



The  
CENTER for  
VICTIMS of  
TORTURE

*Submitted via Federal eRulemaking Portal*

January 25, 2022

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

**Re: Agency DHS, Docket No. DHS-2021-0051 Request for Public Input on Recommendations to Minimize the Separation of Migrant Parents and Legal Guardians and Children Entering the U.S. In the Federal Register at 86 F.R. 70512.**

Dear Ms. Brané:

The Center for Victims of Torture (CVT) respectfully submits this comment in response to the request for input on how to minimize the separation of migrant parents and legal guardians and children entering the U.S. issued by the Department of Homeland Security (DHS), Docket No. DHS-2021-0051, issued on December 10, 2021.

While we commend the Interagency Task Force on the Reunification of Families (“the Task Force”) for seeking input on minimizing and preventing the separation of families at the U.S.-Mexico border, we urge the Biden administration also to revise other policies and practices within the current asylum system that also lead to the separation of children from their loved ones, and continue to damage the parent/caretaker-child bond.

Please find our detailed comments and recommendations below.

Thank you for the opportunity to submit comments on this request for input. Please do not hesitate to contact us with any questions or for further information.

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## **DETAILED COMMENTS for DHS, Docket No. 2021-0051 Request for Public Input on Recommendations to Minimize the Separation of Migrant Parents and Legal Guardians and Children Entering the U.S. by the Interagency Task Force on the Reunification of Families.**

The Center for Victims of Torture (CVT) welcomes the opportunity to provide input on how to Minimize the Separation of Migrant Parents and Legal Guardians and Children Entering the U.S., DHS Docket No. 2021-0051 (“the request for input,” or “the request”).

Founded in 1985 as an independent non-governmental organization, CVT is the oldest and largest torture survivor rehabilitation center in the United States and one of the two largest in the world. Through programs operating in the U.S., the Middle East, and Africa—involving psychologists, social workers, physical therapists, physicians, psychiatrists, and nurses—CVT annually rebuilds the lives and restores the hope of more than 25,000 primary and secondary survivors of torture, other gross human rights violations, and severe war-related trauma. The vast majority of CVT’s clients in the United States are asylum seekers and refugees.

CVT also conducts research, training and advocacy, with each of those programs rooted in CVT’s healing services. The organization’s policy advocacy leverages the expertise of five stakeholder groups: survivors, clinicians, human rights lawyers, operational/humanitarian aid providers, and foreign policy experts. CVT organizes a network of torture treatment programs focused on rebuilding the lives of survivors of torture across the nation. These programs serve primarily asylum seekers, asylees, and refugees.

As experts in the provision of mental health and other rehabilitation services to survivors of torture and other trauma, we are intimately familiar with the importance of the caretaker-child bond and the profound effects that abrogation of such could have on the children and adults who are affected.

### **I. Background**

On May 7, 2018, the U.S. Department of Justice (DOJ) announced the implementation of a “zero tolerance” policy, which led to the prosecution of all individuals crossing the U.S. southern border without documentation, including asylum seekers. Pursuant to this policy, the Trump administration imprisoned parents and separated them from their children (under the age of 18), who were placed in the custody of the U.S. Department of Health and Human Services (HHS). The administration took no steps to ensure parents could be easily reunified with their children. Speaking out in opposition to the “zero tolerance” policy, 20,000 medical professionals emphasized that “[t]he relationship of parents and children is the strongest social tie most people experience, and a threat to that tie is among the most traumatic events people can experience.”

Shortly after taking office, the Biden administration ordered the creation of the [Interagency Task Force for Family Reunification \(Task Force\)](#), to address the “human tragedy that occurred when U.S. immigration laws were used to intentionally separate children from their parents or legal guardians.” Through this request for input, the Task Force asks the public to provide information on how to prevent family separations at the U.S.-Mexico border. Yet, many other U.S. immigration policies and practices beyond the border—some that have been in place for decades—also lead to the rupture of the parent-child bond. Those, too, must be addressed to ensure the U.S. treats asylum seekers and other migrants with dignity.

## **II. End Policies at the U.S.-Mexico Border that Lead to the Separation of Families**

**Criminal Prosecution through Zero-tolerance Policy:** In addition to leading to the separation of parents from children, the policy punishes asylum seekers for crossing the border outside ports of entry. As such, it violates the 1951 Convention Relating to the Status of Refugees and its Protocol – a treaty the United States helped lead efforts to draft, and to which the United States became legally obligated to adhere when it ratified the treaty’s Protocol.

In order to address the harms of “zero-tolerance,” and to deter future administrations from pursuing similar policies, the Biden administrations must:

- End broad prosecutions for illegal entry and re-entry of individuals under 8 U.S.C. §§ 1325 and 1326;
- Reunify all separated families and bring them back to the United States if they have been deported;
- Provide immediate protections from detention and deportation for separated parents and children;
- Support a pathway to citizenship for separated families;
- Provide resources and support, including trauma counseling;
- Settle outstanding family separation damages claims to ensure accountability;
- Support and promote legislation that seeks to prevent family separations under a policy similar to “zero-tolerance.”

**Migrant Protection Protocols:** In January 2019, the Trump administration began to implement the Migrant Protection Protocols – known more commonly as MPP or “Remain in Mexico” – a policy that returned Central American asylum seekers to Mexico to wait during the pendency of their asylum cases. Large numbers of individuals seeking refuge have been living in dangerous Mexican border cities for over a year, and many have been kidnapped, assaulted, and tortured. During COVID-19, the wait has become longer and more dangerous as the pandemic has led to the closure of MPP courts and shelters. While the Biden administration started the MPP wind down in February 2021, which allowed many in the program to pursue their asylum claim in the

U.S., due to a court mandate the administration re-started the program despite having options to avoid its implementation. Shockingly, the administration chose to expand the program to include all citizens of Western Hemisphere Countries. Even if the Biden administration has taken some steps to diminish the damage of the policy, the core of the policy is plagued by due process violations and people are still [exposed to danger and discrimination](#) in Mexico.

For this reason, asylum seekers who are parents trapped in Mexican border cities pursuant to the “Remain in Mexico” policy have to make an agonizing choice about whether to send their children alone across the border to give them a better chance at safety, because unaccompanied children generally have special protections. Some understandably make that choice resulting in family separations. Families are also separated when border officials choose to put only some members of a family in the MPP program, while detaining others in the United States.

**The administration must use every tool at its disposal to address these family separations and end MPP.**

**Title 42:** On March 24, 2020, the Centers for Disease Control and Prevention (CDC) of the Department of Health and Human Services (HHS) published an interim final rule that allowed the creation of a “procedure for CDC to suspend the introduction of persons from designated countries or places, if required, in the interest of public health.” On the same day, the CDC issued an order (“Order”) invoking its authority under the rule to suspend the introduction of persons without documentation who seek to enter the United States via Mexico or Canada on the grounds that they could be “vectors” for transmission of COVID-19. As of the drafting of this comment—almost two years after its start—the order continues to be in effect, yet many safety measures, including vaccines, are readily available to eliminate the need to expel persons to Mexico or Canada. Sending people away without being vaccinated is more dangerous to border communities than vaccinating individuals and allowing entry. Together, the rule and Order invoke baseless public health concerns to justify the violation of domestic and international law. Guidance [reportedly provided](#) to the U.S. Border Patrol instructing agents to expel individuals under the authority provided by this rule fails to reference protections for asylum-seekers under the Refugee Convention and Protocol. These expulsions are returning Central Americans to dangerous Mexican border cities, and others back to the country where they face persecution, particularly Haitian asylum seekers.

As with MPP, families are separated when CBP might allow some parents and guardians into the country, while expelling others back to Mexico or the country they fled. In addition, parents once more must make the impossible choice of sending their children across the border alone, as an alternative to returning back to the dangers they fled.

**The administration can, and must, end the Title 42 expulsions. There is [no legitimate](#) public health justification for the policy and it leads to the separation of families.**

### **III. End Immigration Policies and Practices beyond the U.S.-Mexico Border that Lead to Family Separation**

In CVT's experience, the prolonged uncertainty as to when and if refugees and asylum seekers will see their families again – irrespective of how family separation occurred – can cause such acute feelings of hopelessness and depression that it can result in long-lasting severe mental health trauma, and even suicidal ideations. The administration must address all aspects of the asylum and refugee systems that lead to prolonged family separation, including:

Asylum backlog: The [asylum backlog is over one million](#) cases, and Asylum seekers who had to leave family behind – in some cases in circumstances where the family remains in danger – cannot reunify with their family until they become asylees.

Family Reunification through I-730 Petitions: Besides facing the asylum backlogs, asylees must face delays in the adjudication of their applications to bring family members to join them in the U.S., leading to even longer wait times, and more attending.

Individuals granted Withholding of Removal: Individuals who are granted withholding of removal must meet a higher threshold than asylum seekers, but they cannot include family members who are physically with them in their application, nor can they apply later to bring them through the I-730 petition process. This means that individuals who have been highly traumatized are denied the possibility of living with their family members, who might still face dangers in their home country.

Muslim and African Bans: Over 41,000 visa applicants from predominantly Muslim and African countries were denied as a result of the bans, prolonging the time families were separated from their loved ones.

Detention system: In the 1990s detention became the primary means of enforcing immigration. Congress amplified the scope of who could be subject to detention through the enactment of the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA), which rendered any non-U.S. citizen, including legal permanent residents, vulnerable to detention and deportation. Because detained immigrants are often held in detention facilities far from their family members, or in remote locations that are difficult to access, immigration detention often results in family separation, which itself has a devastating impact on families. When an individual is detained, it might mean that a family lost someone providing social and financial support, which can create social, mental, and financial strain on their family members, including children. These harms reverberate throughout the broader communities.

The vast majority of individuals in detention can be released on discretionary grounds. The administration can and should take broad actions to significantly reduce the number of individuals who are detained.

**To prevent and minimize the separation of families the Biden administration must:**

- Address backlogs (including but not limited to asylum, refugee, and family reunification);
- Identify all features of the immigration system that cause or facilitate family separation and eliminate or revise them;
- Provide redress to those subject to the Muslim and African Bans consistent with [this letter](#) to the administration.
- Phase out immigration detention;
- Refrain from defending the lawsuits leading to the inability of immigrants to be released on bond in the cases of Johnson v. Arteaga-Martinez, No. 19-896, and Garland v. Gonzalez, No. 20-322.

**IV. The Separation of Children from Parents violates the 1951 Refugee Convention**

The international community has recognized the importance of a child's bond with a parent. For example, through Article 9 of the United Nations Conventions on the Rights of the Child (CRC), 196 countries have agreed that they "shall ensure that *a child shall not be separated from his or her parents against their will*, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child."<sup>1</sup> Although the U.S. has not ratified this treaty (the only country in the world not to have done so), as a signatory the U.S. is bound to not engage in actions that "defeat" the CRC's "object and purpose."<sup>2</sup>

Relatedly, the United States must not underestimate how its actions resonate globally; in particular the implicit permission that U.S. practice might give other nations to act the same. The United States cannot maintain a credible global leadership role in the human rights sphere if it does not take serious steps to rectify the adverse effects that separating families had on children and parents affected, and continues to enforce policies and practices that continue to separate families.

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<sup>1</sup> United Nations Human Rights, Office of the High Commissioner (Sept 2, 1990). *Convention on the Rights of the Child*. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

<sup>2</sup> United Nations Treaty Collection, Chapter XXIII (May 23, 1969). *Vienna Convention on the Law of Treaties, Article 18*. Retrieved from [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXIII1&chapter=23&Temp=mtdsg3&clang=en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII1&chapter=23&Temp=mtdsg3&clang=en).

## **Conclusion**

The administration must take steps to minimize and prevent families from being separated at the border and the interior of the country, as abrogation of the parent-child bond has long-lasting mental health consequences for children and adults that reverberate into our communities.

Sincerely,

Center for Victims of Torture