



Office of the General Counsel

3211 FOURTH STREET NE • WASHINGTON DC 20017-1194 • 202-541-3300 • FAX 202-541-3337

January 21, 2022

Submitted Electronically via Regulations.gov

Michelle Brané
Executive Director
Interagency Task Force on the Reunification of Families

Re: Identifying Recommendations to Support the Work of the Interagency Task Force on the Reunification of Families, Docket No. DHS-2021-0051, 86 Fed. Reg. 70512 (December 10, 2021)

Dear Director Brané,

The United States Conference of Catholic Bishops' Department of Migration and Refugee Services ("USCCB/MRS") appreciates the opportunity to provide public comment on the causes of separation of migrant parents/legal guardians and children while entering the United States, as well as recommendations to avoid such occurrences in the future. We were pleased to see Executive Order 14011, *Establishment of Interagency Task Force on the Reunification of Families* (February 2, 2021). We commend the difficult work of the Task Force, though we continue to express concern for the more than 1,000 children within its purview who remain separated from their families.¹

Inspired by Catholic social teaching, USCCB/MRS has operated programs in collaboration with the U.S. government to help protect children from all over the world for nearly 40 years. Since 1994, USCCB/MRS has operated Safe Passages, a program serving migrant children apprehended by the Department of Homeland Security (DHS) and placed in the custody of the Department of Health and Human Services' Office of Refugee Resettlement (HHS/ORR). Through cooperative agreements with HHS/ORR, and in partnership with community-based social services agencies, the Safe Passages program provides residential care (*i.e.*, foster care and small-scale shelter placements) to unaccompanied children in HHS/ORR custody, as well as family reunification services (*i.e.*, pre-release placement screening and post-release services for families). Between 2020 and 2021, the USCCB/MRS network served thousands of vulnerable children, including nearly 100 youth in the Unaccompanied Refugee Minors (URM) program, 626 unaccompanied children (UC) in foster care, and over 1,300 UC and their families receiving post-release services.

In 2018, USCCB/MRS also partnered with Lutheran Immigration and Refugee Service (LIRS) to assist both DHS and HHS in reunifying families separated as a result of the "zero-tolerance" policy put in place by the Department of Justice on April 6, 2018.² USCCB/MRS and LIRS assisted the federal government with the reunification of 1,112 families separated at the U.S.-Mexico border.

¹ INTERAGENCY TASK FORCE ON THE REUNIFICATION OF FAMILIES, INTERIM PROGRESS REPORT, at 3 (Nov. 29, 2021), <https://bit.ly/3yQhC7n>.

² See generally U.S. CONFERENCE OF CATHOLIC BISHOPS & LUTHERAN IMMIGRATION AND REFUGEE SERVICE, SERVING SEPARATED AND REUNITED FAMILIES: LESSONS LEARNED AND THE WAY FORWARD TO PROMOTE FAMILY UNITY (2018), <https://bit.ly/3qBwF2x>.

Throughout all of this work, the importance of keeping families together has repeatedly been demonstrated. Therefore, USCCB/MRS is pleased to make further recommendations in order to support the work of the Task Force and promote the unity of families.

Causes of Family Separation

In recent years, DHS has reported sharp increases in the number of UC entering the custody of HHS/ORR.³ This is due in part to the recent policy changes that have given rise to instances of family separation at the U.S.-Mexico border.⁴ Notable among these is the “zero-tolerance” policy instituted by the Trump Administration in April 2018, which referred all individuals who entered the United States without inspection for criminal prosecution, including adult members of family units, causing thousands of children to be separated from their parents or other guardians. One particularly concerning rationale for this policy and the accompanying separations was deterrence.⁵ Although the policy was rescinded following extensive public outcry, it soon became apparent that neither DHS nor HHS were equipped with the proper tools or mechanisms needed to keep track of separated families and coordinate between themselves, hindering subsequent reunification efforts.⁶

In 2019, DHS implemented the Migrant Protection Protocols (MPP). Under this policy, certain asylum-seekers arriving by land at the U.S.-Mexico border are returned to Mexico to await their hearing in U.S. immigration court. Since its inception in 2019, there have been numerous reports indicating that during the time families and individuals are made to wait in Mexico under MPP, they are exposed to kidnapping, extortion, assault, gender-based violence, and other dangers.⁷ These crimes sometimes occur as individuals are *en route* to their immigration hearings.⁸ In early 2020, there were multiple reports of children entering the United States alone, though they were previously part of a family unit waiting in Mexico under MPP. These “self-separations” have various causes, including that some parents had disappeared or that relatives decided that the conditions in Mexico were too dangerous for children to continue to wait there.⁹ While DHS attempted to terminate MPP in June 2021 (and again in October 2021), ongoing legal challenges have resulted in the program’s reimplemention.¹⁰

³ Franco Ordoñez, *Almost 19,000 Migrant Children Stopped at U.S. Border in March, Most Ever in a Month*, NPR (Apr. 8, 2021), <https://n.pr/3KdgRL0>.

⁴ See Lisa Riordan Seville & Hannah Rappleye, *Trump Admin Ran ‘Pilot Program’ for Separating Migrant Families in 2017*, NBC NEWS (Jun. 28, 2018), <https://nbcnews.to/3qy13L8> (finding that from October 2016 to June 2018, DHS separated over 4,100 children from their parents, rendering them “unaccompanied”).

⁵ Philip Bump, *Here Are the Administration Officials Who Have Said that Family Separation is Meant as a Deterrent*, WASHINGTON POST (June 19, 2018), <https://wapo.st/3GRbW0g>.

⁶ See OFF. OF THE INSPECTOR GEN., DEP’T OF HOMELAND SEC., OIG-18-84, SPECIAL REVIEW – INITIAL OBSERVATIONS REGARDING FAMILY SEPARATION ISSUES UNDER THE ZERO TOLERANCE POLICY 9 (2018).

⁷ See Human Rights First, *Publicly Reported Cases of Violent Attacks on Individuals Returned to Mexico Under the “Migrant Protection Protocols”*, <https://bit.ly/3fyR0PE>.

⁸ HUMAN RIGHTS FIRST, A YEAR OF HORRORS: THE TRUMP ADMINISTRATION’S ILLEGAL RETURNS OF ASYLUM SEEKERS TO DANGERS IN MEXICO, at 2 (Jan. 2020), <https://bit.ly/3FB5YcD>.

⁹ Priscilla Alvarez, *At Least 350 Children of Migrant Families Forced to Remain in Mexico Have Crossed Over Alone to U.S.*, CNN (Jan. 24, 2020), <https://cnn.it/3Ko42hg>.

¹⁰ Press Release, Department of Homeland Security, DHS Issues a New Memo to Terminate MPP (Oct. 29, 2021), <https://bit.ly/3tBh4BO>. The USCCB filed an *amicus curiae* brief in January 2020 before the Supreme Court of the United States, arguing that MPP’s termination is not only permissible but that the program is contrary to domestic and international law, as well as Catholic social teaching. The USCCB has affirmed this position since the reimplemention was ordered. See generally Brief of United States Conference of Catholic Bishops, et al. as Amici Curiae Supporting Respondents, *Wolf v. Innovation Law Lab*, No. 19-1212 (U.S. dismissed June 21, 2021), available at <https://bit.ly/3nFA9za>; see also Press Release, U.S. Conference of Catholic Bishops, U.S. Bishops’ Migration Chairman Expresses Concern Over Reimplementation of Migrant Protection Protocols (Dec. 3, 2021), <https://bit.ly/33PDFQu>.

At the onset of the COVID-19 pandemic, HHS issued an emergency regulation to implement sections 265 and 268 of Title 42 of the U.S. Code (“Title 42”) and delegated authority to the Director of the Centers for Disease Control and Prevention (CDC). Title 42 works to “prohibit, in whole or in part, the introduction of persons and property from such countries or places” where there exists “any communicable disease” and “there is serious danger of the introduction of such disease into the United States.”¹¹ Public health experts have repeatedly urged for this use of Title 42 to be ended, arguing that it “has no basis in science.”¹² Despite this, the policy remains in place and has further contributed to instances of family separation. While unaccompanied children were initially subject to expulsion under Title 42, the practice of applying Title 42 to children was officially discontinued in early 2021 by the CDC.¹³ This resulted in thousands of children seeking protection without their families at the U.S.-Mexico border, creating a historic influx that HHS/ORR had to rapidly accommodate. As a response—and operating under already strained circumstances produced by the pandemic—HHS/ORR created the Emergency Intake Site (EIS) model and held unaccompanied children in unlicensed facilities with minimal services and oversight standards. EISs quickly became a problematic response to the consequences of Title 42. Conditions at these facilities have been described as “dire” by some immigration advocates, and children could be held at these sites for months at a time, well beyond the intended length of stay.¹⁴ In addition to the trauma of leaving their homes and families, children have been subject to the trauma of prolonged stays at EISs, which lack many of the typical resources and programming in standard ORR residential facilities. Many children have experienced panic attacks and adverse mental health symptoms after other children were taken away to be reunified with a family member or sponsor.¹⁵

These policies, among other immigration enforcement practices currently in place, foster the occurrence and negative consequences of family separation.

Recommendations

Consistent with our experience serving separated children and families, we offer the following recommendations:

- 1. Rescind harmful policies directly impacting families at the U.S.-Mexico border, such as Title 42 and MPP.** Title 42 and MPP encourage families to self-separate and do not accomplish the goals of a “fair, orderly, and humane” immigration system.¹⁶ USCCB/MRS calls for an end to the misuse of Title 42 to turn away vulnerable asylum seekers and to instead allow those fleeing persecution, violence, and other life-threatening conditions to access protection, consistent with domestic and international law, as well as sound, scientific rationales to ensure public health. Similarly, USCCB/MRS urges that all necessary legal steps be taken to end MPP.
- 2. Formally promulgate regulations to establish a federal presumption against family separation, absent reasonable child welfare concerns, and institute clear criteria for “good cause” separations.** While there may be times when separation is appropriate (*e.g.*, due to instances of abuse or trafficking), unnecessarily separating families is in direct conflict with basic

¹¹ 42 U.S.C. § 265.

¹² Press Release, Columbia University Mailman School of Public Health, Epidemiologists and Public Health Experts Reiterate Urgent Call to End Title 42 (Jan. 14, 2022), <https://bit.ly/3rMx1CX>.

¹³ Notice of Temporary Exception from Expulsion of Unaccompanied Noncitizen Children Pending Forthcoming Public Health Determination, 86 Fed. Reg. 9,942 (Jan. 30, 2021).

¹⁴ Julie Watson, Amy Taxin, & Adriana Gomez Licon, *Panic Attacks Highlight Stress at Shelters for Migrant Kids*, ASSOCIATED PRESS (June 14, 2021), <https://bit.ly/3GFpD27>.

¹⁵ *Id.*

¹⁶ See The White House, *Fact Sheet: The Biden Administration Blueprint for a Fair, Orderly and Humane Immigration System* (July 27, 2021), <https://bit.ly/3tBUPMm>.

child welfare principles, causes children and families long-term harm, and is an ineffective means of deterrence. In consultation with HHS, DHS should promulgate regulations that include criteria for when it is in the best interest of a child to be separated from his or her parent or legal guardian. In the absence of such criteria, a presumption against family separation should be instituted. Formal notice and comment rulemaking would demonstrate a commitment by the U.S. government to family unity and reduce the potential for future policies that encourage systemic family separation.

3. **Require that federal agencies maintain detailed documentation of family relationships to support future reunification efforts.** DHS should ensure that it documents family relationships for all individuals traveling with family, including extended family. Additionally, DHS policy guidance should denote that even if family relationships are questioned, the alleged relationship must be documented. DHS should also issue guidance on family tracing for all pertinent staff.
4. **Require written justifications for family separation.** Every incidence of family separation should be clearly recorded and the explanation for such separations—including specific criminal charges where applicable—should also be documented. This information needs to be readily shared and accessible to all component agencies of DHS, as well as ORR. In particular, the location of the separated family member needs to be shared with ORR at the time of the child’s referral in order to ensure prompt communication between child and parent, if appropriate. All information should be available to family members, attorneys, and advocates on a secure database.
5. **Provide robust support for post-release services and community-based case management from nonprofit providers.** For children and families who have endured separation, continuing care after release is essential for addressing trauma and mitigating long-term impacts. Additionally, community-based case management services should be utilized in place of family detention to further avoid inflicting unnecessary and long-lasting trauma on children and families. Models such as the Family Case Management Program (FCMP) have already been proven to dramatically reduce costs and create better outcomes for families.¹⁷

Conclusion

Family unity is a cornerstone of the American immigration system. Unfortunately, past and current policies have undermined this important principle. While there are times when separation is appropriate, unnecessarily separating families is extremely traumatic, causes long-term harm, and is an ineffective means of deterrence. For these reasons and those set forth above, we ask the Task Force to take into consideration our recommendations and ensure that family unity and safety are prioritized in U.S. immigration policy.

Respectfully submitted,



Anthony R. Picarello, Jr.
Associate General Secretary and General Counsel
U.S. Conference of Catholic Bishops

¹⁷ U.S. Conference of Catholic Bishops, et al., *The Real Alternatives to Detention* 3–4 (June 2019), <https://bit.ly/3qLxvd9> (finding that the FCMP had compliance rates of over 99% with immigration check-in appointments and with court appearances, while costing only \$38 per family per day, compared to over \$300 per person in family detention per day).