

Principles to Guide Reunification, Relief, and Redress for Separated Families

During the Trump administration, the government engaged in the systematic separation of families coming to the United States. While the public became aware of the practice in May of 2018, the government intentionally separated and inflicted harm on countless families well before then, including during the pilot program in 2017. Family separation continues today, irreparably traumatizing children and parents. Although the government can never fully undo these harms, it has an obligation to reunify all separated families, end family separation and to provide redress, relief, and engage meaningfully in efforts to repair the damage it inflicted.

Any task force established by the Biden administration should be operational by January 20, 2021 and must include efforts to reunite families and ensure they live free and together in the United States. Any effort to locate families must be combined with the government’s announcement of parole and immigration relief for parents who come forward, signaling that it is not only safe to be identified, but also that parents will not face further harm, such as detention. The government must also implement policies to prevent future separations.

A task force should include the Departments of Justice (DOJ), Health and Human Services (HHS), Homeland Security (DHS), and State (DOS), to support ongoing family reunification efforts and advance protection and relief for separated families, including by expeditiously responding to information, resource, and assistance requests from organizations working to reunify all families that are still separated and who wish to reunite in the United States. A task force should also include, or be in regular consultation with, stakeholders for information-sharing, policy development and implementation, and tracking and oversight; stakeholders include directly impacted families, advocacy organizations, and other experts.

A holistic approach is necessary to reckon with the systematic separation of thousands of families during the Trump administration and ensure that no future administration will ever consider separating families as a deterrent measure. **The Biden administration must: (1) find and reunify families in the United States; (2) provide for immediate protections from deportation and support a path to citizenship for separated families; (3) establish a commission and obtain funding for redress; (4) make systemic changes to ensure an end to family separations, including by ending family detention; (5) pursue accountability.** This document includes detailed recommendations under each overarching goal.

I. Find and Reunify Families

- **Reunification in the United States** – Any task force should provide a streamlined process for requesting parole or other means of return, and the government must expeditiously process and grant parole to family members who DHS (1) deported from the United States after separating them from other members of their family,¹ or (2) separated by putting one or more family members into programs such as the so-called “Migrant Protection Protocols,” so that they can return to the United States to reunify with their

¹ To be clear, parole should apply to everyone subjected to the Trump administration’s family separation practices. Thus, parole should be granted for a parent whose child is in the U.S. and who wishes to return and be reunified with their child in the United States. Parole should also be available for parents and children who were *both* deported, whether deported together at same time or at different times.

loved ones. For parents or guardians who are in the United States but still separated from a child, the Biden administration should expeditiously reunify them, including through release from detention, parole, or other mechanisms.

- Collaboration with the ACLU-created Ms. L Steering Committee and other non-profit organizations – Any task force should collaborate with the Steering Committee formed as part of the *Ms. L. v. Immigration and Customs Enforcement (ICE)* litigation that has been engaged in this work since 2018, including by providing any and all records and files in the government’s possession related to separated families. The task force should also collaborate with non-profit organizations and other stakeholders who represent and serve separated families, including those not explicitly included in litigation. Formerly separated families may also wish to be involved, including by speaking to families through the media to reassure them that these efforts will lead to reunification and redress for separated families. Additional efforts should be supported to identify and assist affected families.

II. Provide for Immediate Protections, a Pathway to Citizenship, Legalization

- Implement immediate protections from deportation and re-separation – For families who are returned to the United States, as well as families currently in the United States who are at risk of imminent deportation, the administration must immediately implement a variety of protection options to provide stability, lawful status, and protection from removal, with the ultimate goal of providing permanent legal status. Such options should include those that can be made available quickly through executive action (such as guidance to vacate removal orders,² deferred action with employment authorization, parole in place for parents and children in the U.S., Temporary Protected Status (TPS) designations and redesignations, where appropriate, and other measures).
- Permanent protections – The administration should ensure that every family separated by the United States government is given permanent legal status as swiftly as possible. This can include providing permanent relief through administrative action as well as supporting congressional efforts to create permanent relief measures.³
- Appoint counsel – All separated families should be offered legal counsel at the government’s expense. In any case where a child’s wishes may diverge from the parent’s or where the child has a separate avenue for protection, the government should fund separate counsel for the child.

III. Redress Injuries of Separated Families

² Multiple options exist to seek vacatur of existing orders of removal, which the authors can discuss in more detail upon request.

³ A number of separated families currently face removal proceedings in immigration court. For those individuals, ICE should stipulate to asylum and exercise discretion to grant relief and avoid re-traumatizing families. We are happy to provide detailed recommendations about how to accomplish this goal. The administration must also ensure that separated families have other legal rights restored, including those who were coerced into abandoning claims and those who are entitled to relief under existing settlements. We can also offer guidance on how the administration may use settlement in existing litigation to provide relief to families.

- Establish a commission – The commission should conduct a comprehensive investigation with actionable recommendations for redress, restitution, and non-repetition. The federal government has previously established similar entities, including redress for Japanese internment through the Office of Redress Administration and the commission and victim compensation fund following the 9/11 attacks.
- Create a victim compensation fund – The new administration should establish a victim compensation fund for formerly separated families, including funding that specifically provides for coverage of long-term mental health services to address the trauma of separation. The fund should supplement the funding secured as part of the *Ms. J.P.* settlement for comprehensive trauma-informed mental health services to help remedy the trauma caused to families who experienced separation, including to family members who remain separated and/or families or family members who have since been deported.
- Prioritize settlement of pending and future Federal Tort Claims Act (FTCA) claims – Hundreds of separated families who suffered because of the family separation practice have or will file⁴ administrative FTCA claims seeking compensation for the abuses they suffered at the hands of the government. A new administration can authorize settlement of these pending and future claims and provide relief, including immigration relief, to families at the administrative stage.

IV. Systemic Changes to Ensure Family Separations End

- End the practice of family separation – The administration must put an end to family separation practices at every stage of government custody that harm people seeking protection and deter them from seeking safe haven at our borders. Moreover, DHS must stop making “parental fitness” determinations; such determinations are wholly outside of the agency’s purview and have led to flagrant abuses that result in families treated inhumanely and unjustly being separated.
- End family detention – The administration must end family detention and practices designed to force parents to choose between being separated from their child or being able to seek safe haven in the United States. Families should be released with humanitarian parole pending their immigration case proceedings, and never detained or subject to ankle monitoring or other intrusive surveillance devices.
- Engage in regular stakeholder engagement in policy development – The Biden administration’s task force should include a goal of ensuring that families are never forcibly separated and that when separation does occur there are immediate processes in place to facilitate expeditious communication and reunification. The task force should work with stakeholders who have direct experience serving or interacting with individuals who the government separated from a family member at the border, and senior government officials from all relevant departments, agencies, and the White House, including from DHS, CBP, ICE, DOJ, EOIR, the US Marshals, HHS, ORR, DHS

⁴ The administration should waive any statute of limitations defenses on FTCA claims and encourage families who have not yet done so to file administrative claims.

CRCL and OIG, and HHS OIG. The government must collaborate with stakeholders to develop, at minimum, 1) mechanisms to identify, track, and report family separation by both government officials and family members; 2) mechanisms to ensure rapid and frequent communication and swift reunification of separated family members; and 3) policy to ensure families are never forcibly separated by DHS.

- Support repeal of statutes criminalizing unauthorized entry – The new administration should support the repeal of provisions criminalizing unauthorized entry and re-entry (8 U.S.C sec. 1325 and 1326), which are rooted in racism and are harmful, costly, and discriminatory in their origin and application. While this alone would not be enough to prevent all forced family separation, criminal prosecution for migration-related offenses served as the central engine for the zero tolerance practice in 2018. In the meantime, DOJ should immediately issue new guidance to U.S. attorneys to decline to bring criminal charges for unauthorized entry or re-entry where doing so would separate a family.
- Respond to existing oversight efforts – The Task Force should also include as part of its mandate a review of stakeholder reports, media reporting, filings in related litigation, all relevant DHS and HHS Office for Civil Rights and Civil Liberties and Office of Inspector General reports issued since 2016, and all applicable congressional oversight reports and requirements with the goal of addressing all documented deficiencies and to end separations in the future.

V. Accountability

- Support congressional investigations – Support any efforts led by Members of Congress to create special investigative committees into past family separations, in order for the findings to inform policy changes to ensure DHS never separates families again. Such efforts should require officials who authorized and implemented family separation to publicly testify about their role in the practice. Such efforts should also ensure accountability for government officials whose actions resulted in human rights abuses, violated department policy, and/or flouted the law during the course of their actions, including serious allegations of abuse and sexual assaults of children in DHS and HHS custody.
- Conduct internal investigations – In addition to supporting congressional investigations, DHS, HHS, and DOJ should robustly investigate family separation, including determining which actors were responsible for overseeing the practice and recommending and pursuing potential sanctions for those actors. Internal investigations should be granted independent investigatory authority and should not be subject to final review by agency leadership.
- Prompt compliance with FOIA requests – Provide families with access to their complete immigration files. Require the release of all immigration-related records to separated families and their attorneys upon request within 20 days and ensure compliance with FOIA, including proactive disclosure and full disclosure of records in all pending Freedom of Information Act litigation related to family separation.

The following organizations have endorsed the above principles:

- American Civil Liberties Union (ACLU)
- American Immigration Council (AIC)
- Asylum Seekers Advocacy Project (ASAP)
- Catholic Legal Immigration Network, Inc. (CLINIC)
- Families Belong Together (FBT)
- First Focus on Children
- Human Rights First (HRF)
- Justice in Motion (JiM)
- Kids in Need of Defense (KIND)
- Lawyers' Committee for Civil Rights of the San Francisco Bay Area (LCCRSF)
- The Legal Aid Society
- National Immigrant Justice Center (NIJC)
- Together & Free
- Women's Refugee Commission (WRC)

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