



December 14, 2023

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Office for Civil Rights and Civil Liberties
Compliance Branch, Mail Stop # 0190
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Via Email

Re: Family Separations Stemming from Street Releases at the Southern Border

Dear CRCL Officer,

We write with concerns about U.S. Customs and Border Protection (CBP)'s practices relating to the processing of family groups at the southern border which result in harmful separations. We request that the Department of Homeland Security (DHS) Office of Civil Rights and Civil Liberties (CRCL) (1) immediately begin an investigation into the systemic problems described below; and (2) urge CBP to adopt the recommendations that follow in order to prevent ongoing family separations and the harms they cause.

On numerous prior occasions, we have written to DHS about ongoing separations among adult and extended family members at the border that have taken place during the Biden Administration.¹ This complaint builds on past correspondence and

¹ ACLU of San Diego & Imperial Counties & Jewish Family Service of San Diego, *Forced Splitting of Protection-Seeking Families at the Southern Border* (July 13, 2021), https://www.aclu-sdic.org/sites/default/files/field_documents/2021_07_09_fam_sep_letter_final.pdf; ACLU of San Diego & Imperial Counties, Center for Immigration Law and Policy at UCLA School of Law, & Jewish Family Service of San Diego, *Follow-up Regarding Ongoing Separation of Families at the Southern Border* (Aug. 16, 2022), https://www.aclu-sdic.org/sites/default/files/field_documents/2022_08_15_lucy_letter_final_redacted.pdf.

continues to press for an end to CBP practices that result in family separations as reflected in that correspondence. It also highlights the latest manifestation of family separations in our region: CBP's emerging and ongoing practice in the San Diego, California border region of systematically releasing a high volume of people at transit centers, makeshift nonprofit organization installations, and on the street throughout San Diego County, without a coordinated reception plan (this will be referred to as CBP's practice of engaging in "street releases").

We are encouraged that the federal government has entered into a Settlement Agreement in *Ms. L v. ICE*, No. 3:18-cv-0428-DMS-MDD (S.D. Cal.), which concerns parents and guardians forcibly separated from minor children during the Trump Administration, including during its "zero tolerance" policy of increasing prosecutions of unauthorized entry and reentry along the southern border. However, the *Ms. L* settlement does not remedy nor address ongoing separations among spouses and partners, parents and their adult children, adult siblings, and other separations among family groups that have taken place during the Biden Administration, including as a result of street releases. See Settlement Agreement, *Ms. L v. ICE*, No. 3:18-cv-0428-DMS-MDD (S.D. Cal. Oct. 16, 2023).

Preserving the sanctity of family unity in all forms should be a priority consideration whenever DHS processes people at the border. As we have explained in prior correspondence and reiterate below, there remains ample space for DHS to improve its ongoing practices in this area, including by adopting the recommendations listed below.

Street Releases

Since on or about September 13, 2023, CBP has been releasing individuals from its custody to transit centers and other locations across the San Diego County region, including in San Ysidro, Oceanside, and El Cajon, without providing for basic necessities, including food, water, and shelter, medical screening or stabilization, or onward travel coordination. This practice subjects released individuals to unnecessary risk of serious harm as a result of the lack of access to these critical resources.² Nonprofit organizations and volunteers, including Al Otro Lado and many

² CBP's practice of street releasing migrants in San Diego County is related to, but distinct from, its growing practice of utilizing Open Air Detention Sites ("OADS") to detain migrants in dangerous conditions before formally processing them in Border Patrol stations. Detention in OADS occurs prior to street releases; many individuals who end up being street released have previously experienced a period of detention in OADS. During the period of detention in OADS, some are forced to choose between accessing critical medical care and avoiding traumatic family separation. See Women's Refugee Commission, *People Seeking Asylum Confined Outside in Appalling Conditions: Findings and Recommendations from a Monitoring Visit to*

others, have stepped up to provide critical humanitarian assistance to mitigate harm to vulnerable migrants.³ As of November 2023, over 42,000 people had been released in this manner.⁴

One of the most concerning ramifications of CBP's practice of engaging in street releases is the documented separation that it causes among family groups.

Street Releases Cause Family Separations

As illustrated in greater detail below, CBP's practice of haphazardly street releasing individuals regularly results in separations among family groups for varying lengths of time. In the best-case scenarios, separations last hours or days where CBP street releases members of the same family group on different times or days and/or at different locations across San Diego County. In other scenarios, separations last weeks and months where DHS transfers some family group members to long-term U.S. Immigration and Customs Enforcement ("ICE") detention. Worst still, some separations are made permanent and marked by international borders where CBP deports some family group members.

The trauma families experience during the periods of separation is compounded by CBP's lack of communication and the near-total opacity of their practices. According to Al Otro Lado's documentation, the majority of impacted families report having informed CBP that they were traveling in a family group, yet CBP rarely, if ever, informs them that they are going to be separated from other members. Nor does CBP tell them how to locate or begin the process of reunifying with separated family members. Even in the relatively few instances in which advocates or lawyers intervene, CBP fails to consistently respond to their inquiries, which are supported by documentation including Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. Moreover, existing tools used to locate immigrants in DHS custody are of no meaningful use in this context, as the ICE detainee locator,

San Diego (November 2023) at 4-6, <https://www.womensrefugeecommission.org/wp-content/uploads/2023/11/People-Seeking-Asylum-Confined-Outside-in-Appalling-Conditions-Final.pdf> (hereinafter "WRC Report").

³ Daniel Trotta, *US releases asylum seekers on the streets. Some suburbs bear the burden*. Reuters (Oct. 17, 2023), [⁴ Justo Robles et al., *Border Patrol dropped 42,000 migrants in San Diego streets. Now county, groups are seeking help*. CalMatters \(Dec. 4, 2023\), <https://calmatters.org/california-divide/2023/12/immigration-california-street-releases/>.](https://www.reuters.com/world/us/us-releases-asylum-seekers-streets-some-suburbs-bear-burden-2023-10-17/#:~:text=The%20releases%20are%20now%20happening,to%20Immigrant%20Defenders%20Law%20Center; WRC Report.</p></div><div data-bbox=)

which tracks individuals in long-term ICE custody, often takes weeks to update and does not track people in CBP custody at all. CBP has no analogous locator tool.

As of the date of this complaint, Al Otro Lado has documented a staggering **1,081 unique instances of separations among family groups** stemming from street releases that have occurred since September 13, 2023.

Separations by the Numbers

In addition to providing critical humanitarian assistance at street release sites, Al Otro Lado also documents and assists families who self-identify, shortly after street releases occur, as having been separated during CBP processing. Al Otro Lado has observed that some families fortunately reunify within hours or days, but others experience long-term and sometimes permanent separations marked by international borders. Because of CBP's lack of communication, as described above, impacted families have no systematic way of knowing whether their separations will be short-term, prolonged, or permanent.

Of the **1,081** instances of family separation that Al Otro Lado has documented:⁵

- Some families, including in **32** confirmed cases, were separated after **DHS transferred family members to long-term ICE custody** following CBP processing. Of these, **19 remain separated as of the date of this complaint.**
 - For one such family, the ongoing separation has lasted **73 days and counting** as of the date of this complaint. The family has been separated ever since the father was transferred to the Otay Mesa Detention Center in San Diego, separating him from his adult children and wife.
- For some families, including in **two** confirmed cases, the separations have been made potentially **permanent as a result of the deportation of a family member.**
- Fortunately, some families, including in **279** confirmed cases, have reunified since the separation, but the subsequent reunification does not undo the harm of the separation, particularly where it was prolonged.
 - One family was subjected to **48 days of separation** after two young adult daughters were transferred to ICE detention at the Richwood Correctional Center in Monroe, Louisiana, separating them from their parents; and

⁵ These figures reflect Al Otro Lado's documentation as of the date of the filing of this complaint.

- One family was subjected to **24 days of separation** after a young adult son was transferred to ICE detention at the Joe Corley facility in Conroe, Texas, separating him from his parents.

Snapshots and Testimonies

- A husband and wife from Bolivia were taken into CBP custody in San Diego in October 2023 and separated during processing. The husband, Ricardo,⁶ was street released at the San Ysidro transit center without his wife. After weeks of regularly returning to the transit center in hopes of reuniting with his wife, he learned she was transferred to ICE custody in Texas. There, the wife experienced medical complications. The two were separated for a total of 49 days while the wife was in ICE custody and Ricardo awaited her release while living with their sponsor on the east coast. As Ricardo explained during their period of separation, *“there she is, alone, delicate, and without knowing what is going to happen to her or when she will be released. This entire process has caused her physical and psychological damage. I worry about her health since she told me cysts were detected in her pancreas.”*
- A Peruvian family of three—a husband, wife, and their 18-year-old son—was taken into Border Patrol custody in the San Diego area in October 2023. During processing, the parents were separated from their teenage son and later street-released without him and without any information about his whereabouts. Al Otro Lado inquired with Border Patrol about the son’s whereabouts multiple times and with all necessary documentation, but Border Patrol never responded. After two weeks, Al Otro Lado learned from the ICE detainee locator that the son was in ICE detention in Texas. Al Otro Lado eventually made contact with a local organization in Texas that was able to track the young man down in person at the detention center. The son was released and the family reunited after nearly one month of separation, but the agony the family experienced cannot be undone. During the period of separation, the father pled: *“In the name of God, I ask you, we are suffering. My wife and I suffer here because our son is the most precious thing we have as parents. You as parents know that. We beg you. Don't cause us more sadness than what we already have.”*
- A husband and wife from Colombia were taken into Border Patrol custody in the San Diego area in September 2023. The husband was processed and street released in San Ysidro without his wife. Al Otro Lado inquired about the wife’s whereabouts, and Border Patrol confirmed that she was still in custody but did not indicate that she would be detained by ICE. Due to the delays in information being updated in the ICE detainee locator, she had already been

⁶ Pseudonym to protect identity.

detained by ICE in Louisiana for two weeks before Al Otro Lado could confirm her location. Al Otro Lado worked with a local attorney to attempt to schedule a visit and begin a parole request, but the local attorney learned that the wife had been deported even before the visit could be scheduled.

- A family of four from China—a father, mother, and their two adult children—was taken into Border Patrol custody in the San Diego area in September 2023. While they were in custody, the mother started having medical issues, so she and the adult daughter were taken to a hospital. Officials never informed the father and son to which hospital they were taken or how to find them later. The father and son were released from Border Patrol custody in San Ysidro but had still not heard anything from their family members. After a week without knowing his wife’s whereabouts, he filed a police report. Eventually, the family learned that the mother and daughter had been returned to Border Patrol custody after being discharged from the hospital and, for unknown reasons, sent to ICE detention in Louisiana. Border Patrol never confirmed the wife or adult daughter’s whereabouts to the family or their lawyer. The family has since been reunified after having been separated for 22 days.

Harms Resulting from Separations

We have illustrated the destructive consequences of family separations in past correspondence with DHS.

As we explained in detail in the July 13, 2021, letter, family groups provide each other desperately needed support in the wake of harm they have fled. The forced separation of individual members within family groups by DHS deprives them of this crucial support structure when they need it most, exacerbating their trauma and risking long-term and potentially permanent separation of their families. Unsurprisingly, such experiences severely impact the emotional and physical wellbeing of children and adults alike.⁷ For many, the trauma is compounded by consequences of separation that continue to manifest throughout removal proceedings, including through isolation and unavailable or obstructed communication with family while in ICE detention, practical obstacles that significantly delay or prevent reunification,

⁷ Women’s Refugee Comm’n, Lutheran Immigr. and Refugee Serv., and Kids in Need of Def., *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families* at 12 (Jan. 10, 2017) [hereinafter *Betraying Family Values*], <https://reliefweb.int/sites/reliefweb.int/files/resources/BetrayingFamilyValues-Feb2017.pdf>; Teicher, Martin H., *Childhood trauma and the enduring consequences of forcibly separating children from parents at the United States border*, *BMC Med.*, Aug. 22, 2018, at 16:146, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6103973/>.

and limited access to counsel that, in turn, limits relief from deportation for which the person may be eligible.

Recent reports only underscore the irreparable harm and trauma wrought by separations, including those caused by punitive border policies carried out during the Biden Administration.⁸ CBP's emerging practice of street releasing vulnerable individuals without meaningful regard for family unity imposes similar harms.

Recommendations

In past correspondence and engagements, we have provided DHS with concrete recommendations to remedy the harms caused by ongoing separations among family groups and to prevent them from occurring in the future. We understand that as of April 20, 2023, CBP has adopted versions of these recommendations in a memorandum titled "Additional Guidance on Recordation, Linking, and Processing of Family Groups." Unfortunately, CBP has not released or posted the guidance publicly, thus preventing effective monitoring of the agency's compliance with the guidance. Moreover, ongoing practices, including those documented in this complaint, confirm CBP's regular departure from this guidance.

As such, we reiterate and underscore the continued need for CBP to memorialize as official agency policy and for CBP to enforce the following recommendations:

1. Preserve family unity by adopting a definition of what constitutes a family group to include relationships among parents and their adult children; spouses; couples who are in common-law marriages without marriage certificates, as well as pregnant people and their partners; adult siblings; and extended family members, including grandparents, aunts, and uncles;

⁸ "In fiscal year 2021, 12,212 migrating children reentered the United States alone after having been expelled from the country with their families under Title 42. These separations are traumatic and unnecessary. Families should be allowed to request asylum together." Erica Bryant, Vera Institute, *Children Are Still Being Separated from Their Families at the Border* (June 23, 2022), <https://www.vera.org/news/children-are-still-being-separated-from-their-families-at-the-border>. "The Biden administration routinely separates families through detention and deportation as part of its interior immigration enforcement practices, without meaningful policies designed to protect family unity." Jordyn Rozensky, National Immigrant Justice Center, *The Biden Administration Routinely Separates Immigrant Families* (Jan. 19, 2022), <https://immigrantjustice.org/staff/blog/biden-administration-routinely-separates-immigrant-families>.

2. Direct DHS agents and officials who encounter and process applicants for admission at the southern border to document and link all relationships among family groups, as defined above;
3. Direct DHS agents and officials who encounter and process applicants for admission at the southern border to align and streamline case processing pathways among all adult members of family groups to ensure families are released together to their networks of care in the United States (nothing in this recommendation would have any effect on the rights or processing of unaccompanied minor children under applicable laws, including the Trafficking Victims Protection Reauthorization Act);⁹
4. In instances where separation among family members does occur as a result of inconsistent case processing pathways, ensure the relevant DHS agents and officials promptly communicate to all adult members of the family group the whereabouts of any missing family group member(s), and in cases where any family group member(s) remain in DHS custody, facilitate communication among the separated family members; and
5. Expand the priorities of the Biden Administration's Family Reunification Task Force to include investigation and prevention of ongoing incidents of family separation.

Additionally, the following recommendations are critical to prevent the harms caused by street releases, including family separations, and to work towards a system of processing at the southern border that welcomes people humanely and with compassion:

6. Permanently fund infrastructure that facilitates the safe and humane reception of migrants along the southern border, as modeled by the San Diego Rapid Response Network Migrant Shelter, to include respite sheltering, medical screening and stabilization, and basic legal orientation and humanitarian assistance, rather than relying on local government and non-profit organizations to do so without federal assistance;¹⁰ and

⁹ Signatories of this complaint have requested official release of this guidance directly from CBP, DHS CRCL, including via an official Freedom of Information Act request, but those requests continue to be unanswered.

¹⁰ Jewish Family Service and Women's Refugee Commission, *Welcoming People Seeking Safety: A San Diego Blueprint for Humanitarian Reception*, February 2023, https://www.jfssd.org/wp-content/uploads/2023/02/San-Diego-Blueprint-for-Humanitarian-Reception_2.2023.pdf.

7. Ensure consistent on-the-ground coordination with respite service providers to ensure the swift, safe release and transportation of migrants from DHS custody to the care of shelters and respite centers.

We look forward to CRCL's prompt investigation into this matter, and we urge CRCL to make the foregoing recommendations to CBP to ensure the suffering that we have documented and countless others have likely experienced does not continue to repeat.

Thank you for your attention to this important matter. Do not hesitate to contact us with questions or to discuss.

Sincerely,

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