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Interagency Taskforce on the Reunification of Families
Department of Homeland Security

RE: Identifying Recommendations to Support the Work of the Interagency Task Force on the Reunification of Families; Docket No. DHS-2021-0051

The undersigned organizations dedicated to the health and well-being of children are writing in response to the Department of Homeland Security's (DHS) request for public input in supporting the work of the Interagency Task Force on the Reunification of Families to ensure that family separation does not occur in the future.

We are grateful that the federal government recognizes the harm family separation has on children. In his executive order establishing the Interagency Task Force, President Biden condemned “the human tragedy that occurred when our immigration laws were used to intentionally separate children from their parents or legal guardians.”¹ Secretary Mayorkas has stated, “It is unconscionable to separate children from their parents as a means to deter migration... We have an obligation to reunite separated families and ensure this cruel practice never happens again.”² We agree.

It is important to address the harm the 2018 zero tolerance policy has caused for children and families. Notably, the President's executive order also applies to “any other related policy, program, practice, or initiative resulting in the separation of children from their families at the United States-Mexico border.” Thus, it is equally important that DHS address other enforcement policies currently being implemented at the border and in the interior that continue to harm children and families, including forced separation. Children's mental health and development are impaired, their financial stability is jeopardized, and their family structure is shattered when their parents are deported or threatened with deportation.

¹ *Executive Order on the Establishment of Interagency Task Force on the Reunification of Families*, The White House (February 2, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-the-establishment-of-interagency-task-force-on-the-reunification-of-families/>.

² *DHS to Request Public Input on How the U.S. Government Can Prevent Family Separations at the U.S. Border*, Department of Homeland Security (December 9, 2021), <https://www.dhs.gov/news/2021/12/09/dhs-request-public-input-how-us-government-can-prevent-family-separations-us-border>.

Over five million children, the vast majority of whom are U.S. citizens, have at least one parent who is undocumented and more than half a million children have a parent who is a DACA or TPS recipient.³ Our immigration laws often fail to consider the best interests of children, and the real or perceived threat of separation from a parent due to immigration enforcement creates instability and constant stress for children in mixed-status families, with serious consequences for their long-term development.⁴ A child's stable connection to a parent or caregiver is one of the most critical factors affecting their short and long-term development, especially in the early years.⁵

Immigration enforcement officials should not separate children from their parents, legal guardians, and other relatives at the border or in the interior. All policies and decisions regarding admissibility, enforcement, detention, and deportation of children and their parents must duly consider the best interests of children and promote family unity, including prioritizing release and community-based alternatives to detention.

The immigration system must also be strengthened to ensure that families are able to reunify faster, including addressing lengthy backlogs, repealing punitive bars to entry, and providing deported parents with an opportunity to return to reunify with their families. All enforcement policies at the border and interior should include specific protections for children, including trauma-informed training and accountability protocols for all immigration enforcement officials that come into contact with children and the use of experts in child wellbeing for screening and other enforcement activities involving children. This includes specialized training for social services personnel to identify children who have lost their caregivers while crossing the border, who have been victims of human trafficking, and who could benefit from special protections, such as obtaining Special Immigrant Juvenile Status. Officials should also promote reunification with other family members residing in the U.S. as appropriate for the well-being of the child.

For children who are in the custody of the federal government, policies must build on protections provided by the Flores Settlement Agreement and the Trafficking Victims Protection Reauthorization Act (TVPRA) to ensure that children are placed in family and small,

³ *Children in U.S. Immigrant Families*, Migration Policy Institute (Accessed Nov. 5, 2020), <https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrantfamilies?width=1000&height=850&iframe=true>; Randy Capps et al., *Unauthorized Immigrants in the United States: Stable Numbers, Changing Origins*, Migration Policy Institute (Dec. 2020), <https://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents>.

⁴ Roberto G. Gonzales, Carola Suárez-Orozco, and Maria Cecilia Dedios-Sanguinetti, *No Place to Belong: Contextualizing Concepts of Mental Health Among Undocumented Immigrant Youth in the United States*, *American Behavioral Scientist* 57, no. 8 (August 2013): 1174–99. <https://doi.org/10.1177/0002764213487349>.

⁵ Sharon H. Bzostek and Audry N. Beck, *Familial Instability and Young Children's Physical Health*, *Social Science and Medicine* 73 (2011); Heather Sandstrom and Sandra Huerta, *The Negative Effects of Instability on Child Development: A Research Synthesis*, Urban Institute (2013), <https://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-ofInstability-on-Child-Development-A-Research-Synthesis.PDF>.

community-based settings, are safely and promptly released to a sponsor in the United States, and have legal representation, independent child advocate services, and post-release services, including physical and mental health services, to support their immigration case and integration in the United States.

Following are specific recommendations that we believe DHS can follow to ensure the best interests of children and protect family unity:

Providing Restitution to Families Separated at the Border

We recognize the tremendous efforts that have been made by the Interagency Taskforce on the Reunification of Families to reunify the hundreds of children and parents who have remained separated as a result of the zero tolerance policy, and to provide them with ongoing support following reunification in the United States. However, we firmly believe that in order for there to be full accountability and to follow through on supporting children and families who will be on the path to recovery for the long-term, the U.S. government must provide monetary compensation for those who were separated by the policy. We urge the Taskforce to include in its final report recommendations the importance of providing restitution to those families wrongfully separated by the government both to uphold justice as well as to prevent the use of such actions by the government in the future.

Halt Title 42 Policy

The administration must halt the use of the Title 42 policy. This xenophobic policy established by the Trump administration does nothing to protect public health. This policy directly puts children and families, particularly Black immigrant families, in danger. Although DHS has itself stated the dangerous conditions in Haiti, thousands of families have continued to be deported this year. Just since September 19, 2021, over 10,500 Haitians have been deported, of which nearly 20 percent were children, including newborn infants only a few days old.⁶

The continued deportation of immigrants to Haiti is counter to messaging from DHS, which earlier this year designated Haiti for Temporary Protected Status (TPS) due to unsafe conditions. Additionally, Secretary Mayorkas has reaffirmed DHS' commitment to upholding and strengthening the asylum process. Continuing to deport Haitian families would be completely antithetical to both of those sentiments.

Putting an End to MPP

While we understand that the administration is under court orders to reinstate the Migrant Protection Protocols (MPP), we are deeply disappointed by the decision to expand the reach of

⁶ *Returns of Migrants and Reception Assistance in Haiti*, International Organization for Migration (December 19, 2021), https://reliefweb.int/sites/reliefweb.int/files/resources/factsheet_returns_-_19_december_2021_2_1.pdf.

this xenophobic policy enacted by the Trump administration. We urge the administration to roll back its expansion of this policy and continue to work to halt the policy in its entirety. There is no way to reinstate MPP which will not put children in danger.

A study from Human Rights First found that between January 2019 and January 2021 over 16,000 children have been forced to wait in Mexico, where they face dangerous and unsafe conditions with little to no access to health care services and other supports indispensable to a child's healthy development.⁷ MPP has led to thousands of cases of murder, rape, and torture, including more than 300 cases of children being kidnapped or nearly kidnapped.⁸

MPP has also pushed families to find ways to enter the United States and claim asylum outside of ports of entry. It has resulted in countless deaths, including that of 21 month old Iker Gael Cordova Herrera and his mother who drowned crossing the Rio Grande in 2019 after waiting for months to claim asylum.⁹ The journey to seek asylum in the United States can already be incredibly perilous. Between 2020 and 2021 over 70 children have died trying to enter the United States.¹⁰

Strengthening the Detained Parents Directive

The 2017 directive on the “Detention and Removal of Alien Parents or Legal Guardians” is an important policy that seeks to promote the parental rights of parents in removal proceedings.¹¹ However, the policy falls short of ensuring that parents can continue to care for their children in their homes.

We strongly recommend restoring the use of prosecutorial discretion for parents, legal guardians and primary caregivers of minor children to avoid detention or removal. The use of prosecutorial discretion was a critical aspect of the original 2013 directive and was taken out in 2017 under the Trump Administration. Keeping children with their caregivers is the only way to prevent the trauma caused by separation, and parents who are able to remain in their homes in the U.S. can more easily comply with their child welfare case plans and are therefore better able to reunify with their children in the child welfare system. We also recommend ensuring that DHS review

⁷ *Forced Returns to Mexico: At Least 1,544 Publicly Reported Cases Of Murder, Rape, Torture, Kidnapping & Other Violent Assaults*, Human Rights First (February 19, 2021), <https://www.humanrightsfirst.org/campaign/remain-mexico>.

⁸ Ibid.

⁹ Adolfo Flores, *More Immigrant Children Are Dying At The Border As The Trump Administration Sends People Back To Mexico*, BuzzFeed News (September 20, 2019), <https://www.buzzfeednews.com/article/adolfoflores/immigrant-children-dying-united-states-mexico-trump>.

¹⁰ *Migration Within The Americas*, Missing Migrants Project, International Organization For Migration (Updated January 2022), <https://missingmigrants.iom.int/region/americas>.

¹¹ *Policy Number 11064.2: Detention and Removal of Alien Parents or Legal Guardians*, Immigration and Customs Enforcement (August 29, 2017), <https://www.ice.gov/doclib/detention-reform/pdf/directiveDetainedParents.pdf>.

potential custody issues at each point of the removal process and allow release or stay of removal for purposes of reunification with a child in the child welfare system.

Enforcing the Protected Areas Policy

On October 27, 2021, DHS issued *Guidelines for Enforcement Actions in or Near Protected Areas*.¹² This guidance builds off of longstanding policy within the immigration enforcement offices at DHS to establish “protected areas” or “sensitive locations” where undocumented immigrants can receive essential services or partake in other important activities. We believe the expanded protected areas policy is an important step in helping to stop the chilling effect caused by immigration enforcement and reassure immigrants and their families that they can go about their everyday lives. However, it is critical that the policy be uniformly enforced and that there is a clear process for reporting and investigating violations to ensure transparency and accountability.

We recommend mandatory and regular training for all immigration officials on this policy, including training on how to handle situations where children are present so as to minimize their trauma. Additionally, DHS should communicate this policy with other relevant federal and state agencies, as well as community-based organizations. Finally, DHS should ensure that enforcement actions carried out at or near a protected area result in the prohibition of that information being entered into the record or received into evidence in any potentially related removal proceeding. Individuals who are the subject of such removal proceedings should be able to file a motion for the immediate termination of the removal proceeding.

Biden Deportation Prioritization Memo

On September 30, 2021, DHS issued “Guidelines for the Enforcement of Civil Immigration Law.”¹³ As with previous guidance, these guidelines once again establish categories for prioritizing enforcement, including people who are deemed to “pose a threat to public safety.” While this may seem appropriate on its face, DHS is entrusting local Immigration and Customs Enforcement (ICE) field office staff and directors with making this decision. They erroneously and frequently place people in “dangerous” categories because their goal is maximum deportation.

Parents and caregivers who have been detained or deported are often prioritized for removal due to previous convictions or other involvement with the criminal legal system. This can include individuals who may have been victims of domestic violence or whose convictions occurred a long time ago. The new memo takes some steps in the right direction by specifying that agents

¹² *Guidelines for Enforcement Actions in or Near Protected Areas*, Department of Homeland Security (October 27, 2021), https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-in-near-protected-areas.pdf.

¹³ *Guidelines for the Enforcement of Civil Immigration Law*, Department of Homeland Security (September 30, 2021), <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

should consider the time since an offense was committed, evidence of rehabilitation and whether a conviction was vacated or expunged. But the guidance largely reinforces the harmful framework that closely aligns immigration enforcement with the criminal legal system and gives too much decision-making power to agents, once again putting youth and parents of color at greater risk of being deported and separated from their families.

Similarly, the memo also creates a very broad and disturbing priority category for those who “pose a threat to border security,” defining this as anyone apprehended while unlawfully attempting to enter the United States at a border or a port of entry, as well as those apprehended in the United States after November 1, 2020, who did not enter the country legally. The memo makes no exception for children, asylum seekers, or others eligible for and pursuing lawful immigration status, which is a violation of the Refugee Convention.¹⁴ It makes thousands of children and families—including those seeking refuge from violence and instability in Central America and Haiti—priorities for enforcement, rather than protection—the exact mechanism used to implement the zero-tolerance policy.

Utilizing Alternatives to Detention

Family detention, like all immigrant detention, is unjust and inhumane, having serious and long-lasting impacts on the psychological health and well-being of children and families.¹⁵ While we recognize that the Biden Administration has temporarily halted the practice of family detention as of December 17, 2021, neither President Biden nor DHS Secretary Mayorkas have made official policy changes regarding family detention, meaning DHS can bring families back into detention at any point. The previous administration used family detention to force parents to either remain in indefinite detention or separate from their children.¹⁶

We urge President Biden to permanently shut down family detention centers, and more broadly, we recommend the use of community-based case management programs as an alternative to immigration detention. This includes a comprehensive set of services, such as access to legal representation, counseling, and assistance in obtaining food, housing, and employment to ensure parents/caregivers continue providing their children with the basic needs they need. Prosecutorial discretion can and should be used to ensure immigrants, including parents, legal guardians, primary caregivers are not subject to the dangerous conditions in immigration detention facilities, which are heightened during the ongoing pandemic. Individuals in immigration

¹⁴ *The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary* by Dr. Paul Weis, United Nations High Commissioner for Refugees (1990), <https://www.unhcr.org/4ca34be29.pdf>.

¹⁵ Cheasty Anderson, et al., *From Guards To Guardians: Healthy Community Alternatives To Immigration Detention*, The Children’s Defense Fund-Texas (2021), <https://cdf-texas.org/wp-content/uploads/sites/8/2021/05/Immigrant-Report-2021.pdf>.

¹⁶ Jasmine Aguilera, ‘Family Separation 2.0.’ *Parents in ICE Detention Have To Decide Whether to Keep Their Children or Release Them To Sponsors*, TIME (July 27, 2020), <https://time.com/5866659/ice-parents-children-detention-coronavirus-release/>.

detention have been shown to be subject to trauma, to have their health and safety compromised, and to be deprived of meaningful access to legal representation because of the conditions and the remote, secluded nature of the institutions in which they are being held.

DHS should work to ensure immigrants can remain with their families and in their communities during their ongoing immigration cases—economically it saves money, but most importantly it is the humane thing to do. In 2016 through early 2017, DHS implemented the Family Case Management program which proved an effective model in cases of asylum-seeking families, rather than placing them in family detention facilities.¹⁷ This program achieved a 99% immigration compliance at a fraction of the cost of detention while supporting families. Unlike detention, well-designed case management programs that are contracted to not-for-profit community-based organizations serving refugee and immigrant populations would honor the dignity and rights of those seeking protection in the United States. Such programs could be used for families and parents placed in removal proceedings following apprehension at the border and in the interior.

Reunifying Families Separated by Immigration Enforcement More Broadly

Thousands of parents have been separated from their children, many of whom are U.S. citizen children, as a result of detention or deportation. DHS should facilitate a process for the return of parents, caregivers, and other long-term U.S. residents that have previously been deported, in particular those that would not be considered priorities for deportation under the new guidelines and those who have children, spouses, parents, and other family members in the U.S. We recommend that the Taskforce extend its mission to create a process to allow for previously deported parents and other individuals to apply for humanitarian parole as well as some form of deferred action in order to reunify with children and families in the U.S.

In order to track the impact of deportation on U.S. citizen children, DHS is required to provide a report on the number of parents removed from the U.S., and between July 2019 and July 2020 DHS reported final removal orders for nearly 17,000 immigrants with at least one U.S. citizen child.¹⁸ Research has established the significant harm to children who have lost a parent to detention or deportation, including long-term consequences for their economic security, physical

¹⁷ *The Family Case Management Program: Why Case Management Can and Must Be Part of the US Approach to Immigration*, Women’s Refugee Commission (June 2019), <https://www.womensrefugeecommission.org/research-resources/the-family-case-management-program-why-case-management-can-and-must-be-part-of-the-us-approach-to-immigration/>.

¹⁸ *Deportation of Parents of U.S.-Born Children: Second Half, Calendar Year 2019*, Immigration and Customs Enforcement (July 22, 2020), https://www.dhs.gov/sites/default/files/publications/ice_-_deportation_of_parents_of_u.s.-born_children_second_half_cy_2019.pdf; *Deportation of Parents of U.S.-Born Children First Half, Calendar Year 2020*, Immigration and Customs Enforcement (April 20, 2021), https://www.dhs.gov/sites/default/files/publications/ice_-_deportation_of_parents_of_u.s.-born_children_first_half_cy_2020.pdf.

and mental health, and overall wellbeing.¹⁹ In one study focused on the massive series of worksite raids under the Trump Administration in 2019 in Mississippi, children of all ages were displaying symptoms of Post-Traumatic Stress Disorder several months after the loss of a parent, and older youth were forced to take on caregiver roles and other responsibilities.²⁰ There is simply no way to remedy the harm experienced by children and families who have lost a parent to deportation without reunifying them with that parent.

Conclusion

Thank you for the opportunity to submit this comment to help inform the recommendations of the Interagency Taskforce on the Reunification of Families. As advocates for children, we believe in the mission of the Task Force, and encourage the Administration to adopt holistic policies that considers children's best interests, particularly their need for family unity. Should you have any questions regarding these recommendations, please contact Wendy Cervantes, Director of Immigration and Immigrant Families at CLASP, at wcervantes@clasp.org.

Signed,
Center for Law and Social Policy
First Focus on Children
Children's Defense Fund
The Children's Partnership
Save the Children

¹⁹ Randy Capps et al., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature*, Migration Policy Institute (September 2015), <https://www.migrationpolicy.org/research/implications-immigration-enforcement-activities-well-being-children-immigrant-families>.

²⁰ Wendy Cervantes, Rebecca Ullrich, and Vanessa Meraz, *The Day That ICE Came: How Worksite Raids Are Once Again Harming Children and Families*, The Center for Law and Social Policy (July 13, 2020), <https://www.clasp.org/publications/report/brief/day-ice-came-how-worksite-raids-are-once-again-harming-children-and#:~:text=Allen%2C%20Texas.,half%20were%20originally%20from%20Mexico.>