

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.”<sup>1</sup> 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.<sup>2</sup> In the South Texas Family Residential Center in Dilley, 21 facility staff have tested positive for COVID-19.<sup>3</sup> 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

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<sup>1</sup> 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](http://www.npr.org/sections/coronavirus-live-updates/2020/06/26/884186168/judge-orders-ice-to-free-detained-immigrant-children-because-of-covid-19).

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

<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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

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<sup>4</sup> 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](http://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](http://www.nytimes.com/2018/07/18/us/migrant-children-family-detention-doctors.html).

<sup>5</sup> Linton et al., *supra* note 4, at 5-6.

<sup>6</sup> 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>.

<sup>7</sup> 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).

<sup>8</sup> 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.<sup>9</sup> In some instances, family separation can violate the right to freedom from torture and other ill-treatment.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup> 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

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<sup>9</sup> 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](http://www.amnestyusa.org/wp-content/uploads/2018/10/You-Dont-Have-Any-Rights-Here.pdf).

<sup>10</sup> 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](http://www.amnestyusa.org/wp-content/uploads/2018/10/You-Dont-Have-Any-Rights-Here.pdf).

<sup>11</sup> 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](http://www.ohchr.org/Documents/Issues/Torture/A_HRC_37_50_EN.pdf).

<sup>12</sup> 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](http://www.amnestyusa.org/wp-content/uploads/2018/10/You-Dont-Have-Any-Rights-Here.pdf).

<sup>13</sup> 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