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Re: DHS-2021-0051; Public Comment on Identifying Recommendations To Support the Work of the Interagency Task Force on the Reunification of Families

The National Immigration Project of the National Lawyers Guild (NIPNLG)¹ submits this comment in response to the request for public input by the Interagency Task Force on the Reunification of Families (Task Force) for “recommendations for ways to minimize the separation of migrant parents and legal guardians and children entering the United States.”²

NIPNLG is a national nonprofit organization that provides technical assistance and support to community-based immigrant organizations, legal practitioners, and all advocates seeking and working to advance the rights of noncitizens. NIPNLG works to protect the rights of all, including noncitizens entangled within the criminal justice system, victims of government abuse and misconduct, and those facing summary removal. This includes families unlawfully torn apart under the Trump administration’s Zero Tolerance policy.

NIPNLG is class counsel to the Parent Asylum Class in the *Ms. L. v. ICE* family separation litigation.³ Sirine Shebaya, Executive Director of NIPNLG, then working with another

¹ Ann Garcia, Staff Attorney is the primary author of this comment. Victoria Neilson, Supervising Attorney, also contributed sections.

² See 86 FR 70512, Identifying Recommendations To Support the Work of the Interagency Task Force on the Reunification of Families, (Dec. 10, 2021), <https://www.federalregister.gov/documents/2021/12/10/2021-26691/identifying-recommendations-to-support-the-work-of-the-interagency-task-force-on-the-reunification>.

³ *Ms. L. v. ICE*, Case No. 3:18-CV-428-DMS (S.D. Cal.).

organization, filed *Dora v. Sessions*⁴ in August 2018 in partnership with the Legal Aid Justice Center and Eversheds Sutherland LLP. *Dora* sought relief for 29 parents who were separated from their children at the border and who failed their credible fear interviews as a result of that separation. *Dora* was consolidated with three related⁵ lawsuits, and the court approved a Settlement Agreement in the *Ms. L.* case that granted separated parents and children an opportunity to seek asylum in the United States.⁶ In addition to serving as class counsel for the *Dora* Class, NIPNLG staff have extensive experience working directly with families affected by the Zero Tolerance policy and represent dozens of families in their immigration and Federal Tort Claims Act cases.

For the federal government to ensure that a policy that separates families is never again implemented, it must fully investigate the Trump administration's Zero Tolerance family separation policy, commit to full accountability for those separations, end ongoing Trump-era border policies that are resulting in family separation, repeal the laws that callously criminalize migration, and address the unconscionable backlogs of the Asylum Division of the United States Citizenship and Immigration Services (USCIS).

A. The government must be transparent regarding the Zero Tolerance policy.

The Trump administration's policy of family separation has been the focus of significant scrutiny since the policy came to light in 2018. To say nothing of the thousands of writings and investigations into the Zero Tolerance policy carried out by journalists, academics, NGOs and litigators, the federal government itself has spent significant resources investigating the policy.⁷

⁴ *Dora v. Sessions*, Case No. 18-CV-1938 (D.D.C.).

⁵ *M.M.M. v. Sessions*, Case No. 3:18-CV-1832-DMS (S.D. Cal.); *M.M.M. v. Sessions*, Case No. 1:18-CV-1835-PLF (D.C.D.C.); *Ms. L. v. ICE*, Case No. 3:18-CV-428-DMS (S.D. Cal.).

⁶ Notice of Proposed Settlement and Settlement Election Form, *Dora v. Sessions*, No. 1:18-cv-01938 (D.D.C. filed Aug. 17, 2018),

https://www.nationalimmigrationproject.org/PDFs/practitioners/our_lit/impact_litigation/2018_Oct_Asylum%20Settlement%20-%20Complete%20Notice%20Packet%2010.17.18.pdf.

⁷ See, e.g., U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON THE JUDICIARY, MAJORITY STAFF REPORT, *The Trump's Administration's Family Separation Policy: Trauma, Destruction, and Chaos* (Oct. 2020),

https://judiciary.house.gov/uploadedfiles/the_trump_administration_family_separation_policy_trauma_destruction_and_chaos.pdf?utm_campaign=4526-519; OFFICE OF THE INSPECTOR GENERAL, U.S. DEP'T OF HOMELAND SECURITY, OIG-18-84, *Special Review—Initial Observations Regarding Family Separation Issues under the Zero Tolerance Policy* (Sept. 27, 2018); OFFICE OF THE INSPECTOR GENERAL, U.S. DEP'T OF HEALTH & HUMAN SERVS., OEI-BL-18-00511, *Separated Children Placed in Office of Refugee Resettlement Care* (Jan. 17, 2019); OFFICE OF THE INSPECTOR GENERAL, U.S. DEP'T OF HEALTH & HUMAN SERVS., OEI-09-18-00431, *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody* (Sept. 2019); OFFICE OF THE INSPECTOR GENERAL, U.S. DEP'T OF HEALTH & HUMAN SERVS., OEI-BL-18-00510, *Communication and Management Challenges Impeded HHS's Response to the Zero-Tolerance Policy* (Mar. 2020); OFFICE OF THE INSPECTOR GENERAL, U.S. DEP'T OF JUSTICE, OIG 21-028, *Review of the Department of Justice's Planning and Implementation of Its Zero Tolerance Policy and Its Coordination with the Departments of Homeland Security and Health and Human Services* (Jan. 2021); OFFICE OF THE INSPECTOR GENERAL, U.S. DEP'T OF HOMELAND SECURITY, OIG-21-36, *ICE Did Not Consistently Provide Separated Migrant Parents the Opportunity to Bring Their Children upon Removal* (May 18, 2021); Dep't of Homeland Security, Family Reunification Task Force Progress Reports, <https://www.dhs.gov/publication/family-reunification-task-forceFamily%20Reunification%20Task%20Force%20Progress%20Reports-progress-reports>.

But the fact remains that much remains unknown about the policy that led to the separation of thousands of asylum-seeking families. For example, it was not publicly known until June 2021 that U.S. Customs and Border Protection (CBP) had started separating families in the Yuma Border Patrol Sector in May 2017.⁸ This was two months before separations started in the now well-known El Paso pilot program and implies that families affected by the separation policy had previously been unaccounted for.

The government is uniquely positioned to investigate the family separation policy it created, and its orientation must be to make public its findings. To that end, the Task Force should support congressional investigations into the family separation policy and collaborate with relevant agencies as they continue to pursue their own investigations. If our government reveals only a partial version of the truth, it not only hampers our society's acknowledgment of the injustices of family separation but leaves the door open for the government to repeat the policy again.

It is alarming that the Biden administration's Department of Justice (DOJ) is currently fighting to keep from the public hundreds of documents explicitly referenced in its January 2021 Office of Inspector General (OIG) report that examined the role of the DOJ in the family separation policy.⁹ These include written responses from top officials in the Trump administration to a draft of the DOJ OIG report, Attorney General memoranda on the Zero Tolerance policy, prosecution guidelines from the United States Attorney's Offices along the border on referrals for suspected unlawful entry prosecutions, and documents relating to the planning, implementation and coordination of the family separation policy.¹⁰ All of these documents are relevant and important not only to resolving the claims in the *C.M. v. United States* lawsuit, which seeks redress for specific asylum-seeking families that were forcibly separated by the United States, but to more broadly increase the public's understanding of how the Trump administration developed and deployed the Zero Tolerance policy and to promote accountability for the harms it caused. It is not too late for the DOJ to change course and shed light on these documents, which are essential to understanding the Zero Tolerance policy.

B. Full accountability requires not only reuniting still-separated families, but also providing them with lawful status and the resources necessary to recover and rebuild from the trauma of separation.

President Biden campaigned on a promise to make separated families whole again.¹¹ As of January 4, 2022, the Task Force has sought to make good on that promise by assisting in reuniting 112

⁸ INTERAGENCY TASK FORCE ON THE REUNIFICATION OF FAMILIES, Initial Progress Report at 22 (June 2, 2021), https://www.dhs.gov/sites/default/files/publications/21_0602_s1_family-reunification-task-force-120-day-progress-report.pdf; Kevin Sieff, *The Trump administration used an early, unreported program to separate migrant families along a remote stretch of the border*, WASH. POST (July 9, 2021), <https://www.washingtonpost.com/world/2021/07/09/trump-separated-families-yuma-2017/>.

⁹ Defendant United States' Response in Opposition to Plaintiffs' Motion to Compel, *C.M. v. United States*, No. CV-19-05217-PHX-SRB (D. Ariz. Jan. 5, 2022), ECF 121.

¹⁰ Motion and Memorandum in Support of Plaintiff's Motion to Compel Production of Relevant Documents, *C.M. v. United States*, No. CV-19-05217-PHX-SRB (D. Ariz. Jan. 4, 2022), ECF 119.

¹¹ Joe Biden, *Separated Ad Joe Biden Para Presidente 2020*, YouTube (Oct. 28, 2020), <https://www.youtube.com/watch?v=PevJComISV0/>; Joe Biden, Facebook (June 20, 2018), <https://www.facebook.com/joebiden/posts/10155305481581104>.

children with their parents in the United States through close collaboration with NGOs.¹² While that leaves about 1,700 children who may not yet have been reunited with their parents, we expect that many additional families will be reunited in the coming year.¹³ Recently reunited families, as well as those families that were never deported, can now apply for a three-year reprieve from removal in the form of parole through the together.gov website. A grant of parole will allow these families temporary protection, but only a path to lawful permanent status will provide the families with the relief they need to recover from the trauma of separation. The government must use every legally available means to ensure these families have permanent legal protection.

The government should provide funding for services that will allow the families to find the stability they need. As they navigate the immigration legal process and await an offer from the Biden administration to right the wrongs of family separation, the families need long-term housing, food, mental health services, and legal services. Currently, the families must depend on the non-profit community to fill these gaps, but non-profits are not equipped to provide these resources long-term. Furthermore, even if the families knew how to seek out these resources themselves, the families lack access to federal financial assistance given their lack of qualifying immigration status and many of the families are ineligible for a work authorization permit and would therefore not be able to afford these services.

Ensuring accountability and justice for the separated families also involves prioritizing the compensation of separated families for the abuses they suffered at the hands of the government. President Biden has said he supports compensating the families that survived the Zero Tolerance policy, “no matter what the circumstances.”¹⁴ Nine hundred separated parents and children have filed claims under the Federal Tort Claims Act and at least 35 families¹⁵ have filed lawsuits seeking compensation for their suffering and other injuries they experienced during the separation. The government must work toward a global settlement of these and future claims and lawsuits to avoid protracted litigation that will further traumatize these families, likely prove more costly to taxpayers, and lead to embarrassing revelations through the discovery process. By choosing to litigate instead of settling these claims, the Biden administration’s DOJ will opt to defend the Trump administration policy of family separation and may well incur higher litigation and award costs than it may have by settling the cases.

¹² Executive Order on the Establishment of Interagency Task Force on the Reunification of Families, Exec. Order No. 14,011, 86 Fed. Reg. 8273 (Feb. 2, 2021), <https://www.federalregister.gov/documents/2021/02/05/2021-02562/establishment-of-interagency-task-force-on-the-reunification-of-families>; Joint Status Report at 4, *Ms. L. v. Immigration and Customs Enforcement*, No. 18-cv-00428 DMS MDD (S.D. Cal. Jan. 5, 2022).

¹³ INTERAGENCY TASK FORCE ON THE REUNIFICATION OF FAMILIES, Interim Progress Report at 3 (Nov. 29, 2021), https://www.dhs.gov/sites/default/files/publications/21_1129_s1_interim-progress-report-family-reunification-task-force.pdf.

¹⁴ Zeke Miller and Colleen Long, *Biden: Families of separated children deserve compensation*, ABC NEWS (Nov. 6, 2021), <https://abcnews.go.com/Politics/wireStory/biden-families-separated-children-deserve-compensation-81010134> (“‘If, in fact, because of the outrageous behavior of the last administration, you coming across the border, whether it was legally or illegally, and you lost your child — You lost your child. It’s gone — you deserve some kind of compensation, no matter what the circumstance,’ Biden said. ‘What that will be I have no idea. I have no idea.’”).

¹⁵ FTCA for Separated Families Ongoing Litigation, https://docs.google.com/spreadsheets/d/1bjI_2DnhpBaFGS-0hevbm6rIUS43rekJbb5y1Q8UYw8/edit#gid=173392734.

C. Restrictive Trump-era border policies that led to family separation have continued under the Biden administration, but the Biden administration should disavow these enforcement- and deterrence-centric border policies.

While the Zero Tolerance policy that led to family separation was uniquely cruel in that its stated intent was to deter asylum seekers from coming to the United States to exercise their right to seek asylum here, other perhaps less sensational policies have also resulted in prolonged and sometimes permanent family separations. Among these are the Migrant Protection Protocols (MPP) and summary expulsions under U.S.C. Title 42, two policies that illegally deny individuals and families the ability to seek protection in the United States.

When President Biden came into office, he promised to resume the “safe and orderly reception and processing of arriving asylum seekers” at the border¹⁶ and end the policies that led to “a horrifying ecosystem of violence and exploitation, with cartels kidnapping, violently assaulting, and extorting migrants.”¹⁷ Nevertheless, the administration has chosen to expand¹⁸ the MPP program beyond the scope of whom it covered under the Trump administration and renew¹⁹ the Title 42 order issued by the Center for Disease Control and Prevention (CDC). These programs have led to thousands of reported cases of killings, kidnapping, rape, and torture of asylum-seeking individuals in Mexico.²⁰ Four in five families and individuals forced to return to Mexico under MPP in 2019 did not feel safe in Mexico, and children represented half the targets of physical violence and kidnappings.²¹

¹⁶ Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, Exec. Order No. 14,0110, 86 Fed. Reg. 8267, 8269 (Feb. 5, 2021), <https://www.federalregister.gov/documents/2021/02/05/2021-02561/creating-a-comprehensive-regional-framework-to-address-the-causes-of-migration-to-manage-migration>.

¹⁷ Biden-Harris, The Biden Plan for Securing Our Values as a Nation of Immigrants, <https://joebiden.com/immigration/>.

¹⁸ *First migrants returned under ‘Remain in Mexico’ policy*, ASSOC. PRESS (Dec. 8, 2021), <https://apnews.com/article/joe-biden-mexico-texas-el-paso-1aeada3ee80ab13ed7d1640f64e935df>; Kate Morrissey, *Biden administration to restart ‘Remain in Mexico’ program and expand to include Haitians*, THE SAN DIEGO TRIBUNE (Dec. 2, 2021), <https://www.sandiegouniontribune.com/news/immigration/story/2021-12-02/biden-remain-in-mexico-restart>.

¹⁹ Press Release, Center for Disease Control and Prevention, CDC Extends Order at the Southern and Northern Land Borders (Aug. 2, 2021), <https://www.cdc.gov/media/releases/2021/s080221-southern-northern-land-borders-order-extended.html>; Camilo Montoya-Galvez (@camiloreports), TWITTER (Dec. 3, 2021, 10:52 PM), <https://twitter.com/camiloreports/status/1466842883961540619> (“CDC conducted the 60-day assessment at the end of November and the Order stands.”).

²⁰ Human Rights First, *Delivered to Danger: U.S. Government Sending Asylum Seekers and Migrants to Danger* (updated Feb. 19, 2021), <https://www.humanrightsfirst.org/campaign/remain-mexico>; Human Rights First, “Illegal and Inhumane”: Biden Administration Continues Embrace of Trump Title 42 Policy as Attacks on People Seeking Refuge Mount (Oct. 21, 2021), <https://www.humanrightsfirst.org/sites/default/files/IllegalandInhumane.pdf>; Human Rights First, *A Shameful Record: Biden Administration’s Use of Trump Policies Endangers People Seeking Asylum* (Jan. 13, 2022), <https://www.humanrightsfirst.org/resource/shameful-record-bidenadministration-s-use-trump-policies-endangers-people-seeking-asylum>.

²¹ DHS, *Explanation of the Decision to Terminate the Migrant Protection Protocols*, 13 n.51–52 (Oct. 29, 2021) https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-termination-justification-memo.pdf (citing UNHCR, *Rapid Protection Assessment: MPP Returnees at the Northern Border of Mexico* 15, Dec. 2019).

It is not surprising, then, that these border policies result in family separation as desperate families make the difficult decision to send their children across the U.S.-Mexico border alone. These border policies separate families because, while adults would be turned back under Title 42, unaccompanied minors are permitted to stay in United States and seek protection here.²² Therefore, parents or adult caretakers remain stranded in Mexico while the children enter the United States alone. If the Biden administration seeks to end family separation, it must first end these policies.

D. Migration must be decriminalized in order to end family separation.

Xenophobic and racist laws that criminalize border crossings—8 USC §§ 1325 and 1326—were weaponized by the Trump administration to separate asylum-seeking families at the border.²³ Under the Zero Tolerance program and its predecessors, many adults traveling to the United States with their children were detained and sent to federal custody to face prosecution under either § 1325 or § 1326 while their newly unaccompanied children were sent to Office of Refugee Resettlement (ORR) detention.²⁴

Though these laws, which prohibit “unlawful entry” and “unlawful re-entry,” respectively, came into full view in 2018 during the government-created family separation crisis, they have a long history of destroying families and depriving migrants of the right to seek protection in the United States. Over the past two decades, unauthorized entry and re-entry have become the most commonly prosecuted federal crimes.²⁵ On April 11, 2017, then Attorney General Jeff Sessions announced a renewed commitment to criminal immigration enforcement and, as part of that announcement, he issued a memorandum to all federal prosecutors and directed them to prioritize the prosecution of certain criminal immigration offenses.²⁶ In his remarks Sessions stated: “[t]his is the Trump era. The lawlessness, the abdication of the duty to enforce our immigration laws, and the catch-and-release practices of old are over.”²⁷ Prosecutions for migration-related offenses reached an all-time high²⁸ in Fiscal Year 2019, reaching 106,312 prosecutions before falling by

²² See, American Immigration Council, The “Migrant Protection Protocols” 6 (Oct. 6, 2021), <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols> (“At least 700 children who were part of families subject to MPP were sent across the border alone by their parents.”).

²³ Press Release, U.S. Dep’t of Justice Office of Public Affairs, Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry (Apr. 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry>; Memorandum from Jeff Sessions, Att’y Gen., Zero-Tolerance Offenses Under 8 U.S.C. § 1325(a) (Apr. 6, 2018), <https://www.justice.gov/opa/press-release/file/1049751/download>.

²⁴ See OFFICE OF THE INSPECTOR GENERAL, U.S. DEP’T OF HOMELAND SECURITY, OIG-18-84, Special Review—Initial Observations Regarding Family Separation Issues under the Zero Tolerance Policy (Sept. 27, 2018).

²⁵ TRAC, Immigration Now 52 Percent of All Federal Criminal Prosecutions (Nov. 28, 2016), <https://trac.syr.edu/tracreports/crim/446/>.

²⁶ Press Release, U.S. Dep’t of Justice Office of Public Affairs, Attorney General Jeff Sessions Announces the Department of Justice’s Renewed Commitment to Criminal Immigration Enforcement (Apr. 11, 2017), <https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-announces-department-justice-s-renewed-commitment-criminal>; Memorandum from Jeff Sessions, Attorney General, Memorandum for All Federal Prosecutors: Renewed Commitment to Criminal Immigration Enforcement (Apr. 11, 2017), <https://www.justice.gov/opa/press-release/file/956841/download>.

²⁷ Rafael Carranza, *The Trump era: Attorney General Jeff Sessions outlines tougher stance on illegal immigration*, AZ CENTRAL, Apr. 11, 2017, <https://www.azcentral.com/story/news/politics/washington/2017/04/11/trump-era-attorney-general-jeff-sessions-outlines-tougher-stance-illegal-immigration/100330208/>.

²⁸ Press Release, U.S. Dep’t of Justice, Office of Public Affairs, Department of Justice Prosecuted a Record-Breaking Number of Immigration-Related Cases in Fiscal Year 2019 (October 17, 2019),

more than half in Fiscal Year 2020 as the government began rapidly expelling immigrants back to Mexico instead of detaining them for prosecution.²⁹

Migration-related prosecutions lead to family separations not only when minors are taken away from their parent or caretaker as they were during Zero Tolerance, while they attempt to reach safety in the United States, but also in the regular course of migration, when migrants with deep ties to the United States cross the border seeking to reunite with family.³⁰ While the Biden administration has officially rescinded³¹ the Trump administration's Zero Tolerance policy, it continues to rely³² on racist³³ laws that criminalize border crossings, violating the rights of migrants and separating families. If the Biden administration wishes to avert family separation, it must call on Congress to repeal the laws that make migration a crime while exercising its prosecutorial discretion to end enforcement of 8 USC §§ 1325 and 1326.

E. Delays in the asylum adjudication system also lead to family separation and must be remedied.

Years-long backlogs in the asylum adjudication system, coupled with unnecessary steps and further delays in the follow-to-join application system, have also kept thousands of families separated for years, often more than a decade.

Asylum seekers must often flee their countries leaving spouses and children behind because of the speed of their flight, the cost of paying smugglers, or the danger of the journey to the U.S. border. While U.S. law allows asylees to petition for their immediate relatives to join them in the United States, they may only do so after being granted asylum status.³⁴ As of the fourth quarter of Fiscal Year 2020, there were 386,014 in the affirmative asylum backlog with USCIS³⁵ with some cases pending in the backlog since 2015.³⁶ USCIS has acknowledged that it has no current ability to address the backlog, responding to a Congressman's inquiry, "[t]he backlog is the result of the

<https://www.justice.gov/opa/pr/departments-justice-prosecuted-record-breaking-number-immigration-related-cases-fiscal-year>.

²⁹ TRAC, Major Swings in Immigration Criminal Prosecutions during Trump Administration (Dec. 18, 2020), <https://trac.syr.edu/immigration/reports/633/>.

³⁰ National Immigration Project of the National Lawyers Guild, Rooted in Racism: The Human Impact of Migrant Prosecutions (Dec. 2021), https://www.nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/pr/2021_21Dec_Rooted-in-Racism-Report.pdf.

³¹ See U.S. Dep't of Justice, Office of the Attorney General, Memo for All Federal Prosecutors from the Acting Attorney General, Rescinding the Zero-Tolerance Policy for Offenses Under 8 U.S.C. § 1325(a) (Jan. 26, 2021), <https://www.justice.gov/ag/page/file/1360706/download>.

³² The Biden administration has pursued more than 13,000 charges for unauthorized entry and re-entry since coming into office in January 2021. See U.S. Dep't of Justice, Offices of the United States Attorneys, Prosecuting Immigration Crimes Report (PICR), <https://www.justice.gov/usao/resources/PICRreport> (last visited January 20, 2022).

³³ National Immigration Project of the National Lawyers Guild, Equal Protection Challenges to Prosecutions Under 1325 & 1326: The Groundbreaking Decision in *United States v. Carrillo-Lopez* (Dec. 2021), https://ninpnl.org/PDFs/practitioners/practice_advisories/pr/2021_21Dec-1325-6-Handout.pdf

³⁴ See 8 CFR § 208.21.

³⁵ USCIS, *Number of Service-wide Forms Fiscal Year to Date*, https://www.uscis.gov/sites/default/files/document/reports/Quarterly_All_Forms_FY2020Q4.pdf

³⁶ See Chicago Asylum Office Liaison Call 9.23.21, aila.org, AILA Doc. No. 21122234.

mathematical reality that USCIS receives more cases than it can adjudicate given current resources.”³⁷ Thus, for applicants waiting seven years, there is no hope in sight that the Asylum Office will adjudicate their claims.³⁸

Asylum seekers before the immigration court likewise face delays that can last years. The average wait for asylum decisions in immigration court currently stands at 1621 days—more than four years.³⁹ The number of asylum cases pending in immigration court, 667,229, has increased sixfold in the last ten years.⁴⁰ As with the affirmative asylum backlog, the number of cases being filed exceeds the number of cases being decided, which means that the backlog continues to grow with wait times for adjudications increasing exponentially.⁴¹

For those whose family members are abroad, the wait to be reunited is not over once they win asylum. The number of petitions pending for derivatives of asylees or refugees stood at 25,994 as of the fourth quarter of Fiscal Year 2020.⁴² This backlog nearly tripled from 9000 in 2016, largely as a result of the Trump administration adding needless interviews, closing USCIS offices abroad, and adding procedural steps to the application adjudication.⁴³ According to USCIS case processing charts, the first step of a multi-step adjudication process for derivative asylee applications is taking from 13 to 28 months.⁴⁴ This step involves preliminary paperwork and does not reach the substance of the application.⁴⁵

While family unity is supposed to be the unifying theme of U.S. immigration law,⁴⁶ until USCIS and the immigration courts implement significant changes to the asylum adjudication process and the follow-to-join process, families will remain separated, often for well over a decade.

F. Conclusion

In order to prevent family separation, the government must not only provide justice and accountability for the families that suffered under Zero Tolerance, but must also repeal or repair policies that lead to the systematic separation of families.

³⁷ USCIS response to inquiry by Rep. Gerald Connolly (Jul. 29, 2021)

https://www.uscis.gov/sites/default/files/document/foia/Asylum_Cases_Pending-Representative_Connolly.pdf.

³⁸ For an excellent report on the backlog and proposed changes USCIS could make to the affirmative adjudication process, *see*, Human Rights First, *Protection Postponed: Asylum Office Backlogs Cause Suffering, Separate Families, and Undermine Integration* (Apr. 2021)

https://www.humanrightsfirst.org/sites/default/files/Protection_Postponed.pdf. [Hereinafter, HRF, *Protection Postponed*.]

³⁹ TRAC, *A Mounting Asylum Backlog and Growing Wait Times* (Dec. 27, 2021), <https://trac.syr.edu/immigration/reports/672/>.

⁴⁰ *Id.*

⁴¹ *Id.* (“Year after year asylum applications filed in Immigration Court have far exceeded decisions rendered on these applications.”).

⁴² HRF, *Protection Postponed*, at 19

⁴³ *Id.*

⁴⁴ USCIS, *I-730 Case Processing Times*, <https://egov.uscis.gov/processing-times/>.

⁴⁵ For a concise summary of the I-730 adjudication process, *see*, International Refugee Assistance Project, *Why Refugee Families Cannot Reunite*, <https://refugeerights.org/news-resources/why-refugee-families-cannot-reunite>.

⁴⁶ *See generally*, Rachel Naggar, *Stays of Removal*, Catholic Legal Immigration Network, Inc. (June 21, 2021), <https://cliniclegal.org/resources/removal-proceedings/practice-advisory-stays-removal>.

Thank you for your consideration.

A handwritten signature in black ink, appearing to read "Ann Garcia". The signature is fluid and cursive, with the first name "Ann" being more prominent than the last name "Garcia".

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