



## UNITED STATES COMMISSION ON CIVIL RIGHTS

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Friday June 15, 2018

The Honorable Jeff Sessions  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave, NW  
Washington, DC 20530-0001

The Honorable Kirstjen M. Nielsen  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
Washington, DC 20528

Dear Attorney General Sessions and Secretary Nielsen:

The U.S. Commission on Civil Rights writes to urge the Departments of Justice and Homeland Security to stop separating children from their families after crossing our southern border. In 2015, the Commission reported on immigrant detainee facilities, including the policies that separated children from families and placed those children in separate detention centers.<sup>1</sup> We were concerned then that the government provided inadequate or inappropriate care when it took charge of undocumented children.<sup>2</sup>

Given recent reports, the Commission once again has grave concerns about the fair administration of justice due to coercive tactics and lack of due process afforded to these families. Reportedly families seeking refuge are separated and children are shuffled into detention centers in what one judge stated was “if true . . . brutal, offensive, and fails to comport with traditional notions of fair play and decency.”<sup>3</sup> The policies can coerce parents into withdrawing what may be valid asylum applications or otherwise impairing their immigration proceedings, for fear of what may be happening to their children.<sup>4</sup> The Commission’s concerns are exacerbated by the apparent animus directed at Mexican and Central American immigrants

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<sup>1</sup> U.S. Commission on Civil Rights, *With Liberty and Justice for All*, September 2015, [http://www.usccr.gov/pubs/Statutory\\_Enforcement\\_Report2015.pdf](http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf) at 2-3, 19-21, 45-67, 125-129.

<sup>2</sup> U.S. Commission on Civil Rights, *With Liberty and Justice for All*, September 2015, [http://www.usccr.gov/pubs/Statutory\\_Enforcement\\_Report2015.pdf](http://www.usccr.gov/pubs/Statutory_Enforcement_Report2015.pdf), at 45-66.

<sup>3</sup> *Ms. L. et al. v. U.S. Immigration and Customs Enforcement*, Order Granting In Part and Denying In Part Defendants’ Motion to Dismiss, Case No. 18-cv-0428, Dkt. 71 (S.D. Cal. Jun. 6, 2018), at 23.

<sup>4</sup> Lind, Dara, “Trump’s DHS is using an extremely dubious statistic to justify splitting up families at the border,” *Vox*, May 8, 2018, <https://www.vox.com/policy-and-politics/2018/5/8/17327512/sessions-illegal-immigration-border-asylum-families>.

by the Administration,<sup>5</sup> giving rise to questions of unwarranted discrimination on the basis of national origin.

In the last two months, the Departments of Justice and Homeland Security have issued new directives instituting a “zero-tolerance” policy that has led to the increased separation of families. On May 4, 2018, the Department of Homeland Security issued an internal memorandum directing agents to prosecute all individuals crossing the border, even if that required separating children from their families.<sup>6</sup> On May 7, 2018, Attorney General Sessions announced that the Department of Justice would pursue the policy.<sup>7</sup> These recent policy directives changed longstanding border enforcement practices.<sup>8</sup>

The new policy unnecessarily separates families with no clear evidence that it increases border security. The Commission notes that a prior joint initiative of the Departments of Justice and Homeland Security that instituted a similar “zero-tolerance” approach did not reduce illegal border crossings,<sup>9</sup> as verified by the Department of Homeland Security.<sup>10</sup> The policy ignores the reality that many of those coming to the border are desperately seeking asylum, fully within the parameters of our nation’s immigration laws.

The policy is inhumane and against the best interests of the children. By separating children from their families, the policy causes irreparable harm to children and families.<sup>11</sup> International

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<sup>5</sup> Feuer, Alan, “Citing Trump’s ‘Racial Slurs,’ Judge Says Suit to Preserve DACA Can Continue,” N.Y. Times, March 29, 2018, <https://www.nytimes.com/2018/03/29/nyregion/daca-lawsuit-trump-brooklyn.html> (noting federal courts’ consideration of President Trump’s statements that Mexico sends “criminals” and “rapists” to America and that “Latino immigrants [are] ‘animals’ and ‘bad hombres.’”).

<sup>6</sup> See Kopan, Tal, “New DHS policy could separate families caught crossing the border illegally,” CNN, May 7, 2018, <https://www.cnn.com/2018/05/07/politics/illegal-immigration-border-prosecutions-families-separated/index.html>; see also Sec. Kirstjen Nielsen (@SecNielsen), Twitter (May 4, 10:27 AM) <https://twitter.com/SecNielsen/status/992455806393176064/>.

<sup>7</sup> U.S. Department of Justice, Attorney General Sessions Delivers Remarks Discussing the Immigration Enforcement Actions of the Trump Administration, May 7, 2018, <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.

<sup>8</sup> Gore, D’Angelo, “Trump Blames Own Border Policy on Democrats,” FactCheck.org, <https://www.factcheck.org/2018/05/trump-blames-own-border-policy-on-democrats/>.

<sup>9</sup> Lydgate, Joanna, Assembly-Line Justice: A Review of Operation Streamline, The Chief Justice Earl Warren Institute at University of California at Berkeley, January 2010, [https://www.law.berkeley.edu/files/Operation\\_Streamline\\_Policy\\_Brief.pdf](https://www.law.berkeley.edu/files/Operation_Streamline_Policy_Brief.pdf).

<sup>10</sup> Office of the Inspector General, Department of Homeland Security, Streamline: Measuring Its Effect on Illegal Border Crossing, May 15, 2015, [https://www.oig.dhs.gov/assets/Mgmt/2015/OIG\\_15-95\\_May15.pdf](https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf).

<sup>11</sup> See, e.g., Shonkoff, J.P., Garner A.S., AAP Committee on Psychosocial Aspects of Child and Family Health, et al. The Lifelong Effects of Early Childhood Adversity and Toxic Stress, Pediatrics, 2012, available at <http://pediatrics.aappublications.org/content/129/1/e232>.

authorities are taking note – and disapproving – of the U.S. government’s actions.<sup>12</sup> There is also bipartisan agreement that keeping families together is the best policy.<sup>13</sup>

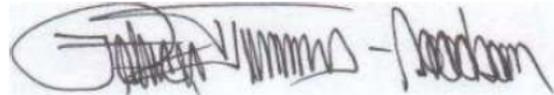
The Commission calls on the Departments of Justice and Homeland Security to stop this approach which subverts the fair administration of justice and appears to discriminate against families on the basis of their national origin.

Thank you for your consideration and we look forward to your response.

Sincerely,



Catherine E. Lhamon, Chair



Patricia Timmons-Goodson, Vice-Chair



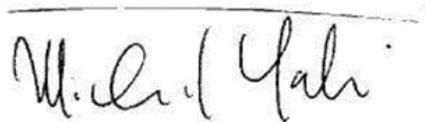
Debo Adegbile, Commissioner



David Kladney, Commissioner



Karen K. Narasaki, Commissioner



Michael Yaki, Commissioner

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<sup>12</sup> United Nations Human Rights, Office of the High Commissioner, “Press briefing note on Egypt, United States, and Ethiopia,” June 5, 2018, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23174&LangID=E> (noting that by ignoring the separated children’s well-being, the zero-tolerance policy violates the separated children’s human rights).

<sup>13</sup> Pramila Jayapal *et al.*, Letter to The Honorable John Carter and Lucille Royal-Allard, June 7, 2018. [https://jayapal.house.gov/sites/jayapal.house.gov/files/DHS\\_AppropsFY19\\_FamilySeparation\\_06072018.pdf](https://jayapal.house.gov/sites/jayapal.house.gov/files/DHS_AppropsFY19_FamilySeparation_06072018.pdf) (108 Members of Congress); Transcript: Rep. Mark Meadows on "Face the Nation," CBS News, May 27, 2018, <https://www.cbsnews.com/news/transcript-rep-mark-meadows-on-face-the-nation-may-27-2018/> (“I think conservatives and moderates, Democrats and Republicans all agree that keeping a family together is the best strategy”).