



Lutheran Immigration
and Refugee Service



Betraying Family Values:

How Immigration Policy at the United States Border
is Separating Families



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This report is a joint project of Lutheran Immigration and Refugee Service (LIRS), the Women's Refugee Commission (WRC), and Kids in Need of Defense (KIND). It was researched and written by Jessica Jones, Katharina Obser, and Jennifer Podkul. It was reviewed and edited by Michelle Brané, Megan McKenna, Alex Pender, Joanne Kelsey, Annie Wilson, and Kay Bellor. Additional thanks to Lutheran Volunteer Corps fellows: Katie McCoy and McKayla Eskilson.

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KIND was founded by the Microsoft Corporation and UNHCR Special Envoy Angelina Jolie, and is the leading national organization that works to ensure that no refugee or immigrant child faces immigration court alone. We do this in partnership with over 335 law firms, corporate legal departments, law schools, and bar associations, which provide pro bono representation to unaccompanied children referred to KIND for assistance in their deportation proceedings. KIND has received more than 12,900 child referrals since we opened our doors in 2009, and trained over 14,700 pro bono attorneys. KIND also helps children who are returning to their home countries through deportation or voluntary departure to do so safely and to reintegrate into their home communities. Through our reintegration pilot project in Guatemala, we place children with our local nongovernmental organization partners, which provide vital social services including family reunification, school enrollment, skills training, and counseling. KIND also advocates to change law, policy, and practices to improve the protection of unaccompanied children in the United States, and is working to build a stronger regional protection framework throughout Central America and Mexico. We educate policymakers, the media, and the broader public about the violence that is driving children out of the Northern Triangle and their need for protection.

For more than forty years, LIRS has provided child welfare services to refugee and migrant children who are unaccompanied or separated from family. LIRS staff have expertise in serving and advocating for the best interests of refugee and migrant children. LIRS and its partners provide a range of services to children and families across the United States, including a range of foster care services, family reunification and support services, as well as advocacy and technical assistance.

The Women's Refugee Commission improves the lives and protects the rights of women, children and youth 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 and children, and the policies that can protect and empower them. Our Migrant Rights & Justice program works to ensure access to protection and due process for detained protection-seeking women and children in the United States informed by our own monitoring and research.

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GLOSSARY OF TERMS

ATD: Alternatives to Detention. These can include various forms of release, or more formal government-contracted services to help ensure compliance with immigration requirements.

ATEP: CBP's Alien Transfer Exit Program employs a costly program of lateral repatriation in which Mexicans subject to removal are transported along the border to locations far from their entry point in an attempt by the U.S. to break up smuggling rings and make return more difficult.

CBP: Customs and Border Protection of the Department of Homeland Security; includes U.S. Border Patrol, responsible for admissions at ports, and the Office of Field Operations, responsible for official ports of entry.

CDS: Consequence Delivery System intended to serve as a set of DHS options of punishments to deter future migration.

CFI: Credible Fear Interview. For asylum-seeking migrants placed into expedited removal, a referral to a credible fear interview is the only way to make a case for asylum in the United States. Otherwise the migrant will be deported without any review of their case by an immigration judge. A migrant is supposed to be referred for a CFI interview if they express a fear of return at any stage during apprehension or custody. The CFI takes place while an asylum seeker is in ICE custody.

CRCL: DHS Office of Civil Rights and Civil Liberties, charged with investigating and reporting to Congress on civil rights and civil liberties complaints.

DHS: United States Department of Homeland Security

DIF: Mexico's child welfare agency, Desarrollo Integral de La Familia

DOJ: United States Department of Justice

Expedited Removal: An expedited deportation process created under IIRIRA, under which a migrant is deported immediately or after brief processing, unless the migrant expresses a fear of return and is referred for a credible fear interview. Today, expedited removal applies both at formal ports of entry when someone is deemed ineligible for entry into the United States, and can also be applied to migrants apprehended between ports of entry.

EOIR: Executive Office for Immigration Review, the immigration court system located within the Department of Justice.

FMUA: CBP's classification of "Family Unit Aliens" consisting of children who are apprehended with one or more parents or legal guardians.

HHS: United States Department of Health and Human Services, which includes the Office of Refugee Resettlement.

HSA: Homeland Security Act of 2002, which dissolved the former Immigration and Naturalization Service and divided its responsibilities between EOIR and DHS. It brought under one departmental umbrella of DHS: the Transportation Security Administration, U.S. Secret Service, FEMA, U.S. Coast Guard, CBP, ICE, USCIS, as well as other offices and responsibilities.

ICE: United States Immigration and Customs Enforcement, the branch of DHS responsible for investigative and interior immigration enforcement activity.

IIRIRA: Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

JFMRU: Juvenile and Family Management Residential Unit. Juvenile coordinators within this unit liaise with ORR for the transport and care of unaccompanied children.

MIRP: CBP's Mexican Interior Repatriation Program seeks to remove Mexicans to interior areas of Mexico far from U.S. border areas to deter future migration.

NTA: Notice to Appear is a letter given and/or mailed to an immigrant in removal proceedings with the date the immigrant is to appear in immigration court. (Not all migrants being removed are entitled to a hearing before a judge).

ORR: Office of Refugee Resettlement, which is responsible for the care and custody of unaccompanied children; part of the United States Department of Health and Human Services.

RFI: Reasonable Fear Interview, a relatively new process established by IIRIRA for asylum-seeking migrants for whom DHS reinstates a prior order of removal. Migrants encountered by DHS must be referred for a reasonable fear interview if a migrant who already has an order of removal but expresses fear of return. USCIS conducts RFIs after an individual has been transferred to ICE custody.

TEDS: CBP's National Standards for Transport, Escort, Detention and Search.

TVPRA: The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.

UC/UAC: "Unaccompanied alien child," also referred as an unaccompanied child, introduced in the Homeland Security Act of 2002, is defined as "a child who:

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom –

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

UNHCR: United Nations High Commissioner for Refugees, the UN Refugee Agency

USCIS: United States Citizenship and Immigration Services, the agency overseeing asylum, citizenship, and other visa services within DHS.

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EXECUTIVE SUMMARY

Over the past five years, the United States has seen a shift in the demographics of migrants encountered at our borders—from a majority of adult males, often from Mexico, seeking employment, to families, children, grandparents, aunts, and uncles fleeing together, seeking protection in the United States, coming mostly from Central America.¹ Tragically, U.S. immigration enforcement policies, instead of shifting to adapt to this significant change, have continued to try forcing a square peg into a round hole, and in doing so have compounded the vulnerabilities of families and protection-seeking migrants. Instead of promoting family unity, we as a nation are breaking families apart.

This report documents the ways in which family separation is caused, both intentionally and unintentionally, by the U.S. government's immigration custody and enforcement decisions. It explains how the government's lack of consistent mechanisms for identifying and tracking family members result in family members being detained or removed separately and often losing contact with each other. Because the Department of Homeland Security and other government agencies currently have little policy guidance on humanitarian considerations during enforcement actions, many families are needlessly torn apart.

This report demonstrates how the process of enforcement along the border subjects families to separation, how children, even when accompanied by a parent, can be rendered unaccompanied, and how such separation impacts the family's well-being and access to due process. Finally, this report explains how family separation through the deportation process is dangerous and impedes safe repatriation and reintegration. Our findings of policies and practices in this report have been informed in part from our discussions and interviews with the Department of Homeland Security (DHS), DHS Policy, DHS Office for Civil Rights and Civil Liberties, DHS Office of Inspector General, Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and the Department of Health and Human Services Office of Refugee Resettlement (ORR).

Family unity is important not only to maintain the integrity of the family unit, but also because its destruction has a detrimental impact on liberty, access to justice, and protection. It also negatively impacts emotional and psychological development and well-being, creates security and economic difficulties, and strips the dignity of an individual and their family as a whole. In addition, it is a fundamental human right enshrined in international and U.S. child welfare law.

The federal government should prioritize liberty and family unity in its immigration policy, including enforcement actions. Government agencies with enforcement and custody responsibilities should have mechanisms to identify family

members, and to prevent, mitigate, and track family separation in all cases. Instead of pursuing policies of deterrence and detention, family unity, the right to liberty, and reunification must become presumptive principles.

Ensuring family unity does not require legislation, but can be achieved with administrative changes. These changes include:

1. **The Department of Homeland Security (DHS) should consider family unity as a primary factor in all charging and detention decisions.**

DHS agents should receive training and guidance on identification, documentation, processing, and placement decisions for families. A continuum of alternatives to detention should be utilized instead of traditional institutional detention to avoid separating families and unnecessary detention causing trauma and due process complications.

2. **DHS and its component agencies should document and trace all family relationships.**

Family separation should be recorded and justified in writing. Such information should also be collected, analyzed, and reported regularly to Congress. Information should be accessible to ORR and to family members and their attorneys. This should also permit families to trace other family members, file complaints about family separation, and seek family reunification.

3. **DHS should consider the best interests of the child in all processing, custody, and removal and repatriation decisions.**

DHS should avoid placing family members, whether a mother with a minor child or others arriving together, into expedited or reinstatement of removal. For decisions impacting a child, their best interests should always be of primary consideration and family relationships should be vetted whenever possible. DHS should consider ORR's best interest recommendation as well as recommendations by the DHS Advisory Committee on Family Residential Centers in release decisions regarding detained family members. This should include decisions impacting the custody, release or removal of their family members. During removal and repatriation, children should be protected from family separation to ensure children are returned safely without causing undue trauma.

4. DHS should require the hiring of child welfare professionals at the border to supervise the protection of children and families and oversee instances of family separation.
5. DHS should coordinate among its components and with HHS to identify family separation and facilitate release and reunification.

DHS and its components, including ICE, CBP, and the Citizenship and Immigration Services (USCIS), should work with HHS and ORR to ensure an inter-agency process to help separated family members be released and/or reunited. This should include mechanisms to help detained family members locate and connect with separated loved ones.

6. DHS and the Department of Justice's Executive Office for Immigration Review (EOIR) should ensure separated children who have been designated as unaccompanied children retain their designation for the duration of their removal proceedings.
7. DHS Office of Civil Rights and Civil Liberties (CRCL) should investigate cases of family separation to identify trends, provide oversight and accountability, and report findings to Congress and the public. DHS agencies should also work with DHS CRCL to improve documentation, reporting, and policies on family separation.

TEARING APART FAMILIES: *How Immigration Policy at the United States Border is Separating Families*

Introduction

Daxany, 5 years old

In the summer of 2016, 5-year-old Daxany² and her 15-year-old brother Ervin fled to the United States from Honduras in search of protection with their mother, Cristina. After arriving near the U.S. border, they were taken into Customs and Border Protection (CBP) custody and locked in a secure holding cell. The family huddled together and fell asleep. After an hour, their rest was abruptly interrupted when they were woken up by officials who told the children to say goodbye to their mother. Cristina was removed from the cell. The children were given no explanation. Ervin overheard officials telling their mother that because she had been deported previously and crossed illegally, she was not allowed to stay with her children. Shortly thereafter, Daxany and Ervin were transferred to the Department of Health and Human Services Office of Refugee Resettlement (ORR) custody, where they were placed in a LIRS foster care program. Social workers reported that the family separation was traumatic to Daxany and Ervin. During the separation, Ervin constantly expressed sadness and worry for his mother and he desperately wanted to know what happened to her. After two weeks, Daxany and Ervin were released to their father. Two months later, Cristina was released from ICE custody and reunified³ with her children. – Story provided by LIRS

Over the last year, a disturbing new trend has emerged at the U.S. border: families torn apart.⁴ As an increasing number of families migrate together to the United States, the number of documented cases of family separation has escalated.⁵ These cases are not specific to certain families, nationalities, or regions of the United States. They affect siblings, parents, spouses, small children, and grandparents, both U.S. citizens and noncitizens.

Separation has long been recognized to occur during the migration journey, but it also occurs after apprehension and while in U.S. immigration custody, at official ports of entry, and to those apprehended while crossing into the United States at unofficial entry points, in states including California, Arizona, and Texas. In some instances, the U.S. government affirmatively renders children “unaccompanied” by physically separating and transferring children away from their accompanying family members. These cases are sometimes the result of inadequate government systems

and practices to protect families, and in others they are the result of an intentional focus on enforcement, deterrence, and punishment. **There is no agency-wide policy defining what constitutes a family, no traceable documentation of those familial relationships, nor a requirement for documentation of all family separation incidents.**

In all cases, family separation practices effectively strip away a family member’s right to family unity, are deeply traumatic, and cause significant long-term consequences to a family’s integrity, safety, and access to due process.

SECTION 1: FAMILY SEPARATION DURING BORDER APPREHENSION AND PROCESSING

In some cases, family members are separated along their journey or as they are crossing the border. In other cases family members who arrive at the border together are separated due to immigration enforcement actions such as detention, removal, or prosecution. As the case examples in this report demonstrate, enforcement actions can be unintended consequences of intake and detention policies and procedures, which do not take into account the importance of family unity, or can be intentional actions taken as part of deterrence policies.

Undocumented or mixed status families encountered or apprehended by U.S. Customs and Border Protection (CBP) are taken into custody, placed in secure holding cells, and processed. During this process there are multiple ways and reasons a family may become separated.

Physical Separation in Short-Term Holding Cells

Angel, 17 years old

Angel, 17 years old, traveled with his younger sister Isabela, 15 years old, in 2016. Following apprehension by Border Patrol, Angel and Isabela were held in separate cells. When Angel asked what happened to his sister, the Border Patrol agent yelled at Angel. Angel later shared with a social worker that he was very concerned for his sister and that the separation was upsetting. It was not until they were in ORR custody that they were eventually reunified and placed together with an LIRS partner organization. – Story provided by LIRS

At CBP stations or central processing facilities, border officials typically separate family members in order to group migrants together in one secure cell according to age and gender. Usually this means a holding cell for: teenage unaccompanied boys, teenage unaccompanied girls, very young unaccompanied boys and girls, mothers with children, adult men, and occasionally a cell for adult male parents with children. In practice, this means a number of sibling groups, non-parent relatives with children, or husbands and wives with or without children are separated during holding. CBP agents also do not always corroborate family relationships through identity documents, consulates, or through separate screening interviews by child welfare professionals. This could result in separation for the duration of families' short-term detention. Because of this practice, toddlers or other young children may find themselves scared and alone in a holding cell with other young children and without the care of an adult family member. In many cases they are not reunited after this initial separation. Similarly, women and/or children may not get a chance to see their husbands, partners, or fathers following separation and placement in a holding cell.

Jazier, 4 years old

Jazier, 4 years old, traveled with his 7-year-old sister and 19-year-old cousin to the U.S. border, where they were apprehended by CBP. Jazier was separated from his sister and cousin by CBP officials in custody, instead of being allowed to remain with them. The two younger children were shortly thereafter reunited by ORR and placed in an LIRS foster care program. LIRS does not know what happened to the cousin.

– Story provided by LIRS

Luna, Anthony, and David, 12, 11, and 9 years old

Luna, Anthony, and David—12, 11, and 9 years old respectively—fled South America with their maternal aunt Rocia, who had raised them for the past six years. Upon apprehension by Border Patrol, Luna overheard agents yelling at her aunt as they separated her from her niece and nephews. According to Border Patrol practice, Luna would have been placed in a separate cell for girls, Anthony and David in another, and Rocia in yet another cell.

– Story provided by LIRS

Lack of Mechanisms for Tracking and Recording Family Relations

Federal law and policy clearly underscore CBP's responsibilities to safeguard the best interests of children in its custody and to protect the family unit.⁶ However, government agencies currently have little policy guidance on family unity and separation, and no consistent or comprehensive mechanisms to document family status or trace family members.⁷ There are no shared databases between the law enforcement agencies within the U.S. Department of Homeland Security (DHS), including Immigration and Customs Enforcement (ICE) and CBP, or with the ORR which is tasked with caring for unaccompanied children. Although the agencies have a process to share data among their respective databases, information relating to family separation is often not transmitted. There is no government entity charged with systematically tracking family separation. Not only is there no systematic coordination between CBP and ICE, there is also no requirement that family separation be documented or justified.

Because of this lack of infrastructure and documentation, once separation occurs, individuals have little meaningful recourse to locate, contact, or reunite with a loved one. CBP introduced a national border policy in October 2015, the National Standards on Transport, Escort, Detention, and Search (TEDS), which only clearly requires documentation when there is a separation involving parents and minor children.⁸ Similarly, ICE's database system has no searchable fields or linked cases to easily identify family relationships. For family members seeking information, ICE has a Detainee Resource Information Hotline (DRIL), ORR has a HELP Line, and CBP runs the CBP INFO Center; yet, there is no dedicated hotline across ICE, CBP, and ORR that could help identify the location of a separated family member or assist with reunification. Often, this information is not available to individuals while in the custody of ICE, CBP, or ORR.

The widespread failure to record and track this information results in families separated and left without any knowledge or information about where their family members are or how to reconnect with them. Government officials with whom they come into contact after separation may also be left without the information or assistance they would need to reconnect or reunify families.

Failure to Identify Family Relationships

In some cases, family members do not share information about separated family members with immigration officials because they are afraid of how the information may be used. Immigration officials can therefore make custody decisions without knowing that a family member exists.

But in many cases, families are not identified as families because the definition of family used by immigration officials is very restrictive. There is no clear, articulate, and practical definition of family used by DHS that takes into account the reality of migrant family structures and migration patterns. The definition used by immigration authorities relies on definitions in immigration law for unaccompanied children that require the transfer of an unaccompanied child to ORR. The law limits the release of a child to a parent or legal guardian while in DHS custody.⁹

DHS has relied on this language describing unaccompanied children to create a restrictive definition of family as being only a parent or legal guardian accompanied by a child or children under the age of 18.¹⁰ This means, for example, that siblings traveling together without a parent are not considered family, two married adults traveling together are not considered family, a grandmother and her two young grandchildren are not considered family, and a child traveling with a cousin or uncle are not considered family. In all of these cases, the failure to identify these children as part of a family results in their separation from a trusted adult who has been caring for them and providing support.

TEDS also states that family separation between a minor child(ren) and a parent or guardian should generally be avoided.¹¹ The policy permits family separation, however, whenever CBP agents or officers determine some family members have legal authorization to enter the United States but other family members do not. Additionally there are no standards to protect the unity of families other than what CBP defines as a “family unit”—a parent(s) or legal guardian and their minor child(ren); meaning, families composed of spouses or partners, adult children, siblings, aunts, uncles or grandparents traveling together not only do not receive the designation of a “family unit,” but they would receive no special consideration for the preservation of their family.

Elliot, 5 years old

Five-year-old Elliot was separated from his grandmother, who was his primary caregiver all of his life, when they were apprehended by Border Patrol. Elliot was later placed by ORR into an LIRS foster care program where he was reunified with his father. ICE should have considered Elliot's grandmother for release before detaining her due to her role as Elliot's lifelong caregiver. Following release from ORR, Elliot would not have been deprived of her consistent care and nurturing presence. LIRS has been unable to ascertain what happened to Elliot's grandmother. – Story provided by LIRS

In some cases, family separation occurs to protect and vet a family connection and disrupt trafficking. For example, a child might be separated from an accompanying “uncle” or as articulated above, a “grandparent,” or even a parent if there is suspicion that the claimed relative is actually a trafficker. In these cases it is difficult to subsequently reunify the child with his or her family member even if the relationship is later found to be valid and in the best interest of the child.

While in these cases the law regulating the treatment of unaccompanied children and protection from trafficking often requires an initial separation and transfer of an unaccompanied child to ORR custody while a more thorough assessment is conducted, the lack of any kind of recognition of these claimed relationships, and therefore no recording or tracking of these relationships or separation, makes family reunification after processing all the more difficult, or even impossible.¹² While family reunification should always be a priority, the designation of “unaccompanied” for legal proceedings or subsequent custodial considerations does not, and should not, change if the availability of a child’s parent or legal guardian changes later.

In some cases, there is little to no investigation by CBP into the specifics of family relationships, and, as in the case above, a child such as Elliot may be placed with ORR without any information from CBP detailing the relationship of the primary caregiver, his grandmother, what happened to her, or the accompanying relative or caregiver (e.g., release on alternatives, ICE custody), and how to contact him or her. As will be described in greater detail further in the report, these separations are traumatic and can result in long-lasting or even permanent damage to children and to family structures. ORR’s knowledge of a child’s family members is critical to its family reunification process. If ORR is not informed of these potential relationships, reunification and/or release to an appropriate sponsor is delayed or perhaps prevented entirely.

Estefany, 2 years old

Two-year-old Estefany was in her mother's arms when her mother was brutally murdered by gangs. Three months later, her father was also murdered. Estefany was taken in by her only living relatives—her aunt and uncle. The family, along with Estefany's cousin, decided to flee to the United States where they were apprehended. Even though her uncle had official documentation of her father's passing and that the aunt and uncle were Estefany's only living relatives, the family was separated. The uncle was sent to ICE custody, the aunt and her child were released, and Estefany was transferred to ORR custody. (Estefany remained in LIRS foster care until reunification with her aunt two-and-a-half weeks later. The uncle's release status is unknown to LIRS.)

– Story provided by LIRS

Family members and caretakers separated from a child ultimately designated as unaccompanied may not find out what happens to their child family member after the physical separation, or reunification may be delayed for a long time. There is no requirement that separated family members or other caretakers be informed of their relatives' location or status of their case. If parents or legal guardians are not informed of the process, they could potentially lose their parental rights as they remain in immigration custody or are removed.¹³ For all family members, caretakers, and children, the separation and lack of information is traumatic and potentially devastating both emotionally and to the outcome of their legal case, whether for a short period or indefinitely.

Separating Children from Their Parents**Maria, mother**

Maria fled her abusive partner in Mexico with three U.S. citizen children and two non-U.S. citizen children, 3-year-old Odalys and 2-year-old Rosie. After arriving at a U.S. port of entry, Maria and her children were detained and processed by CBP officials. Maria unsuccessfully attempted to flee the processing office to return to Mexico with Odalys and Rosie. The ICE report stated that the three U.S. citizen children were taken from their mother by officials because they were at risk of child endangerment. The report based this assessment on the assertion that when Maria was fleeing from the agents, she picked up Rosie and grabbed Odalys by the arm. CBP claims that Maria dragged Odalys a little and her face was scraped in the process. Odalys and Rosie were also taken from Maria as a result and were placed in ORR custody. There were no potential sponsors identified for Rosie and Odalys. The placement of their older siblings who have U.S. citizenship was never communicated to ORR, nor was information provided to ORR about how to contact Maria. After LIRS service providers contacted Maria, they came to the conclusion that it was not in the best interests of the children to be separated from their mother and LIRS advocated for Maria's release from ICE custody so Odalys and Rosie could be reunified with their mother. – Story provided by LIRS

Lucia, mother

Lucia sought asylum at the border with her husband and two youngest children, who are U.S. citizens, after gang members tortured and killed their extended family members as punishment for their refusal to allow the children to join the gang. Her husband appeared at the border with injuries from the gang that had been targeting them. Despite arriving as a family, including U.S. citizen children, and despite seeking asylum, Lucia and her husband were sent to different adult detention centers, while CBP referred their young children to San Diego Child Family Services, which placed them with a family member. The family member abused and neglected the two children. From detention, Lucia was able to arrange for the children to live with a different family member, but after a time, the second family member was no longer able to care for the children because of medical issues. Only with the assistance of a pro bono attorney was Lucia able to obtain release on parole and has since been reunited with her children. Her husband remains detained. – Story provided to WRC by pro bono attorney

There have been numerous reports of border agents separating parents from their children in which border officials decided that separation was in the best interest of the child. Under current policy and practice, these decisions are arbitrary and require no justification or documentation and do not involve any child welfare expertise. Current practice affords no due process to protect the integrity of the family. Critical decisions affecting child welfare and parental rights are made by law enforcement personnel without any input from professional social workers or child welfare professionals. A parent can effectively lose custody of their child without any judicial oversight and in a manner and for reasons inconsistent with current child welfare legal standards.¹⁴ In these cases, as in cases of children identified as unaccompanied, the parent is sent to an ICE adult detention facility while the child is rendered unaccompanied and transferred to ORR.

Brandon, 17 years old

Brandon was 17 years old when he traveled to the United States with his father. CBP officials detained Brandon and his father at the border. Although CBP officials confirmed the pair's biological relationship with the consulate, Brandon and his father were nonetheless separated by the agency. Brandon was placed in an LIRS foster care program by ORR. – Story provided by LIRS

In one case, LIRS served toddler children who were separated from their mother because she ran from agents to avoid being apprehended. These agents made judgments regarding the mother's suitability based on very limited information and in a manner inconsistent with child welfare standards.

It should be noted that there are cases in which the separation of a parent and child legitimately serves to protect the child and is in line with child welfare standards. Examples may include parents who have violent criminal histories or in which there was an incident of alleged child abuse which was reported to the designated federal or local authorities. However, these decisions should be conducted by trained child welfare professionals, and should never be conducted by CBP agents without appropriate child welfare training.

To rectify these situations, CBP could hire social workers to oversee care and custody of children and families, and train other CBP agents on how to apply a best interests of the child framework for when an agent believes a child's separation from their parent is warranted.¹⁵ Cases like Lucia Maria's above illustrate the importance of training on child abuse or neglect, which can also provide guidance to border agents on appropriate reporting of allegations to state or local authorities and/or the FBI in accordance with the law.¹⁶

Separation Because of Mixed Immigration Status

Border agents also often separate family members traveling together if some have legal permission to enter the United States and some are unauthorized. Children who are U.S. citizens or have legal status are particularly vulnerable to being separated from unauthorized parents. As the story below of Maria and her children shows, Maria's mixed status children—U.S. citizen children and younger undocumented children—were separated not only from each other but also from their mother. Border agents may decide to pursue an immigration enforcement action against the undocumented family members and send them to detention.

In the case of children who are U.S. citizens or lawful permanent residents who cannot be detained in immigration custody, the decision to detain the parent results in separation. Some agents ask the family member to try to locate an individual who can take custody of the child.¹⁷ Other border agents may call the local or state child welfare agency to take custody of the child. As a result, and again, because there are no mechanisms in place to document relationships and encourage reunification, family members without documentation who remain in custody may not know for a long time what happens to their children. In some cases, reunification may be significantly delayed, or parents may lose parental rights.¹⁸

CBP's TEDS standards requires a separation be documented in the case of a minor child who is separated from a parent or legal guardian due to differences in immigration status, i.e., the child is a U.S. citizen and the parent is undocumented. TEDS only provides the parent and legal guardian "an opportunity" to arrange for child care of their U.S. citizen children. Otherwise, the policy requires their transfer to social services.¹⁹

Separating Families as a Method of Deterrence

As a matter of procedure and policy, border agents routinely separate family members, including intentionally, as punishment—or "consequences"—through what DHS calls its Consequence Delivery System (CDS). These consequences are meant to deter future migration, often regardless of international protection or other humanitarian concerns. The CDS has been implemented systematically since 2005. Common examples of CDS include Reinstatement of Removal, criminal prosecution for an immigration offense such as reentry (including Operation Streamline), lateral repatriation, Alien Transfer Exit Program (ATEP), and Mexican Interior Repatriation Program (MIRP). *See Appendix X.*

DHS' stated purpose of the CDS is to deter future unauthorized migration, despite a lack of evidenced-based evaluation of CDS to support its effectiveness.²⁰ As such, many parents and children arriving at the border and seeking asylum are subject to CDS to punish them for their flight to the United States. Deterring future migration is prioritized over concern for protection, access to justice, and family unity.

Rosa, 19 years old

Rosa, 19, was apprehended at the border with her mother, father, and 15-year-old sister. Her father was detained in an adult male detention center, Rosa was sent to a separate facility, and her mother and younger sister were paroled.
– Story provided to WRC by private attorney

Border agents may use an evaluation process to administer a consequence based on the level of infraction for unauthorized entry or other suspected criminal activity. Nowhere in the CDS process is there a clear articulation of weighing humanitarian considerations, such as claims for legal relief and international protection, or the impact on children or family units. Additionally, CBP lacks guidance on how to weigh such considerations vis-à-vis the use of a consequence.²¹ In practice, human rights groups and service providers have documented systemic failures by border agents to ensure the protection of family members throughout the process.²² Some families fear that border agents will purposely separate them and consequently have chosen not to reveal their family unit status.²³

The punishments employed as part of CDS vary greatly. Each consequence poses a unique risk to accompanying family members. See Appendix A for more information on how CDS is designed, examples of types of consequences, and the potential impact of each of these consequences.

Examples of how deterrence tactics separate families:

1. Expedited Removal and Reinstatement of Removal:

With the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Congress created a new summary process for expedited removal and for reinstating prior orders of removal when an individual re-enters without authorization, known as "reinstatement of removal."²⁴ For the many families fleeing Central America or Mexico, expedited removal and reinstatement of removal inhibits access to the asylum application process and results in separation. While this summary process can allow for the pursuit of a protection claim, it is a complex process that requires a separate screening process—called a credible fear or reasonable fear interview—before the parent or family member is able to apply for asylum before an immigration judge. This process often involves prolonged detention, and adds further complication when family separation keeps family members from pursuing an asylum case together.

Although expedited and reinstatement of removal have existed for years, as families fleeing violence in Central America began making headlines in 2014, the Obama Administration implemented an aggressive deterrence policy designed to stop families from seeking protection in the United States.²⁵ The Administration prioritized all recent border crossers as enforcement priorities and vastly increased the use of expedited removal and detention of mothers arriving with children. The Administration has also been discouraging families from making the dangerous journey through ad campaigns, failing to recognize that families may flee to Mexico, the United States, or other countries as a last resort for protection.²⁶

As the use of expedited removal, reinstatement of removal, and detention against families and adults seeking asylum has increased, so have the risks of separation. While the government could release family members together, either to relatives in the community or through alternatives to detention (ATD), it often prioritizes their detention. Some mothers are detained with their minor children in family detention settings, but are still separated from other family members who are detained elsewhere. Fathers are rarely detained in family detention, so in cases of fathers with minor children in which ICE resists releasing the father, he will be separated from his minor children.

Gerardo, 5 years old

Gerardo, 5 years old, traveled to the United States with his father. Gerardo and his father were separated by CBP officials during apprehension at the border. The father was placed in ICE detention, while Gerardo was transferred to ORR.
– Story provided by LIRS

Furthermore, because the longstanding Flores Settlement Agreement places constraints on DHS's ability to detain children for long periods without further complications, DHS may decide to separate mothers and children rather than release them together.²⁷ DHS's resistance to the use of alternatives to detention in these cases is resulting in mothers or fathers being sent to ICE adult detention while CBP removes their children from them and sends them to ORR custody. This detention and separation is not only traumatic and impedes access to protection, it is also costly and unnecessary.

Joana, mother

Twenty-two-year-old Joana fled to the United States with her one-and-a-half-year-old daughter Lucia. Following apprehension, Joana was separated from Lucia, even though Joana was still breastfeeding her. Instead of being released from CBP custody, Joana was sent to ICE custody and Lucia was released to her mother's partner, who was living in the United States. While in ICE detention, Joana submitted a pro se request for visitation with her daughter and a pro se request for release—both were denied. Joana subsequently received legal representation from the Northwest Immigrant Rights Project. After Joana obtained representation, her attorney helped Joana be reconsidered for release from detention under the Parental Interests Directive. Joana was released from detention and reunited with her child after three months of separation.
– Story provided by Northwest Immigrant Rights Projects

In these cases, DHS policies, as carried out both by CBP and ICE, are prioritizing enforcement and detention as a deterrent over family unity and the right to liberty that could be preserved with release or alternatives to detention.

The separation of families has critical consequences not only on the emotional well-being but also on the ability of separated family members to make a clear and complete claim before the court. In some situations, a desperate parent will try to withdraw their protection claim because of their fear over losing their child, only to be told it is too late.²⁸ Young, separated children may not know the reason for their flight to the United States. Without the mother's involvement, their claim may ultimately fail even if the child has a strong persecution claim and appears eligible for U.S. protection.

The story on page three of 5-year-old Daxany and 15-year-old Ervin, who were separated from their mother because she was put into reinstatement of removal, is a classic example of how placing a parent in reinstatement and separating them from their children is a form of punishment condoned by the current CDS.

Patricia, separated from husband

Patricia, a 32-year-old Mexican, was crossing the U.S. border with her husband when they were both detained. They were placed in separate holding cells in a Border Patrol station. She asked Border Patrol agents several times about him and they did not give her any information. One official told her to “stop asking me about your husband or I am going to keep you another two days in detention.” She was deported the day after she and her husband were detained. Patricia thinks that perhaps her husband, who a year prior had spent ten days in jail after attempting to enter the United States, was being held for additional time as a result.
– Story provided by The Kino Border Initiative

2. Criminal Prosecution of Migration:

Family unity has also been negatively impacted by the implementation of laws that focus on enforcement and often result in criminal charges against individuals who seek to enter without inspection (a misdemeanor) or who reenter unauthorized following a previous order of removal (a felony).²⁹ These charges are often brought against asylum seekers even if they request asylum at the border. In practice, this means persons referred for criminal prosecution are sent to a different federal agency to be tried and possibly jailed, while their spouses or children are detained, released, or removed, separately. These transfers make it even more difficult for families to remain in contact because there is no mechanism by which these different agencies track family members. Since the systemic referral of migrants for criminal prosecution through initiatives such as Operation Streamline began, it has been plagued with criticisms including of its use against accompanying fathers and spouses.³⁰ Like reinstatement of removal, a spouse or other family member, once separated, may lose contact with their family members and often have no way of finding them. Moreover, CBP employs this program universally, even against asylum seekers, punishing them for returning to the United States for reasons entirely out of their control. This practice runs contrary to the very spirit of refugee protection; in 1951 the United Nations signed the Convention Relating to the Status of Refugees, explicitly opposing penalties against refugees who enter unlawfully.³¹

3. Alien Transfer Exit Program (ATEP) and Mexican Interior Repatriation Program (MIRP):

CBP’s Alien Transfer Exit Program (ATEP) is a program of lateral repatriation in which Mexicans subject to removal are transported along the border to locations far from their entry point in an attempt by the United States to break up smuggling rings and make return more difficult. Similarly, the Mexican Interior Repatriation Program (MIRP) seeks to remove Mexicans to interior areas of Mexico far from the U.S. border to deter future migration.

Luis, 18 years old

Luis, 18 years old, was apprehended with his father near Douglas, Arizona. When apprehended, they declared their family relationship and were placed in the same holding cell at the Douglas station. The day after their apprehension, Luis was taken out of the cell and placed on a bus without being told why his father was not also being transported with him. Luis was deported to Nogales, Sonora, while his father was deported hours away to Mexicali. Luis had no idea what had happened to his father for more than two days after his deportation. He was very scared to be alone in a city where he had never been, as well as nervous for his father’s well-being.
– Story provided by Kino Border Initiative

For families who enter the United States, this may mean they could enter together, be detained and processed at the same detention facility, and then intentionally repatriated to different places. For example, even if a married couple is apprehended together in Tucson, AZ, the husband may be involuntarily shipped hours away to another U.S. port of entry, or be repatriated to another part of Mexico away from his wife. Numerous advocates have documented how the practice of intentionally separating spouses and families far along the border for the purpose of deterring migration significantly increases vulnerability.³² In some cases, the separation of a spouse may also be combined with border officials’ transfer of identity documents, cell phones, and money with the family member laterally repatriated, putting the other family member(s) in untenable situations, exposing them to a greater likelihood of trafficking, and crippling their ability to return to their communities.

Findings from the Kino Border Initiative³³

From 2014 through 2015, the Kino Border Initiative (KBI) surveyed individuals deported to Nogales, Sonora. Their survey of 358 participants found:

- Almost 65 percent of migrants who were traveling with immediate family were separated from those family members (an increase of almost 10 percent from a survey by the Mexican Government, *Las Encuestas sobre Migración en las Fronteras Norte y Sud de México [EMIF]* in 2012).
 - 13 percent of family separations included the separation from a child.
 - 20 percent of family separations were due to the detention of another family member (most likely connected to Operation Streamline or another border prosecution program).
 - 30 percent of family separations were attributable to lateral repatriation programs such as ATEP or MIRP.
- In 36 percent of the cases, individuals at the time of the interview were unsure of the location of their family members.
- 69 percent of families surveyed reported an increased feeling of insecurity due to family separation during the deportation process.
- Separated families were also more than twice as likely as other surveyed participants to have experienced abuse in a short time following their removal.
- 38 percent of family members reported financial difficulties due to the separation.

Additionally, data from KBI's basic questionnaire for migrants who arrived at their aid center from January to June of 2016 showed that:

- 36 individuals who were detained while crossing the border were separated from a parent in the detention and deportation process.
- 128 individuals were separated from their spouse.
- 67 individuals were separated from children.
- 124 individuals were separated from their siblings.

SECTION 2: FAMILY SEPARATION CONSEQUENCES IN LONG-TERM CUSTODY

Juan, father

Juan and his 21-year-old daughter Nadine were apprehended by CBP officers after walking through the desert for five days and brought to the Tucson Border Patrol Station. Nadine was five months pregnant at the time. Juan told officials that his daughter was pregnant and needed medical attention. But she was not given any. Juan repeatedly told officials that he needed to be deported with his daughter because he was responsible for her care. The agents disregarded his request, stating that she was no longer a minor. Juan was deported to Mexicali while his daughter Nadine was deported at approximately the same time 360 miles away through Nogales. She felt very alone and unsafe. Juan later expressed that the failure to respect the importance of family unity put both his daughter and her baby at risk. – Story provided by Kino Border Initiative

Family members are not only physically separated at the border, but their legal cases and experiences with the immigration enforcement system continue to be separate. There is no systematic approach to how families who are separated at the border will be detained or released. Adults charged criminally or held as witnesses may be transferred to Department of Justice (DOJ) custody. Other adults may be sent to ICE adult or family detention facilities, or released on bond or through another alternative to detention. Unaccompanied children are sent to ORR custody, and U.S. citizen children may go to state or local child welfare agencies or be reunified with other family members. ICE has a Parental Interest Directive that instructs ICE to use discretion in making detention decisions involving parents and primary caregivers.³⁴ It directs ICE agents to consider a person's status as a parent or primary caregiver as a mitigating factor in favor of release over detention.

In addition, custody and release decisions may be made on the availability of bed space. In other words, these decisions are not made based on individualized determinations that prioritize protection concerns and family unity in custody. This is despite the agency's stated priorities that primary caregivers and other vulnerable populations should not be detained except in rare circumstances.³⁵

Separation Causes Trauma

Marco, 7 years old

Seven-year-old Marco and his father Raul fled their country because of death threats from gangs. Marco was separated from his father upon apprehension while they were in Border Patrol custody. Marco was sent to ORR custody in an LIRS foster care program, where the separation was reported to the DHS Office of Civil Rights and Civil Liberties. After about a month, Marco was reunified with an aunt in New York. Meanwhile Marco's father Raul was placed far away in ICE detention in Tacoma, WA. During the time of the 3-month separation, Marco and his aunt were unable to contact Raul and were desperate for information about him. Marco expressed sadness and anxiety, and continuously asked his LIRS case manager where his father was. LIRS contacted ICE's Enforcement and Removal Office about considering Raul's release under ICE's Parental Interests Directive. After three and a half weeks, Raul was released and reunified with his son. – Story provided by LIRS

The separation of family members, and their separate detention in various ICE and ORR facilities, can cause emotional trauma to both children and adults. As noted in interviews and numerous studies, evidence proves that family separation can negatively impact both the emotional and physical well-being of separated adults and children.³⁶ Both medical and mental health experts have concluded that forced separation of migrant children who have fled violence can be particularly harmful.³⁷ For a young child, even a brief separation from parents, especially if endured following trauma or during a traumatic event (such as the secure holding cells operated by CBP), can have a long-lasting impact.³⁸ For many family members, the trauma of separation is further compounded by ICE officials hindering direct communication between family members. Separation also presents enormous challenges to reunification and obstacles to accessing legal relief. These challenges are exacerbated for those family members who may not have access to counsel, which is all too common for those in ICE detention facilities.³⁹

Maria, mother

During a visit to a detention center, Women's Refugee Commission staff was approached by Maria, a woman from Guatemala, who was sobbing because she had recently arrived at the facility after having been separated from her 6-year-old son at the border. She had received no information from immigration officials about where he was taken or how to contact him, and was desperately concerned for his safety. – Story provided by Women's Refugee Commission

Soledad, 13 years old

Thirteen-year old Soledad entered the U.S. with her father in Arizona. After apprehension by CBP, she and her father were separated; he is currently detained by ICE. Soledad was transferred to ORR and placed in an LIRS program. While at school, Soledad erupted into tears and shared that since the separation from her father, she wanted to die. She became emotionally inconsolable, expressing that she couldn't breathe, that her head hurt, her "heart hurt" and she began vomiting. Her service providers connected her to needed mental health care, but the emotional toll of on-going separation remains a struggle for her. – Story provided by LIRS

Trying to Reunify

Positive Example of Family Reunification

Four-year-old Pablo fled Honduras with his uncle, Jose and grandmother, Yvette. Following apprehension they were separated and Pablo was sent to ORR and placed in an LIRS foster care program. ICE promptly released both Jose and Yvette, and ORR is in the process of reunifying the entire family. – Story provided by LIRS

Separated family members are often dependent on the willingness, sympathy, and extraordinary efforts of individual ICE or ORR officials to facilitate connections for communication, for reunification, or legal case consolidation. In cases involving children placed with ORR, ICE Enforcement and Removal Operation's Outreach and the Juvenile Coordinators in the Juvenile and Family Residential Management Unit have been

able to assist in some cases. However, there are no formal policies in place across all federal agencies. It is up to voluntary efforts by service providers or officials to help facilitate release, reunification, or at minimum for families to maintain contact despite physical separation. Based on reports we received from service providers, even in cases in which an individual in ICE custody repeatedly informs ICE field officials of family separation, ICE's response to facilitate contact and reunification are inconsistent at best.

Corea, mother

Corea traveled to the United States with her husband Pedro and their three children. Following apprehension, the family was separated. Corea was released from family detention in San Antonio, TX, with two of her children. She remained at a local shelter while she attempted to obtain information regarding her husband, who had been detained separately by ICE, and another child, who had been separated and sent to ORR care. She did not feel that she could continue on to her destination until she had clear information about the rest of her family, and did not know who to call at ICE to communicate about her case. – Story provided by LIRS

Often, a refusal to release is linked to stated agency enforcement priorities that are often interpreted locally to require detention of all border crossers, regardless of international protection claims or family unity concerns. ICE also has no process for taking release recommendations from ORR so that ORR may consider adult family members for the care and custody (sponsorship) of children following release from ORR's care. Although ORR may have another sponsor identified in the community to care for a child, it is often the mothers, fathers, grandparents, siblings, and aunts or uncles in ICE detention who are the primary caregivers of separated children.

Estrella, 6 years old

Estrella was six years old when she was separated from her primary caregiver—her aunt— at the U.S. border. Estrella's aunt had hoped to reunite with her brother, Estrella's father, in the United States when life in Central America became too dangerous. Estrella, who has been immobile for most of her life as a result of severe medical and cognitive needs, was transferred to a foster care program operated by ORR; her aunt was held in a detention facility. LIRS worked to reunite the family and provide Estrella with appropriate care. As a result, her aunt was released and reunified with Estrella and Estrella's father. – Story provided by LIRS

Due Process Consequences from Family Separation

In addition to the trauma generated by family separation, there are also serious consequences for an individual's and family's case for legal relief. Many of those separated may have had a linked asylum claim that individuals then must try to pursue separately. Sometimes one or more family members are released and placed into immigration court proceedings, while the other must first undergo a preliminary screening to determine whether she can even be allowed to make her asylum case. Separating cases can result in widely varying legal outcomes. Despite having the same claim for asylum, in which one family member could be linked to another family member's asylum case, they now become two separate cases. It is possible for U.S. Citizenship and Immigration Services (USCIS) or DOJ's Executive Office for Immigration Review (EOIR) to affirmatively consolidate the cases. However, information about a relative's separate removal proceeding is not included in their "A File," even if a person explains that they were separated. As mentioned above, some may not share that they arrived with other family members because they do not know what has happened to them and fear that alerting authorities may cause them to be apprehended or deported. This separation of cases creates numerous complications, inefficiencies, and can ultimately interfere with critical access to legal protection.

Separating cases risks creating disparate results in which one family member wins their claim while another loses. Sometimes these disparate decisions are made based on the same presented facts, but in many cases individual cases are jeopardized because critical information is lost with the separation. Whether the cases are merged or not, the physical separation and inability to communicate can affect the information and supporting documentation presented and fundamental credibility issues.

Separated family members, particularly children, may not know all the details or have all the documentation of their intertwined case. For example, one separated family member may have carried the identification documents and evidence relating to an asylum claim for the whole family, leaving other family members without documentation, which can impact their credible and reasonable fear finding and subsequent court case. Or a child may not be aware of all the circumstances explaining the danger they were in, or may not be able to convey their need for protection. In all of these cases, separation and especially separation without the ability to remain in contact and communicate and coordinate their asylum claim may result in permanent separation and in some family members being removed to dangerous or life threatening situations. In some cases, one or more family members may be deported while the remaining family member(s) stay behind to pursue their claims, despite all having the same asylum

Aurelia, U.S. resident, mother

Aurelia, a long-time resident with temporary legal protection in the United States, returned to Honduras to help investigate the murder of her activist mother. She began to speak out against police corruption and was intimidated, threatened, and extorted in response. She left Honduras again with her husband, Manuel, and their young son; they all arrived in the United States and were apprehended by CBP.

Aurelia was separated from Manuel and told that he would be deported that night. CBP refused to answer any questions about his case or detention. Aurelia and her son were sent to a family detention facility, where despite intense pressure to accept deportation, she finally received an initial reasonable fear screening. Aurelia was also eventually told how to locate Manuel, but even once located, communication was extremely difficult. After she and her son passed their screening interview, Aurelia requested that her son be released to his aunt but ICE instead attempted to place her son into a shelter for unaccompanied children. ICE then required Aurelia to sign a paper saying that ICE could not separate Aurelia from her son in order to stop the son's placement in a shelter. ICE continued to fight the son's release. Aurelia and her son were finally released four months after entering family detention.

Manuel was ultimately detained for eight months. As a result of the separation at the border and attempts to send their son to ORR, Aurelia, Manuel, and their son were forced to pursue three different immigration claims, with three different lawyers, and in three different immigration courts. All three have since been granted relief, after enormous trauma as well as immense cost and inefficiency to all involved. – Story provided by Worker and Immigrant Rights Advocacy Clinic at Yale Law School and the Asylum Seeker Advocacy Project at the Urban Justice Center.”

Mariella, 5 years old

Five-year-old Mariella traveled to the United States with her father Daniel from Guatemala. Following their encounter with CBP agents, Mariella was separated from her father. This resulted in Mariella, who only speaks a Mayan language, being left alone in a cell with other children. As a result of the separation, Mariella was sent to ORR and placed in an LIRS foster care program, and her father sent to ICE detention. While in LIRS foster care, Mariella could not identify any other family members to whom she could be reunified. The initial separation by CBP means that Mariella will remain in ORR custody unless her father is released. LIRS case managers reported the case to CRCL and reached out to the ICE Field Office Juvenile Coordinators in ICE/JFMRU. Meanwhile, Daniel requested a credible fear interview because of death threats he received in Guatemala. When the LIRS case manager and Daniel were able to connect, Daniel changed his mind about moving forward with this case—detention, family separation from his daughter, and other factors made him want to accept voluntary departure.

– Story provided by LIRS

Ana, indigenous language speaker

In another facility, Ana, an indigenous language speaker, was detained for months as she continued to have her immigration hearings rescheduled due to the government's inability to provide an interpreter. Ana was detained and separated from her husband, who seeks protection for similar reasons but was released with bond from another facility.

– Story provided to WRC by private attorney

SECTION 3: FAMILY SEPARATION UPON DEPORTATION

Family separation has profound long-term consequences for those facing removal or repatriation. Parents or spouses may be removed while their child or spouse is still making a protection claim. Even when a parent may have the opportunity to be repatriated together with their child, they are forced to make the impossible decision between staying together and having their child forfeit their legal claim or suffering separation.

A History of Separation During Removal

Women's Refugee Commission and others have already extensively documented the impact of immigration enforcement and deportation on parents and caregivers and their children.⁴⁰ For years, interior immigration enforcement practices resulted in the detention of parents often far from their children. As a result, parents were unable to maintain parental rights over their children as they were unable to participate in or even know about local child welfare proceedings involving the child that immigration apprehension forced them to leave behind. Often, DHS afforded parents and caregivers no means to participate in custody proceedings, or to coordinate and reunite with children in cases of removal. Ultimately, ICE issued a Parental Interests Directive aimed at preventing and mitigating the impact of immigration enforcement on families. Although some practices have improved, the issues continue to persist, especially in light of increasing separation occurring at the border.⁴¹

Yessica and Wilder, 10 and 9 years old

Yessica, 10 years old, and Wilder, 9 years old, traveled to the United States with their mother. CBP officials apprehended the family unit, but they could not verify the mother's relationship to Yessica and Wilder. The children were separated from their mother, and the mother was placed in an ICE detention facility. Initially, ICE officials did not permit the ORR service provider, LIRS, to pass information to the mother about her children's legal case, creating due process obstacles for the children's immigration claims. The children were eventually reunified with an aunt, but what has happened to the children's mother remains unknown to LIRS as LIRS was not asked to provide case management services to the children post-release.

– Story provided by LIRS

An Impossible Choice: Repatriation or Separation

Because many children are unable to present their legal claim for immigration relief due to separation from a family member, many are forced to choose voluntary return or accept an order of removal. Through its Guatemalan Child Return and Reintegration Project (GCRRP), KIND has seen several children between the ages of 8 -12 years old who have had to make the impossible decision about whether or not to request to leave voluntarily or stay and try to find their parent from whom they have been separated.

For the children who choose voluntary departure, there are many instances in which the child's removal is not coordinated with a parent's or other family members' return to the home country. For example, KIND has assisted children returning to Guatemala through GCRRP who entered with a family member, including a parent or primary caretaker, but were separated from them during apprehension and detention, and are now being removed alone. Because the children were unable to remain in contact with the adult with whom they traveled, they could not coordinate their travel back to the home country together. This means young children are forced to make the trip with a stranger, often a representative from their consulate, or are escorted by an immigration official, rather than a family member. Not only does this cause unnecessary and harmful stress to the child, but it poses logistical difficulties upon return. Finally, there is no guarantee that they will be reunified with the parents when they arrive in their home country.

Locating Children Who Have Been Returned

Because a child returned home separately from their caretaker will be processed as unaccompanied, there are additional procedures a child and their family must go through upon repatriation. For example, in Guatemala, an unaccompanied child must be processed at a designated reception center. Even when a parent arrives to reunify with their child at the airport, the child will be sent alone to the processing center before that parent can leave with their child. This might not happen until the following day which means prolonged separation and re-traumatization.

When an unaccompanied child is processed through a special reception center, family members must arrange and pay for travel to arrive at the facility and go through what could be a lengthy reunification process that could be avoided had the family members been returned together. These unnecessary processes are not only a waste of resources for both the sending and the home country, but they are traumatic and draining for the children and their families.

Similar instances have occurred for children repatriated to Honduras. The Evangelical Lutheran Church in America (ELCA), which supports a local organization's reintegration program, has reported instances in which children were separated from their family member as they entered the United States.⁴² Due to confusion about the process during their repatriation, children or their family members received no information from authorities about each other's whereabouts. There have also been cases in which family members were compelled to travel to the child and family repatriation center multiple times to inquire about the location of the child and his/her arrival schedule.

The Repatriation of Mexican Children

Mexican children returned alone are received by Mexico's child welfare agency, Desarrollo Integral de La Familia (DIF). After reception by DIF, children are taken to a shelter where DIF caseworkers attempt to locate and contact children's family members. For separated Mexican children at the U.S. border, a child could be separated solely for the purpose of placing the parent in one of the Consequence Delivery System's punishments. This means a Mexican child could remain in the custody of DIF while waiting to reunify with their family member. For parents fleeing because of persecution, this places them in the untenable situation of having their child in Mexico in a dangerous location, or risking their lives returning to Mexico so they can reunify with their child.

CONCLUSION AND RECOMMENDATIONS

Family unity is important not only to maintain the integrity of the family unit, but also because of the detrimental impact on liberty, access to justice, and protection when it is disrupted. Family unity is a fundamental human right enshrined in international law.⁴³ The denial of the right to family unity causes great harm, disrupting emotional and psychological well-being, creating new security and economic difficulties, and stripping the dignity of an individual and their family unit. **The federal government should prioritize liberty and family unity in any immigration policy that it sets, including enforcement actions.** Government agencies with enforcement and custody responsibilities should have mechanisms to identify family members, and to prevent, mitigate, and track family separation in all cases. Instead of pursuing policies of deterrence and detention, family unity, the right to liberty, and reunification must become presumptive principles. To that end, our organizations recommend:

1. **The Department of Homeland Security (DHS) should consider family unity as a primary factor in all charging and detention decisions.**

DHS agents should receive training and guidance on identification, documentation, processing, and placement decisions for families. A continuum of alternatives to detention should be utilized instead of traditional institutional detention to avoid separating families and unnecessary detention causing trauma and due process complications.

2. **DHS and its component agencies should document and trace all family relationships.**

Family separation should be recorded and justified in writing. Such information should also be collected, analyzed, and reported regularly to Congress. Information should be accessible to ORR and to family members and their attorneys. This should also permit families to trace other family members, file complaints about family separation, and seek family reunification.

3. **DHS should consider the best interests of the child in all processing, custody, removal and repatriation decisions.**

DHS should avoid placing family members, whether a mother with a minor child or others arriving together, into expedited or reinstatement of removal. For decisions impacting a child, their best interests should always be of primary consideration and family relationships should

be vetted whenever possible. DHS should consider ORR's best interest recommendation as well as recommendations by the DHS Advisory Committee on Family Residential Centers in release decisions regarding detained family members. This should include decisions impacting the custody, release or removal of their family members. During removal and repatriation, children should be protected from family separation to ensure they are returned safely without causing undue trauma.

4. **DHS should require the hiring of child welfare professionals at the border to supervise the protection of children and families and oversee instances of family separation.**
5. **DHS should coordinate among its components and with HHS to identify family separation and facilitate release and reunification.**

DHS and its components, including ICE, CBP, and USCIS, should work with HHS and ORR to ensure an inter-agency process to help separated family members be released and/or reunited. This should include mechanisms to help detained family members locate and connect with separated loved ones.

6. **DHS and the Department of Justice's Executive Office for Immigration Review (EOIR) should ensure separated children who have been designated as unaccompanied children retain their designation for the duration of their removal proceedings.**
7. **DHS Office of Civil Rights and Civil Liberties (CRCL) should investigate cases of family separation to identify trends, provide oversight and accountability, and report findings to Congress and the public. DHS agencies should also work with DHS CRCL to improve documentation, reporting, and policies on family separation.**

For a detailed set of recommendations see LIRS, WRC, KIND, and other coalition partners' backgrounder, available at: <http://lirs.org/wp-content/uploads/2016/04/Family-Separation-FINAL-backgrounder-3-22-16.pdf>

ENDNOTES

¹ WRC analysis of data from US Customs and Border Protection. On file with authors. See also <https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions>

² All names in the report have been changed to protect the identities of family members.

³ The purposes of this report, family reunification, references a core child welfare concept and principle in federal and state child welfare laws.

⁴ For more information on the pervasiveness of family separation due to immigration enforcement policies, please see the background: "Separation of Immigrant Families in U.S. Immigration Custody" (March 2016), available at: <http://lirs.org/wp-content/uploads/2016/04/Family-Separation-FINAL-background-3-22-16.pdf>; Jesuit Conference of Canada and the United States, Lutheran Immigration and Refugee Service (LIRS), National Immigrant Justice Center, and Women's Refugee Commission, (WRC), "Memo: Concerns Over the Separation of Immigrant Families in U.S. Immigration Custody" (September 30, 2015); Jesuit Conference of Canada and the United States and Kino Border Initiative, *Our Values on the Line: Migrant Abuse and Family Separation at the Border*, September 15, 2015, available at: http://jesuits.org/Assets/Publications/File/REPORT_2015_Our_Values_on_the_Line.pdf; Jeremy Slack, Daniel E. Martinez, Scott Whiteford, and Emily Peiffer, "In Harm's Way: Family Separation, Immigration Enforcement Programs and Security on the US-Mexico Border (2015)," *Journal on Migration and Human Security* 3:2, available at: <http://jmhs.cmsny.org/index.php/jmhs/article/view/46>

⁵ Increased reports of family separation have been documented by several advocates and service providers, see generally supra n.4. Many of these reports have been filed with the Department of Homeland Security Office of Civil Rights and Civil Liberties. Because of the problems with data collection and documentation of family separation incidents quantitative data is not available and the full scope of the problem is unknown.

⁶ These principles are underscored in the Flores Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK(Px)(C.D. Cal. Jan 17,1997) (hereafter, "Flores"), available at: <http://web.centerforhumanrights.net:8080/centerforhumanrights/children/Document.2004-06-18.8124043749>; *Flores v. Lynch*, Case No. CV-85-4544 DMG (AGRx)(C.D. Cal. 2015), modified by, *Flores v. Lynch*, 2015 WL 9915880 (9th Cir. 2016); Homeland Security Act of 2002, Pub. L. 107-296, title IV, §462(g), codified in 6 USC § 279(g), available at: https://www.dhs.gov/sites/default/files/publications/hr_5005_enr.pdf; Section 235(a)(2) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), Pub. L. No. 110-457, 122 Stat. 5044 (2008)(codified at 8 U.S.C. 1232(a)(2)), available at: <http://www.state.gov/j/tip/laws/113178.htm>; DHS Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities ("PREA"), 6 C.F.R. §115 et al., Subpart B (2014), available at: <http://www.prearesourcecenter.org/sites/default/files/content/2014-04675.pdf>; Customs and Border Protection, National Standards on Transport, Escort, Detention, and Search (TEDS) at 1.9 and 5.6 (2015), available at: https://www.cbp.gov/sites/default/files/documents/cbp-teds-policy-20151005_1.pdf (TEDS requires family units to remain together "to the greatest extent operationally feasible" absent concerns for security or safety. If separation must occur, TEDS further requires, "such separation must be well documented in the appropriate electronic system(s) of record."), at 4.3 and 5.6.

⁷ TEDS does not require this documentation. See TEDS 4.5 and 5.3.

⁸ TEDS 4.3 and 5.6 outline the requirements of documentation of separation of minor children and their parents. TEDS 4.5 and 5.3 outline the documentation requirements generally, which does not require documenting all family members traveling together.

⁹ U.S. Customs and Border Protection (CBP) officials are required by law to determine whether a child in their custody is 'unaccompanied.' The Homeland Security Act of 2002 (HSA) defines an "unaccompanied alien child" as a child without parents or legal guardians who are available to care for the child. The Trafficking Victims Protection Reauthorization Act of 2008 further ensures children not accompanied by a parent or legal guardian are not released to adults without legal authority, which could expose them to trafficking risks. The child's other family members are processed separately by Immigration and Customs Enforcement (ICE). Unaccompanied children are placed in the Department of Health and Human Services Office of Refugee Resettlement (ORR) federal custody in child welfare licensed care pending family reunification during their immigration removal proceedings. Unaccompanied children from contiguous countries undergo a separate screening process and instead of automatic transfer to ORR, can be immediately repatriated. For more on the screening process of Mexican Children see, U.S. Government Accountability Office, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody* 18-37 (July 2015)(Finding that DHS failed to use appropriate screening procedures for trafficking and asylum protections and often returned children even with indications of trafficking), available at: <http://gao.gov/products/GAO-15-521>; United Nations High Commissioner for Refugees (UNHCR), *Findings and Recommendations Relating to the 2012-2013 Missions to Monitor The Protection Screening of Mexican Unaccompanied Children Along the U.S.-Mexico Border* (UNHCR monitored the screening by border officials of Mexican children and found their protection screening failed to meet their statutory and international legal obligations), available at: http://www.immigrantjustice.org/sites/immigrantjustice.org/files/UNHCR_UAC_Monitoring_Report_Final_June_2014.pdf; *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* 56 (2014), available at: <http://www.unhcr.org/en-us/>.

¹⁰ HSA at 279(g), supra n.6

¹¹ TEDS at 4.3 and 5.6. "Generally, family units with juveniles should not be separated. When it is necessary to separate juveniles from the parent(s) and/or legal guardian(s), officers/agents must follow their operational office's policies and procedures and appropriate legal requirements. In circumstances where family units must be separated **due to different immigration dispositions**, such separation must be documented in appropriate electronic system(s) of record." (Emphasis added). Additionally, in TEDS 8.0, a family unit is defined as "A group of detainees that includes one or more non-United States citizen juvenile(s) accompanied by his/her/their parent(s) or legal guardian(s), whom the agency will evaluate for safety purposes to protect juveniles from sexual abuse and violence." However, this definition is linked only to TEDS, not a DHS-wide definition of families, and excludes any other configuration of family members that may arrive or be apprehended together.

¹² See HSA, supra n.6 and TVPRA, supra n.6.

¹³ Women's Refugee Commission, *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention* (December 2010), available at: <https://www.womensrefugeecommission.org/rights/gbv/resources/667-torn-apart-by-immigration-enforcement-parental-rights-and-immigration-detention>; WRC, *Detained or Deported: What About My Children?* (May 2014), available at: <https://www.womensrefugeecommission.org/rights/gbv/resources/1022-detained-or-deported-parental-toolkit-english-interactive>.

¹⁴ See e.g. The Adoptions and Safe Families Act of 1997, P.L. 105-89, Amending Title IV-B Subparts 1 and 2 and Title IV-E of the Social Security Act. (This law set out minimum safeguards for the preservation of parental rights and family unity along with many due process safeguards).

¹⁵ Subcommittee on Best Interests, and Interagency Working Group on Unaccompanied and Separated Children, *Framework for Considering the Best Interests of Unaccompanied Children* (Young Center for Immigrant Children's Rights, May 2016), available at: http://theyoungcenter.org/wp-content/uploads/2016/05/107014_Book.pdf; Memo: Concerns Over Separation (Sept 30, 2015), p. 3.

¹⁶ Prison Rape Elimination Act,(PREA) § 115.161

¹⁷ See TEDS at 5.6

¹⁸*Torn Apart*, *supra* n.13.

¹⁹ See TEDS 5.6. “In those instances where a parent or legal guardian and U.S. citizen child must be separated, social services may need to be contacted to take custody of the child. CBP should ensure parents have the opportunity to arrange for care of their children before contacting a social service agency. In those instances where a parent or legal guardian and a non-U.S. citizen child must be separated, the non-U.S. citizen child will be classified as a UAC and will be processed accordingly.”

²⁰ Border Patrol Strategic Plan 2012-2016 (U.S. Customs and Border Protection), available at: https://www.cbp.gov/sites/default/files/documents/bp_strategic_plan.pdf.

²¹ *Supra* n. 4, *Our Values on the Line* at pages 14-17 (Finding that well over one in three family separations could be remedied with more explicit CBP policies to ensure the identification of family relationships of migrants when in custody and to ensure that they are not deported to different places at different times).

²² See e.g., *Our Values on the Line*, *supra* n.4; NIJC et al., DHS Civil Rights and Civil Liberties Complaint: Inadequate U.S. Customs and Border Protection (CBP) screening practices block individuals fleeing persecution from access to the asylum process, November 13, 2014, National Immigrant Justice Center, et al. (Details CBP’s inadequate asylum screening and the violations of due process for several complainants), available at: <http://immigrantjustice.org/sites/immigrantjustice.org/files/images/Right%20to%20Asylum%20-%20CRCL%20Complaint%20Cover%20Letter%20-%2011.13.14%20FINAL%20PUBLIC.pdf>; U.S. Government Accountability Office, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, 18-37 (July 2015) (Documents CBP’s failures in protection screening for credible fear and trafficking, which included analysis of CBP’s own documentation), available at: <http://tinyurl.com/z69yprd>; *You Don’t Have Rights Here: US Border Screening and Returns of Central Americans to Risk of Serious Harm* (Human Rights Watch, October 2014), available at: <https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk>; *Turning Migrants into Criminals: The Harmful Impact of US Border Prosecutions* (Human Rights Watch, May 2013), available at: https://www.hrw.org/sites/default/files/reports/us0513_ForUpload_2.pdf; *Bordering on Failure: Canada-U.S. Border Policy and the Politics of Refugee Exclusion* (Harvard Immigration and Refugee Law Clinical Program, Harvard Law School, November 2013), available at: <https://harvardimmigrationclinic.files.wordpress.com/2013/11/bordering-on-failure-harvard-immigration-and-refugee-law-clinical-program1.pdf>; Jacqueline Hagan, Brianna Castro, and Nestor Rodriguez, “The Effects of U.S. Deportation Policies on Immigrant Families and Communities: Cross Border Perspectives,” *North Carolina Law Review* 88 (2010) 1799-1824, available at: <http://www.nclawreview.org/documents/88/5/hagan.pdf>

²³ *Our Values on the Line*, *supra* n.2 at 12-19 (In their survey, they found 65% of interviewed migrants stated they were separated by an immediate family member. 13% of separations involved children.)

²⁴ IIRIRA §§305, 309(d)(2), Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996), codified at 8 U.S.C. §1231.

²⁵ Carla Argueta, Border Security: Immigration Enforcement Between Ports of Entry (Congressional Research Service, April 19, 2016), available at: <https://www.fas.org/srgp/crs/homesecc/R42138.pdf>

²⁶ See e.g., Evan McMorris-Santoro, “Here Are The New Ads the U.S. is Running in Central America to Stop Border Crossing,” (BuzzFeed News July 10, 2014), available at: https://www.buzzfeed.com/evanmcsan/here-are-the-ads-the-us-government-is-running-in-central-am?utm_term=.ei4205kXe#.wGCD6bVYJ

²⁷ See *Flores Settlement Agreement*, *supra* n. 6.

²⁸ This is based off of reports from service providers.

²⁹ IIRIRA, *supra* n. 24, codified at 8 U.S.C. §1325 (penalties for entering without authorization) and §1326 (felony penalties for reentering without inspection and having a prior removal order).

³⁰ Streamline: Measuring Its Effect on Illegal Border Crossing (DHS Office of the Inspector General May 15, 2015, OIG-15-95), available at: https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf. See also, *Our Values*, *supra* n. 4, *Torn Apart: How U.S. Immigration Policy Fragments New Mexico Families* (American Civil Liberties Union of New Mexico April 2013), available at: https://www.aclu-nm.org/wp-content/uploads/2013/04/tornapart_030113_05_web05.pdf; *A Culture of Cruelty: Abuse and Impunity in Short-Term U.S. Border Patrol Custody* (No More Deaths, 2011), available at: <http://forms.nomoredeaths.org/wp-content/uploads/2014/10/CultureOfCruelty-full.compressed.pdf>; *In the Shadow of the Wall: Family Separation, Immigration Enforcement, and Security* (The Center for Latin American Studies, University of Arizona, March 2013), available at: http://las.arizona.edu/sites/las.arizona.edu/files/UA_Immigration_Report2013web.pdf.

³¹ Convention Relating to the Status of Refugees (July 28, 1951), 189 UNTS 137, available at: <http://www.unhcr.org/en-us/1951-refugee-convention.html>. (Article 31 states, “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”) (While the United States is not a signatory to the Convention, the United States has acceded to the Protocol); “The Refugee Convention 1951: The Travaux Préparatoires Analysed with Commentary by Dr. Paul Weis” (1990), available at: <http://www.unhcr.org/en-us/protection/travaux/4ca34be29/refugee-convention-1951-travaux-preparatoires-analysed-commentary-dr-paul.html>. (“A refugee whose departure from his country of origin is usually a flight, is rarely in a position to comply with the requirements for legal entry (possession of national passport and visa) into the country of refuge. It would be in keeping with the notion of asylum to exempt from penalties a refugee, escaping from persecution, who after crossing the frontier clandestinely, presents himself as soon as possible to the authorities of the country of asylum and is recognized as a bona fide refugee.”). See also *supra* n. 30, OIG Report “Streamline,” The Refugee Act of 1980, P.L.96-212 (March 17, 1980) (Congress passed legislation to implement many important provisions of the Refugee Convention).

³² *Our Values*, *supra* n. 4 and *Torn Apart*, *In the Shadow*, *A Culture of Cruelty*, *supra* n.30,

³³ Findings provided by Kino. For more information see *Our Values on the Line*, *supra* n.4 and Kino’s website: <https://www.kinoborderinitiative.org/>.

³⁴ Directive by (then) Acting ICE Director John Sandweg, *Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities* (U.S. Immigration and Customs Enforcement, August 23, 2013), available at: https://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf. The Parental Interests Directive (PID) reinforces that immigration officials can use prosecutorial discretion not to detain primary caregivers as well as directs that the location of detained primary caregivers should take into account the location of their children.

³⁵ LIRS staff conversation with Artesia ICE official, July 22, 2014 (notes on file), confirmed in conversation of ICE official with WRC staff at Artesia July 22, 2014. Also, confirmed in meeting between WRC staff and ICE officials, and in answer by ICE official at Karnes tour on September 16, 2014. See also, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal* (U.S. Commission on International Religious Freedom 2016), available at: <http://www.uscirf.gov/sites/default/files/Barriers%20to%20Protection.pdf>

³⁶ *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants*. Memo by DHS Secretary Jeh Johnson. November 20, 2014, available at: https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.

³⁷ American Psychological Association and Presidential Task Force on Immigration. (2012), *Crossroads: The Psychology of Immigration in the New Century*, available at: (2012), <http://www.apa.org/topics/immigration/report.aspx> (“Ongoing separation from loved ones who continue to be in danger also predicts psychological symptoms (Nickerson, Bryant, Steel, Silove, & Brooks, 2010). As a result, refugee adults and children are at particularly high risk for mental health problems (APA, 2010c), including posttraumatic stress disorder (PTSD), depression, anxiety, - psychosis, and dissociation (Keyes, 2000)”); Grace, B.L. Benjamin J. Roth and Roth, B.J. (2015). Breanne L. Grace, *Post-Release: Linking Unaccompanied Immigrant Children to Family and Community*, (Columbia: University of South Carolina, available at: 2015), http://lirs.org/wp-content/uploads/2015/05/USC_PostReleaseFRProgramEvaluation_fullreport.pdf (“Likewise, for many children detainment was traumatic as they were separated from siblings or other related children and were subject to long periods of waiting without knowing what might happen.”); T.H. Gindling and Sara Z. Poggio, *The Effect of Family Separation and Reunification on the Educational Success of Immigrant Children in the United States* (Bonn: Institute for the Study of Labor, April 2010), available at: <http://ftp.iza.org/dp4887.pdf>

³⁸ Janet Cleveland, PhD., et al., Brief submitted to the House of Commons Standing Committee on Citizenship and Immigration concerning Bill C-31, the Protecting Canada’s Immigration System Act, *The Harmful Effects of Detention and Family Separation on Asylum Seekers’ Mental Health in the Context of Bill C-31* (April 2012), available at: https://www.csssdelamontagne.qc.ca/fileadmin/csss_dlm/Publications/Publications_CRF/brief_c31_final.pdf.

³⁹ *Id.*

⁴⁰ *Blazing A Trail: The Fight for Right to Counsel in Detention and Beyond* (National Immigration Law Center March 2016), web edition available at: <https://www.nilc.org/wp-content/uploads/2016/04/Right-to-Counsel-Blazing-a-Trail-2016-03.pdf>.

⁴¹ WRC reports *supra* n. 13, see also Urban Institute and Migration Policy Institute, *Implication of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families* (September 2015), available at: <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000535-Implications-of-Immigration-Enforcement-Activities-for-the-Well-Being-of-Children-in-Immigrant-Families-A-Review-of-the-Literature.pdf> Race Forward, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System* (November 2011), available at: <https://www.raceforward.org/research/reports/shattered-families>

⁴² For more information, see: WRC, *Detained or Deported? What About My Children* (2014), available at: <https://www.womensrefugeecommission.org/rights/resources/1022-detained-or-deported-parental-toolkit-english-interactive>; and WRC, *Torn Apart*, *supra* n. 13.

⁴³ Information provided by Alaide Vilchis Ibarra, Assistant Director, Migration Policy and Advocacy, ELCA.

⁴⁴ UN International Covenant on Civil and Political Rights, art. 23, (March 23, 1976); UN Convention on the Rights of the Child, art. 9, (September 2, 1990); General Comment 6 to the Convention, “Treatment of Unaccompanied and Separated Children Outside their Country of Origin” (CRC 2005).

METHODOLOGY

This report examines the ways in which immigrant families arriving in the United States are separated through immigration enforcement. It explores the consequences of that separation on individual members as it relates to subsequent custody, access to protection and the immigration process, and deportation. Our three organizations became aware of this growing concern in early 2015. We each encountered these issues in different ways—including through direct legal and social services provided to unaccompanied children, through unaffiliated legal service providers around the country, and through research with detained women in immigration detention facilities.

Collectively, we have worked in tandem with numerous other non-governmental organizations to identify the causes of family separation and to develop policies and practices that would prevent separation from occurring in the first place. We continue to work to document separation when it occurs, mitigate the consequences of family separation, and facilitate reunification of separated family members.

The stories in this report are all real stories, although names and some details may have been changed to ensure confidentiality and protect privacy. Correspondence or notes pertaining to each case example are on file with the authors. Although we encountered these stories in different ways, all of our organizations received consent to include these stories. Our findings and recommendations of policies and practices in this report have been informed in part from our discussions and interviews with DHS, DHS Policy, DHS CRCL, DHS OIG, ICE, CBP, and ORR.

For more information on each organization's research and privacy protocols, please see our websites.

supportkind.org

womensrefugeecommission.org

LIRS.org

THE CONSEQUENCE DELIVERY SYSTEM (CDS)

CBP’s evaluation process for placing a person or family into a CDS can vary greatly by each geographical sector’s policies. The process often mirrors the chart below, in which an initial classification is followed by a consequence. Often border officials are not provided clear guidance on when it is appropriate to use a consequence and whether such consequences should be used against vulnerable populations, including families. There is no assessment of how a particular CDS consequence could impact the personal security of a migrant, nor is there documentation justifying a use of a particular CDS.

Figure 1: Example of an Evaluation Process for CDS

CBP’s Evaluation Process for the Consequence Delivery System		
Step 1	Record Checks:	E3 system (Border Patrol database), federal databases, and FINS (federal fingerprint database)
Step 2	Review History:	Prior immigration history, previous immigration consequences, and criminal history
Step 3	Determine Nexus:	Criminal organization, link to DHS target/priority or classification (smuggling, trafficking, immigration entry violation, etc)
Step 4	Classify & Verify Entrant:	<ul style="list-style-type: none"> • 1st apprehension • Family unit (a parent and child as defined and designated by CBP) • 2nd or 3rd apprehension • Persistent alien • Suspected or target smuggler • DHS “criminal alien” classification
Step 5	Review Consequence Delivery:	<ul style="list-style-type: none"> • Previous actions • Expected outcomes • Possible path forward • Best available CDS
Step 6	Execute:	<ul style="list-style-type: none"> • Record disposition • Place alert • Info-sharing with strategic partners

Figure 2. How CDS Can Cause Family Separation

DEPARTMENT OF HOMELAND SECURITY'S "CONSEQUENCES": IMMIGRATION PUNISHMENTS & FAMILY IMPACT		
CDS	DHS OBJECTIVE	HYPOTHETICAL STORY EXAMPLE
Operation Against Smugglers Initiative on Safety and Security (OASISS)	A bilateral agreement between the U.S. and Mexico that allows for Mexican citizens found smuggling aliens in the U.S. to be prosecuted by the Government of Mexico.	Nine-year-old Miguel traveled to the U.S. with his father Jose and other migrants. Border Patrol thinks Jose is a human smuggler so separates Jose and sends him to Mexico to be prosecuted.
Operation Streamline	A multi-agency effort to criminally prosecute individuals who "illegally enter the United States." Consequences are imposed through an array of criminal sanctions aiming to reduce illicit cross-border activity. Individuals can also be criminally prosecuted for entry/re-entry outside of Streamline.	Ana had previously fled to the U.S. because of the dangers in El Salvador but was deported with a final order of removal. She returns again with her 2-year-old daughter Rosa at a port of entry. Office of Field Operations decides to refer Ana for prosecution and sends her daughter to ORR. Ana is taken into U.S. Marshal's custody.
Alien Transfer Exit Program (ATEP) or the Mexican Interior Repatriation Program (MIRP)	Repatriates migrants into regions far from their entry location to disrupt future coordination with smugglers after their arrest and removal. The MIRP program removes Mexican nationals to the interior of Mexico on a voluntary basis. The stated objective of the program is to save lives and disrupt the human smuggling cycle.	Maria and Carlos traveled to Nogales together, where they were apprehended by Border Patrol. Border Patrol decides to punish Maria and Carlos by returning Carlos at the port of entry in El Paso with the family's papers, meanwhile Maria is returned alone to Nogales without her papers.

DEPARTMENT OF HOMELAND SECURITY'S "CONSEQUENCES":
IMMIGRATION PUNISHMENTS & FAMILY IMPACT

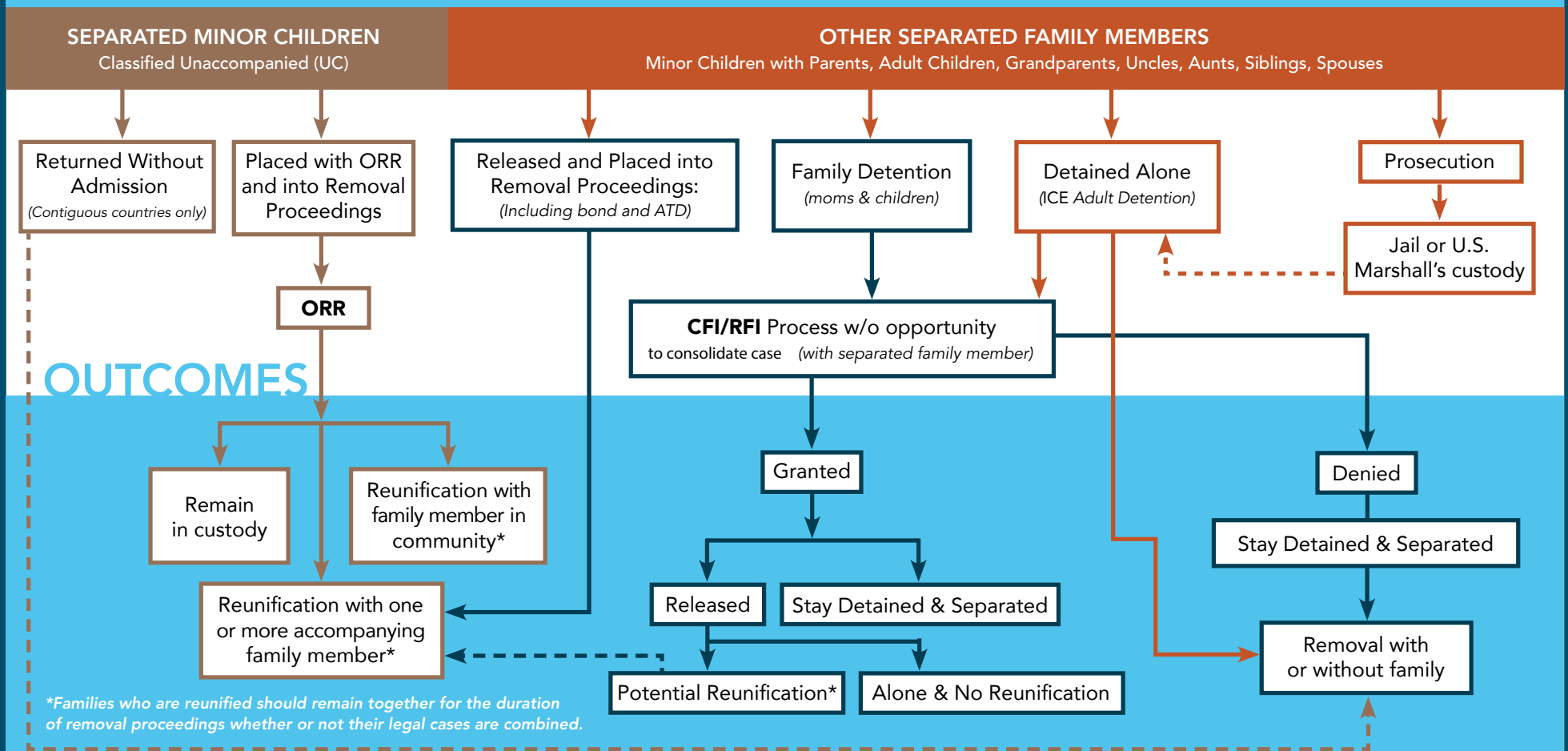
CDS	DHS OBJECTIVE	HYPOTHETICAL STORY EXAMPLE
<p>Expedited Removal Proceedings or Reinstatement of Removal</p>	<p>Initially a proceeding at formal points of entry, expedited removal was expanded to include any migrant arrested within 100 miles of the border within 14 days of arrival. Migrants do not get a hearing before an immigration judge, but instead are immediately processed for a formal administrative removal order. If a migrant then returns, he may be considered for criminal prosecution.</p> <p>Reinstatement of removal authorizes Border Patrol to reinstate a previous removal order for migrants who re-enter unauthorized. The prior order of removal is reinstated and not subject to review, meaning that a migrant will not get to see a judge to contest or appeal a decision.</p>	<p>Five-year-old Brandon arrives in the U.S. with his aunt Lucia and 18-year-old cousin Yessica and 10-year-old cousin Juan. Lucia and Juan are sent to a family detention facility and placed in expedited removal proceedings pending a credible fear interview. Yessica, who was previously removed, is sent to a women's detention facility and is placed in reinstatement of removal. Despite expressing a fear of return to the border agent, Yessica is never referred for a reasonable fear interview because the agent does not believe her. Five-year-old Brandon is sent to ORR and put into removal proceedings.</p>
<p>Voluntary Return</p>	<p>Allows migrants to depart voluntarily from the U.S. at the discretion of Border Patrol agents and their supervisors, instead of placing them in removal proceedings. This reduces processing time for Border Patrol. The return carries no legal consequence for future migration. Individuals may be pressured to accept voluntary return.</p>	<p>Eleven-year-old Alicia was raped by gangs in El Salvador. Alicia's father, Alex, decides they will flee to the U.S. Border Patrol sends Alicia to ORR custody. Meanwhile Alex is sent to ICE detention where he decides to accept voluntary departure, leaving behind Alicia so she can seek legal relief. Alicia is eventually reunified with an aunt in the U.S.</p>
<p>Warrant of Arrest / Notice to Appear</p>	<p>Used when Border Patrol agents make an arrest and a migrant is detained in DHS's long-term custody pending a hearing before an immigration judge.</p>	<p>Pregnant Yennifer arrives at the border with her son Walter and her husband Daniel. ICE decides not to detain Yennifer because she is pregnant. Yennifer is issued a Notice to Appear and has an ankle bracelet placed on her. Daniel is sent to ICE detention.</p>

What happens to a family when separated by CBP?

Note: None of these tracks are mutually exclusive



PROCESS



KEY

CBP: Customs and Border Protection
 ORR: Office of Refugee Resettlement
 ICE: Immigration and Customs Enforcement

CDS: Consequence Delivery System
 CFI: Credible Fear Interview
 RFI: Reasonable Fear Interview

DIF (Desarrollo Integral de La Familia): Mexico's child welfare agency
 ATD: Alternatives to Detention

WHO TO CALL?

Information Sheet

This contact sheet is intended to help service providers navigate various complaints and concerns, including family separation.

Advocates representing family members who have been separated should alert immigration officials immediately to try to identify the location of other separated family members and facilitate contact and/or release and reunification. In addition, advocates can also alert the Office of Civil Rights and Civil Liberties (CRCL) with individual complaints or with information to identify trends and patterns of family separation. Although CRCL has a specific complaint form, even information sent via email is sufficient to help CRCL identify and document cases.

FEDERAL CONTACT SHEET FOR IMMIGRATION CASE ISSUES	
USCIS	
<i>Issues with cases before USCIS, e.g. SIJS interview delays, asylum case consolidation</i>	Contact the local field office first: http://www.uscis.gov/about-us/find-uscis-office/field-offices If no response is received call the Customer Service Center 1-800-375-5283 If problems continue contact the ombudsman http://www.dhs.gov/contact-cisomb
EOIR	
<i>Court related issues: hearing date, EOIR hotline, COA, etc.</i>	First contact your local field office Assistant Chief Immigration Judge (ACIJ), available here: http://www.justice.gov/eoir/acij-assignments Email the EOIR engagement office EngageWithEOIR@usdoj.gov EOIR Hotline: 1-800-898-7180 or 240-314-1500 <i>*Note if a child has an attorney, the attorney should be taking care of this</i>
ICE	
<i>Family separation issues (e.g., a detained parent seeking a separated family member or to reunite with a child)</i>	Always state that you are calling regarding a parental interests inquiry or enter “Parental Interests Inquiry” in the subject line of the email Contact the local outreach office by sending them an email http://www.ice.gov/contact/ero or completing this online form http://www.ice.gov/webform/ero-contact-form If no response, call the Detention Reporting and Information Line: 1-888-351-4024
<i>Locating a family member or client</i>	Use the Online Detainee Locator System to locate a detained family member in ICE custody: https://locator.ice.gov/odls/homePage.do
<i>Other ICE concern or complaint</i>	Email the ERO engagement office ERO.INFO@ICE.DHS.gov
DHS Joint Intake Center (JIC)	
<i>Centralized complaint center for DHS</i>	File a complaint with JIC and also with CRCL if there is both misconduct and civil right and civil liberties concerns. Also, see this guide on filing complaints. DHS Office of Inspector General (OIG) may investigate first for criminal allegations. Email: Joint.Intake@dhs.gov and Phone: 877-2INTAKE (877-246-8253)
DHS Office of Civil Rights and Civil Liberties (CRCL)	
<i>Filing a CRCL Complaint *CRCL may forward the investigation to another entity, such as CBP Internal Affairs, ICE, the Office of Inspector General, etc.</i>	You can file a complaint regarding any civil rights and civil liberties concern with any DHS agency. (Complaints can be about treatment, language access, failing to return belongings/documents*, refusal to facilitate contact, etc). Include the G-28 or release form from the child (and sponsor) with the CRCL complaint You can fill out a CRCL complaint at: https://www.dhs.gov/file-civil-rights-complaint , email the CRCLCompliance@hq.dhs.gov , or fax a complaint at 202-401-4708 <i>*Note for missing documents such as a birth certificate, they may be in the child’s A-file. Contact the local Field Office Juvenile Coordinator (FOJC) first to ensure that it is not there.</i>
ORR	
<i>Prison Rape Elimination Act concerns and policy issues</i>	Email: PSAC@acf.hhs.gov
<i>ORR helpline for assistance Civil Rights Complaint</i>	ORR sponsor helpline (assistance for family regarding school enrollment, etc): the ORR National Call Center information@ORRNCC.com or 1(800)203-7001 You can file a civil rights complaint regarding ORR with HHS’s Office of Civil Rights: http://www.hhs.gov/ocr/civilrights/complaints/index.html
Child Abuse or Neglect on Federal Lands and/or by Federal Agent	
<i>In any case, where there is no MOU with the local CPS agency, report child abuse or neglect to the local FBI office.</i>	Contact your local FBI Field Office https://www.fbi.gov/contact-us/field-offices with reports of abuse or neglect on federal lands, property, or facilities. <i>*You may want to say you are reporting in accordance with the Victim of Child Abuse Act of 1990, 42 US Code Section 13031. See § 13031(c)(definitions of abuse and neglect); 28 CFR 81.2 (Reports of Abuse); 28 CFR 81.3 (Designation of Federal Bureau of Investigation).</i>

INFORMACION DE CONTACTOS FEDERALES PARA CUESTIONES EN CASOS DE INMIGRACION	
USCIS	
Cuestiones con casos antes de USCIS, por ejemplo: Atraso de entrevistas con SIJS, Consolidación de Casos de Asilo	Primero, contacte su oficina local: http://www.uscis.gov/about-us/find-uscis-office/field-offices Si no recibe respuesta llame al Centro de Servicio al Cliente al 1-800-375-5283 Si los problemas persisten contacte al mediador http://www.dhs.gov/contact-cisomb
EOIR	
Cuestiones relacionadas con la corte: fecha de la audiencia, línea directa de EOIR, COA, etc.	Primero contacte a la oficina local del Juez Asistente de Inmigración (ACIJ), disponible aquí: http://www.justice.gov/eoir/acij-assignments Contacte por correo electrónico a la Oficina de Peticiones de EOIR EngageWithEOIR@usdoj.gov Línea directa de EOIR: 1-800-898-7180 or 240-314-1500 <i>*Note if a child has an attorney, the attorney should be taking care of this</i>
ICE	
Cuestiones de separación familiar (e.g., un padre/una madre detenido (a) buscando a un familiar separado o para reunirse con un menor)	Siempre indique que está llamando acerca de una indagación sobre intereses de los padres o ingrese “Parental Interests Inquiry” en el título del correo electrónico Contacte a la oficina local enviándoles un correo electrónico http://www.ice.gov/contact/ero o completando este formulario en línea http://www.ice.gov/webform/ero-contact-form Si no hay respuesta, llame a La Línea sobre Información y Reporte de Detenciones al: 1-888-351-4024
Localizar a un familiar o cliente	Use el Sistema de Localización de Detenidos en línea para localizar a un familiar detenido bajo la custodia de ICE: https://locator.ice.gov/odls/homePage.do
Otra inquietud o queja relacionada con ICE	Por correo electrónico contacte a la Oficina de Peticiones ERO ERO.INFO@ICE.DHS.gov
DHS Joint Intake Center (JIC)	
Servicio centralizado de quejas para DHS	Presente una queja a JIC y también a CRCL si hay una mala conducta e inquietud sobre derechos o libertades civiles. También, consulte esta guía sobre como presentar una queja. La Oficina del Inspector General del DHS (OIG) podría investigar primero alegaciones criminales. Correo Electrónico: Joint.Intake@dhs.gov y Teléfono: 877-2INTAKE (877-246-8253)
DHS Office of Civil Rights and Civil Liberties (CRCL)	
Presentar una queja al CRCL <i>*CRCL podrá enviar la investigación a otra entidad como la oficina de Asuntos Internos de CBP, ICE, la Oficina del Inspector General, etc.</i>	Puede presentar una queja sobre derechos y libertades civiles concerniente a cualquier agencia de DHS. (Las quejas pueden ser sobre trato recibido, acceso al idioma, la no devolución de pertenencias/documentos*, la negativa a facilitar contacto, etc). Incluya el formulario G-28 o autorización del menor (y patrocinador) con la queja a CRCL Puede presentar una queja a CRCL al: https://www.dhs.gov/file-civil-rights-complaint , correo electrónico a CRCLCompliance@hq.dhs.gov , o enviar por fax una queja al 202-401-4708 <i>*Tenga en cuenta que documentos que falten como por ejemplo un certificado de nacimiento pueden encontrarse dentro del expediente A-file del menor. Primero comuníquese con la oficina local del FOJC para asegurarse que no se encuentre ahí.</i>
ORR	
PREA & asuntos sobre políticas	Correo electrónico: PSAC@acf.hhs.gov
Línea de Asistencia de la ORR Queja relacionada con Derechos Civiles	Línea de asistencia de la ORR para patrocinadores (asistencia para la familia en cuanto a la matriculación escolar, etc): Centro Nacional de Llamadas de la ORR information@ORRNCC.com o 1(800)203-7001 Puede presentar una queja sobre los derechos civiles en relación con ORR en la oficina de Derechos Civiles de HHS: http://www.hhs.gov/ocr/civilrights/complaints/index.html
ABUSO A MENORES O NEGLIGENCIA EN TERRITORIO FEDERAL Y/O POR UN AGENTE FEDERAL	
En cualquier caso, donde no haya un MOU con la agencia local de servicios de protección de menores (CPS), reportar caso de abuso a menores o negligencia a su oficina local del FBI	Contacte su oficina local del FBI: https://www.fbi.gov/contact-us/field-offices con cualquier reporte de abuso o negligencia en territorio, propiedad, o instalaciones federales. <i>*Podría decir que está haciendo una denuncia bajo la Ley de Maltrato al Menor de 1990, 42 US Sección del Código 13031. Ver § 13031(c)(definiciones de abuso y negligencia 28 CFR 81.2 (Denuncias de Abuso); 28 CFR 81.3 (Designación de la Oficina Federal de Investigación).</i>

Acronym Glossary (Translated from English into Spanish):

Acronym	Agency Name-English	Agency Name-Spanish
USCIS	United States Citizenship and Immigration Services	Servicio de Ciudadanía e Inmigración de Estados Unidos
SIJS	Special Immigrant Juvenile Status	Estatus Especial para Jóvenes Inmigrantes
EOIR	Executive Office for Immigration Review	Oficina Ejecutiva para Revisión de Inmigración
COA	Change of Address	Cambio de Dirección
ACIJ	Assistant Chief Immigration Judge	Juez Asistente de Inmigración
ICE	U.S. Immigration and Customs Enforcement	Servicio de Inmigración y Control de Aduanas de Estados Unidos
DHS	United States Department of Homeland Security	Departamento de Seguridad Nacional de los Estados Unidos
JIC	DHS Joint Intake Center	Centro de Admisión Conjunta del DHS
CRCL	Office for Civil Rights and Civil Liberties	Oficina para Derechos y Libertades Civiles
OIG	DHS Office of Inspector General	Oficina del Inspector General del DHS
CBP	U.S. Customs and Border Protection	Oficina de Aduanas y Protección Fronteriza de Estados Unidos
FOJC	Field Office Juvenile Coordinator	Coordinador de Jóvenes en Oficinas de Campo
ORR	Office of Refugee Resettlement	Oficina de Reasentamiento de Refugiados
PREA	Prison Rape Elimination Act	Ley de Eliminación de Violaciones (sexuales) en Prisiones
HHS	U.S Department of Health and Human Services	Departamento de Salud y Servicios Humanos de Estados Unidos
MOU	Memorandum of Understanding	Memorándum de Entendimiento
CPS	Child Protective Services	Servicio de Protección de Menores
FBI	Federal Bureau of Investigation	Oficina Federal de Investigación



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