



July 13, 2021

Secretary Alejandro Mayorkas
U.S. Department of Homeland Security
301 7th Street, SW
Washington, D.C. 20528

Via email

Re: Forced Splitting of Protection-Seeking Families at the Southern Border

Secretary Mayorkas,

We write with concerns about troubling patterns we have observed at the southern border involving U.S. Customs and Border Protection (“CBP”) splitting families who are seeking protection in the United States. The ACLU Foundation of San Diego & Imperial Counties (“ACLU”) and Jewish Family Service of San Diego (“JFS”) routinely encounter people who have been recently released from CBP custody in the San Diego region.¹

We are encouraged that under your leadership, the U.S. Department of Homeland Security (“DHS”) has begun the critical work of rolling back harmful border policies as initial steps towards rebuilding the asylum process at the southern border. However, inhumane practices continue and there remains ample space for improvement, to the ultimate benefit of relevant government agencies, local and international non-governmental agencies, and, above all, people who are directly affected by the policy changes.

One area of particular and growing concern is the forced splitting of families at the southern border, both through so-called Title 42 expulsions and through the application of different custody determinations to members of family units that travel together. These family groups provide each

¹ JFS provides critical services to individuals and families seeking asylum in the Tijuana/San Diego border region, including high-volume direct representation in immigration proceedings and operation of the San Diego Rapid Response Network Migrant Shelter in San Diego. Through the San Diego Rapid Response Network and the California Welcoming Taskforce, ACLU and JFS, together with other local partners, have coordinated regional responses to the Biden Administration’s changes to border policies impacting people seeking asylum in our region.

other desperately needed support in the wake of harm they have fled, but the disparate processing of individual members within family groups by DHS compounds their trauma and risks long-term and potentially permanent separation of their families. As detailed in the stories below, the uneven application of these policies has forced the separation of children from a parent, parents from their teenaged adult children, spouses from one another, pregnant women from their partners, and many other life-altering ruptures of deeply rooted family bonds. Beyond the devastating human suffering inflicted, these separations may also have significant consequences in removal proceedings, potentially depriving people of necessary witnesses and evidence for their asylum claims.

As discussed in greater detail below, we urge DHS to cease its practice of splitting families by: (1) adopting a definition of “family unit” that comports with a common-sense understanding of what it means to be a family; (2) documenting all relationships among family units that travel together; (3) exercising discretion to extend grants of parole to all members of family units that travel together; and (4) immediately halting Title 42 expulsions.

I. Life-Altering Harms of Breaking Families Apart

For years and across several administrations, advocates have sounded alarms about CBP’s practices of separating families at the border. The forceful separations of children from their parents as a deterrence practice is well-known at this point,² but separations through inconsistent enforcement and custody determinations upon apprehension among members of family units is another long-running practice that can also devastate families.³ There are countless permutations of forced separations, but the common thread that emerges is the irreversible harm that such cruel practices inflict on directly impacted family members.⁴

Studies show family separation can negatively impact the emotional and physical wellbeing of children and adults alike.⁵ For many, the trauma is compounded by consequences of separation that continue to manifest throughout removal proceedings, including obstructed communication with family while in ICE detention, practical obstacles that significantly delay or prevent reunification, and limited access to counsel that, in turn, limits relief from deportation for which the person may be eligible.⁶ For family members whose asylum cases are connected, separation obstructs family members’ opportunities to present necessary corroborating witness

² *Ms. L. v. U.S. Immigr. & Customs Enf’t*, 310 F. Supp. 3d 1133, 1136 (S.D. Cal. 2018).

³ American Immigration Council, *Divided by Detention: Asylum-Seeking Families’ Experiences of Separation*, (Aug. 2016) [hereinafter *Divided by Detention*], https://www.americanimmigrationcouncil.org/sites/default/files/research/divided_by_detention.pdf; Women’s Refugee Comm’n, Lutheran Immigr. and Refugee Serv., and Kids in Need of Def., *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families* (Jan. 10, 2017) [hereinafter *Betraying Family Values*], <https://reliefweb.int/sites/reliefweb.int/files/resources/BetrayingFamilyValues-Feb2017.pdf>

⁴ *Divided by Detention*, *supra* n. 3, at 13-16; *Betraying Family Values*, *supra* n.3, at 12-16; *Ms. L. v. U.S. Immigr. & Customs Enf’t*, ECF No. 17-3, *Brief by Amici Curiae in Support of Plaintiff’s Habeas Corpus Petition and Complaint for Declaratory and Injunctive Relief*.

⁵ *Betraying Family Values*, *supra* n. 3, at 12.

⁶ *Id.*

testimony or access critical evidence in presenting their claims for relief, which can result in inconsistent case timelines and outcomes.⁷ In some cases, one family member may be granted relief by one immigration judge or asylum officer, while another is denied by a different immigration judge or officer for lack of sufficient corroboration, resulting in a potentially permanent separation.⁸ These factors not only compound the distress inherent in immigration processes, but they hinder due process, fairness, and ultimately correct outcomes in removal proceedings.

Unsurprisingly, in the context of separations that result from inconsistent custody determinations, impacted people have reported the separations have negatively impacted their families' mental health.⁹ Moreover, where the splitting of families causes the separation of one primary caretaker, the sudden and incongruent caretaking burden that any remaining caretaker is forced to shoulder often compromises financial stability.¹⁰ The merciless implementation of Title 42 expulsions has compounded the exposure to harm caused by separations by introducing the possibility of sudden and permanent separations across international borders.

II. Snapshots of Separations

Between January and May 2021, the ACLU and JFS encountered 19 different families who experienced varying degrees of separation that began while they were detained in CBP custody upon entering the United States. Below are select examples of egregious instances.

Cases involving separation of 18- and 19-year-old children from their parents:

- In March 2021, a Brazilian family, consisting of a mother, father, their special-needs 18-year-old daughter, and their 6-year-old son, entered the U.S. near Yuma, Arizona and were detained in U.S. Border Patrol (“USBP”) custody. USBP separated the daughter, who had turned 18 less than two weeks before their entry, from her parents. The parents were then transferred to the USBP San Diego Sector and subsequently released into the U.S. on parole with their 6-year-old. However, their 18-year-old daughter with special needs was transferred to a U.S. Immigration and Customs Enforcement (“ICE”) detention center alone, where she remains detained.
- In February 2021, a married Cuban couple entered the U.S. together with their son, who turned 18 years old in October 2020, via the San Luis, Arizona port of entry. The mother was released on parole from the port of entry after an initial period of detention and the

⁷ *Id.* at 13; *Divided by Detention*, *supra* n.3, at 14.

⁸ Beth Fertig, *A Mother and Daughter Both Have H.I.V. The U.S. Lets in Only One*, N.Y. TIMES (March 6, 2019), <https://www.nytimes.com/2019/03/06/nyregion/family-separation-hiv.html>; Kate Morrissey, *Who gets asylum? Even before Trump, system was riddled with bias and disparities*, THE SAN DIEGO UNION TRIBUNE (Aug. 23, 2020), <https://www.sandiegouniontribune.com/news/immigration/story/2020-08-23/who-gets-asylum-even-before-trump-system-was-riddled-with-bias-and-disparities>.

⁹ *Divided by Detention*, *supra* n.3, at 14.

¹⁰ *Id.* at 15.

father was transferred to the San Diego Sector of USBP and later released from there, after being detained for eight days total. Meanwhile, their 18-year-old son was transferred to an ICE detention center.

- In April 2021, a Brazilian mother and her 19-year-old daughter entered the United States near San Diego, California and were detained in USBP custody for multiple days. The mother was released into the U.S. on parole without her daughter, who was transferred to an ICE detention center in Louisiana, where she remains detained.

Cases involving pregnant women who were separated from the fathers of their children:

- In January 2021, a Haitian couple entered the U.S. near the San Diego, California. The woman, who was five months pregnant at the time, was released into the U.S. on parole, while the father was transferred to an ICE detention center. DHS did not tell her at the time which one.
- In March 2021, a Haitian couple entered the U.S. near San Diego, California. The woman, who was eight months pregnant at the time, was released into the U.S. on parole, while the father was expelled to Mexico under title 42.
- In April 2021, a Nicaraguan married couple entered the U.S. near Calexico, California. The wife, who was four months pregnant at the time, was released into the U.S. on parole without her husband, who was transferred to an ICE detention center in Louisiana.

Cases involving separation of married spouses:

- In March 2021, a Cuban married couple entered the U.S. near Yuma, Arizona. The husband was transferred to the USBP San Diego Sector and subsequently released into the U.S. on parole, while his wife was transferred to an ICE detention center.
- In March 2021, a Venezuelan married couple entered the U.S. near San Diego, California. The husband was released into the U.S. on parole, while his wife was sent to ICE custody, where she was subsequently transferred among multiple detention centers in Arizona, Louisiana, and Mississippi.

Cases involving other variations of separations, including separations impacting small children from one or more of their caregivers:

- In April 2021, a Honduran family consisting of a 7-year-old child, her mother, and the child's grandmother, who serves as the child's primary caretaker due to the mother's epilepsy and cognitive impairments, entered the U.S. near McAllen, Texas. The grandmother was released into the U.S. on parole while the child and her mother were transferred to the USBP San Diego Sector. USBP then expelled the child and her mother to Mexico under Title 42, where the mother's conditions led to their subsequent separation by Mexican officials.

- In April 2021, a Mexican family consisting of a husband and wife, their two-year-old daughter, and the child's grandmother entered the U.S. via the San Ysidro port of entry. The child, mother, and grandmother were released into the U.S. on parole, while the child's father was transferred to an ICE detention center, where he remains detained.
- In February 2021, a Cuban family consisting of a 1-year-old baby, his father, and his grandparents entered the U.S. near San Diego, California. The father and baby were released into the U.S. on parole, while both grandparents were separated from each other and transferred to different ICE detention centers.
- In March 2021, a Venezuelan family consisting of a 6-year-old child, his parents, and grandparents entered the U.S. near San Diego, California. The parents and child were released into the U.S. on parole after being detained in USBP custody for five days. The grandmother was released into the U.S. on parole after 16 days of USBP detention. The grandfather was transferred to an ICE detention center in Arizona and then to another in Mississippi, where he currently remains detained.

III. Recommendations

By beginning to roll back inhumane border policies, DHS, under your guidance, has taken important initial steps towards rebuilding the asylum process at the southern border. Those steps appear to acknowledge the misery imposed by the prior policies and the critical need to redress the harms they caused. In that spirit, we urge DHS to adopt the following recommendations to reduce instances of separations and to mitigate against the harms they cause.

1. Preserve family unity by adopting a definition of what constitutes a family to include relationships among parents and their adult children, no matter their age; couples who are in common-law marriages without marriage certificates, as well as pregnant women and their partners; siblings; and extended family members, including grandparents, aunts, and uncles;
2. Direct DHS agents and officials who encounter applicants for admission at the U.S. southern border, in consultation with child welfare professionals, to document all relationships among family units, as defined above, that travel to the southern border together;
3. Direct all DHS agents and officials who make custody determinations pertaining to applicants for admission at the U.S. southern border that when they recommend parole or release for any members of a family unit traveling together, they extend those determinations to all adult members of that family unit (nothing in this recommendation would have any effect on the rights or processing of unaccompanied minor children under applicable laws, including the Trafficking Victims Protection Reauthorization Act); and
4. Immediately halt Title 42 expulsions and implement COVID-19 safety protocols concurrent with provision of federal resources and coordination by DHS agencies with non-governmental organizations in the U.S.

We are confident that adopting these recommendations will drastically reduce the number of families unnecessarily subjected to the anguish and ongoing trauma caused by their forced separation at the southern border and will mark one more step towards a just asylum process that welcomes people with dignity and humanity.

/s/ Monika Y. Langarica

Monika Y. Langarica

Immigrants' Rights Staff Attorney

ACLU Foundation of San Diego & Imperial Counties

Email: mlangarica@aclusandiego.org

Phone: 619-398-4493

/s/ Kate Clark

Kate Clark, Esq.

Senior Director of Immigration Services

Jewish Family Service of San Diego

Email: katec@jfssd.org

Phone: 858-637-3359