

Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
301 7th Street, S.W.
Washington, D.C. 20528

Honorable Matthew Albence
Deputy Director and Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement
500 12th Street, S.W.
Washington, D.C. 20536

Sent via email

July 17, 2020

Dear Acting Secretary Wolf and Acting Director Albence:

The undersigned organizations write to urge that families held at all three Immigration and Customs Enforcement (ICE) family detention centers be swiftly, safely, and promptly released together following a court order to release all children in ICE facilities. We understand that the deadline was extended to July 27, 2020. We strongly object to any plan to place a choice before parents that is no choice at all: indefinite detention with their children in deadly conditions during a global pandemic or possibly permanent separation from them. Parents must be released with their children to preserve family unity, as family separation is not in the best interests of the child.

In her June 26 order directing ICE to release all children detained at its three family detention centers, District Court Judge Dolly Gee described how these facilities are “on fire,” with confirmed cases of COVID-19 and inadequate protective measures, and concluded that “there is no more time for half-measures.”¹ COVID-19 is running rampant in these facilities, which detain children as young as one-year-old. In the Karnes County Residential Center, 34 parents and children of approximately 100 detained have tested positive for COVID-19.² In the South Texas Family Residential Center in Dilley, 21 facility staff have tested positive for COVID-19.³ Despite this, ICE continues to fail to take steps to prevent contagion in these family detention facilities. Sick employees are permitted to come to work, and there are arbitrary contact-tracing and quarantine practices.

Long before the onset of COVID-19, family detention and family separation were roundly criticized by medical and mental health experts for the trauma they inflict on children and their

¹ Vanessa Romo, “Judge Orders ICE To Free Detained Immigrant Children Because Of COVID-19,” NPR NEWS (June 26, 2020), available at www.npr.org/sections/coronavirus-live-updates/2020/06/26/884186168/judge-orders-ice-to-free-detained-immigrant-children-because-of-covid-19.

² <https://twitter.com/camiloreports/status/1281588453440987136>.

³ Petitioners' Reply in Support of Motion for Preliminary Injunction, *O.M.G. v. Wolf*, 1:20-cv-786-JEB, Doc # 85 (D.D.C. July 10, 2020) (containing summary of all the other “notices of positive cases”); Notice of COVID-19 Positive Cases, *O.M.G. v. Wolf*, 1:20-cv-786-JEB, Doc # 86 (D.D.C. July 12, 2020).

parents.⁴ Detention centers are often retraumatizing, and children in detention “may experience developmental delay and poor psychological adjustment” even after they are released; even brief periods of detention can lead to psychological trauma and long-term health risks.⁵ Family separation is a form of psychological violence experts have likened to “soul murder,” which inflicts lasting and permanent damage upon children and their parents.⁶ The powerful evidence documenting the harm of these practices only underscores the urgency of ending both immediately.

Most families held in prolonged and indefinite detention were wrongfully denied the chance to seek safety because of the unlawful third-country transit ban, which renders ineligible for asylum nearly anyone who traveled through any other country on their way to the United States. In the past two weeks, multiple courts have declared the ban unlawful, and it is now no longer in effect.⁷ Detained families must now be afforded the fair chance to seek asylum they never received, and they should be paroled from detention during their asylum proceedings.

We are deeply alarmed that ICE is now on the verge of forcing parents into an impossible and cruel “choice,” as it did in May 2020, when ICE asked detained parents whether they wished to remain detained with their children in unsafe conditions or separate from their children so the children could be released from detention.⁸ These families are living with unthinkable fear and anxiety – not knowing if they will be released, if they will contract COVID-19, or if ICE will seek to try to separate them again, as it attempted in mid-May.

ICE has historically exercised its legal authority and discretion to release parents with their children on parole and/or into alternative-to-detention (ATD) programs. Since the COVID-19 crisis started, Members of Congress, advocates, attorneys, doctors, and members of the public have repeatedly urged ICE to use its legal authority and discretion to release detained families together.

Yet, in the face of this heightened risk of contracting COVID-19, and despite having full authority and discretion to act to save lives, ICE is choosing to pursue an option to separate families. Instead of releasing them together from facilities with confirmed COVID-19 cases, it is choosing to

⁴ Julie M. Linton, Marsha Griffin, Alan J. Shapiro, Council on Community Pediatrics, “Detention of Immigrant Children” (March 9, 2017), available at <https://pediatrics.aappublications.org/content/early/2017/03/09/peds.2017-0483>; “AAP renews call for an end to family separation at the border” (January 18, 2019), available at www.aappublications.org/news/2019/01/18/immigration011819; see also Miriam Jordan, “Whistle-Blowers Say Detaining Migrant Families ‘Poses High Risk of Harm,’” NEW YORK TIMES (July 18, 2018), available at www.nytimes.com/2018/07/18/us/migrant-children-family-detention-doctors.html.

⁵ Linton et al., *supra* note 4, at 5-6.

⁶ Steve Turnham, “Experts say psychological impact of family separation on part with abuse,” ABC NEWS (June 18, 2018), available at <https://abcnews.go.com/Politics/experts-psychological-impact-family-separation-par-abuse/story?id=55981817>.

⁷ See Memorandum Opinion, *CAIR Coalition v. Trump*, No. 19-2530, Dkt. 72, June 30, 2020, available at <https://www.humanrightsfirst.org/sites/default/files/CAIR%20Coalition%20Opinion%20%281%29.pdf> (granting summary judgment to plaintiffs based on third-country transit ban’s violations of multiple provisions of the Administrative Procedure Act); *East Bay Sanctuary Covenant v. Barr*, Nos. 19-16487, 19-16773 (9th Cir. 2020) (slip op.), available at <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/07/06/19-16487.pdf> (upholding district court’s preliminary injunction halting implementation of ban for violations of asylum and administrative law).

⁸ See Joint Status Report, *Flores v. Barr*, Case No. CV 8-4544-DMG, Dkt. No. 846, July 8, 2020, at 1; Amnesty International USA, *Family Separation 2.0: ‘You aren’t going to separate me from my only child’* (May 21, 2020), available at <https://rightsnow.amnestyusa.org/wp-content/uploads/2020/05/Amnesty-International-USA-Family-Separation-2.0-May-21-2020-.pdf>.

separate families or keep them locked up together in detention indefinitely. Both traumatize children. Neither is an option.

Family separation produced by this coercive “choice” violates multiple human rights, including the right to family unity, the right to liberty, and the requirement to prioritize the best interests of the child.⁹ In some instances, family separation can violate the right to freedom from torture and other ill-treatment.¹⁰ The United Nations (UN) Special Rapporteur on Torture has denounced any authorities’ “deliberate separation of family members” who are seeking asylum at borders, calling it “*refoulement* in disguise,” which is “designed to coerce them to ‘voluntarily’ return to their country-of-origin” regardless of their protection needs.¹¹

The detention of children is not in their best interests, and their separation from parents is only lawful in exceptional circumstances, such as when a child faces imminent harm. The UN Refugee Agency (UNHCR) has categorically called on all states to end the practice of immigration detention of children, and to maintain family unity through alternatives to detention. The UN Special Rapporteur on Torture has likewise stated that the detention of children is never in a child’s best interests, and can constitute ill-treatment if the detention is due to their or their parents’ immigration status.¹²

These rights violations are entirely avoidable: ICE has the legal authority and discretion – and especially in the pandemic, the obligation – to release families together. ICE can parole or release parents for urgent humanitarian reasons or significant public benefit.¹³ There is surely no more urgent humanitarian reason or significant public benefit than protecting the health of families in ICE’s care and custody during a pandemic. Instead, ICE is inflicting fear and uncertainty upon families and endangering public health.

We urge you to release children together with their parents, and we roundly reject any solution that will result in either the continued detention of families or separations of detained parents from their children. We strongly oppose the development of any protocol for gaining the purported consent of families to separation; any such protocol is inherently coercive, on top of being unnecessary given that ICE has full authority and discretion to release families together on parole

⁹ Arbitrary and punitive separations of children from their parents are never in the best interests of the child, and violates U.S. and international law. All 50 states, the District of Columbia, and U.S. territories require consideration of a child’s best interests in decisions about the child’s custody, while the best interests standard has been increasingly incorporated into immigration law and policy. For discussion of the human rights standards, see Amnesty International, ‘*You Don’t Have Any Rights Here*’: *Illegal Pushbacks, Arbitrary Detention & Ill-treatment of Asylum-seekers in the United States* (2018), Index: AMR 51/9101/2018, at p. 27, available at www.amnestyusa.org/wp-content/uploads/2018/10/You-Dont-Have-Any-Rights-Here.pdf.

¹⁰ Amnesty International, ‘*You Don’t Have Any Rights Here*’: *Illegal Pushbacks, Arbitrary Detention & Ill-treatment of Asylum-seekers in the United States* (2018), Index: AMR 51/9101/2018, at pages 27-32, available at www.amnestyusa.org/wp-content/uploads/2018/10/You-Dont-Have-Any-Rights-Here.pdf.

¹¹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (February 26, 2018), available at www.ohchr.org/Documents/Issues/Torture/A_HRC_37_50_EN.pdf.

¹² For discussion of the human rights standards, see Amnesty International, ‘*You Don’t Have Any Rights Here*’: *Illegal Pushbacks, Arbitrary Detention & Ill-treatment of Asylum-seekers in the United States* (2018), Index: AMR 51/9101/2018, at p. 33, available at www.amnestyusa.org/wp-content/uploads/2018/10/You-Dont-Have-Any-Rights-Here.pdf.

¹³ INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5.

and/or into ATD programs. Preserving the unity of these families is in these children's best interests, and it is also the right and compassionate thing to do.

We therefore call on you to immediately release all detained families together. This administration must not use COVID-19 as an opportunity to deploy its family separation policy again.

Thank you for your urgent attention to this matter.

Sincerely,

ALDEA – The People's Justice Center
Amnesty International USA
National Immigrant Justice Center
Proyecto Dilley
RAICES
Rapid Defense Network
Women's Refugee Commission

#DetentionKills Network
Advocate Visitors with Immigrants in Detention in the Chihuahuan Desert
Al Otro Lado
Alianza Americas
Alianza Nacional de Campesinas
American Friends Service Committee
American Immigration Council
American Immigration Lawyers Association
Asylum Seeker Advocacy Project (ASAP)
AsylumWorks
Bellevue Program for Survivors of Torture
Black Alliance for Just Immigration
California Collaborative for Immigrant Justice (CCIJ)
Capital Area Immigrants' Rights (CAIR) Coalition
Catholic Legal Immigration Network, Inc.
Center for Disability Rights
Center for Gender & Refugee Studies
Center for Victims of Torture
Centro de los Derechos del Migrante, Inc.
Children's Defense Fund
Children's Defense Fund - Texas
Church World Service
Cleveland Jobs with Justice
Columbia Law School Immigrants' Rights Clinic
Denver Justice and Peace Committee (DJPC)
Desert Support for Asylum Seekers
Detention Watch Network
Diocesan Migrant & Refugee Services, Inc.

Dominican Sisters of Sinsinawa, WI
Empowering Pacific Islander Communities (EPIC)
Families Belong Together
Farmworker Association of Florida
Fordham Law School Feerick Center for Social Justice
Free Migration Project
Friends of Miami-Dade Detainees
FWD.us
Grassroots Leadership
Haitian Bridge Alliance
HIAS
Hope Border Institute
Human Rights First
Human Rights Watch
Illinois Coalition for Immigrant and Refugee Rights
Immigrant & Non-Citizen Rights Clinic - CUNY School of Law
Immigrant Defenders Law Center
Immigrant Families Together
Immigrant Legal Advocacy Project
Indivisible Sacramento
Institute for Women in Migration, A.C. (IMUMI)
Interfaith Welcome Coalition
International Refugee Assistance Project
International Rescue Committee
Jewish Activists for Immigration Justice of Western Mass
Justice Action Center
Justice for Migrant Women
Kids in Need of Defense
Kino Border Initiative
Latin America Working Group (LAWG)
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Leadership Conference of Women Religious
Lutheran Immigration and Refugee Service
Mariposa Legal
Mexican American Legislative Caucus
Migrant Center for Human Rights
MN Inter-faith Coalition on Immigration
MomsRising
MSU COL Immigration Law Clinic
National Association of Social Workers - Texas Chapter
National Center for Youth Law
National Council of Asian Pacific Americans - NCAPA
National Council of Jewish Women
National Employment Law Project
National Immigration Project of the National Lawyers Guild
National Network for Immigrant & Refugee Rights

National Partnership for New Americans
Network in Solidarity with the People of Guatemala (NISGUA)
New Hampshire-Vermont Guatemala Accompaniment Project
New Jersey Alliance for Immigrant Justice
NorCal Resist
Northern Manhattan Coalition for Immigrant Rights (NMCIR)
Northwest Immigrant Rights Project
Oxfam America
Physicians for Human Rights
Reformed Church of Highland Park
Santa Fe Dreamers Project
Shut Down Etowah
Sikh American Legal Defense and Education Fund (SALDEF)
Snohomish Immigration Advocacy
Southeast Asian Resource Action Center
Southern Border Communities Coalition
Southern Poverty Law Center
St. Louis Inter-Faith Committee on Latin America
Still Waters Anti-Trafficking Program
Sueños Sin Fronteras de Tejas
Tahirih Justice Center
Texas Civil Rights Project
The Advocates for Human Rights
The Florence Immigrant & Refugee Rights Project
The Leadership Conference on Civil and Human Rights
The Social Justice Committee of St. Andrew's Presbyterian Church, Austin TX
Transformations CDC
Tsuru for Solidarity
U.S. Committee for Refugees and Immigrants
Union for Reform Judaism
Unitarian Universalist of Arlington, VA
Unitarian Universalist Service Committee
United Stateless
Washington Office on Latin America
Welcoming Immigrants Housing Project, Emmanuel Lutheran Church of Eastmont
Wind of the Spirit Immigrant Resource Center
Witness at the Border
YMCA of Greater Houston
Young Center for Immigrant Children's Rights