., 1978), provides safety and healthy development of self-esteem, eagerness to learn, trust, and self-reliance and, thus, is crucial for an individual's psychological, cognitive, neurobiological, and social development. The attachment relationship not only is important for child development, but also is critical for parents'/caregiver's growth and well-being (Bowlby, 1952). Therefore, ruptures in attachment can have a devastating impact on both the child and the parent/caregiver. Research has shown that ruptures in parent-child attachment (due to experiences such as trauma, loss, and separation) are associated with significant parental/caregiver distress and impairment in functioning (Bowlby, 1940; Glasgow & Gouse-Sheese, 1995; Mena et al., 2008; Suárez-Orozco, Bang, & Kim, 2011). Forced separation/disruption during immigration is a unique form of separation due to the inherent uncertainty. This may lead parents to experience

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"ambiguous loss," a situation in which there is no certainty that their child will return the way he/she used to be (Boss, 2002). Since this loss cannot be reconciled with the uncertainty, the grief process is frozen. The impact of such a loss inhibits parents'/caregivers' cognitive functioning, which significantly impairs their coping and decision-making capabilities. In his report to the World Health Organization, Bowlby suggested that there are critical periods during separation/disruption and reunification that play a role in mitigating the harmful, long-lasting effects on parent-child attachment (Bowlby, 1952). He concluded, and a wealth of other research has since shown, that the greater the degree and length of the separation/disruption the more there is potential for irreversible damage.

Parent-child Separation/Disruption is a Source of Trauma and Traumatic Stress

In addition to the impact on attachment, forced and unexpected separation/disruption of an individual from her/his loved ones is a source of trauma and traumatic stress. The Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5; American Psychiatric Association, 2013) specifies the first criterion (Criterion A) for post-traumatic stress disorder (PTSD) as including "exposure to actual or threatened death, serious injury, or sexual violence" through direct experience, witnessing, or learning that the event occurred to a close family member or close friend. In the case of forced family separation/disruption, parents/caregivers are faced with a significant threat to their child's well-being; from the parents'/caregivers' perspective, the child is under threat and in danger of experiencing physical violence (with potential to result in serious physical injury), sexual violation, or even death. It is our opinion that forced family separation/disruption therefore meets Criterion A for PTSD. As a result, we can expect many parents/caregivers to experience the symptoms of PTSD following the separation/disruption from their children; such symptoms include intrusive thoughts and feelings (e.g., unwanted memories, flashbacks, nightmares), avoidance of trauma reminders (thoughts, feelings, and external stimuli), negative mood and cognition (e.g., memory difficulty, negative thoughts about the world), and hyperarousal (e.g., difficulty concentrating, irritability, hypervigilance). Not all of these symptoms are necessary in order to experience functional impairment. Furthermore, it is widely known that exposure to traumatic events and threats to an individual's or loved one's well-being commonly results in a wide array of psychological symptoms beyond PTSD (Briere & Scott, 2015), such as depression, anxiety, dissociation, mood instability, and psychosis. These symptoms of trauma-related distress can be expected to severely affect parents'/caregivers' ability to provide coherent testimony, recounting, and narrative in asylum proceedings, as will be discussed further in this declaration.

In addition to the traumatic impact of the singular experience of family separation/disruption, additional characteristics of asylum-seeking parents'/caregivers' forced separation/disruption from their children are expected to significantly exacerbate the symptoms of traumatic distress. First, as mentioned above, the traumatic separation/disruption is ongoing, the loss is ambiguous, and there is undetermined resolution. Without having any expectation or knowledge of children's well-being or plans for reunification, parents'/caregivers' distress will be continually heightened. Extended chronicity and duration of the trauma or related threat are known to increase the

frequency and severity of trauma-related psychological symptoms (Ford et al., 2015). Second, parents/caregivers experience a significant loss of control and helplessness in this situation. They have little or no knowledge of their children's whereabouts or well-being, and minimal control over the outcomes for their children. The lack of perceived control during traumatic events engenders a sense of helplessness, which exacerbates trauma-related distress and negative psychological outcomes (Ford et al., 2015).

Similarly, parents'/caregivers' inability to contact, comfort, and communicate with their children reduces their sense of control, and in many cases strips them of the opportunity to perform their highest priority function in society: to care for and ensure the well-being of their offspring. When individuals are prevented from executing their societal roles and functions, they can be expected to experience psychological distress; once again, this will exacerbate the symptoms related to the trauma of separation/disruption. Finally, asylum-seeking parents/caregivers have inherently experienced prior traumatic events in their lives, as this constitutes the basis for seeking asylum. Traumatic stress is cumulative, and exposure to multiple or repeated traumatic events over the lifespan has been shown to increase risk, severity, and complexity of trauma-related symptoms (Cloitre et al., 2009). Therefore, the trauma of forced family separation/disruption compounds the prior traumas experienced by parents/caregivers (commonly including violence exposure, abuse, and traumatic loss) with the expected impact of significantly worsening psychological outcomes, levels of functioning, and ability to effectively engage in asylum proceedings. A growing body of empirical research has indeed demonstrated that parent-child separation/disruption during immigration processes (as well as corresponding parental detention and threat of deportation) is associated with increased risk, rates, and severity of mental health problems for parents/caregivers (Brabeck & Xu, 2010; Linton, Griffin, & Shapiro, 2017; Rusch & Reyes, 2013; Suárez-Orozco, Bang, & Kim, 2011).

Neurobiological Effects of Stress

Traumatic stress, such as being separated from one's child as described above, has measurable effects on neurobiological and physiological functioning. When humans experience a stressor, physiological and mental resources are diverted to responding to the stressor (Ulrich-Lai and Herman, 2009). This response involves engagement of emotion processing centers of the brain, release of stress hormones, and activation of the sympathetic nervous system, resulting in a "fight, flight, or freeze" reaction. Under these circumstances, the human brain focuses on surviving the immediate threat, and other areas of the brain essentially go on lockdown until the threat is resolved. Thus, more complex cognitive functions are impaired while the body focuses on maintaining safety. Executive functioning, or the ability to solve problems, evaluate consequences, and make decisions, is particularly vulnerable to the effects of stress (Arnsten, 2009).

As described above, forced separation/disruption during the immigration process involves an ongoing, ambiguous, unresolved stressor. This experience greatly disrupts and diminishes organization, planning, and problem-solving. In addition, remaining in this heightened state of stress response can lead to physical and mental exhaustion, likely exacerbated by lack of sleep in parents/caregivers detained and separated from their children. Thus, the traumatic stress of forced separation/disruption from children puts a

parent/caregiver at an extreme disadvantage in the capacity to navigate the process of getting out of expedited removal proceedings, submitting a claim for asylum, and completing a credible fear interview.

Impaired Ability to Conduct Interviews and Provide Testimony

As previously discussed, parents/caregivers separated from their children are likely experiencing symptoms of PTSD and additional mental health difficulties. Of particular concern is the impact on cognitive functioning related to the neurobiological stress response. Research has consistently found that several cognitive functions, including but not limited to attention, communication, and memory, are significantly impaired in individuals with PTSD and traumatic distress (Flaks et al., 2014; Olff, Polak, Witteveen, & Denys, 2014). In terms of attention, abnormalities in concentration, shifting of attention, and working memory capacity are common (Flaks et al., 2014; Olff et al., 2014), largely due to intrusive and distressing memories and thoughts (Flaks et al., 2014). In regard to forced family separation/disruption, parents/caregivers can be expected to struggle with memories of being separated from their children and ongoing thoughts of concern for their wellbeing. Parents/caregivers are expected to be overwhelmed and preoccupied by their concern for their children, with their functioning dictated by the automatic "fight, flight, or freeze" responses that effectively render them incapable of focusing on secondary priorities or other historical events. Therefore, despite their intentions and efforts, they will likely experience difficulties in maintaining focus and processing information appropriately, negatively affecting their ability to participate in asylum proceedings and credible fear interviews.

In addition to impairing attention, intrusive and distressing memories and thoughts interfere with the ability to effectively recall information (Flaks et al., 2014; Schweizer & Dalgleish, 2011). Specifically, memories become fragmented and disorganized as well as difficult to retrieve (Polak et al., 2014; Schweizer & Dalgleish, 2011). This means that while individuals may recall sensations and emotions associated with a memory, they tend to encounter difficulties in retrieving details or in providing consistent and coherent retelling of events (Schweizer & Dalgleish, 2011). Further, emotionally-laden information is typically affected to a greater degree than emotionally-neutral information (Schweizer & Dalgleish, 2011). Thus, providing emotional narratives of events is particularly difficult for individuals experiencing symptoms of PTSD and trauma-related distress. This is especially true for asylum seekers with PTSD, who have been shown to demonstrate poorer memory specificity (Graham, Herlihy, & Brewin, 2014). In the case of forced family separation/disruption, even when attention is not diverted to separation from their children, parents/caregivers can be expected to experience difficulties in recalling information regarding their fears of persecution in their home countries. This may result in failing to provide important and relevant details to support their cases, negatively impacting their ability to provide comprehensive and compelling information in asylum proceedings. These difficulties are even further exacerbated in the case of currently separated parents/caregivers, as their trauma is ongoing and unresolved (thus heightening the frequency and severity of the traumatic stress response and related symptoms).

Additionally, memories, including those of traumatic events, are naturally susceptible to misinformation effects (Paz-Alonso & Goodman, 2008). Misinformation effects occur when an individual's recall of episodic memories become less effective due to post-event information (Paz-Alonso & Goodman, 2008). This is further perpetuated by a delay between memory formation and memory recall (Paz-Alonso & Goodman, 2008). Thus, as more time passes, and new information is processed, preexisting memories become more difficult to effectively and coherently retrieve. In the case of forced family separation/disruption, parents/caregivers are expected to exhibit increasing difficulty in recalling information prior to separation/disruption. In addition, repeated attempts to report traumatic events in a detailed manner may exacerbate current symptoms of PTSD and trauma-related distress, which may be derived from child separation/disruption or other factors of the pre- and post-migration process including but not limited to insecurity regarding legal status and fear of repatriation (Schock, Rosner, & Knaevelsrud, 2015). The aforementioned cognitive impairments associated with PTSD have an overwhelming effect on communication. Further, they have been found to negatively impact the ability to effectively provide court testimony. Thus, it is expected that parents/caregivers experiencing these deficits will struggle to provide detailed and coherent testimony in asylum proceedings.

Signed,

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Hilit Kletter, PhD, Clinical Assistant Professor, Director of Trauma Programs

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Exh.

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December 11, 2017

VIA ELECTRONIC MAIL

Cameron Quinn
Officer for Civil Rights and Civil Liberties
Department of Homeland Security
Washington, DC 20528

John V. Kelly
Acting Inspector General
Department of Homeland Security
Washington, DC 20528

Re: **The Separation of Family Members Apprehended by or Found Inadmissible while in U.S. Customs and Border Protection (CBP) Custody at the U.S.-Mexico Border**

Dear Ms. Quinn and Mr. Kelly:

The undersigned organizations jointly file this complaint on behalf of numerous family members who have been separated while in federal custody at the U.S. border, including instances in which one family member has been referred for criminal prosecution by the Department of Justice (DOJ). The alarming increase in family units being forcibly divided is consistent with the current

Administration's unabated series of attacks on the most vulnerable individuals in today's immigration system: protection-seeking children and their family members.[1]

Our organizations have for years and in great detail documented the immense trauma created by the separation of family members and the impact of separation on their ability to pursue legal immigration relief.[2] The separation of parents from their children at the U.S.-Mexico border and within the United States, absent a justifiable child protection grounds, is so fundamentally unconscionable it defies countless international and domestic laws on child welfare, human rights and refugees. In addition to this it violates CBP's own standards on family unity and subverts the mission of the Office of Refugee Resettlement (ORR) to vouchsafe the interests of unaccompanied children as mandated by Congress. It is cruel and unlawful to separate family members for the sole purpose of deterring migration; such separation deprives family members the ability, given their detention, to locate each other and be reunited.

As such, we urge your offices to continue to investigate current Department of Homeland Security (DHS) practices in order to stop the practice of separating families for purposes of punishment and deterrence, to ensure compliance with international and domestic standards and already articulated DHS policies on family separation, to identify and expand humane alternatives to detention and separation, to better track family separation incidents, and to implement meaningful mechanisms so that separated family members can locate, contact, and reunite with one another.

BACKGROUND

Family unity is recognized as a fundamental human right, enshrined in both domestic and international law.[3] The U.S. Supreme Court has held that the right to family unity is "perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court."[4] While some

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[1] President Donald J. Trump's Letter to House and Senate Leaders & Immigration Principles and Policies, October 8, 2017, available at: https://www.whitehouse.gov/the-press-office/2017/10/08/president-donald-j-trumps-letter-house-and-senate-leaders-immigration.

[2] For extensive discussion on family separation at the border in the last three years, including recommendations on next steps, see: Women's Refugee Commission, Kids in Need of Defense, and Lutheran Immigration and Refugee Service, *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families*. March 2017. https://www.womensrefugeecommission.org/rights/gbv/resources/1450-betraying-family-values. See also: American Immigration Council. *Divided by Detention: Asylum-Seeking Families Experiences of Separation*. August 2016. https://www.americanimmigrationcouncil.org/research/divided-by-detention-asylum-seeking-families-experience-of-separation. See also: Jesuit Conference of the United States and Canada & Kino Border Initiative. *Our Values on the Line: Migrant Abuse and Family Separation at the Border*. September 2015 Available at: http://jesuits.org/Assets/Publications/File/REPORT_2015_Our_Values_on_the_Line.pdf.

[3] Family unity as a protected right can be found in: Final Act of the 1951 U. N. Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Recommendation B.; U.N. International Covenant on Civil and Political Rights, art. 23, (March 23, 1976); U.N. Convention on the Rights of the Child, art. 9 (September 2, 1990); General Comment 6 to the Convention, "Treatment of Unaccompanied and Separated Children Outside their Country of Origin" (CRC 2005).

[4] *Troxel v. Granville,* 530 U.S. 57, 65 (2000). Further, the Supreme Court has held that a parent's right to the care and custody of his or her child "has been deemed essential, [a] basic civil right of man, and rights far more precious than property rights." *Stanley v. Illinois,* 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972).

family members who seek protection at the U.S. border may have been separated during their journey prior to reaching the United States, or may be separated in isolated incidents by immigration officials due to valid concerns over the best interest of the child,[5] our organizations have noticed an alarming increase in instances of family members who arrived together but were intentionally separated by U.S. immigration officials without a clear or reasonable justification, as a means of punishment and/or deterrence and with few to no mechanisms to locate, contact, or reunite with separated family members.

While our organizations are concerned about family separation and its consequences in all of these scenarios, this particular complaint focuses largely on the separation of children from their parents specifically in cases where those families traveled together to the United States for the purposes of seeking protection and found themselves instead separated.

While the TVPRA authorizes the separation of children from non-parents and legal guardians in order to prevent trafficking and comply with safe family reunification standards, several immigration laws demonstrate Congressional intent to keep children with their parents whenever feasible and to prioritize the reunification of separated children with parents whenever in the best interests of the child.[6]

CBP currently has insufficient guidance and policies relating to definitions of what constitutes family membership, when and how family members should be separated, if necessary, and mechanisms to help family members once they have been separated. However, CBP's National

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[5] For example, the passage of the Homeland Security Act of 2002 ("HSA") and the William Wilberforce Trafficking Victims Protection Reauthorization Act ("TVPRA") of 2008 and, provide for the separation of children from non-parents and legal guardians in order to prevent trafficking and comply with safe family reunification standards. *See* Section 462 of the HSA, Pub. L. No. 107-296, codified at: 6 U.S.C. § 279 and Section 235 of the TVPRA, Pub. L. No. 110-457, codified at: 8 U.S.C. § 1232.

[6] *See e.g.,* The Homeland Security Act of 2002 clearly defines an unaccompanied alien child as a child with respect to whom "no parent or legal guardian in the United States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2)(C)(ii); HSA defines ORR's role as "…ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child" 6 U.S.C. § 279(b)(1)(B); The TVPRA states that "an unaccompanied alien child in the custody of the Secretary of Health and Human Services shall be promptly placed in the least restrictive setting that is in the best interest of the child" 8 U.S.C. § 1232(c)(2)(A); TVPRA further requires that "an unaccompanied alien child may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being" § 1232(c)(3)(A); regulations on the custody of children states that "Juveniles may be released to a relative (brother, sister, aunt, uncle, or grandparent) not in Service detention who is willing to sponsor a minor and the minor may be released to that relative notwithstanding that the juvenile has a relative who is in detention" 8 C.F.R. § 212.5(b)(3); Flores Settlement Agreement of 1997, Case No. CV 85-4544-RJK(Px) ¶ 14 establishes a policy favoring release of all children and prioritizing their reunification with parents, available at: http://web.centerforhumanrights.net:8080/centerforhumanrights/children/Document.2004-06-18.8124043749; Judge Gee upheld Plaintiffs' motion to enforce Paragraphs 14, 18, 19, and 23 of the Agreement on the issue of whether Defendants are making and recording continuous efforts to release class members or place them in nonsecure, licensed facilities in accordance with the Agreement, *Jenny L. Flores, et al. v. Jefferson B. Sessions, III, et al.*, CV 85-4544 DMG (AGRx)(C.D. C.A., June 27, 2017), available at: http://www.centerforhumanrights.org/PDFs/06-27-17_Flores_2016MTE_Order.pdf.

Standards on Transport, Escort, Detention, and Search (TEDS) do require that family units stay together "to the greatest extent operationally feasible" absent concerns for security and safety.[7] TEDS also requires documentation if separation does occur.[8]

However, in early March 2017, then DHS Secretary Kelly stated that the department was formally considering a policy of separating children from their parents at the border in order to deter their migration to the United States.[9] Among others, the American Academy of Pediatrics expressed serious concern over the proposal, stating that authorities should "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."[10] Multiple members of Congress and non-governmental organizations strongly opposed the idea.[11] We remain concerned that such a policy or practice would only drive vulnerable migrants further into the hands of unscrupulous smugglers or traffickers when fleeing violence for safety but fearing the prospect of family separation at the hands of U.S. immigration agents.

Moreover, other deterrence policies have already been found to violate U.S. law in the case of asylum-seekers.[12] Countless recent reports[13] show that U.S. CBP has systematically violated U.S.

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[7] CBP, *National Standards on Transport, Escort, Detention, and Search (TEDS)*, available at: https://www.cbp.gov/sites/default/files/assets/documents/2017-Sep/CBP%20TEDS%20Policy%20Oct2015.pdf. For further discussion on the lack of clear mechanisms and policies to track and identify separated family members, see *Betraying Family Values*, p. 4.

[8] *TEDS* at 4.3 and 5.6.

[9] "Kelly: DHS is considering separating undocumented children from their parents at the border." *CNN*. http://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html.

[10] See "AAP Statement Opposing Separation of Mothers and Children at the Border." March 4, 2017. Available at: https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/immigrantmotherschildrenseparation.aspx. For further discussion and recommendations on the treatment of immigrant children, see also: Linton JM, Griffin M, Shapiro AJ, AAP Council on Community Pediatrics. Detention of Immigrant Children. *Pediatrics*. March 2017. Available at: http://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf

[11] See: "Letter to Secretary Kelly Opposing Plan to Separate Migrant Families at the Border." March 22, 2017. Available at: https://www.womensrefugeecommission.org/rights/gbv/resources/1460-family-separation-sign-on-letter. See: House Committee on Homeland Security, March 8, 2017, available at: https://democrats-homeland.house.gov/sites/democrats.homeland.house.gov/files/documents/children030817.pdf; Letter to the Congressional Hispanic Caucus, March 8, 2017, available at: https://congressionalhispaniccaucus-lujangrisham.house.gov/media-center/press-releases/congressional-hispanic-caucus-pens-letter-to-dhs-opposing-separation-of; Letter to Democratic Members of Congress, March 9, 2017, available at: https://bass.house.gov/media-center/press-releases/rep-bass-leads-house-democrats-letter-opposing-trump-administration-plan.

[12] See *R.I.L.R. v Johnson*, finding that the Department of Homeland Security is prohibited from using detention (a "No Release Policy") as deterrence to future migration, suggesting more broadly that the government cannot use *any* detention tactic—including a policy of family separation—as a deterrence for future migration because it violates the principle of individual decision-making in detention issues. Available at: https://www.aclu.org/cases/rilr-v-johnson.

[13] See, e.g., Borderland Immigration Council, *Discretion to Deny: Family Separation, Prolonged Detention, and Deterrence of Asylum Seekers at the Hands of Immigration Authorities Along the U.S.-Mexico Border*, 12 (2017), https:// media.wix.com/ugd/e07ba9_72743e60ea6d4c3aa796becc71c3b0fe.pdf (reporting that "it is commonplace for asylum seekers to be placed in expedited removal proceedings and summarily deported . . ., despite expressing

law and binding international human rights law by refusing to allow individuals access to the asylum process by utilizing various tactics including intimidation, inhumane treatment and threats of violence, criminal prosecution, and family separation. U.S. law mandates that asylum seekers be provided with due process of law and access to the asylum process.[14] In addition to the trauma caused to separated family members, the practice of dividing family units at the border leads to the unlawful result of depriving asylum seekers of access to the asylum process – as a result of the deterrent effect of family separation and due to the unavailability of critical legal evidence and witnesses – and stripping them of their right to seek asylum under U.S. law.

Former Secretary Kelly subsequently stated on the record while testifying before the U.S. Senate that the DHS would not, in fact, "routinely" separate children from their families when arriving at the border except under extenuating circumstances, such as if "the mother is sick or addicted to drugs," or if the life of the child was in imminent risk.[15] He testified to the U.S. Senate that these were the only circumstances mothers and children would be separated and that he "[could not] imagine" doing so in other cases.[16] Despite this, our organizations and the media are documenting cases of separation where, to our knowledge, families were not separated on account of a mother or father who fit this description.

Family separation incidents are continuing and appear to be increasing

Despite Constitutional protections guaranteeing parents fundamental due process rights in the care and custody of their children, controlling Supreme Court precedent, and the government's commitment that children would not be separated from their family members at the border except under extenuating circumstances, our organizations have documented numerous instances of family separation in the last several months alone. The Florence Immigrant and Refugee Rights Project (FIRRP), a legal service provider in Arizona, has identified 155 cases of family separation at the border involving parents and children as of late October 2017; of these, 90 cases had occurred

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fear"); U.S. Comm'n on Int'l Religious Freedom, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal*, 20 (2016) (reporting that despite findings and recommendations in a 2005 study relating to primary inspection, USCIRF observers in 2016 continued to find "several examples of non-compliance with required procedures" in CBP primary inspection interviews); see also 2005 USCIRF Report, supra note 25, at 54 (finding that, in approximately half of the inspections observed, inspectors failed to read the proper advisals regarding asylum to the non-citizen and that "in 15 percent of [the] cases [ ] where an arriving [non-citizen] expressed a fear of return to the inspector, that [non-citizen] was not referred" for a credible fear interview).

[14] U.S. Const. Amend. V. See also, e.g., Marincas v. Lewis, 92 F.3d 195, 203 (3d Cir. 1996) ("The basic procedural rights Congress intended to provide asylum applicants . . . are particularly important because an applicant erroneously denied asylum could be subject to death or persecution if forced to return to his or her home country."). 8 U.S.C. § 1158(a)(1) (The INA provides that any noncitizen "who is physically present in the United States or who arrives in the United States" has a statutory right to apply for asylum, irrespective of such individual's status);

[15]Testimony before Congress in the Senate Homeland Security and Governmental Affairs Committee hearing titled, "Improving Border Security and Public Safety" (April 5, 2017); see also "Kelly says DHS won't separate families at the border." *CNN*. http://www.cnn.com/2017/03/29/politics/border-families-separation-kelly/index.html. *See* Elise Foley and Roque Planas,"Trump Administration Won't Routinely Separate Families At The Border After All," (HuffPost April 5, 2017), available at: http://www.huffingtonpost.com/entry/dhs-separating-families-border_us_58e50d4fe4b0f4a923b448b7.

[16] *Id.*

in the most recent quarter as of that time, indicating a significant spike in incidents of family separation.[17]

Lutheran Immigration and Refugee Service (LIRS), an organization that provides services to unaccompanied children in transitional foster care around the country, reports that until April 2017 it had seen no cases of children separated from parents, and in May and June 2017 encountered one each month. Beginning in July 2017, however, LIRS began to see a substantial increase, with four cases reported in July, five cases in August, and nine cases in September.[18] Separated children can include very young children; LIRS's FY 2017 data revealed that children's ages ranged from two to 15, and were an average of eight years old. In the vast majority of these cases, LIRS social workers have not been made aware any imminent child abuse or neglect allegations that would warrant a child's separation from a parent consistent with child welfare standards.[19] These incidents of family separation directly contradict then-Secretary Kelly's statements that DHS would not separate families unless a child was in danger.

DHS and its components have consistently demonstrated that they are unable to manage the separation of family members in a legal and ethical manner. Family members are given little to no information on what happens to those from whom they are separated, including how to locate, contact, or reunite with them. DHS and its components continue to lack the ability to track familial relationships of individuals who are transferred to Immigration and Customs Enforcement (ICE) custody or to coordinate mechanisms to work with ORR within the Department of Health and Human Services (HHS) or the Department of Justice (DOJ) to facilitate location of, contact with, or release and reunification with separated family members.

Criminal prosecution of asylum seekers impedes access to protection and increasingly separates families

The undersigned organizations have received an increase in reports of family units being broken up where a parent traveling with a child is referred by CBP officials for prosecution by DOJ under 8 U.S.C. §1325 for illegal entry or 8 U.S.C. §1326 for illegal re-entry; parents in these cases may have no prior criminal history or removal orders. Those who *do* have prior removal orders—and who are prosecuted for illegal re-entry under 8 U.S.C. §1326—are often seeking humanitarian relief in the United States.

A recent report in the Houston Chronicle, detailed further below, reported knowledge of 22 specific cases "in which parents […] with no history of immigration violations were prosecuted for the misdemeanor crime of improper entry and had their children removed." The article notes that "[f]ederal defense attorneys across the southern border say they are fielding unprecedented

[17] Data on file with authors.
[18] Affidavit of Jessica Jones, Policy Counsel at Lutheran Immigration and Refugee Service (LIRS). December 8, 2017. On file with authors.
[19] DHS PREA Regulations also set out standards for the safety of juveniles and when a report should be made to mandated reporting agencies by CBP or ICE. *See* 6 CFR § 115.14, 115.114, 115.61, and 115.161.

requests from migrant clients to find their children."[20] This reported trend is consistent with the cases that LIRS has documented, nearly all of which "occurred after the parent or legal guardian was criminally prosecuted for crossing the border illegally or for reentry following a prior order of removal."[21] Indeed, according to reports in the Houston Chronicle, Border Patrol (BP) officials affirmed at an October 2017 meeting that family separation was occurring. A subsequent email from CBP's Office of Assistant Chief Counsel's noted that "'[a]ny increase in separated family units is due primarily to the increase in prosecutions of immigration-related crimes.'"

These cases present not only additional hurdles to family reunification, but the DHS Office of Inspector General (OIG) has already identified the prosecution of asylum seekers as a practice that may violate U.S. obligations under international law.[22] Prosecutions which take place before an asylum seeker is able to complete, or in many cases even begin, the process of applying for asylum will have the effect of denying asylum seekers access to the asylum process or dissuading them from even attempting to avail themselves of humanitarian protections in the United States.[23] Asylum law in the United States shields asylum seekers from punishment (including prosecution) for unauthorized entry.[24]

The Impact of Family Separation

The long-term consequences of family separation have already been well documented.[25] The cases below illustrate the same trauma and the same profound impact on the ability to express or document a fear of return as the dozens that have previously been published and/or filed with your agency. Separated families are desperate to understand what happened to their loved ones and may be unable to fully articulate or provide evidence to support a claim when they have no information about and cannot locate those with whom they traveled. Many separated individuals receive no

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[20] "Trump moves to end 'catch and release', prosecuting parents and removing children who cross border." *Houston Chronicle*. November 25, 2017. Available at: http://www.houstonchronicle.com/news/houston-texas/houston/article/Trump-moves-to-end-catch-and-release-12383666.php.

[21] Affidavit of Jessica Jones.

[22] The 1951 Refugee Convention states: "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened…." See: *Streamline: Measuring its Effect on Illegal Border Crossing*, DHS Office of the Inspector General, May 2015, pp. 16-17, available at: https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf. See also: *The Rise in Criminal Prosecutions of Asylum Seekers*, Human Rights First, July 2017, pp. 6-7 Available at: http://www.humanrightsfirst.org/sites/default/files/hrf-criminal-prosecution-of-asylum-seekers.pdf.

[23] Sign-on Letter to Stop Streamline Prosecution of Asylum Seekers, July 10, 2015, AILA Doc. No. 15072304, available at: http://www.aila.org/advo-media/aila-correspondence/2015/sign-on-letter-end-prosecution-of-asylum-seekers?utm_source=aila.org&utm_medium=InfoNet%20Search.

[24] *Streamline: Measuring Its Effect on Illegal Border Crossing*, p. 2.; The United States is bound through its accession to the 1967 Protocol Relating to the Status of Refugees to Article 31(1) of the Refugee Convention, which prohibits states from penalizing refugees for illegal entry. Because refugee status is a matter of discovery and a refugee is, in fact, deserving of the protections of the Refugee Convention and Protocol prior to recognition of refugee status, the referral of asylum seekers for criminal prosecution in the manner described by the OIG report is incompatible with U.S. commitments under Article 31(1). Convention Relating to the Status of Refugees art. 31(1), July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137, available at http://www.refworld.org/docid/3be01b964.html.

[25] See: *Betraying Family Values*, *Divided by Detention*, *Our Values on the Line*.

information on how to locate, contact, or reunite with a family member. We believe that referrals to DOJ for prosecution only further exacerbate these circumstances.

The practice of separating families at the border will cause family members—including parents with young children—to seek alternative ways of entering the United States, rather than presenting at a port of entry on the U.S.-Mexico border out of fear that they will be separated. As a result, vulnerable individuals desperate to avail themselves of humanitarian and legal protections may fall into the hands of unscrupulous smugglers. A systemic, wide-scale policy of family separation on the U.S.-Mexico border intended as deterrence will have dangerous repercussions for asylum seekers attempting to access the U.S. asylum system.[26] Indeed one study that conducted a statistical analysis of DHS data on the migration of unaccompanied children from Northern Triangle countries from 2011 through 2016, found that no U.S. policy—whether it be deterrence or not—has a statistical impact in the migration of a child.[27] Instead, the study found that the single biggest indicator of a child's migration was the number of homicides in locality of where the child lived, finding that for every 10 homicides in a locality, 6 more additional children would migrate. So not only is the practice inhumane, the premise for the policy is unfounded.

Further, the separation of family members constitutes a significant impediment to due process. Separated family members whose cases would otherwise be linked may no longer have access to critical physical or testimonial evidence, or the trauma of separation may preclude sharing critical information. In one case of a separated child who had been rendered unaccompanied and was later encountered by LIRS it was "[o]nly after talking to the parent [that] LIRS learn[ed] of why the parent and child fled because the parent kept that information away from the child to protect the child."[28] As families are separated at the border, an asylum-seeking individual's spouse, parent, or sibling—who is being held in DOJ or ICE custody in a remote detention facility hundreds or thousands of miles away—may possess the very evidence that will enable the asylum seeker to prevail before an Immigration Judge or the Asylum Office. The cases below demonstrates the

[26] On July 12, 2017, the American Immigration Council, along with the Center for Constitutional Rights and a large law firm, filed a class action lawsuit challenging Customs and Border Protection's (CBP) unlawful practice of turning away asylum seekers who present themselves at ports of entry along the U.S.-Mexico border. This litigation remains pending at the time of submission of this complaint. https://www.americanimmigrationcouncil.org/litigation/challenging-customs-and-border-protections-unlawful-practice-turning-away-asylum-seekers. See also, "Rights groups sue U.S. government, alleging it is turning away asylum applicants at Mexico border," *Washington Post*, July 12, 2017, available at: https://www.washingtonpost.com/world/the_americas/rights-groups-sue-us-government-alleging-it-is-turning-away-asylum-applicants/2017/07/12/35b95508-6650-11e7-94ab-5b1f0ff459df_story.html?utm_term=.ea50c1b28505.

[27] *Violence, Development, and Migration Waves: Evidence from Central American Child Migrant Apprehensions*, CGD Working Paper 459. Washington, DC: Center for Global Development, available at: https://www.cgdev.org/publication/violence-development-and-migration-waves-evidence-central-american-child-migrant.

[28] Affidavit of Jessica Jones. On file with authors.

negative effects family separation may have on an individual's legal case, which may lead to prolonged detention for some or even deportation.

The Particular Focus on Parents and Children at the Border

Current and previous practices separating families affect every possible configuration of family and have occurred in a variety of settings. Our organizations have received accounts of spouses or partners being separated from one another; one or both parents from children; non-parent caregivers from dependents; siblings or cousins (including where one or both are adult); or situations in which one parent and child are sent to family detention while another parent and/or child are detained in a different family detention facility. Members of the same family may be detained in separate ORR, ICE, CBP, and DOJ facilities.

Forcibly dividing families at the border can occur in the jurisdiction of either BP or Office of Field Operations (OFO) when someone has recently crossed, but family separation can also occur when ICE or CBP apprehend family members who have been in the United States for a long time, separating them from other relatives including U.S. citizen children or others. This complaint focuses on the separation of children from their parents at the border despite having traveled to the United States together as a unit and where, to our knowledge, there are no indications of child trafficking or danger to the child at the hands of the parent.

INDIVIDUAL COMPLAINTS & EXAMPLES OF TRENDS OF FAMILY SEPARATION

Many of our organizations have already filed complaints with your office on behalf of individual separated family members. The cases below represent a sample of recent cases of family members who have been separated, with a specific emphasis on parents and children. They underscore not only the significant emotional impact family separation can have on an adult or a child, which may in turn frustrate his or her ability to articulate a claim for relief, but also the due process implications of impeding access to a loved one who may possess critical legal evidence. Any policies or practices of intentionally separating immigrant children from their parents when there is not a specific and clear protection concern, and in particular in cases involving prosecution of the parent, also raise serious legal concerns.

Further, these cases demonstrate the difficulties that separated family members face in locating and reuniting with one another once separated due to insufficient policies and systems. In many cases, family members and the service providers assisting them are not able to locate and reach all of the different affected individuals; as a result, some of the stories are incomplete without this additional information. Therefore, we are also including cases that were observed by service providers but have been anonymized and should not be seen as individual complaints. These cases

are denoted as such below. While in some cases more detailed affidavits may be available, not all cases include full identifying information.[29]

1. **Case of Sofia, whose husband was separated from their five-year-old son Rodrigo at the U.S.-Mexico border**

Sofia fled Guatemala with her husband and their two minor children. Her husband, Luis, entered the U.S. with their five-year-old son, Rodrigo on or around November 11, 2017. Luis was separated from his son at the border. Sofia entered the United States with their one-year-old child, Jaime, the following day and was subsequently transferred to the South Texas Family Residential Center (STFRC) in Dilley, Texas. Sofia learned that Rodrigo had been separated from her husband and transferred to the custody of ORR and that her husband had been transferred to the San Luis Regional Detention Center in Arizona. Through the assistance of her attorney, Sofia discovered that her husband was in the custody of the U.S. Marshals and that he had likely been charged criminally for illegal re-entry to the United States, even though he had traveled to the United States for the purpose of seeking asylum.

Sofia reports that her attorney attempted to coordinate a phone call between her and her husband on numerous occasions, but was informed that phone calls between detainees are not permitted when at least one of them is in the custody of the U.S. Marshals. Sofia describes the emotional impact of being separated from both her minor son, Rodrigo, and her husband and the negative impact this separation had on her legal case:

> When I finally spoke to Rodrigo, [my older son], we both cried. He seemed very upset. He asked why his father had left him. I did not know what to tell him to make him feel better. I had to lie and tell him that his dad was working and that he was going to be brought to me very soon to try to calm him down, but it did not help much. He is far too young to be separated from his parents. He is in a foreign country where everything seems different and there is no one around him that he knows.
>
> I had my credible fear interview on Monday, November 27. I know that I cannot return to Guatemala, and did my best to explain why to the asylum officer. However, I feel that I really needed to speak to my husband to understand exactly why we were in danger because he was the one who heard the threats against us directly. I could not describe exactly what words the gang used or how many times we were threatened. I think that my husband did not tell me the whole story because he was trying to protect me. I am waiting and hoping that what I knew was enough to pass the interview and that I will be called to sign a positive decision soon.

At the time of submission of this complaint, Sofia and their one-year-old child Jaime had been released and were permitted to pursue their immigration cases in a non-detained setting; it is

[29] Only pseudonyms are used in public versions of this complaint.

unclear whether or not Rodrigo remains in the custody of ORR or where exactly Luis remains in custody.

2. Aurelia, Honduras, formerly detained at Karnes County Residential Center with her 1.5-year-old daughter; separated from her husband who was transferred to U.S. Marshals custody

Aurelia, her husband, and their 1.5-year-old daughter fled gang violence in Honduras and entered the United States on October 22, 2017 around El Paso, Texas. Aurelia reports that after the family was apprehended by U.S. Border Patrol authorities (BP), officers indicated to the family that, "they were not accepting anymore [sic] families with kids." Aurelia reports that although she requested to call her sponsor, officials told her that they "weren't allowed to have a lawyer, or a judge, and that they were the judges." She states, "[T]hey did not ask us if we feared returning to our country and they did not give us the chance to ask for asylum."

Aurelia reports that her husband was subsequently transferred to another facility. Aurelia was given no information regarding his location, just that he had been transferred to a different facility and that he would be deported after her. Although she was told she would be deported, she was instead transferred to the Karnes County Residential Center with her 1.5-year-old daughter. She tried repeatedly to locate her husband. She was told that he was detained in the Otero County Processing Center, but even when Geo Group officials tried to connect her to the facility, she was told that the facility could not locate him. She finally learned that he'd been referred to U.S. Marshals custody, not ICE custody. Aurelia reports that her husband has no criminal history, and writes "I only want to communicate with him and to know how he is." Her daughter also "asks for him every day."

3. Maria, Guatemala, separated from her five- and 14-year-old children and her husband

Maria fled Guatemala with her husband, child, and her husband's child to escape violence, including the murder of their 21-year-old child. They entered the United States on September 9, 2017, at the San Ysidro port of entry. Maria reports that on September 11, she was separated from her husband and children and subsequently transferred to the Otay Mesa Detention Center. For at least ten days, she notes that DHS officers failed to provide her with any information regarding the whereabouts of her children. At that point, she was told that her children had been separated from her husband and that they were sent to a shelter in New York while her husband was also detained at the Otay Mesa Detention Center.

Maria received a phone number to call her children, which she reports does not give her the opportunity to leave a message if no one answers. She writes that: "When I do talk to my kids, they tell me they don't want to be there, they miss me, and they want to be with me."

Maria and her husband agreed to have their children released to an uncle; however the uncle was not able to receive the children. She is concerned over what will happen with them, and they continue to be in ORR custody in New York.

4. Case of Valentina, detained with one-year-old child, after being separated from her husband at the U.S.-Mexico border

Valentina fled El Salvador with her husband and their one-year-old son and entered the U.S. on or around November 14, 2017. Following several days in a processing unit on the border near San Luis, Arizona, Valentina's husband was transferred to an adult immigrant detention center in Arizona, and Valentina and their child were transferred to a family detention center in Dilley, Texas.

Valentina reports that she attempted to speak with her husband on the phone on numerous occasions after they were separated. According to Valentina, the adult detention center in which her husband was detained required proof of her marriage to her husband in order to coordinate a phone call. She describes the emotional impact of the separation from her husband:

> Hilario and I are legally married, but I do not have our marriage certificate easily accessible. I only traveled with my passport, which has my married name of "[last name]." [My pro bono attorney at] CARA requested if that was sufficient for the phone call, but it has not yet been accepted. My mom has been trying to send me my marriage certificate, but whenever she tries to fax or email it does not go through.
>
> I received my positive credible fear determination today. Hilario and I fled El Salvador for exactly the same reason, so I believe that if I have a positive credible fear determination he should also have one. I am terrified of what will happen if he is deported. I fear he will be killed and I will have to raise [Juan] alone. I am worried about the developmental effects the psychologist talked about. I feel helpless because I am unable to talk to my husband and help him.

Valentina's pro bono attorney contacted USCIS and requested that her case be linked to that of her husband's. Valentina was given a phone call to her husband 13 days after her attorney requested it. Her case was eventually linked to that of her husband. Valentina and her minor son were released from custody on or around December 5, 2017 and allowed to pursue their immigration case in a non-detained setting. However, her husband remains detained at the time of submission of this complaint.

5. Case of Camila, Mexico, detained with 17-year-old daughter, separated from her husband and 16-year-old child at the U.S.-Mexico border

Camila fled Mexico with her husband and their two teenaged children, Rebeca (17 years old) and Xavier (16 years old). Xavier is a U.S. citizen. The family entered the United States on or around November 7, 2017, at the Hidalgo Port of Entry. Xavier was separated from his parents and older

sister shortly after they entered the United States, and transferred to the custody of Camila's sister-in-law, who lives in Texas. Camila and Rebeca were transferred to the South Texas Family Residential Center in Dilley, Texas, and her husband was transferred to the Port Isabel Detention Facility. Camila describes the emotional trauma associated with being separated from her husband and son:

> It has been very traumatic for our family to be separated in this way. It is difficult for my daughter and I to discuss it without crying. It has been very difficult for my daughter to be separated from her father and brother. I have never been separated from my son and I worry about him every day. We fled Mexico as a family and I believe we should have been kept together as a family, especially because my children are still underage.

At the time of submission of this complaint, Camila and her daughter have been reunited with her son and permitted to pursue their immigration case in a non-detained setting, but her husband remains detained.

6. **Case of Javier, El Salvador, separated from 12-year old son Rodrigo near San Ysidro Port of Entry**

Javier and Rodrigo presented themselves at the San Ysidro port of entry on November 12, 2017, after having first tried to request asylum at the Otay pedestrian port of entry but being indicated they had to find the San Ysidro port to be process. Upon requesting asylum, Javier and Rodrigo were handcuffed and taken to a holding room (at some point during this time, the handcuffs were removed). Both were eventually transferred to another holding cell with other fathers and children. The cell contained a toilet and sink, meaning that any use of the toilet occurred with the other men and children around. Javier reports that he and the others spent some days being held in the cell or transported to another federal building during the day and being transported to a hotel in the evenings.

On November 16, 2017, the men were taken to a cell in the other building and held again with other men and their children. Officers repeatedly pressured the men to give up their children; eventually, when only four men and their children were left, someone who introduced himself as the "boss" explained again that the men would be separated from their children. As Javier was taken out of the cell to identify his and his child's belongings, officers took his and the children of the other fathers. Javier reports that he never signed anything relinquishing custody of his child. He reports that the officer also took his belongings. Javier reports that immigration officers gave him a phone number with which he could try to locate his son and speak to him; however, Javier states that he was unable to locate his son despite repeated attempts to do so. According to advocates working on his case, Rodrigo remains in ORR custody.

7. **Case of Angelo, El Salvador, separated from his one-year-old son Tobias near San Ysidro Port of Entry**

Angelo and his one-year-old son requested asylum from U.S. border authorities on November 12, 2017. They were held in custody at San Ysidro in a room they described as very cold. While at San Ysidro, an immigration officer (who Angelo reports was wearing a green uniform, though all other officers were wearing blue) took an inventory of Angelo's belongings, and kept one-year-old Tobias's birth certificate while returning the rest of the items. When Angelo asked why she kept it, he reports that she told him that it was important and needed to remain separate. Angelo and Tobias were, like others, transferred back and forth between a federal immigration building in San Diego during the day and a hotel at night. While en route to the building on November 16, 2017, Angelo reports that he asked to change Tobias's diaper, but officials refused the request.

Angelo reports that while at the building on November 16, immigration officials repeatedly approached Angelo and other fathers to pressure them into giving up their children. On one occasion, Angelo reports that an officer indicated that "letting go of their kids was what was good for them, because otherwise it would affect their whole process." According to Angelo, the officer also indicated he would "take action" if the fathers did not cooperate, and that "they should not make their children witness violence." Angelo reports that eventually an official arrived who indicated that he was the director, and that he said that he had orders from authorities above him to separate the fathers from their children.

Angelo and the three other dads insisted that they stay with their children, but eventually an officer took Tobias away. Angelo reports that the officers did not take Tobias's belongings, and that that evening he and the other fathers were transferred to the Otay Mesa Detention Center. Angelo eventually received a phone number that he was told to use to locate Tobias, but when he called it he was told that he could not receive any information about Tobias "for security reasons." According to advocates working on his case, Tobias remains in ORR custody at the time of submission of this complaint.

8. **Case of Alejandro, El Salvador, separated from his five-year-old daughter Aria near San Ysidro Port of Entry**

Alejandro and his five-year-old daughter, Aria, turned themselves in to seek asylum at the San Ysidro port of entry on Friday, November 10, 2017, fleeing death threats in El Salvador. Alejandro showed authorities his and his daughter's passports, which indicate that he is her father. He was not asked for any additional documents. Alejandro reports that he and his daughter were there for approximately five days, that it was cold, and that his daughter "would cry all the time because she was afraid that the men guarding us with guns were there to kill us. She knew that we had left El Salvador because someone wanted to kill us so she was very afraid."

Alejandro reports that he and other fathers and their children were transported subsequently to a hotel. The next day they were taken to a building where they were detained in two different holding cells until they returned to the hotel in the evening. The following morning, they returned to the

office. They were eventually told to separate their belongings from their children's and that they would be separated from them. Although they resisted, eventually an individual who Alejandro reports was a senior official with ICE (a "jefe") appeared who told them that the order to separate had come from higher levels and that they would have to be separated from their children. Alejandro interpreted the official's words as a threat that their cases would be negatively impacted. Alejandro reports that the children became extremely upset. He said that Aria said to him " 'I don't want to be separated, I'm going to hug you so hard that no one will be able to separate us […] Who will protect me if I'm afraid that someone will kill me?'"

After they were separated, Alejandro reports that he and the others received a phone number for ORR to call his daughter, but that he could not do so from detention. Alejandro writes:

> I am worried about [Aria's] mental health. I tried calling but I have no funds. She has a congenital condition that causes her to lose control of her bladder.
>
> I do not understand why I was separated from my daughter. The officers never asked me for any other documents proving I was her father. It did not seem that there was ever any question that Aria is my daughter. I have never been arrested in any country. I had an *in absentia* removal order from many years ago, but I explained that to the officers and they never mentioned it as a reason for taking my child from me. It has been very difficult not knowing where she is.

According to advocates working on his case, Aria remains in ORR custody at the time of submission of this complaint.

9. **Case of Federico, Honduras, separated from his three-year-old son Sami at the U.S.-Mexico Border**

Federico and Sami crossed the U.S.-Mexico border on Monday, November 13, 2017, to seek humanitarian protection, after fleeing Honduras. Federico and Sami were apprehended by Border Patrol and transferred to a facility he believes was in Chula Vista. Federico reports that he and his son were badly treated while being held; Sami had to repeatedly use the bathroom and eventually the Border Patrol officer interacting with them got upset and screamed at them to shut up. Sami ultimately wet his pants. When Federico asked to call his sponsor, he reports he was told that he was not allowed to do so and that "it would not make any difference." On Tuesday, November 14, Federico and Sami were taken to a building he believes was in San Diego, and that night stayed in a hotel. He and his son were taken back to the building the next day and held in a room with other fathers and children until they returned to the hotel that night. On November 16, he reports they were again taken to the same building and that on this day they were told they would have to let go of their children so the children could go to a shelter.

Federico reports that they repeatedly resisted, until eventually an official arrived who announced that he was in charge. Federico reports that he and the other fathers still tried to refuse letting go of their children, but that eventually the officials returned and said they would "have to use force to take them away." Federico writes that Sami "begged to not be taken away and put his arms around me. I grasped him firmly in my arms. I told the officials that I would not give him up, and that they would have to take him from me. Then, one of the officers came up to me and with both hands forcefully pulled [Sami] out of my arms. They didn't give us any paperwork to sign or anything."

Federico shared that he was only provided with a number for ORR, but told when he called that they could not give him any information about his son. He writes "I feel like I have no will to do anything without knowing where my son is or whether he is safe. The only thing I ask for right now is that [Sami] be by my side." Advocates working on the case believe Sami remains in an ORR custody program.

10. "Andrea," Honduras, older woman separated from husband, children, daughter-in-law, and grandchild, separated at the U.S.-Mexico border[30]

Andrea is a Garifuna woman in her 60s who presented at the Nogales port of entry along the Arizona-Mexico border in June 2017. She has no criminal history and no past immigration history. Andrea and her family fled to the U.S. after violent gangs killed three of her sons because the family was unable to pay the monthly extortion payments the gang demanded. Andrea presented at the port of entry with her son, daughter, daughter-in-law, granddaughter and husband, who suffered from cancer and was seriously ill. Her daughter, granddaughter, daughter-in-law, and husband were paroled into the United States and allowed to go to Texas to complete their immigration case in a non-detained setting, while Andrea and her son were both detained in Eloy, Arizona. Despite Andrea's husband being in critical condition as of late October 2017, ICE refused to release Andrea to be with him. It was only after her husband's death and intensive efforts by Andrea's attorneys that Andrea was paroled in order to attend her husband's funeral.

11. "Fernando," Honduras, disabled 18-year-old separated from mother and younger siblings at the U.S.-Mexico border

Fernando is an 18-year-old with developmental disabilities, who fled gang violence in Honduras with his mother and younger siblings following the murder of his half-brother. Fernando, his mother, and his younger brothers presented at a port of entry on the U.S.-Mexico border in September 2017. The family had never been in the United States before. Fernando was separated

[30] Cases #10-#13 are anonymized in order to protect identity and were reported through the Florence Project. Although we cannot share more specific information, they serve to illustrate a growing trend of family separation observed by service providers.

from his family members and detained alone in adult detention while his mother and siblings were sent to a family detention center. It has been difficult for attorneys working with Fernando to reach the rest of his family and for Fernando to provide information about his claim due to his developmental disability. Because of the separation, it has also been difficult for attorneys to obtain medical records documenting Fernando's medical history and disability and which would provide critical evidence in his asylum case. Fernando remained detained in Arizona as of December 6, 2017.

12. "Anna," Guatemala, a two-year-old separated from her father at the U.S.-Mexico border and rendered unaccompanied and "Antony," Guatemala, two-year-old separated from his father at the U.S.-Mexico border and rendered unaccompanied

Anna's and Antony's cases are completely unrelated, but both are examples of family separation involving young toddlers. Anna is a two-year-old Guatemalan girl who was separated from her father at the U.S.-Mexico border and transferred to ORR custody. Antony is a two-year-old Guatemalan boy who was also separated from his father at the U.S.-Mexico border and encountered by legal service providers in ORR custody. Both were too young to be able to communicate with legal service providers about their arrest, separation, or reasons why their families left Guatemala. In Antony's case, legal service providers were able to determine that his father had been prosecuted for illegal entry 8 U.S.C. §1325(a)(1) in the Western District of Texas. This separation occurred despite records indicating that the father had no prior immigration history or known criminal history.

13. "Carlos," Guatemala, 16-year-old separated at U.S.-Mexico border from his mother, who was prosecuted for illegal entry under 8 USC §1325(a)(1)

"Carlos" is a 16-year-old boy from Guatemala who was separated from his mother after they were apprehended while crossing the U.S.-Mexico border. Together they were seeking asylum based on gang violence and threats they received after reporting violence to the police. Carlos was transferred to a shelter in Tucson as an unaccompanied child, while his mother was prosecuted and convicted for illegal entry pursuant to 8 U.S.C. §1325(a)(1) in the Western District of Texas. According to records, Carlos's mother had no immigration or criminal history.

14. "Alex," who was separated from his toddler child, "Jesse," and then subsequently deported[31]

Jesse, a toddler child and his parent Alex were detained in CBP custody, where a CBP agent mocked Alex and the circumstance of being in CBP custody. The agent asked Alex if Alex believed in God. Alex replied that he was Catholic. The agent then proceeded to say, "Where is your God now?!...Is your God going to save you from being deported?!...Your God must not care about you because he allowed you to be here!" Alex was subsequently deported to their country

[31] Case information in #14-#15 are from the affidavit of Jessica Jones, LIRS. They have been anonymized and given gender neutral names to protect the identity of the family. Full information will be filed separately.

of origin without his child. The child was rendered unaccompanied and transferred to ORR and placed in an LIRS foster care program. Upon placement, ORR did not have any information on whether Alex had been criminally prosecuted, where he was, or whether the child had a fear of return, because the Form 93 or I-213 were not provided to ORR. LIRS has frequently called Alex to gather more case information and understand what Alex would like to happen; during these calls, "Alex frequently would sob uncontrollably about the experience in CBP custody and reported severe anxiety attacks. The foster parent caring for the toddler child has reported that the child has also had severe anxiety attacks for a toddler and has been unable to sleep at night due to the separation from the parent. This has required a high level of care by the foster parent and LIRS foster care agency due to the medical attention needed for the child."

15. "Chris," an asylum-seeking parent separated from "T.J." a U.S. citizen child and "A.J" an undocumented child

TJ, a U.S. citizen child and AJ, an undocumented child arrived at the border with their parent Chris who was coming to the United States for the first time and seeking asylum. Border Patrol separated both children from Chris and LIRS believes Chris was transferred to ICE detention, but Chris may have been previously detained in United States Marshals custody. LIRS does not have these details because ORR was not provided the I-213 and other documentation. TJ was transferred to state child protective services and because AJ was rendered "unaccompanied" when CBP transferred AJ to ORR custody. ICE told Chris that if he decided to pursue an asylum case he would remain detained for over six months. Further, Chris has children in two different forms of custody and may face a child welfare proceeding for Chris's U.S. citizen child. Forced to choose between months of separation from his children or pursuing asylum, Chris ultimately decided not to pursue an asylum claim and requested to be deported.

CONCLUSION

The above case examples demonstrate a disturbing, increasing trend of family separation at the hands of U.S. immigration officials at the U.S.-Mexico border despite former Secretary Kelly's assurances to the contrary. The separation of family members, and specifically minor children from their parents, absent extraordinary circumstances, raises significant legal concerns and threatens the most fundamental interests of parents and their children.

We urge your office to investigate and clarify current DHS policy on family separation and ensure that former Secretary Kelly's commitment to avoid family separation is implemented. Many of our organizations have also outlined recommendations designed to prevent family separation, ensure a fair process for those seeking protection, and help families stay connected and in communication if separation does occur. These include that:

1. DHS should consider family unity as a primary factor in all charging and detention decisions. DHS agents should receive training and clear guidance on the identification, documentation, processing, and placement decisions for families.

2. DHS and its component agencies should document and trace all family relationships to better understand when family separation occurs and inform strategies to address it.
3. DHS should consider the best interests of the child in all processing, custody, and removal and repatriation decisions.
4. DHS should mandate the hiring of child welfare professionals at the border to supervise the protection of children and families and, in rare instances in which it is warranted, oversee instances of family separation.
5. DHS should coordinate among its components and with HHS and DOJ to identify family separation and facilitate release and reunification. DHS and its components should work with HHS and DOJ to ensure an inter-agency process to help separated family members be released and/or reunited. This should include mechanisms to help detained family members locate and connect with loved ones, such as an inter-agency hotline.[32]
6. DHS should prioritize humanitarian considerations and obligations to ensure access to protection for asylum seekers when considering referral for criminal prosecution. Those traveling together as a family and who are asylum seekers should not be referred for prosecution until a determination has been made about an individual's eligibility for relief.
7. For families who require additional support, DHS should explore alternatives to detention such as the Family Case Management Program (FCMP) that ICE terminated in June 2017 and that—rather than unnecessarily relying on detention or ankle monitors—facilitated access to case management to ensure compliance with immigration requirement.
8. The Office for Civil Rights and Civil Liberties and the Office of the Inspector General should continue to investigate the unscrupulous prosecution of asylum seekers for entry and reentry following a former attempt to avail themselves of humanitarian protection in the United States.

Thank you in advance for your time and consideration. If you have any questions or require additional information, please contact Katie Shepherd of the American Immigration Council at kshepherd@immcouncil.org or (202) 507-7511, or Katharina Obser of the Women's Refugee Commission at katharinao@wrcommission.org or (202) 750-8597.

Al Otro Lado

American Immigration Council (Council)

American Immigration Lawyers Association (AILA)

[32] The undersigned organizations recommend the implementation of a coordinated, national phone system that will permit detained (and non-detained) individuals to locate and contact their family members. Individuals in ICE, CBP, and DOJ custody—who should already have access to telephones with which they may call their attorneys or non-detained individuals—should be able to call a free number and speak with an individual who can assist in coordinating a phone call in a timely manner. The agency has already had some success with the ICE ERO Detention Reporting and Information Line (DRIL), which may serve as a model, but is specific to ICE custody, rather than HHS and DOJ. The coordination of phone calls between family members could address several concerns raised in this complaint.

Florence Immigrant and Refugee Rights Project (FIRRP)

Kids in Need of Defense (KIND)

Lutheran Immigration and Refugee Service (LIRS)

Refugee and Immigrant Center for Education and Legal Services (RAICES)

Women's Refugee Commission (WRC)