

CRUEL INDIFFERENCE

Family Separation at the U.S.-Mexico Border Before and After Zero Tolerance

Immigrants' Rights Policy Clinic

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AGENCY GLOSSARY

This white paper refers to the following U.S. federal agencies that families encounter at the U.S.-Mexico border:

Department of Homeland Security (DHS): U.S. federal executive agency charged with safeguarding the United States. DHS is the umbrella agency for Customs and Border Protection and Immigration and Customs Enforcement.

Customs and Border Protection (CBP): One of the world's largest law enforcement organizations; tasked with enforcing immigration laws at the U.S. border and claims jurisdiction to enforce certain laws within 100 miles of external U.S. boundaries.

Office of Field Operations (OFO): A subcomponent of CBP that conducts inspections of individuals at ports of entry, including at land borders and international airports.

Border Patrol: A subcomponent of CBP that patrols the U.S. borders near and between ports of entry.

Immigration and Customs Enforcement (ICE): The arm of DHS responsible for enforcing immigration laws in the interior of the United States.

Health and Human Services (HHS): U.S. federal executive agency charged with developing policies that enhance the health and well-being of all Americans.

Office of Refugee Resettlement (ORR): A subcomponent of HHS that offers resources for refugees, asylum seekers, and some other new arrivals to the United States.

TIMELINE OF FAMILY SEPARATIONS

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- 1931** ● New York Times front-page headline reads “FAMILIES ARE SEPARATED” in an article about U.S. deportation system.
 - 2009–2016** ● **Obama administration separates asylum-seeking families** through its border practices, including family detention and inconsistent processing.
 - January 2017** ● **Donald J. Trump takes office** as President of the United States.
 - February 2018** ● **ACLU files *Ms. L v. ICE*** challenging the separation of a Congolese woman and her 7-year-old daughter after they presented themselves at a U.S. port of entry to request asylum. The case later included all parents who were separated from their children at or near the border.
 - April 2018** ● **Trump’s DOJ announces Zero Tolerance Policy** pursuant to which all adult migrants who cross the border without authorization will be referred for criminal prosecution.
 - May 2018** ● **Trump’s DHS Secretary Nielsen signs a memo** applying the Zero Tolerance Policy to parents traveling with children, resulting in parents being taken into criminal custody and separated from their children.
 - June 2018** ● **Federal judge issues a preliminary injunction order** in *Ms. L* requiring that the government stop separating parents or guardians from their minor children unless exceptions apply, and that it begin reunification of those who were already separated.
 - January 2019** ● **Trump administration pilots the Migrant Protection Protocols (“MPP”)**, pursuant to which some individuals seeking asylum in the United States were forced to await their immigration court hearings in Mexico, leading to many problems, including family separations.
 - October 2019** ● **Updated count of children separated from their parents** since the start of the Trump administration puts the total number at more than 5,400.
 - March 2020** ● **Trump administration issues Title 42 order**, authorizing CBP to turn away migrants arriving at the U.S.-Mexico border under the guise of COVID-19 prevention, leading to more family separations.
 - January 2021** ● **President Joseph R. Biden takes office**; pauses enrollments in the Trump-era MPP policy but continues implementing Trump-era Title 42 order.

- February 2021** ● Biden administration creates the **Family Reunification Task Force**, which is charged with reuniting families separated during the Trump administration's Zero Tolerance policy.
- June 2021** ● Biden's DHS Secretary Mayorkas issues a **memorandum terminating MPP**.
- July 2021** ● **ACLU of San Diego & Imperial Counties and JFS San Diego send letter** to DHS Secretary Mayorkas alerting the agency of ongoing separations of families not protected by *Ms. L*, including parents and their young adult children, spouses, and pregnant women, and urging changes to border processing to uphold family unity.
- December 2021** ● **DHS reimplements and expands MPP** partially due to litigation requiring it to enforce MPP in "good faith."
- June 2022** ● **U.S. Supreme Court reverses lower court decision** blocking DHS's MPP termination memo, green-lighting the end of MPP.
- August 2022** ● **CILP, JFS San Diego, and ACLU of San Diego & Imperial Counties send follow-up letter** demanding justice for Lucy, a woman who was separated from her 10-year-old daughter and 18-year-old sons after Border Patrol agents assaulted her, and reiterating policy recommendations intended to uphold family unity in border processing.
- April 2023** ● **CBP issues internal policy guidance** on family groups purporting to direct agents and officers to document relationships among family groups, including spouses and parents and their young adult children, and to give strong consideration to keeping family groups together in border processing, but it does not release that guidance publicly.
- May 2023** ● End of the public health emergency declaration brings about **the end of Title 42**. That same month, DHS begins implementation of the **Family Expedited Removal Management (FERM) Program**.
- September 2023** ● **CBP begins releasing newly-arrived migrants** to the streets and at transit stations across San Diego, leading to the separation of over 1,000 families in a period of about three months.
- December 2023** ● **Final Settlement Agreement in *Ms. L* creates certain protections** to remedy separations that occurred during the Trump administration and to prevent future separations among parents or guardians and their minor children.
- **CILP, JFS San Diego, ACLU of San Diego & Imperial Counties, and Al Otro Lado file complaint** with DHS Office of Civil Rights and Civil Liberties about ongoing family separations caused by street releases and urging policy changes to uphold family unity in border processing.

INTRODUCTION

“I didn’t know where any of my children were. It was a feeling of hopelessness I cannot describe ... At that point, I considered taking my own life. My children are everything to me, and their safety is all I care about – just as any mother can understand.”¹

—**Lucy**, an asylum seeker from El Salvador, describing her anguish upon being separated from her 10-year-old daughter, 18-year-old son, and 18-year-old stepson, near the U.S.-Mexico border on February 14, 2022. A Border Patrol agent assaulted Lucy. The altercation resulted in an arrest and criminal charges against her. Despite the charges against Lucy being dismissed at the federal government’s request, she remained separated from her daughter and son for five months, and indefinitely from her stepson, who was deported.²

“When the border patrol arrived, they asked us: ‘¿Quiénes son familia?’ ‘Who is a family?’ But a family [to them] was [one that includes] children.” Luz and Simon, married just under a year, young, and very much in love, were still holding each other’s hands tightly. Together, they raised their hands, explaining: “Nosotros somos familia.” “We are family.”³

—**Luz and Simon**, sharing the moment they encountered Customs and Border Protection (“CBP”) on September 21, 2023. After migrating together from Venezuela they were separated by CBP for three days at the U.S.-Mexico border. During that time, they didn’t know when—or if—they would see each other again.

This white paper addresses two misconceptions. The first is that family separations at the U.S.-Mexico border began under the administration of former President Trump. The second is that they ended with the election of President Biden. Rather, the separation of families has long been a feature of CBP enforcement, and it persists today.

Family separations at the U.S.-Mexico border—like those that Lucy, Luz, and Simon experienced during the Biden administration—will continue across future administrations unless the federal

1 Press Release, ACLU of San Diego & Imperial Counties, Mother Assaulted and Separated From Children at Border; Demands Accountability From the Department of Homeland Security (Aug. 16, 2022), <https://www.aclu-sdic.org/en/press-releases/mother-assaulted-and-separated-children-border-demands-accountability-department>.

2 Letter from Monika Y. Langerica, UCLA Center for Immigration Law and Policy, Kate Clark, Jewish Family Service of San Diego, & Bardis Vakili, ACLU of San Diego & Imperial Counties, to Alejandro Mayorkas, Sec’y, U.S. DHS (Aug. 16, 2022), https://www.aclu-sdic.org/sites/default/files/field_documents/2022_08_15_lucy_letter_final_redacted.pdf. (“Coalition Letter Aug. 2022”).

3 Zoom interview with Simon & Luz (Mar. 13, 2024) (“Simon & Luz Interview”). The authors have utilized pseudonyms to protect the couple’s anonymity.

government takes meaningful action to: (1) create and implement effective policies to protect family unity in border processing and (2) hold CBP accountable for its abuses.

Family separations at the U.S.-Mexico border will continue across future administrations unless the federal government meaningfully implements effective policies to protect family unity and holds CBP accountable.

In Part I, this white paper discusses the extensive pattern of family separations at the border throughout our nation's history and into the present. Part II shifts the focus to *how* family separations still occur and *who* is being separated, drawing on data and stories from immigrants' rights organizations in the San Diego region to illustrate the systemic nature of ongoing separations. Part III highlights *why* family separations persist despite court orders and agency guidance purporting to have ended them. Finally, Part IV lays out policy recommendations for the federal government that are designed to prevent and remedy family separations, and hold CBP accountable for the harms they cause. These recommendations point the way toward a future in which family unity is respected in U.S. border processing, and all people are treated justly under U.S. laws.

I. THE UNITED STATES HAS A LONG HISTORY OF SEPARATING FAMILIES AT THE BORDER

CBP's separation of migrant families at the border is not an aberration; nor is it a new phenomenon.⁴ It is much more than an issue that separates Democrats from Republicans. Family Separation is entrenched in federal policy and agency practices. But it is neither necessary nor inevitable.

A. Trump's Zero Tolerance Policy

In May 2018, Trump adopted Zero Tolerance, a blanket policy to criminally prosecute all adult migrants who entered between ports of entry for unauthorized entry or reentry, pursuant to 8 U.S.C. §§ 1325 and 1326; the policy's explicit goal was to separate families.⁵ CBP detained parents and guardians and then transferred their minor children into the custody of the Office of Refugee Resettlement ("ORR") to be processed as "unaccompanied minors."⁶ This led to the highly visible mass separations of newly arrived families with children at the border.⁷ Even at ports of entry—where the statutes criminalizing unauthorized entry and reentry don't generally apply—CBP officials separated families lawfully presenting themselves for asylum. For example, officials initially detained Ms. L., the lead plaintiff in a nationwide lawsuit challenging family separation, with her seven-year-old daughter after they presented themselves at a port of entry. CBP subsequently forcibly separated them, and ORR then transferred the child to a shelter located over a thousand miles away from her mother.⁸

Through Zero Tolerance, Trump explicitly encouraged CBP to separate families as a way to deter, punish, and inflict cruelty on migrants.⁹ CBP officials under Trump separated 2,816 children from their parents or legal guardians in the six-week period that Zero Tolerance was officially active.¹⁰ CBP separated thousands more children from their families at the border during the full course of the Trump administration.¹¹

4 See, e.g., KATY MURDZA AND WALTER EWING, AMERICAN IMMIGRATION COUNCIL, THE LEGACY OF RACISM WITHIN THE U.S. BORDER PATROL (Feb. 2021), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_legacy_of_racism_within_the_u.s._border_patrol.pdf (detailing how a legacy of racism within Border Patrol has led to abuses such as family separation).

5 See generally WILLIAM KANDEL, CONG. RSCH. SERV., R45266, THE TRUMP ADMINISTRATION'S "ZERO TOLERANCE" IMMIGRATION ENFORCEMENT POLICY (2021), <https://sgp.fas.org/crs/homesecc/R45266.pdf>; see also *A Timeline of the Trump Administration's Family Separation Policy*, AMERICAN OVERSIGHT (last updated Jan. 4, 2023), <https://www.americanoversight.org/a-timeline-of-the-trump-administrations-family-separation-policy> (Trump's Zero Tolerance "formalized the separation of children from parents as a deliberately cruel measure to attempt to deter future migrants").

6 Kandel, *supra* note 5 at Summary; see also *Q&A: Trump Administration's "Zero-Tolerance" Immigration Policy*, HUMAN RIGHTS WATCH (Aug. 16, 2018), <https://www.hrw.org/news/2018/08/16/qa-trump-administrations-zero-tolerance-immigration-policy> (explaining the government's position that "prosecutions required the parents to serve time in criminal custody, and thus due to rules on holding children in either criminal or immigration detention, the separations were the logical result").

7 Kandel, *supra* note 5.

8 *Ms. L. v. ICE*, 310 F. Supp. 3d 1133, 1138 (S.D. Cal. 2018), *modified*, 330 F.R.D. 284 (S.D. Cal. 2019).

9 Kandel, *supra* note 5 at Summary (explaining that Trump officials argued Zero Tolerance was meant "to discourage migrants from coming to the United States and submitting fraudulent asylum requests"); see also *READ: Transcript of CNN's town hall with former President Donald Trump*, CNN, May 11, 2023, <https://www.cnn.com/2023/05/11/politics/transcript-cnn-town-hall-trump/index.html> (Trump explaining "if a family hears they're going to be separated, they love their family, they don't come").

10 Kandel, *supra* note 5 at Summary.

11 *Id.* (estimating 5,300–5,500 total children separated under Trump, including children separated before Zero Tolerance was officially underway, and after it was effectively paused).

While the sweeping reach of Zero Tolerance was unprecedented, the family separations themselves were not. Rather, the United States has a deeply rooted history of separating families, especially those who are not white: examples include the separation of enslaved families as a form of racial violence and oppression, the separation of Japanese American families between internment camps under the guise of national security, and the separation of Native American children from their families as forced assimilation.¹² The separation of migrant families at the U.S.-Mexico border as a method of deterrence, punishment, and exclusion is part of this shameful legacy.¹³

While the sweeping reach of Zero Tolerance was unprecedented, the family separations themselves were not.

B. Family Separations as a Deeply Rooted Pattern

As early as 1931, *The New York Times* decried the fact that “FAMILIES ARE SEPARATED” in a front-page article exposing what it called the “cruelty” in U.S. deportation practices.¹⁴ In more recent times, the Obama administration separated families at the border. A San Diego-based advocate who worked closely with immigrant families witnessed family separations occurring as early as 2009.¹⁵ Under Obama, separations occurred largely due to failures to process families together, including failures resulting from the administration’s practice of “family detention.”¹⁶ While DHS detained some parents—usually mothers—with their minor children, the government still separated them from other family members, such as fathers and adult children, by jailing them elsewhere.¹⁷ Families were also subject to separation if a parent had past contact with the criminal legal system; in these cases, DHS often incarcerated the parent apart from their child.¹⁸ Occasionally, separations occurred as a result of DHS’s failure to properly identify and track families at the outset of processing.¹⁹ An immigrants’ rights organization called attention to the fact that during the Obama administration, CBP had “no agency-wide policy defining what constitutes a family, no traceable

12 See *History of Family Separation*, GATHERING FOR JUSTICE (last accessed Apr. 6, 2024), <https://www.gatheringforjustice.org/familyseparation> (highlighting the long history of family separation through slavery, Native American boarding schools, Japanese internment, and U.S. border policy); Jeffery Robinson, *America Was in the Business of Separating Families Long Before Trump*, ACLU (July 6, 2018), <https://www.aclu.org/news/racial-justice/america-was-business-separating-families-long-trump> (same); Shani King, *The Family Law Canon in a (Post?) Racial Era*, 72 OHIO ST. L.J. 575, 596 (2011) (noting long history of separating enslaved families as a way to coerce compliance); see generally Antia Maddali, *The Immigrant “Other”: Racialized Identity and the Devaluation of Immigrant Family Relations*, 89 INDIANA L. J. 643 (2014) (exploring how separations of immigrant families are “reminiscent of historical practices that removed early immigrant and Native American children from their parents in an attempt to cultivate an Anglo-American national identity”).

13 See, e.g., Statement Before the U.S. House Homeland Security Committee, Human Rights Watch, *The Human Cost of Harsh US Immigration Deterrence* (July 26, 2023), <https://www.hrw.org/news/2023/07/26/statement-human-rights-watch-human-cost-harsh-us-immigration-deterrence-policies>; K-Sue Park, *Self-Deportation Nation*, 132 HARV. L. REV. 1878 (2019).

14 *Dark Age Cruelty Charged in System for Deportations*, N.Y. TIMES, Aug. 8, 1931, <https://nyti.ms/3U0NjqV>; see also Noah Lanard, *An Explosive Government Report Exposed Family Separations and Other Immigration Horrors—in 1931*, MOTHER JONES, Oct. 27, 2020, <https://www.motherjones.com/politics/2020/10/an-explosive-government-report-exposed-family-separations-and-other-immigration-horrors-in-1931/>.

15 Zoom interview with Margaret Cargioli, Directing Attorney for Policy & Advocacy, Immigrant Defenders Law Center (Mar. 1, 2024) (hereinafter “Cargioli Interview”).

16 LEIGH BARRICK, AMERICAN IMMIGRATION COUNCIL, *DIVIDED BY DETENTION: ASYLUM-SEEKING FAMILIES’ EXPERIENCES OF SEPARATION* (Aug. 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/divided_by_detention.pdf (DHS, through exercising custody determinations, split family members “sending them to different facilities around the country – while failing to track and reunite those who arrived separately”).

17 JESSICA JONES ET AL., LUTHERAN IMMIGRATION & REFUGEE SERVICE, WOMEN’S REFUGEE COMMISSION, & KIDS IN NEED OF DEFENSE, *BETRAYING FAMILY VALUES: HOW IMMIGRATION POLICY AT THE UNITED STATES BORDER IS SEPARATING FAMILIES 3–4* (Jan. 10, 2017), https://supportkind.org/wp-content/uploads/2017/03/BetrayingFamilyValues_Feb2017.pdf (hereinafter “Betraying Family Values”).

18 *Id.* at 7–8.

19 *Id.* at 1 (calling attention to “the government’s lack of consistent mechanisms for identifying and tracking family members being detained or removed separately”).

documentation of those familial relationships, nor a requirement for documentation of all family separation incidents.”²⁰

A federal judge raised the identical family processing problem in 2018 under Trump’s Zero Tolerance policy:

“[T]he government has no system in place to keep track of, provide effective communication with, and promptly produce [migrant] children. The unfortunate reality is that under the present system migrant children are not accounted for with the same efficiency and accuracy as *property*. Certainly, that cannot satisfy the requirements of due process.”²¹

The same ineffective and opaque CBP processing systems that led to family separations under Obama laid the foundation for Trump-era separations to reach unprecedented levels years later.²²

C. Biden’s Promises

As a presidential candidate, Biden vowed to end Trump’s “cruel and senseless policies” that separated families at the border.²³ He said that Trump’s Zero Tolerance policy “violates every notion of who we are as a nation.”²⁴ Following his election, President Biden continued to declare a commitment to family unity. In March 2024, despite having abandoned many of his initial promises on immigration,²⁵ Biden proclaimed in his State of the Union Address: “I will not separate families.”²⁶

Yet CBP is still separating families today. Although the ongoing separations differ in important ways from those under Trump and Obama, family separations persist under the Biden administration. This is because the federal government continues to lack comprehensive family unity policies. The federal government also continues to lack accountability measures to ensure CBP is following what policies do exist. Without meaningful systemic change, these failures in CBP policies and practices will result in continued separations under future administrations.

20 *Id.* at 3.

21 *Ms. L.*, 310 F. Supp. 3d at 1144 (emphasis in original).

22 Notably, the idea of increasing criminal prosecutions for unauthorized entry and separating families as a deterrence measure was first conceived of in 2014 by senior immigration enforcement officials under Obama. The Obama administration ultimately chose not to implement the policy, but Trump officials used the 2014 idea as a blueprint for Zero Tolerance. See Nick Miroff & Sari Horwitz, *Trump didn’t invent family separation, but his administration was willing to try it*, WASH. POST, June 19, 2018, https://www.washingtonpost.com/world/national-security/trump-didnt-invent-family-separation-but-his-administration-was-eager-to-try-it/2018/06/19/f32f11f6-73d6-11e8-b4b7-308400242c2e_story.html.

23 Chantal Da Silva, *Immigration Makes It Into Election Debate For First Time—Here Is Where Trump and Biden Stand*, FORBES, Oct. 23, 2020, <https://www.forbes.com/sites/chantaldasilva/2020/10/23/immigration-makes-it-into-election-debate-for-first-time--here-is-where-trump-and-biden-stand/?sh=257e74ed330d>.

24 *Id.*; see also Amna Nawaz & Saher Khan, *Biden Vowed to Fix America’s Immigration System. Here’s What He Achieved in His First Year*, PBS, Jan. 20, 2022, <https://www.pbs.org/newshour/show/biden-vowed-to-fix-americas-immigration-system-heres-what-he-achieved-in-his-first-year> (“[Biden] came into the office saying he’s not just going to undo what the previous president had done... and work toward a more fair, more humane overall immigration system.”).

25 Press Release, Immigrant Legal Resource Center, *Broken Promises on Immigration Will be Biden’s Legacy* (Oct. 6, 2023), <https://www.ilrc.org/broken-promises-immigration-will-be-biden-s-legacy> (“the Biden administration has continued to collude with the dangerous Operation Lone Star in Texas, reneged on its promise to close privately-run detention centers ... continued to separate families, and ignored the plight of many asylum seekers”); Press Release, American Immigration Council, *One Year In: The Biden Administration’s Promises on Immigration Remain Unfulfilled* (Jan. 19, 2022), <https://www.americanimmigrationcouncil.org/news/one-year-biden-administrations-promises-immigration-remain-unfulfilled> (“At the end of the first year, Biden’s promise to create a safe and orderly process for seeking asylum at the border remains entirely unfulfilled, immigration detention has expanded, separated families have not been made whole.”).

26 *State of the Union 2024 Highlights: Biden Talks Trump, Democracy and Abortion in Energetic Speech*, NBC NEWS, Mar. 7, 2024, <https://www.nbcnews.com/politics/white-house/live-blog/live-updates-state-union-biden-rcna140769>.

II. FAMILY SEPARATIONS AT THE U.S.-MEXICO BORDER UNDER THE BIDEN ADMINISTRATION

During his first month in office, President Biden took important steps to end and remedy Trump-era family separations. His administration rescinded Trump's Zero Tolerance policy. It launched the Family Reunification Task Force ("Task Force"), which was charged with reunifying the families separated under Zero Tolerance.²⁷

The Task Force addresses separations of minor children from parents or guardians that took place between January 20, 2017 and January 20, 2021.²⁸

In February 2023, the Task Force characterized CBP's documented information about families separated during the Trump administration as "patchwork at best;" instead, it cited the work done by immigrants' rights organizations as a major reason the Task Force was able to reunify the families it had thus far.²⁹ As of the Task Force's November 2023 progress report, 3,147 children separated during the Trump administration were reunited with their families, but 1,052 children remained separated.³⁰ These numbers do not account for families CBP separated under Trump that have not been brought to the Task Force's attention; the number of these unaccounted for separations is unknown.³¹

Despite the Task Force's important work, it has not addressed separations between family members other than minor children and their parents or guardians, nor has it assisted with any separations that occurred after Biden's election.

The Biden administration has failed to grapple with the ways in which its own policies and practices continue to separate families.

While the Biden administration should be lauded for its efforts to address the harms inflicted by Trump-era family separations, it has failed to grapple with the ways in which its own policies and practices continue to separate families.

27 DEPARTMENT OF HOMELAND SECURITY, INTERIM PROGRESS REPORT: INTERAGENCY TASK FORCE ON THE REUNIFICATION OF FAMILIES 1–3 (Nov. 30, 2023), https://www.dhs.gov/sites/default/files/2023-12/2023_1215_sec_frftf-interim-progress-report-final-november-2023.pdf (hereinafter "Interim Progress Report: Interagency Task Force on the Reunification of Families").

28 *Do You Qualify?*, TOGETHER.GOV, <https://www.together.gov/qualifications> (last visited Apr. 13, 2024); see also Diana Madden et al., *Commentary: Accounting for Migrant Family Separations: When Numerical Chaos Exacerbates Health Inequity*, 47 FAM. & CMTY. HEALTH 62, 63 (2024).

29 *Fact Sheet: A Review by the Family Reunification Task Force on the Second Anniversary of Its Establishment*, DHS (Feb. 2, 2023), <https://www.dhs.gov/news/2023/02/02/fact-sheet-review-family-reunification-task-force-second-anniversary-its> ("When the Task Force began its work, the information known about the families who had been separated was patchwork at best, pieced together from segmented documentation compiled through the *Ms. L. v. ICE* litigation...[but] did not cover the full-time span of family separations.") (hereinafter "DHS Task Force Fact Sheet").

30 Interim Progress Report: Interagency Task Force on the Reunification of Families, *supra* note 27 at 9.

31 Madden, *supra* note 28 at 64.

A. How Has CBP Separated Families Under Biden?

CBP BORDER PROCESSING

As in past administrations, CBP is the agency tasked with processing and enforcing border laws and policies. The preservation of family unity is now mandatory during CBP's processing of parents or legal guardians with minor children, referred to as a "family unit" in federal regulations and CBP policies; this policy is a result of a settlement agreement in *Ms. L.*, the lawsuit challenging Trump's Zero Tolerance policy.³² Outside of this narrow "family unit" context, when a migrant family consisting of other types of relatives, referred to as a "family group," enters the United States, CBP has wide discretion in how to process the family group.³³

At the outset, CBP may decide to keep individuals detained in its short-term custody for days or weeks at a time, or to prioritize them for more immediate release. Beyond that, CBP has discretion to determine whether individuals will be released or detained for the remainder of their immigration proceedings. For example, CBP has the option to release individuals to pursue their claims for immigration relief from within the United States. Alternatively, CBP may subject people to truncated asylum screenings in CBP custody before determining whether to release them.³⁴ CBP also has the power to refer individuals for long-term detention in ICE custody, which typically means that they remain detained for months. In some cases, CBP may also refer individuals for criminal prosecution, including prosecution for unauthorized entry or reentry.³⁵ All of these decisions impact family unity because, outside the context of narrowly defined family units, "CBP exercises its discretion to determine how it will process members of the same family group on an individual basis."

Family unity in border processing is only possible if family groups are recorded in the first place and family members are linked together. If family members are not affirmatively linked at the beginning of processing, CBP officers will often process individual family members differently, resulting in separations. For example, CBP may transfer one family member to ICE detention while keeping others in

32 8 C.F.R. 236.3(b)(7); *Ms. L v. ICE*, 3:18-cv-428-DMS-AHG, Settlement Agreement at 26 (S.D. Cal., Dec. 1, 2023) (hereinafter "*Ms. L Settlement Agreement*").

33 See *Ms. L Settlement Agreement*, *supra* note 32.

34 *Obstructed Legal Access: NIJC's Findings From 3 Weeks of Telephonic Legal Consultations in CBP Custody*, NATIONAL IMMIGRANT JUSTICE CENTER (May 25, 2023), <https://immigrantjustice.org/staff/blog/obstructed-legal-access-nijcs-findings-3-weeks-telephonic-legal-consultations-cbp>.

35 See 8 U.S.C. §§ 1325, 1326; see also *Fact Sheet: Prosecuting People for Coming to the United States*, AMERICAN IMMIGRATION COUNCIL (Aug. 23, 2021), <https://www.americanimmigrationcouncil.org/research/immigration-prosecutions> ("Lawyers increasingly have observed federal prosecutions of adult family members for entry-related offenses which result in those family members being sent to a federal prison away from their children. The children are then [processed as] unaccompanied minors ... while parents receive little or no information about their location and condition.").

CBP custody, or CBP may release family members at different times in different locations.

Family unity in border processing is only possible if family groups are recorded in the first place and family members are linked together.

In addition to these discretionary practices, CBP's processing of families at the border is also influenced by the federal government's broader border policies. While not all of the border policies described below began during President Biden's term, they have contributed to family separations during his administration.

MIGRANT PROTECTION PROTOCOLS OR "REMAIN IN MEXICO" PROGRAM

The so-called Migrant Protection Protocols ("MPP"), also known as the "Remain in Mexico" program, began under the Trump administration in 2019 and continued for nearly two years into the Biden administration. The policy empowered individual CBP officers and agents to decide whether to allow individuals to pursue their asylum claims from within the United States, or to return them to Mexico to await their court proceedings. Under MPP, individuals seeking asylum were forced to live under precarious conditions in Mexican border cities and were only permitted to enter the United States for periodic hearings, creating due process and humanitarian problems.³⁶

CBP's discretionary MPP determinations resulted in different placements for members of the same family.³⁷ This subjected migrants to family separations across borders for indefinite periods of time—in addition to dangerous conditions, housing and food insecurity, and lack of access to legal resources in Mexico.³⁸ In some cases, CBP failed to document family relationships and returned parents to Mexico under MPP while it processed their minor children in the United States, leading to separations. In these cases, reunification was "nearly impossible."³⁹

³⁶ AMERICAN IMMIGRATION COUNCIL, THE "MIGRANT PROTECTION PROTOCOLS": AN EXPLANATION OF THE REMAIN IN MEXICO PROGRAM 1 (last updated Feb. 1, 2024), <https://www.americanimmigrationcouncil.org/research/migrant-protection-protocols> (hereinafter "AIC MPP Report").

³⁷ *Id.* at 3 ("Individuals who crossed the border at the same time were sometimes treated differently, with one person sent back under MPP and the other person permitted to seek asylum through the normal process. In some cases, this led to families being separated at the border, with one parent sent back to Mexico and the other parent and the child allowed to enter the United States.")

³⁸ KATHRYN HAMPTON ET AL., PHYSICIANS FOR HUMAN RIGHTS, FORCED INTO DANGER: HUMAN RIGHTS VIOLATIONS RESULTING FROM THE U.S. MIGRANT PROTECTION PROTOCOLS 3 (Jan. 19, 2021), <https://phr.org/our-work/resources/forced-into-danger/>.

³⁹ *The "Migrant Protection Protocols" Are Harming Children and Must End*, YOUNG CENTER FOR IMMIGRANT AND CHILDREN'S RIGHTS (Dec. 12, 2019), <https://www.theyoungcenter.org/stories/2019/12/12/the-migrant-protection-protocols-are-harming-children-and-must-end>.

The Biden administration paused placing new people into MPP in January 2021, and it issued a memorandum attempting to terminate MPP in June 2021, but months later a federal judge ordered the administration to continue implementing the program.⁴⁰ While the case was on appeal, the Biden administration voluntarily expanded the program by broadening the group of people to whom MPP applied; Haitians and other Caribbean nationals who had previously been excluded from MPP became subject to its provisions.⁴¹

MPP operated until October 2022, when the U.S. Supreme Court upheld the Biden administration's initial rescission of the program.⁴² DHS has never disclosed the exact number of people subject to MPP, nor accounted for the number of family separations that occurred under the program.⁴³

TITLE 42

The Biden administration also continued implementation of "Title 42," a mass border expulsion policy disguised as a "public health measure" in response to the COVID-19 pandemic, which began under the Trump administration.⁴⁴ The policy effectively closed the border to migrants arriving at the U.S.-Mexico border, including those seeking protection from persecution or torture.⁴⁵ The government claimed Title 42 gave CBP officers authority to summarily expel migrants from the United States without allowing them to claim humanitarian protection as federal law requires.⁴⁶

40 *Texas v. Biden*, 554 F. Supp. 3d 818, 856–57 (N.D. Tex. 2021) (ordering Biden administration "to enforce and implement MPP in good faith"), *enforcement granted in part*, No. 2:21-CV-067-Z, 2021 WL 5399844 (N.D. Tex. Nov. 18, 2021), and *aff'd*, 20 F.4th 928 (5th Cir. 2021), as revised (Dec. 21, 2021), *rev'd and remanded*, 597 U.S. 785 (2022).

41 AIC MPP Report, *supra* note 36 at 7 ("Under MPP 2.0, CBP could apply MPP to all Western Hemisphere nationals (excluding Mexicans), a larger group of people than MPP 1.0 . . . MPP [2.0] was applied to Haitians and other Caribbean nationals who were previously exempt under MPP 1.0.")

42 *Biden v. Texas*, 597 U.S. 785, 814 (2022) (reversing and remanding lower court injunction requiring re-implementation of MPP; holding Biden's rescission of MPP did not violate 8 U.S.C. § 1225(b)(2)(C)). The case is currently back at the district court in the Northern District of Texas for consideration of the validity of the second MPP Termination Memorandum, where it is possible that Judge Kacsmaryk will order MPP's revival yet again. See *Texas v. Biden*, No. 2:21-cv-67-Z (N.D. Tex.); see also Civil Rights Litigation Clearinghouse, *Case: Texas & Missouri v. United States* (last updated Oct. 6, 2023), <https://clearinghouse.net/case/18186/>.

43 AIC MPP Report, *supra* note 36 at 1 (noting that DHS eventually began posting monthly data on MPP in August 2020 after it was required by Congress).

44 KELSEY SANTAMARIA, CONG. RSCH. SERV., LSB10874, COVID-RELATED RESTRICTIONS ON ENTRY INTO THE UNITED STATES UNDER TITLE 42: LITIGATION AND LEGAL CONSIDERATIONS 1 (Mar. 13, 2023), <https://crsreports.congress.gov/product/pdf/LSB/LSB10874> (explaining that invoking authority under 42 U.S.C. § 265, immigration officials were directed to expel migrants who did not have visas or other travel documents, or who sought to enter the United States unlawfully between ports of entry).

45 *Id.*; see also Adam Isacson, *10 Things to Know About the End of Title 42*, WOLA (May 9, 2023), <https://www.wola.org/analysis/end-title-42/>.

46 Leonardo Castañeda & Katie Hoepfner, *Five Things to Know About the Title 42 Immigrant Expulsion Policy*, ACLU (Mar. 22, 2022), <https://www.aclu.org/news/immigrants-rights/five-things-to-know-about-the-title-42-immigrant-expulsion-policy>.

Despite public health officials' conclusion that Title 42 was "scientifically baseless and politically motivated,"⁴⁷ the Biden administration extended the policy in August 2021,⁴⁸ expanded its scope to include nationals of additional countries,⁴⁹ and continued to describe it as a "public health imperative."⁵⁰ The Biden administration only attempted to end the Title 42 policy for the first time in a termination order set to take effect on May 23, 2022. However, a federal court blocked that termination order on procedural grounds, and the Biden administration continued to enforce the policy for another year until the expiration of the public health emergency terminated the Title 42 order.⁵¹

Under Title 42, individual CBP officers and agents claimed authority to summarily expel migrants without screening them for asylum.⁵² In fact, under Title 42, CBP officers expelled many migrants *within 15 minutes of processing*.⁵³ This left little time to effectively process family groups together, even assuming that individual CBP agents wanted to do so. The predictable result was that CBP regularly separated families under Title 42.⁵⁴

47 Letter from Anika Backster MD et al., to Hon. Xavier Becerra, Sec'y, Dep't of HHS, Dr. Rochelle Walensky, Director, CDC, & Hon. Alejandro Mayorkas, Sec'y, U.S. DHS (Sept. 2, 2021), <https://www.publichealth.columbia.edu/file/7613/download?token=I1MIX8IK>; Letter from Joe Amon et al., Clinical Professor, Cmty. Health & Prevention, to Norris Cochran, Sec'y, HHS, & Dr. Rochelle Walensky, Dir., CDC (Jan. 28, 2021), <https://www.publichealth.columbia.edu/file/7597/download?token=F5AyPn5M>.

48 Public Health Reassessment and Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists, 86 Fed. Reg. 42828 (Aug. 5, 2021), <https://www.federalregister.gov/documents/2021/08/05/2021-16856/public-health-reassessment-and-order-suspending-the-right-to-introduce-certain-persons-from> (hereinafter "Public Health Reassessment and Order").

49 *Biden Doubles Down on Trump-Era Cruelty at the Border*, CENTER FOR GENDER AND REFUGEE STUDIES (Jan. 5, 2023), <https://cgrs.uclawsf.edu/news/biden-doubles-down-trump-era-cruelty-border>. ("The Biden administration will expand the use of its deadly Title 42 policy to expel asylum seekers from Cuba, Haiti, and Nicaragua to danger in Mexico, with no legal process whatsoever.")

50 *Mayorkas: Title 42 'is not an immigration policy that we in this administration would embrace'*, YAHOO NEWS, Oct. 12, 2021, <https://www.yahoo.com/news/mayorkas-dhs-title-42-immigration-095900696.html>; see also Aza-deh Erfani, *FAQ: The End Of Title 42 Expulsions*, NATIONAL IMMIGRANT JUSTICE CENTER (May 10, 2023), <https://immigrantjustice.org/staff/blog/faq-end-title-42-expulsions>.

51 See *Louisiana v. CDC*, 603 F. Supp. 3d. 406 (W.D. La. 2022) (granting motion to enjoin termination of Title 42); see also Rafael Bernal & Harper Neidig, *Judge blocks Biden from rolling back Title 42*, THE HILL, May 20, 2022, <https://thehill.com/regulation/court-battles/3496264-judge-blocks-biden-from-rolling-back-title-42/>; *Louisiana v. CDC*, No. 22-30303, Federal Government's Motion to Vacate the Preliminary Injunction (5th Cir. May 12, 2023).

52 Drishti Pillai & Samantha Artiga, *Title 42 and Its Impact on Migrant Families*, KFF (May 26, 2022), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/title-42-and-its-impact-on-migrant-families/>.

53 Public Health Reassessment and Order, 86 Fed. Reg. at 42836 (explaining that while processing noncitizens under Title 8 takes approximately an hour and a half to two hours, "processing an individual for expulsion under the CDC order takes roughly 15 minutes and generally happens outdoors").

54 See KATHRYN HAMPTON ET AL., PHYSICIANS FOR HUMAN RIGHTS, NEITHER SAFETY NOR HEALTH: HOW TITLE 42 EXPULSIONS HARM HEALTH AND VIOLATE RIGHTS 36 (July 2021), <https://phr.org/wp-content/uploads/2021/07/PHR-Report-United-States-Title-42-Asylum-Expulsions-July-2021.pdf> (noting that under Title 42, there was often no written or verbal notice of the reason for expulsion of where individuals were expelled to, or of the location of separated family members).

As one example, a Haitian couple entered the United States in March 2021. Officers released the mother, who was eight months pregnant, on parole. Meanwhile, CBP expelled the father to Mexico under Title 42, effectively leaving the mother to eventually give birth and care for the baby on her own.

While the Biden administration exempted unaccompanied minors from Title 42 expulsions, CBP officers had discretion to decide how to process any other individuals.⁵⁵ CBP agents routinely expelled some members of a family group pursuant to Title 42, while they released others into the United States on parole or detained them in long-term ICE custody.⁵⁶

As one example of these separations, a Haitian couple entered the United States near San Diego in March 2021. Officers released the mother, who was eight months pregnant at the time, on parole. Meanwhile, CBP expelled the father to Mexico under Title 42, effectively leaving the mother to eventually give birth and care for the baby on her own.⁵⁷

The federal government ended Title 42 on May 11, 2023—28 months into Biden’s presidency.⁵⁸ By that time, CBP had expelled over two million migrants through Title 42 under his administration alone.⁵⁹ CBP did not report—because it did not track—the number of family groups it separated under Title 42.

55 Pillai & Artiga, *supra* note 52.

56 Note that family units, which are limited to parents or guardians and their minor children, were accounted for differently than family groups under Title 42, following the court’s preliminary injunction order in *Ms. L v. ICE*. See Email from Acting Deputy Chief, U.S. Border Patrol, to Chiefs & Deputies (Mar. 12, 2021), <https://www.cbp.gov/sites/default/files/assets/documents/2021-Nov/Family%20Separation%20and%20Title%2042.pdf> (“Members of a family unit must be processed together under Title 8 or Title 42, unless separation is warranted based on the factors outlined in the *Ms. L v. ICE* preliminary injunction guidance. If a separation is warranted in accordance with the *Ms. L v. ICE* preliminary injunction guidance, the separated parent(s) or legal guardian(s) may not be processed for expulsion under Title 42, and all members of the family unit should be processed under Title 8.”).

57 Letter from Monika Y. Langarica, ACLU San Diego & Imperial Counties & Kate Clark, Jewish Family Service of San Diego, to Alejandro Mayorkas, Sec’y, U.S. DHS, at 4 (July 13, 2021), https://www.aclu-sdic.org/sites/default/files/field_documents/2021_07_09_fam_sep_letter_final.pdf (hereinafter “Coalition Letter July 2021”).

58 Off. of Mgmt. & Budget, Exec. Off. of the President, Statement of Administration Policy (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf>; see also Isacson, *supra* note 45.

59 Erfani, *supra* note 50 (noting CBP recorded 2,358,093 expulsions under Title 42 between February 2021 and March 2023); see also *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions*, CBP (Dec. 22, 2023), <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>.

FAMILY EXPEDITED REMOVAL MANAGEMENT (FERM)

In May 2023, the same month that the Biden administration terminated Title 42, it announced a new expedited removal process for families that ostensibly aims to avoid the use of detention and keep families together.⁶⁰ The Family Expedited Removal Management (FERM) program places parents and minor children apprehended at the border into a drastically expedited screening and removal process.⁶¹ Advocates have criticized FERM as infringing on families' rights to access attorneys and gather supporting evidence,⁶² undermining their ability to secure a meaningful opportunity to pursue asylum.⁶³ FERM also subjects families to round-the-clock electronic surveillance and curfews that some advocates have argued are akin to "house arrest."⁶⁴ Crucially, FERM does not protect family unity: CBP retains discretion to process members of the same family inconsistently. As one example, immigration officials released a mother and her minor children to relatives in New Jersey under the FERM program, but sent her 19-year-old son to an ICE detention facility in Arizona, separating the family.⁶⁵

60 ICE Announces New Process for Placing Family Units in Expedited Removal, ICE (May 10, 2023), <https://www.ice.gov/news/releases/ice-announces-new-process-placing-family-units-expedited-removal>.

61 See *Explainer: Too Fast For Fairness: "Expedited Removal" and the Family Expedited Removal Management Program*, NATIONAL IMMIGRANT JUSTICE CENTER, at 2 (Jan. 11, 2024), <https://immigrantjustice.org/research-items/explainer-too-fast-fairness-expedited-removal-and-family-expedited-removal> ("In FERM, families have as little as one day upon their arrival at their destination city to undergo a pivotal adjudication: their credible fear interview, which is the threshold screening to determine whether they are eligible to apply for asylum. If they fail this interview, they have just one week to seek review by an immigration judge. If they fail there, they are required to report to an ICE office for deportation, usually within a week...Under these conditions, the vast majority of families cannot find an attorney despite the high stakes they face.") (hereinafter "NIJC FERM Explainer"); see also *Policy Brief: ICE's Family Expedited Removal Management (FERM) Program Puts Families at Risk*, NATIONAL IMMIGRANT JUSTICE CENTER (Aug. 31, 2023), <https://immigrantjustice.org/research-items/policy-brief-ices-family-expedited-removal-management-ferm-program-puts-families> (hereinafter "NIJC FERM Policy Brief").

62 NIJC FERM Explainer, *supra* note 61 at 2–3 (finding that fewer than 3% of people in FERM have legal representation, its rushed timelines make it impossible to prepare and present asylum claims, and blanket application of ankle monitors and surveillance harms people's mental health, making it even harder to navigate the legal system)

63 The FERM program followed in the footsteps of the Biden administration's "Dedicated Docket." Launched in May 2021, the Dedicated Docket is a fast-track immigration court program targeting families arriving at the southern border. Advocates have criticized the low levels of legal representation and high numbers of in absentia removal orders issued against children in these expedited proceedings. See *generally* IMMIGRANTS' RIGHTS POLICY CLINIC, UCLA SCHOOL OF LAW, THE BIDEN ADMINISTRATION'S DEDICATED DOCKET (May 2022), https://law.ucla.edu/sites/default/files/PDFs/Center_for_Immigration_Law_and_Policy/Dedicated_Docket_in_LA_Report_FINAL_05.22.pdf; HARVARD IMMIGRATION & REFUGEE CLINICAL PROGRAM, DENIAL OF JUSTICE: THE BIDEN ADMINISTRATION'S DEDICATED DOCKET IN THE BOSTON IMMIGRATION COURT (June 2023), https://harvardimmigrationclinic.org/files/2023/06/Dedicated-Docket-Report_FINAL.pdf; NIJC FERM Policy Brief, *supra* note 61.

64 NIJC FERM Explainer, *supra* note 61 at 2 (noting that under FERM, ICE requires one parent to wear an ankle monitor and stay confined in their home at night, a curfew that "effectively amounts to house arrest").

65 CINDY S. WOODS, AMERICANS FOR IMMIGRANT JUSTICE, THE FAMILY EXPEDITED REMOVAL MANAGEMENT PROGRAM (FERM): A THREE-MONTH ASSESSMENT 8 (Sept. 7, 2023), <https://aijjustice.org/wp-content/uploads/2023/10/FERM-Report-Americans-for-Immigrant-Justice-2023.pdf>.

STREET RELEASES

Most recently, CBP has separated families as a result of its emerging practice of releasing large numbers of migrants at transit centers and on the streets of cities along the southwest border. These releases are commonly referred to as “street releases.”⁶⁶ Before adopting this practice, CBP facilitated releases in coordination with nonprofit organizations and migrant shelters, which ensured a more orderly process that protected family unity.⁶⁷

While the collaboration between CBP and migrant shelters on the border still continues to some extent, CBP has also begun engaging in street releases devoid of adequate coordination with local service providers to ensure the provision of food and water, shelter, medical care, or onward travel coordination. In many scenarios, CBP street-releases family members at different times and at different locations with no information about the whereabouts of other members of the family group.

Between September and December 2023, the immigrants’ rights organization Al Otro Lado documented more than 1,000 family separations due to street releases in San Diego alone.⁶⁸ Simon and Luz, the young married couple separated in September 2023, were among them. Unbeknownst to Simon, CBP released Luz to a migrant shelter. Three days later, CBP agents street-released Simon at a San Diego park. The officers did not tell Simon what was happening, or where he was going. “[The agents] took me and released me in a park and told me, you all go here. You are free now. *Ya están libres*. That’s where I found out I was free... they didn’t tell [me] anything.”⁶⁹

Left at the park with a dead phone battery, Simon did not know where he was, where Luz was, how he was going to contact her, or if she had even been released. Simon and Luz were eventually reunified after three days with the help of nonprofit organizations that provide humanitarian aid to newly arrived migrants. In other cases, long-term detention or deportation of some family members and the street release of others leads to lengthy—or even permanent—separation.

66 Letter from Monika Y. Langarica, UCLA Center for Immigration Law and Policy, Kate Clark, Jewish Family Service of San Diego, Meghan Zavala, Al Otro Lado, & Felicia Gomez, ACLU San Diego & Imperial Counties, to CRCL Officer, U.S. Dep’t of Homeland Sec. (Dec. 14, 2023), https://law.ucla.edu/sites/default/files/PDFs/Center_for_Immigration_Law_and_Policy/CRCL_Complaint_Street%20Releases.pdf (hereinafter “Coalition Letter Dec. 2023”); see also Wendy Fry, *Border Patrol is dropping off hundreds of migrants at San Diego trolley station after welcome center closes*, CALMATTERS (Feb. 27, 2024), <https://calmatters.org/california-divide/2024/02/california-border-migrants/>.

67 See, e.g., Tina Vasquez, *Here’s Why ICE Is ‘Mass Releasing’ Immigrant Families From Detention Centers*, REWIRE NEWS GROUP (Oct. 30, 2018), <https://rewirenewsgroup.com/2018/10/30/heres-why-ice-is-mass-releasing-immigrant-families-from-detention-centers/>; JENNY ALDRICH, SAVITRI ARVEY, & GUSTAVO LÓPEZ, *THE RELEASE OF FAMILIES SEEKING ASYLUM ACROSS THE U.S. SOUTHWEST BORDER* 19, SCHOOL OF GLOBAL POLICY AND STRATEGY, UNIVERSITY OF CALIFORNIA, SAN DIEGO 12–19 (Oct. 2019), https://usmex.ucsd.edu/_files/report_release-of-families-seeking-asylum.pdf.

68 Coalition Letter Dec. 2023, *supra* note 66.

69 Simon & Luz Interview, *supra* note 3.

B. Who Has Been Separated Under Biden?

The Biden-era policies described above have allowed CBP to separate countless families. Those who fall outside DHS’s narrow definition of a “family unit” have borne the brunt of separations under the current administration. These include:

SPOUSES WHO ARE SEPARATED FROM EACH OTHER

In March 2021, a married couple from Cuba arrived at the U.S. border near Yuma, Arizona.⁷⁰ The husband was sent to CBP custody in San Diego and eventually released into the United States on parole, but his wife was transferred to a long-term ICE detention center. Similarly, Luz shared that her separation from Simon was not unique: during her CBP detention, Luz was detained with two other women whom officials also separated from their spouses.⁷¹ Advocates explain that it is not uncommon to meet a separated spouse on the streets of San Diego who is awaiting the release of their still-detained partner.⁷²

Separation of spouses often involves legal and logistical barriers. As Simon and Luz report, CBP family separations can happen “very very fast.”⁷³ Thus, it can be hard to fully understand what is happening and to ask to remain together. Showing proof of a spousal relationship can also be difficult for individuals who, for myriad reasons, may not be in possession of such evidence, or for those who face language barriers, and where CBP officials are not adequately trained on documents from other countries.⁷⁴ Moreover, spouses may face separation even if they do have documentation of their relationship. Simon and Luz each had a notarized copy of their marriage certificate, and affirmatively told CBP that they were a married couple.⁷⁵ Instead of requesting to see proof of their marriage, CBP officers asked only if Luz was pregnant.⁷⁶ When she said that she was not, CBP refused to keep them together.⁷⁷

PREGNANT WOMEN WHO ARE SEPARATED FROM THEIR PARTNERS

In April 2021, a married couple from Nicaragua arrived near Calexico, California. The wife was four months pregnant at the time and released alone into the United States, while her husband was sent to an ICE detention center in Louisiana.⁷⁸ Luz and Simon witnessed

70 Coalition Letter July 2021, *supra* note 57 at 4.

71 Simon & Luz Interview, *supra* note 3.

72 Zoom Interview with Meghan Zavala, Data & Policy Analyst, *Al Otro Lado* (Feb. 28, 2024) (hereinafter “Zavala Interview”); Cargioli Interview, *supra* note 15.

73 Simon & Luz Interview, *supra* note 3.

74 Cargioli Interview, *supra* note 15.

75 Simon & Luz Interview, *supra* note 3.

76 *Id.*

77 *Id.*

78 The separation of pregnant women from their families is only one of the examples of abuses perpetrated against pregnant people by CBP. See, e.g., Press Release, ACLU, New Evidence of Horrific Treatment of Pregnant People in CBP Custody Reignites Demands For Change (Apr. 25, 2023), <https://www.aclu.org/press-releases/new-evidence-of-horrific-treatment-of-pregnant-people-in-cbp-custody-reignites-demands-for-change>.

a similar situation at a CBP facility.⁷⁹ CBP encountered a pregnant woman, her husband, and her two minor children at a border encampment.⁸⁰ Upon arriving at a CBP facility for processing and detention, agents separated them, sending the husband to the same facility as Simon.⁸¹

YOUNG ADULT CHILDREN WHO ARE SEPARATED FROM THEIR PARENTS

In March 2021, CBP detained a Brazilian family—a mother, father, their 18-year-old daughter with special needs, and their 6-year-old son—upon their arrival at the U.S. border near Yuma, Arizona. CBP separated the daughter with special needs from her parents. Because she was 18, CBP did not recognize her as part of the “family unit.” While the parents and 6-year-old son were transferred to the CBP San Diego Sector and then released into the United States on parole, the 18-year-old daughter with special needs was sent alone to an ICE detention center.⁸²

CBP separated the daughter with special needs from her parents. Because she was 18, CBP did not recognize her as part of the “family unit.”

ICE often transfers family members to detention centers far away from their families, including in Mississippi, Louisiana, or Texas. When ICE detains a family member, separations often last for weeks or months. Because ICE’s tracking system lags, it takes at least a week (if not more) to even know where a detained family member is located. In this case, the daughter was detained in March 2021 and remained separated from her parents for at least four months.

GRANDPARENTS AND OTHER CAREGIVERS WHO ARE SEPARATED FROM THEIR LOVED ONES

In April 2021, a Honduran family—a 7-year-old child, her mother, and the child’s grandmother—arrived at the U.S. border near McAllen, Texas. The grandmother had served as the child’s primary caretaker because of the mother’s epilepsy and cognitive impairments. But CBP nonetheless separated the family. The agency exercised its discretion

⁷⁹ Simon & Luz Interview, *supra* note 3.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Coalition Letter July 2021, *supra* note 57 at 3.

to release the grandmother into the United States on parole. But CBP transferred the child and her mother to the San Diego Sector, and eventually expelled them to Mexico under Title 42.⁸³

C. Harms Resulting from Family Separations

The negative impacts of family separations under the Biden administration are often less visible than the horrific images of crying children in cages that marked Trump’s Zero Tolerance policy. But the harm of being separated from family members for days, weeks, or even years under current CBP policies is no less real. For both adults and children, separations can greatly disrupt a family’s ability to thrive, and can lead to long-term posttraumatic stress, depression, and suicidal thoughts.⁸⁴ Lucy described considering taking her own life, while Luz and Simon shared their fear of losing one another.⁸⁵

The negative impacts of family separations under the Biden administration are often less visible than the horrific images of crying children in cages that marked Trump’s Zero Tolerance policy. But the harm under current CBP policies is no less real.

Family separations also severely undermine due process as required by law. Family members’ immigration cases are often intimately related. When family members are separated, they cannot present necessary witness testimony or provide crucial evidence for relief claims. This may violate the person’s right to present evidence.⁸⁶ It can also result in inconsistent case timelines, meaning family members may have to undergo individual threshold eligibility interviews or appear in immigration court separately and at different times, which can lead to different case outcomes.⁸⁷ Even when families are able to access court together, it can be challenging to consolidate cases if family members’ cases were not linked at inception. An attorney can help streamline this process, but finding a lawyer is extremely difficult.⁸⁸

⁸³ *Id.* at 4.

⁸⁴ Coalition Letter Aug. 2022, *supra* note 2 at 4–5.

⁸⁵ *Id.* at 3; Simon & Luz Interview, *supra* note 3.

⁸⁶ 8 U.S.C. § 1229a(b)(4)(b) (2006).

⁸⁷ Coalition Letter Aug. 2022, *supra* note 2 at 5.

⁸⁸ Zoom interview with Kate Clark, Senior Director of Immigration Services, Jewish Family Service of San Diego (Mar. 11, 2024).

III. WHY DO FAMILY SEPARATIONS PERSIST?

The U.S. government has been on notice that its border policies result in family separations at least as far back as the Obama administration.⁸⁹ The Trump administration's policies knowingly and cruelly exacerbated the problem. And while President Biden reversed some of the worst of Trump-era policies, the Biden administration has been on notice since July 2021 that its border policies and practices continue to tear families apart.⁹⁰

After witnessing hundreds of families separated from each other at the border in the early months of the Biden administration, the ACLU of San Diego & Imperial Counties and JFS alerted DHS Secretary Alejandro Mayorkas to the reality that border policies under the Biden administration were still leading to family separations.⁹¹ In a July 2021 letter, the organizations laid out a series of practical policy recommendations to prevent and remedy ongoing separations. In August 2022 and December 2023, the ACLU of San Diego & Imperial Counties, JFS, and CILP ("San Diego Coalition") followed up with a complaint detailing how CBP assaulted Lucy and separated her from her children, reiterating prior concerns about family separations under Biden, and urging the administration to adopt policies to protect family unity, including those recommended in the July 2021 correspondence.⁹²

Two interrelated problems explain why family separations persist: first, the Biden administration has failed to meaningfully implement effective policies to protect family unity; second, CBP continues to be characterized by a culture of cruel indifference.

Yet family separations persist. Two interrelated problems explain why: First, the Biden administration has failed to meaningfully implement effective policies to protect family unity. Second, CBP is marked by a culture of cruel indifference, operating without

⁸⁹ See generally *Betraying Family Values*, *supra* note 17.

⁹⁰ Coalition Letter July 2021, *supra* note 57.

⁹¹ *Id.*

⁹² Coalition Letter Aug. 2022, *supra* note 2; Coalition Letter Dec. 2023, *supra* note 66.

transparency or accountability for its failure to implement what policies do exist and for the family separations that it continues to cause at the U.S.-Mexico border.

A. CBP’s Failure to Meaningfully Implement Effective Policies to Protect Family Unity

In April 2023, following the San Diego Coalition’s advocacy, the Biden administration took an initial step towards a practice that would—if meaningfully implemented—better protect family unity. On April 20, 2023, CBP issued an internal memorandum titled “Additional Guidance on Recordation, Linking, and Processing of Family Groups” (“April 2023 Guidance”).⁹³ The guidance was subsequently leaked but, as of the time of this writing, CBP has not made it public. Adopting some of the San Diego Coalition’s recommendations, the updated guidance expands the definition of a “family group” to include:

1. Parents/legal guardians with their unmarried adult children 18–25 years-old;
2. Grandparents with their unmarried adult grandchildren 18–25;
3. Spouses who are 18 and older; and
4. Unmarried siblings 18–25 years old.

According to the guidance, DHS “remains committed to protecting the unity of families encountered at the border to the extent legally and operationally feasible.” Once familial relationships are established, CBP agents “must record and link all known members of the family group.” The guidance further establishes that throughout processing, CBP shall “give the strongest consideration” to keeping families together. In short, CBP’s April 2023 Guidance addresses many of the gaps in border processing policies that lead to the separation of families. On paper, the new rules represent a strong commitment to family unity and an adoption of a common-sense understanding that family often encompasses more than minor children and their parents or legal guardians.

Yet substantive and implementation gaps remain. The guidance leaves to CBP’s discretion a determination of whether family unity

⁹³ Troy A. Miller, *Additional Guidance on Recordation, Linking, and Processing of Family Groups*, CBP (Apr. 20, 2023) (hereinafter “April 2023 Guidance”) (on file with authors).

outweighs “operational feasibility” in any given case. Moreover, the protections provided by the guidance only apply to family groups who are in possession of documentation of their familial relationships. Even if families do have documentation, such as in the case of Simon and Luz, there is little evidence that CBP is affirmatively verifying and documenting familial relationships. Where family members are linked, they may still be subject to individual detention determinations at CBP’s discretion. Moreover, the policy’s lack of transparency seriously undermines its effectiveness. CBP has not made this guidance public, making it difficult for advocacy groups to disseminate it and track compliance. By its own terms, the guidance does not require CBP to track or make publicly available data about its implementation, including how many families CBP keeps together or separates under its provisions.

In light of these gaps, it is unsurprising that family separations persist. Indeed, the more than 1,000 family separations documented by Al Otro Lado as a result of CBP’s street releases all took place *after* CBP internally released its April 2023 Guidance.⁹⁴

B. CBP’s Culture of Cruel Indifference

CBP’s failure to implement its own April 2023 Guidance is not an oversight. Instead, it is emblematic of the agency’s well-documented culture: one marked by cruel indifference, in which CBP operates without transparency or accountability for its practices that predictably result in family separations, even where those practices defy existing guidance.

CBP’s culture is one of the primary obstacles to the implementation of policies that promote family unity. It has previously been characterized as a culture that “protects and rewards abuse.”⁹⁵ The consequences are evident in a range of abuses from confiscating the epilepsy medication of children and destroying religious artifacts⁹⁶ to forcing a pregnant woman to give birth under dangerous conditions while holding onto a trash can⁹⁷ to the killing of at least ten people since 2020.⁹⁸

Family separations at the border are similarly a predictable outcome of the agency’s culture. One advocate described CBP’s approach to

94 Coalition Letter Dec. 2023, *supra* note 66; see also Andrea Castillo, *Over 1,000 migrant families separated at border near San Diego since September, advocates say*, LA TIMES (Dec. 15, 2023), <https://www.latimes.com/politics/story/2023-12-15/migrant-families-at-san-diego-border-immigrant-advocates-letter-dhs>.

95 Adam Isacson, *Fixing a Culture that Protects and Rewards Abuse at U.S. Border Agencies*, WOLA (Oct. 14, 2020), <https://www.wola.org/analysis/fixing-a-culture-protects-rewards-abuse-us-border-agencies/>; see also HUMAN RIGHTS WATCH, “THEY TREAT YOU LIKE YOU ARE WORTHLESS”: INTERNAL DHS REPORTS OF ABUSES BY US BORDER OFFICIALS (Oct. 21, 2021), <https://www.hrw.org/report/2021/10/21/they-treat-you-you-are-worthless/internal-dhs-reports-abuses-us-border-officials>.

96 Noah Schramm, *Border Patrol’s Abusive Practice of Taking Migrants’ Property Needs to End*, ACLU (Feb. 13, 2024), <https://www.aclu.org/news/immigrants-rights/border-patrols-abusive-practice-of-taking-migrants-property-needs-to-end>.

97 Ema O’Connor, *A Woman Gave Birth In A Border Patrol Station Still Wearing Her Pants. Now The Agents Involved Are Being Accused Of Abuse*, BUZZFEED NEWS (Apr. 9, 2020) <https://www.buzzfeednews.com/article/emaconnor/pregnant-woman-birth-border-patrol-aclu-complaint>.

98 Adam Isacson, *CBP and Border Patrol Deadly Force Incidents Since 2020*, WOLA (Mar. 8, 2023), <https://www.wola.org/analysis/cbp-border-patrol-deadly-force-incidents-2020/>.

families at the border as “inhumane.”⁹⁹ Although CBP faces complex challenges in processing families, the prevailing sentiment among advocates is that CBP agents are indifferent—if not openly hostile—to migrant families. As one example, a CBP agent dismissively told Luz that he “did not know” where her husband was, and that if she did not see him pass by or hear his name called, then he was “probably at another facility.”¹⁰⁰ In Simon’s case, CBP agents told him “absolutely nothing,” only communicating with Simon when ordering him to be quiet, wake up, or take food.¹⁰¹ At times, CBP moves beyond indifference to hostility and even violence. This darker side of CBP culture is exemplified by Lucy’s story, where a Border Patrol agent punched her in the mouth, hit her in the stomach, and slammed her against a train before separating her from her 10-year-old daughter and 18-year-old sons.¹⁰²

Of course, no agency is a monolith. Some CBP agents buck the dominant culture and go out of their way to assist separated families. One service provider shared that she saw CBP agents accompanying buses of migrants set to be released.¹⁰³ At the drop-off site, a migrant showed one of the agents a picture of a missing family member. The CBP agent recognized the missing family member and confirmed that they were still in custody. That individual act illustrates the discretion that CBP agents have to ameliorate—at the very least—the harms of separations, and demonstrates another reality is possible.

Unfortunately, that is not today’s reality. Instead, CBP’s dominant culture of cruel indifference permeates the way it processes families in a manner that routinely results in avoidable separations. Below, this white paper describes how two facets of CBP culture—a lack of transparency into documentation of family relationships and a lack of accountability—stand in the way of CBP effectively implementing even its own stated family unity policies.

CBP’S LACK OF TRANSPARENCY INTO DOCUMENTATION OF FAMILY RELATIONSHIPS

CBP’s profound lack of transparency into how (or if) it documents family groups arriving at the border contributes to ongoing separations.

99 Cargioli Interview, *supra* note 15.

100 Simon & Luz Interview, *supra* note 3.

101 *Id.*

102 Coalition Letter Aug. 2022, *supra* note 2 at 3.

103 Cargioli Interview, *supra* note 15.

If relationships among family groups are not being documented and tracked, then family separation is all but assured.

CBP's April 2023 Guidance—which the agency has yet to release publicly more than a year into its existence—requires that all family groups be recorded if they are traveling together. As discussed above, CBP utilizes separate classifications for families comprised of parents or guardians and their minor children (“family units”) and families comprised of other relationships (“family groups”).¹⁰⁴ But because CBP does not make available data about families other than narrowly-defined *family units*, it is impossible to know the extent to which CBP is tracking *family groups* accurately, or if CBP tracks *family groups* at all. If relationships among family groups are not in fact being documented and tracked, then family separation is all but assured as each family member is individually processed by CBP instead of the family being processed together.

Transparency is a crucial tool to combat documentation failures that lead to family separations. Zero Tolerance exposed the utter failure of CBP's documentation and tracking procedures with respect to family units. That exposure led to a DHS Office of Inspector General audit that found over 1,200 separated children with potential familial relationships that were not documented by CBP's tracking system,¹⁰⁵ as well as an investigation by the U.S. Government Accountability Office (“GAO”) into CBP's inadequate tracking and documentation of families with minor children.¹⁰⁶ GAO found that family separations were not accurately tracked, agents inconsistently recorded details, and that CBP “does not have sufficient controls to ensure effective implementation” of documentation policies.¹⁰⁷ In fact, “[d]ata errors were so extensive that a Border Patrol Chief expressed embarrassment at the number of inaccuracies documented by field personnel.”¹⁰⁸ The investigation led to nine recommendations by GAO to ensure that CBP tracked every family unit and documented every separation that occurred and the stated justification for the separation. Transparency worked: As of January 2021, GAO stated that CBP had adopted all nine recommendations with respect to the documentation and tracking of *family units*.

104 DHS OFFICE OF INSPECTOR GENERAL, DHS LACKED TECHNOLOGY NEEDED TO SUCCESSFULLY ACCOUNT FOR SEPARATED MIGRANT FAMILIES 3 (Nov. 25, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-11/OIG-20-06-Nov19.pdf> (hereinafter “DHS Office of Inspector General Report Nov. 2019”).

105 *Id.* at 8.

106 U.S. GOVERNMENT ACCOUNTABILITY OFFICE, SOUTHWEST BORDER: ACTIONS NEEDED TO IMPROVE DHS PROCESSING OF FAMILIES AND COORDINATION BETWEEN DHS AND HHS (Feb. 19, 2020), <https://www.gao.gov/assets/d20245.pdf> (hereinafter “GAO Report Feb. 2020”).

107 *Id.* at 28.

108 DHS Office of Inspector General Report Nov. 2019, *supra* note 104 at 12.

Unfortunately, this white paper did not find evidence that GAO's adopted recommendations had an effect on the documentation and tracking of *family groups*. Indeed, the available information suggests many of the same problems that led to the disastrous separations of family units also characterize CBP's processing of family groups. Even families who proactively tell CBP that they traveled together—like Simon and Luz—are routinely processed separately, and are likely not documented as family groups.¹⁰⁹ Moreover, according to advocates, CBP rarely, if ever, communicates the location and status of separated adult family members to other family members.¹¹⁰ Thus, despite the lessons of Zero Tolerance and CBP's crucial changes to its processing of *family units*—which provide a clear model for how to stop family separations by simply documenting and tracking familial relationships and ensuring streamlined processing—opaque CBP practices continue to facilitate the separation of *family groups*.

For those who do experience separation, CBP's lack of transparency has historically erected significant barriers to reunification. Until June 2024, there existed no system for family members or lawyers to locate individuals who remained detained in CBP custody. For years, ICE has operated a detention locator for individuals in its custody, but that system is known for long delays and, until very recently, did not account for individuals in CBP custody. This left separated family members unable to locate or reunite with family members who remained in CBP custody. DHS recently announced a change to the ICE locator that reportedly will now allow users to search for individuals who have been in CBP custody for 48 hours or more.¹¹¹ While this is a promising development, it remains to be seen how effective this change will be on the ground.

CBP'S LACK OF ACCOUNTABILITY

CBP's utter lack of accountability also contributes to ongoing family separations. That lack of accountability is deeply rooted in agency culture: A 2023 report found that 95% of complaints against CBP officials led to no action.¹¹² These findings are consistent with many past studies.¹¹³ Against this backdrop of impunity for individual CBP officials, the agency's lack of accountability for family separations should come as no surprise.

¹⁰⁹ Zavala Interview, *supra* note 72; Simon & Luz Interview, *supra* note 3.

¹¹⁰ Coalition Letter Dec. 2023, *supra* note 66 at 3.

¹¹¹ Department of Homeland Security Announces Enhanced Searchability of Migrants in Custody After Crossing the Border, DHS (June 7, 2024), <https://www.dhs.gov/news/2024/06/07/department-homeland-security-announces-enhanced-searchability-migrants-custody>.

¹¹² ADAM ISACSON & ZOE MARTENS, WOLA AND KINO BORDER INITIATIVE, ABUSES AT THE U.S.-MEXICO BORDER: HOW TO ADDRESS FAILURES AND PROTECT RIGHTS 9 (Aug. 2023), https://www.kinoborderinitiative.org/wp-content/uploads/2023/08/WOLA_KINO_Report_ENG_FINAL-1.pdf.

¹¹³ See, e.g., DANIEL E. MARTÍNEZ & GUILLERMO CANTOR, AMERICAN IMMIGRATION COUNCIL, NO ACTION TAKEN: LACK OF CBP ACCOUNTABILITY IN RESPONDING TO COMPLAINTS OF ABUSE 1 (May 4, 2014), <https://www.americanimmigrationcouncil.org/research/no-action-taken-lack-cbp-accountability-responding-complaints-abuse> (showing that 97% of complaints had no action taken); GUILLERMO CANTOR, AMERICAN IMMIGRATION COUNCIL, STILL NO ACTION TAKEN: COMPLAINTS AGAINST BORDER PATROL AGENTS CONTINUE TO GO UNANSWERED 1 (Aug. 2, 2017), <https://www.americanimmigrationcouncil.org/research/still-no-action-taken-complaints-against-border-patrol-agents-continue-go-unanswered> (follow up report three years later finding little to no action taken); ACLU, CUSTOMS AND BORDER PROTECTION ACCOUNTABILITY (Dec. 23, 2020), <https://www.aclu.org/documents/customs-and-border-protection-accountability> (reviewing CBP practices from the Trump era and warning of the need for accountability).

As highlighted above, CBP's April 2023 Guidance purports to expand the definition of a family group and shift practices to reflect a common sense understanding of who should be processed together. If CBP officials were held to account for failing to follow this guidance, many of the family separations detailed in this white paper would not have occurred.

If CBP officials were held to account for failing to follow the agency's April 2023 internal guidance, many of the family separations detailed in this white paper would not have occurred.

CBP's lack of accountability in the family separation context is not just a problem among individual agents and officers on the ground. It pervades higher-level agency officials. After the San Diego Coalition submitted its initial letter detailing ongoing family separations in 2021, Coalition members met with a series of agencies and oversight bodies and eventually sent a follow-up letter in 2022.¹¹⁴ Over two years after the San Diego Coalition's initial letter, the DHS Office for Civil Rights and Civil Liberties ("CRCL"), a DHS oversight agency, determined that the issue of family separations was "resolved" on September 15, 2023, writing "CRCL believes that CBP has developed sufficient policies to address the issues raised in the complaint."¹¹⁵ Five days after CRCL deemed the issue "resolved," Al Otro Lado began tracking what would amount to over 1,000 family separations within a three-month period. To date, CBP has not been held to account for these separations.

¹¹⁴ See Coalition Letter Aug. 2022, *supra* note 2.

¹¹⁵ Letter from DHS Office for Civil Rights and Civil Liberties to Monika Y. Langarica, UCLA Center for Immigration Law and Policy, Kate Clark, Jewish Family Service of San Diego, and Norma Chavez, ACLU Foundation of San Diego & Imperial Counties (Sept. 15, 2023) (on file with authors).

IV. LOOKING FORWARD

As Simon and Luz put it, the solution is simple: “do not separate families.”¹¹⁶ Separating families at the border has been normalized in U.S. immigration policy, extending across administrations. But it does not need to be this way.

Preventative policies can protect family unity by keeping families together in the first place. Where separations do occur, effective policies can require robust documentation that will facilitate the ability of the government to reunify families when needed, and for family members to locate one another. This will allow families to reunite more quickly. However, for any of these policies to be effective, the federal government must institute strong transparency and accountability mechanisms to maximize and monitor CBP compliance. The recommendations below would prevent family separation, facilitate reunification, and keep CBP transparent and accountable.

A. Recommendations to Preserve Family Unity in Border Processing

1. CBP agents and officers who encounter and process applicants for admission at the southern border should affirmatively inquire about, document, and link all relationships among family members who are apprehended together, consistent with the April 2023 Memorandum entitled “Additional Guidance on Recordation, Linking, and Processing of Family Groups” (“April 2023 Guidance”), without relying exclusively on official government documentation when other evidence is readily available.
2. CBP should adopt a definition of “family group” to account for and protect relationships among spouses, including those in common law marriages, pregnant individuals and their partners, parents and their adult children, grandparents and their adult grandchildren, and adult siblings.
3. CBP agents and officers who encounter and process applicants for admission at the southern border should ensure family groups are processed and released together by extending

¹¹⁶ Simon & Luz Interview, *supra* note 3.

consistent release decisions to all adult members of the same family group (nothing in this recommendation would displace legal obligations to minor children, including under the TVPRA).

4. DHS agents and officers should exercise their discretion to decline to refer for criminal prosecution any adult family members of family groups that would necessarily result in long periods of family separation.
5. The federal government should permanently fund organizations that facilitate the safe and humane reception of all migrants who are released from CBP custody along the southern border.
6. CBP should ensure consistent on-the-ground coordination with humanitarian service providers to ensure the swift, safe release and transportation of individuals from CBP custody to the care of shelters and respite centers.

B. Recommendations to Facilitate Prompt Reunification of Separated Families

1. CBP agents and officers should promptly communicate to all adult members of family groups the whereabouts of any family members separated during or as a result of CBP processing.
2. DHS should prioritize reunification of all separated family members that have or will occur under the Biden administration, or any future administrations, in addition to the separations that occurred under the Trump administration.

C. Recommendations to Increase CBP Transparency and Accountability

1. CBP should publicly release the April 2023 Guidance, as well as any additional or future CBP policies or memoranda concerning family unity, and it should assess and document compliance with such guidance by Sector and Area of Responsibility, and periodically release compliance information publicly.
2. CBP should periodically release to the public data about the family groups it encounters along the southern border, including

any separations that occur during or as a result of CBP processing and detention.

3. DHS oversight agencies should conduct regular audits of CBP data to ensure it is complete and accurate, and they should release the findings of those audits publicly.
4. CBP should hold accountable officials who breach family unity policies, including through strong disciplinary actions, such as suspension and firing.