




NATIONAL OFFICE

 6400 Arlington Blvd, Ste 400
Falls Church, VA 22042

 Justice@tahirih.org

 571 -282 -6161 (p)
571 -282 -6162 (f)

January 25, 2022

Submitted via www.regulations.gov

Michelle Brané, Executive Director
Interagency Task Force on the Reunification of Families
U.S. Department of Homeland Security

Samantha Deshommnes, Chief
Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: Comments in Response to Request for Recommendations to Support the Work of the Interagency Task Force on the Reunification of Families, Docket No. DHS-2021-0051; 86 Fed. Reg. 70,512 (Dec. 10, 2021) (deadline extended by Document No. 2021-27935)

Dear Director Brané and Chief Deshommnes:

The Tahirih Justice Center (Tahirih) submits the following comments to the U.S. Department of Homeland Security Interagency Task Force on the Reunification of Families in response to the above-referenced request for recommendations, published in December 2021.¹

I. Introduction

The Tahirih Justice Center is the largest multi-city direct

¹ See 86 Fed. Reg. 70,512 (Dec. 10, 2021); 86 Fed. Reg. 92,266 (Dec. 27, 2021). All sources cited in this comment—including, but not limited to, court opinions, legislative history, and secondary sources—are to be considered part of the administrative record.

services and policy advocacy organization specializing in assisting women, girls, and other immigrants fleeing gender-based violence. Tahirih is a national, nonpartisan policy and direct services organization that has answered calls for help from nearly 29,000 survivors of gender-based violence and their families since its inception 24 years ago. Tahirih provides free legal and social services to help our clients find safety and justice as they engage in the daunting, courageous, and rewarding work of rebuilding their lives and contributing to their communities as illustrated by our clients' stories. Since its founding, Tahirih has also served as an expert resource for the media, Congress, policymakers, and others on immigration remedies for survivors fleeing gender-based violence (GBV).²

We thank DHS for the opportunity to comment regarding ways to minimize the separation of migrant parents and legal guardians and children entering the United States, consistent with the law.

Introduction

Family separation wreaks particular havoc on those who have already survived violence and persecution. Survivors travel to the United States to seek protection from abuse and harm. They display symptoms of post-traumatic stress disorder, depression, and anxiety.³ Family separation compounds this harm in myriad ways. The forcible separation of children from their parents triggers symptoms of post-traumatic stress disorder, including feelings of anguish, fear, guilt, sadness, lack of control, and isolation.⁴ Removal of family presence often deprives survivors of their "secure base," leading to prolonged suffering and delayed recovery.⁵ When children see their parents in fear, the trauma is lasting and detrimental to development.⁶ Such separation is so traumatic that Physicians for Human Rights deemed it tantamount to torture.⁷

Given the deep and lasting impact of family separation on survivors, providing redress for previous family separation and preventing future separation is essential to the United States' fulfillment

² See, e.g., Tahirih Justice Center, [Tahirih in the News](#); Tahirih Justice Center, [Congressional Testimony](#); Tahirih Justice Center, [Comments](#).

³ See, e.g., KHN, *Many Immigrants Seeking U.S. Asylum Suffer from Post-Traumatic Stress Disorder, Depression, Advocates Say*, KHN (Mar. 10, 2009), available at <https://khn.org/morning-breakout/dr00057390/>.

⁴ See, e.g., S. Garcia, *Lingering trauma: Families separated at border suffer long-term mental health challenges* (Jan. 28, 2021), available at <https://www.usatoday.com/story/opinion/2021/01/28/torture-families-separated-border-suffer-long-term-consequences-column/4274567001/>.

⁵ See Alissa Jerud, Ph.D., *Parent-Child Separation, Trauma, PTSD and Recovery in Children*, Anxiety (July 3, 2018), available at <https://www.anxiety.org/parent-child-separation-trauma-ptsd-and-recovery-in-children>.

⁶ American Immigration Council, *Family Separation Has Caused Life-Long Trauma Years Later* (Nov. 22, 2021), available at <https://yubanet.com/usa/family-separation-has-caused-life-long-trauma-years-later/>.

⁷ See Katie Peeler, *Forced Family Separation Isn't Just Traumatic. It's Torture*, Physicians for Human Rights (Mar. 10, 2020), available at <https://phr.org/our-work/resources/forced-family-separation-isnt-just-traumatic-its-torture/>.

of its legal obligations to provide access to asylum.

1. Ensure Justice for Separated Families

The Zero Tolerance policy tore apart families seeking protection at our borders, separating more than 5,000 children from their families in an effort to deter survivors from exercising their legal right to seek asylum.⁸ This cruel policy amounted to state-sponsored torture and resulted in documented post-traumatic stress disorder, depression or anxiety among those separated.⁹ Reunification of separated families, reparations, and mental health support and services are essential to address the damage inflicted by this harmful policy.

Any programs akin to Zero Tolerance, including those that rely on prosecutions of asylum seekers for authorized entry or reentry violations, will inevitably lead to similar violations of human rights and to lasting trauma. Such programs should be terminated and avoided. To ensure that this occurs, the administration must agree to compensate the survivors of prior separations and hold those responsible for the separations accountable in any way available under U.S. law. If there are no consequences for the imposition of torture on immigrant families, that torture will be repeated.

2. Rescind Migrant Protection Protocols

The so-called Migrant Protection Protocols return survivors of violence to dangerous conditions in Mexico while they await their asylum hearings. Implementing this policy, CBP forces families apart, permitting some family members to remain in the United States while sending their parents, siblings, and other family members to Mexico to await hearings. To take one of many examples, Mariali¹⁰ was pregnant with her second child when her family tried to enter the United States. Her daughter was permitted to enter with her, but her husband was returned to Mexico to await a hearing. He endured homelessness in Mexico and missed the birth of his child, only admitted to the United States more than a year after his wife and daughter. Rescission of the Migrant Protection Protocols—an outcome that is possible only with the full commitment of the administration to end the atrocities routinely caused by that policy—will ensure that this cruel and inhumane policy cannot lead to further family separations and trauma.

3. End Title 42 Expulsions

Expulsions of asylum seekers under Title 42 of the U.S. Code have swollen to more than a

⁸ See Human Rights First, *Punishing Refugees and Migrants: The Trump Administration's Misuse of Criminal Prosecutions* (Jan. 2018), available at <https://www.humanrightsfirst.org/sites/default/files/2018-Report-Punishing-Refugees-Migrants.pdf>.

⁹ Ed Pilkington, *Families separated at the border under Trump suffering severe trauma - study*, The Guardian (Nov. 24, 2021), available at <https://www.theguardian.com/us-news/2021/nov/24/trump-family-separations-trauma-study>; Katie Peeler, *Forced Family Separation Isn't Just Traumatic. It's Torture*, Physicians for Human Rights (Mar. 10, 2020), available at <https://phr.org/our-work/resources/forced-family-separation-isnt-just-traumatic-its-torture/>.

¹⁰ Names have been changed to protect confidentiality.

million people, including children, and resulted in innumerable family separations. The purported public health rationale for Title 42 has been rejected by independent public health experts and has not been defended on the merits by either the Department of Homeland Security or the Centers for Disease Control,¹¹ yet this administration continues to use it to expel thousands per month. These conditions result in the unaccompanied arrivals of thousands of children in the United States, resulting in the separation—and government-forced torture—of thousands of families.¹²

4. Eschew Detention of Asylum Seekers

Detention of asylum seekers pending adjudication of their claims for U.S. protection cruelly and unnecessarily separates parents and guardians from their children. Karina, for example, was detained while she pursued her asylum claim, leaving her minor U.S. citizen son and her pregnant U.S. citizen daughter on their own for many months. While Karina was jailed, her first granddaughter was born and her young son had to navigate alone his application and acceptance to his city’s science magnet middle school, while in the care of neighbors. Even after Karina was awarded legal status and her family was reunified, they continue to require mental health resources to help them address post-traumatic stress disorder and depression. Detention pending asylum adjudication needlessly compounds the trauma of survivors by separating families.

5. Understand That “Family” Is Broader Than “Parents”

The U.S. government has consistently employed a culturally benighted definition of “family” as

¹¹ See Camilo Montoya-Galvez, *Top CDC official told Congress migrant expulsion policy was not needed to contain COVID*, CBS News (Nov. 12, 2021), available at <https://www.cbsnews.com/news/cdc-official-told-congress-migrant-expulsion-policy-not-needed-to-contain-covid/> (“A former senior official with the Centers for Disease Control and Prevention told a congressional committee that a border policy instituted last year to expel migrants and block them from requesting asylum was not needed to contain the spread of the coronavirus, according to a transcript released Friday.”); Physicians for Human Rights, *1,300+ Medical Professionals from 49 U.S. States and Territories Call on CDC to End “Junk Science” Border Expulsion Policy* (Oct. 28, 2021), available at <https://phr.org/our-work/resources/u-s-medical-professionals-demand-cdc-end-title-42/> (“1,383 medical professionals today demanded that the Centers for Disease Control and Prevention (CDC) end the Title 42 border expulsions order that has systematically endangered thousands of people who seek asylum in the United States.”); Letter to HHS Secretary Azar and CDC Director Redfield signed by leaders of public health schools, medical schools, hospitals, and other U.S. institutions (May 2020), available at <https://www.publichealth.columbia.edu/public-health-now/news/public-health-experts-urge-us-officials-withdraw-order-enabling-mass-expulsion-asylum-seekers>; Letter to Acting HHS Secretary Cochran and CDC Director Walensky (Jan. 2021), available at <https://www.publichealth.columbia.edu/research/program-forced-migration-andhealth/letter-acting-hhs-secretary-cochran-and-cdc-director-walensky>.

¹² Nicole Sganga and Camilo Montoya-Galvez, “Over 2,100 children crossed border alone after being expelled with families to Mexico,” CBS News (May 7, 2021), available at <https://www.cbsnews.com/news/migrant-children-left-families-asylum-border>.

consisting only of children and their parents or legal guardians.¹³ In many parts of the world, the people who count as close family extend well beyond parents. At a minimum, grandparents, aunts, and uncles routinely act as primary caregivers for children. Any policy intended to end family separation must recognize this reality—or it will be functionally meaningless, and inevitably allow the torture of separation to continue, in a significant proportion of cases.

6. Address Asylum Office and EOIR Delays

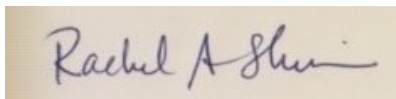
Extensive backlogs and delays at the Asylum Office and immigration courts prevent asylum seekers from receiving prompt adjudications of their claims. Many asylum seekers wait years for review of their meritorious applications, during which time their family members are trapped in dangerous conditions in home countries. Silvia, who escaped severe domestic violence in her home country, was granted asylum by an immigration judge in less than a year, but more than two and half years later her asylee relative petitions for her two young sons remain pending—and her children remain thousands of miles from their mother—solely because of long delays and backlogs in adjudication of their requests for protection. Speeding adjudication of asylum claims will reduce family separation and promote family reunification.

Conclusion

Family separation is a cruel and inhumane tool misused to prevent asylum seekers from lawfully seeking asylum, as is their right under U.S. and international law. And Zero Tolerance was far from the only government program that routinely, inevitably, and undeniably results in family separation. To end the torture of separation, the administration must also commit to eschew Title 42, the Migrant Protection Protocols, and detention and deportation to separate families and instead enact policies that enshrine respect and dignity for all migrants. Otherwise, its supposed commitment to end family separation will prove nothing more than an empty charade.

Please feel free to contact me at rachels@tahirih.org or with any questions or for further information.

Sincerely,



Rachel Sheridan
Litigation Counsel
Tahirih Justice Center

¹³ *E.g.*, 86 Fed. Reg. at 70,512-13.