

## POLICY BRIEF

### Introduction

The Trump administration's brutal family separation policy remains a lasting and disgraceful legacy of both that administration and of the United States as a nation. Under the policy, formally known as "Zero Tolerance," the United States government took migrant children from their parents by force as a [deliberate measure to deter others](#) from migrating or seeking asylum. Crueler still, the federal agencies that implemented family separations failed to track the separations—that is, they failed to record which children were separated from which parents. In total, at least [5,569 children were separated from their parents](#) or guardians during the Trump administration, a figure that includes separations occurring after or apart from the formal Zero Tolerance policy. More than 1,000 children remain separated from their parents today.

This policy brief summarizes the current status of, and ongoing harms suffered by, these forcibly separated families. It details the **urgent actions necessary for the well-being of families torn apart**, which include the funding and **provision of services, critical policies and oversight, and restitution measures** that both Congress and the Biden administration should take to help heal these families. Finally, the brief reaffirms—in the strongest terms—the need, and recommends **policies, to prevent future forcible family separations and to immediately address and remedy any future separations that do occur.**

### What Happened under Zero Tolerance?

As has been extensively documented, high-level Trump officials conceived and executed a [deliberate policy to forcibly take children](#) from their parents upon apprehension by US Border Patrol. Those officials [intended to separate families](#) to [deter other migrants](#) from requesting asylum in the United States—cruelly punishing one group of people to try to prevent others from seeking protection. The officials were warned by numerous experts that forcibly taking children from parents causes tremendous long-term harm to children. Nonetheless they continued to use the policy, persisting even after its pilot program revealed that the government was "[unable to track separated family members](#) in a way that would facilitate eventual reunification." Records of the officials show, in their own words, an inhumane indifference to the necessary record-keeping that would ensure that children—including [more than 1,000 children under 10 years old](#)—and their parents would or could see each other again.

The horrors of family separation are documented in numerous government reports: those of the Inspectors General of the Departments of [Justice](#), [Homeland Security](#), and [Health and Human Services](#); the progress reports of the [Interagency Task Force on the Reunification of Families](#); and a detailed report from the [House Judiciary Committee](#). The facts and timeline have been further corroborated in the [Ms. L](#) and [Ms. J.-P.](#) lawsuits, [detailed timelines](#) from [advocacy groups](#), and advocacy efforts by civil society organizations, including the [Women's Refugee Commission](#) (WRC). Further information is still coming to light.

## Family Tracing and Reunification—Where Are the Forcibly Separated Families Now?

In its most recent [progress report of July 31, 2022](#), the Biden administration's [Family Separation Task Force](#) identifies 1,217 children who remain separated from their parents or guardians. Three hundred thirty-one are in the process of being reunified with their parents. The Task Force also identifies 2,634 children who have been reunified with their parents. Because government officials [failed to establish](#) any tracking and reunification mechanisms or recordkeeping until ordered to do so by the federal court in the Ms. L case, even after being warned of the imperative need, the full scope of children and their parents and guardians subjected to forcible separation is still unknown.<sup>1</sup>

The absence of government records has required extensive family-tracing efforts. In 2018, the Ms. L litigation resulted in the formation of the Ms. L Steering Committee, a small cohort of organizations that work to locate the thousands of families forcibly separated by US government officials. Four years later, the Steering Committee's efforts are ongoing—engaging the law firm Paul, Weiss, as well as Kids in Need of Defense (KIND), Justice in Motion, and WRC—and the [status and whereabouts of the parents of 168 children remain unknown](#).

WRC has directly participated in efforts to find and reunify more than 50 families. Family-tracing investigations often begin from phone numbers or addresses for family members that can be gathered from US immigration detention or immigration court, with outreach by postal mail, telephone, messaging apps like WhatsApp, and social media like Facebook. The court-provided data is commonly out of date or inaccurate. Some investigations require on-the-ground searches in the families' home countries, supplementing public-records searches. Further, the US government has proved slow to act and resistant; for example, despite two years of litigation, the Trump administration only [disclosed an entire separate dataset](#) of possible contact information in late 2020. Given the lapse of time between the separations in 2017 or 2018 and the disclosure, the delay increased the proportion of contacts that were out of date and meaningfully impeded children from seeing their parents again.

Compounding the effects of US government negligence, family tracing is made more difficult by language, indigeneity, and poverty. A significant portion of the forcibly separated families are native speakers of indigenous languages from remote regions of Guatemala. Indigenous groups in Guatemala are systematically marginalized from nearly every part of public life, which generates challenges related to poverty—including limited or intermittent access to cell phones due to lack of funds or lengthy periods of grueling agricultural labor performed in remote locations without internet or cell service. There is also mistrust of the motives of non-indigenous outsiders and of Guatemalan government indifference. Contact typically requires hard-to-find interpreters just to attempt a phone call to a number dating from 2017 or 2018.

Finally, many families have a natural distrust of anything connected to the US government that forcibly took their children. An example from a joint endeavor between WRC and Barnard College, "Separated: An Oral History Project," illustrates this. One interviewee, who was forcibly separated from their mother, describes thinking that "if they [the US government] already caused me pain before, now they will come to me to cause more pain." Today, these children and parents continue to grapple with the ongoing and overwhelming pain while trying to restore relationships and rebuild their lives, in many cases after years of upheaval.

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1 Critically, these investigations into past forcible separations do not account for the thousands of children who have been forcibly separated from their parents at the U.S.-Mexico border by border authorities pursuant to overbroad and arbitrary determinations under the DHS guidance implementing the Ms. L injunction, wherein DHS asserted authority to make what effectively constitute parental fitness and custody determinations. See, e.g., Kids in Need of Defense (KIND), *Family Separation: Two Years Later, the Crisis Continues* (2020) pp. 9-11, <https://supportkind.org/wp-content/uploads/2020/07/Family-Separation-Report-2020-FINAL-2.pdf>.

## Children and Their Parents Continue to Suffer Severe Impacts from Forcible Separation

Expert studies consistently conclude that the [harmful impacts](#) of forcible family separation are lifelong, a harrowing reality borne out by separated family members. In the same WRC-Barnard College project, one child separated from their mother for more than two years described the experience as this:

*"It is a pain that cannot be erased. Whatever you try."*

A father who had experienced a psychotic break after being separated from his child observed that he still feels the fear and pain in his body years later:

*"Suddenly that, that still bothers me, now in my body too. It's like a fear. It's like something is still in my body right now."*

A mother separated from her son for several years said:

*"Still, the pain persists. The trauma is done, and I just have to get used to living with it."*

Children and parents report ongoing effects of the trauma they experienced and recurring manifestations of the pain of indefinite separation, as well as fear that forcible separation will happen again. A parent reunited with their child noted that "we do feel that relief being together, but we live with anxiety in this country, because I don't know when we can be deported separately again." In other cases, parents have reported being unable to work because their [children remain too frightened](#) to be separated from them even for brief periods of time. One parent noted that a formerly cheerful and rambunctious child returned to them changed and reserved:

*"They gave me another daughter. They did not give me the daughter that I gave them. They did not give her back to me, they gave me another daughter. [After coming home] my daughter was thinner. She was so thin. My daughter was not pink, she was yellow, she had fungus on her fingers ... her teeth were dirty and full of cavities."*

Our interviews corroborate academic research on the severe, predictable, and irreparable harms of forcibly taking children from parents. An agonizing [case study](#) in the *New England Journal of Medicine (NEJM)* describes the continuing psychological distress endured after reunification by a seven-year-old girl forcibly separated from her mother. The girl demonstrates severe post-traumatic stress disorder, including catastrophic thinking, separation anxiety, and irritability. She shows little interest in activities she previously enjoyed, has trouble concentrating, and alternates between fear of and aggression toward her schoolmates. Her new food aversions leave the formerly separated girl able to eat only soup from a cup.

The *NEJM* case aligns to the findings of studies with larger numbers of research subjects. In one study, separated children were found to have three times the rate of [severe emotional or behavioral difficulties](#) as compared to the baseline US population, while in another study, **100 percent** of the forcibly separated children studied [exhibited symptoms](#) of post-traumatic stress disorder (PTSD), major depressive disorder, or generalized anxiety disorder. Forcible separations on children have significant deleterious impacts not only on their mental health but also on their behavioral functioning, resulting in educational and medical harms. Crucially, studies also find that these [harmful impacts](#) go beyond the effects of trauma in the home country or during the migration journey—indeed, nearly every domain of functioning is impaired in separated children.

## Policy Recommendations: Urgent Actions Necessary to Repair the Harms to Families and Ensure Justice

While the Biden administration has already taken [important steps](#), additional actions are crucial to fulfilling the president's vow to protect family unity and the government's duty to redress the harm it caused.

**Families require services. Justice requires restitution.** Further, the Biden administration must work to **ensure that family separation never happens again.**

Today, separated families suffer [unmet material needs](#) even after reunification, including housing insecurity and homelessness, employment instability, and lack of food access. Family well-being is central to protecting family unity. Moreover, the families whose parents and children were forcibly separated deserve reparative justice.

The Biden administration should promptly support the following to help right the wrongs—even if they can never be fully undone—of family separation. WRC emphasizes that the urgent service needs are necessary for safe and stable reunifications of separated families.

### *Urgent Service Needs*

- » Psychological and behavioral health services are fundamental for assisting children and their parents to deal with ongoing mental and emotional pain, not to mention PTSD, depression, and anxiety—including separation anxiety. **Despite the centrality of these services to the recovery of children and their families**, the bulk of behavioral health services accessible to families through the *Ms. J.P.* settlement have expired, with only a [limited suite of services](#) made available to *Ms. L* class members for one year via the Substance Abuse and Mental Health Services Administration (SAMHSA). **Although the recommendations for future services contemplated by the Task Force are welcome, these grievous harms call for a comprehensive and long-term commitment.**
- » **Educational support services** are critical for children grappling with severe impairments to their functioning resulting from forcible family separation trauma. Separated children require services that go beyond basic assistance for children new to the US school system.
- » **Medical services** are central to the baseline health of children and families, including preventive treatment, regular check-ups, and specialist services where necessary. Because the [effects of psychological trauma](#) can both manifest in physical symptoms and lead to behaviors that impair functioning in the long term, children and families require access to medical care connected to psychological and behavioral health services.
- » **Employment and childcare services and assistance** are essential to ensuring an adequate environment that will enable these families to heal from their government-caused traumas in an enduring way. While [private sector charity](#) in support of these goals is laudable, it cannot and should not replace governmental redress of its own misdeeds.
- » **Housing and nutrition (food) support** are crucial to ensure that families are not unhoused or hungry while they work to rebuild their shared lives, whether awaiting or following reunification. This support is especially necessary considering the difficulties and delays common to the work permit process.

## *Restitution Measures*

- » **Restitution and the offer of a formal apology to separated families.** History has shown the importance of governments accepting responsibility, showing contrition, and providing restitution when government actions cause irreparable harm. It is essential for the US government to publicly, completely, and consistently renounce the policy and practice of family separation. This must include a reversal of the Department of Justice's indefensible, unconscionable, and completely contrary-to-family-unity [litigation position](#) defending the policy. The Trump administration implemented the family separation policy and harmed innocent children; the Biden administration should set things right.
- » **Permanent status and protection** in the US are vital to prevent future re-separation or other harm or persecution of the thousands of families forced apart by the government. While robust support of congressional efforts to create permanent relief measures is welcome, the government has a variety of authorities available to permit families to pursue asylum affirmatively and in a non-adversarial posture before the US Citizenship and Immigration Services. Given the enormously harmful effect of separation on families' ability to seek asylum, the government must entertain all claims and fulfill records requests related to prior asylum denials. Every family should be given the opportunity to apply for asylum or refugee status wherever possible.

## *Policies to Prevent Future Separations of Families*

- » **Durable policies that secure the speedy resolution—through immediate location, contact, and swift reunification—of rare and exceptional family separations, with enforcement mechanisms.** While WRC strongly opposes family separation, these separations may still occur for any number of reasons. The Biden administration must ensure and enforce robust policies and practices to safeguard the rights of children and their families should forced separations occur. In the development and execution of these policies and practices, the involvement of trained state-licensed child welfare professionals will be indispensable. Furthermore, these policies must guarantee (1) the immediate, consistent, and comprehensive tracking of separated family members, the claimed relationship of the separated individuals, and real-time location information; (2) regular and meaningful contact—including video—between the separated family members, at minimum as often as required for the child's developmental needs; and (3) rapid reunification procedures. Policies and procedures must include access to administrative and judicial appeals processes, appointed counsel, and complete, accurate, and transparent tracking and recordkeeping. WRC intends to closely monitor any new policies or programs intended to address family unity.
- » **The development, publication, and implementation of a comprehensive action plan to ensure family separations cannot happen again.** It is not enough to promise that the federal government will not repeat the policies and practices leading to the separation of families at the border. The Biden administration must make durable policy to **prevent malicious and indifferent actors in government from having the option to visit these harms on future children.** We encourage the administration to draw from [extensive recommendations](#) provided by WRC and other civil society organizations on ways to prevent the separation of migrant families entering the US.<sup>2</sup>

<sup>2</sup> In December 2021, DHS published a Request for Public Input on minimizing family separation: Identifying Recommendations To Support the Work of the Interagency Task Force on the Reunification of Families, <https://www.federalregister.gov/documents/2021/12/10/2021-26691/identifying-recommendations-to-support-the-work-of-the-interagency-task-force-on-the-reunification>.

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We extend deep thanks to the parents who generously shared their experiences with family separation in the joint WRC-Barnard College endeavor “Separated: An Oral History Project.”

This brief was made possible by the generous support of the Open Society Foundations and Tides Foundation.

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## **Women’s Refugee Commission**

The Women’s Refugee Commission (WRC) improves the lives and protects the rights of women, children, and youth who have been displaced by conflict and crisis. We research their needs, identify solutions, and advocate for programs and policies to strengthen their resilience and drive change in humanitarian practice. Since our founding in 1989, we have been a leading expert on the needs of refugee women, children, and youth and the policies that can protect and empower them. [womensrefugeecommission.org](http://womensrefugeecommission.org).

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September 2022