

November 28, 2018

Secretary Kirstjen M. Nielsen
U.S. Department of Homeland Security
245 Murray Lane, S.W.
Washington, D.C. 20528

Secretary Alex Azar
U.S. Department of Health & Human
Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Nielsen and Secretary Azar:

We are 112 civil liberties, civil rights, faith-based, human rights, immigrant rights, privacy, government transparency, and youth welfare and justice organizations. We write regarding your agencies' recently formalized practice of using information obtained from detained immigrant children to find, arrest, and try to deport their parents and relatives.¹ What your agencies are doing is wrong. It is also illegal.² We urge you to reverse these policies immediately.

Children enter your custody uniquely vulnerable. Many have crossed hundreds of miles of desert alone or among strangers; others are forcibly separated from their parents. Many are raped or abused en route. All of them are in physical or mental trauma.

When these children are detained, one of the first questions that Customs and Border Protection and the Office of Refugee Resettlement ask them is whether they have family or friends in the U.S. that might be able to take care of them. As one of the individuals who conducted these interviews has explained,³ many of these children understand that when they identify their parents or relatives, they put those people at risk for deportation. This guilt affects the children. Despite this, thousands of kids give up this information: they are desperate to be reunited with their families. Even worse, some of the children are misled into believing that no harm will come to their relatives as a result of being identified. Officials from your

¹ Tal Kopan, "ICE arrested undocumented immigrants who came forward to take in undocumented children," CNN, Sept. 20, 2018.

² These practices violate binding obligations under court order and federal statute to ensure the prompt release of unaccompanied children. See further discussion below.

³ Valeria Luiselli, *Tell Me How It Ends: An Essay in Forty Questions* (2017) at 49 ("This guilt weighs on some children noticeably. Many ask during their interviews if their guardians will now be at risk for deportation.").

agencies reportedly assure the children that they need not worry about the information being used against them.⁴

This is the reality: *Your agencies are taking scared, jailed children who are desperate to see their families, asking them to identify their relatives so that they can be reunited—and then using that data to find, arrest, and deport those families.* Under the new policy:

- A seven-year-old child fled Honduras after his father was murdered and his mother abandoned him. His uncle came forward and took him in. ICE agents came to their home claiming that they were checking on the child. With the child watching, the agents arrested the uncle and subsequently placed him in removal proceedings.⁵
- Two teenage brothers from El Salvador fled to the U.S. to be with their mother after a gang broke into their home and assaulted them. They gave CBP officers their mother's name and address. Soon afterwards, ICE agents called their mother, visited her home, arrested her, and then deported her to El Salvador.⁶
- A teenager from Guatemala arrived alone at the Arizona border. He told ORR officials to contact his brother, a husband and father of two young children, who was living in New Mexico. ORR officials asked his brother for a range of information, assuring him that it would not be used against him. Soon after the teen arrived in the home, ICE came and arrested his brother. The teen now holds himself responsible for his brother's arrest.⁷

This practice began in a “surge initiative” from June to August of last year.⁸ This spring, your agencies entered into an agreement and sought to issue rules to formalize this practice.⁹ These rules require, as a default, that every adult in a

⁴ Kids in Need of Defense, *Targeting Families: How ICE Enforcement Against Parents and Family Members Endangers Children* (2017) (KIND, *Targeting Families*) at 8.

⁵ National Immigrant Justice Center et al., Complaint to the Department of Homeland Security Office of Civil Rights & Civil Liberties, Dec. 6, 2017 (NIJC Complaint) at 8-9; KIND, *Targeting Families*, at 4.

⁶ KIND, *Targeting Families*, at 12.

⁷ Uriel J. Garcia, “ICE arrests young immigrant’s sponsor months after feds assured him he’d be safe,” *The Santa Fe New Mexican*, Sep. 9, 2017; KIND, *Targeting Families*, at 8-9.

⁸ NIJC Complaint at 3-4.

⁹ *Memorandum of Agreement Among the Office of Refugee Resettlement of the U.S. Department of Health and Human Services and U.S. Immigration and Customs*

prospective sponsor’s household provide fingerprints for a criminal and immigration background check. DHS has reserved the right to use this data to find and deport undocumented people that step forward to take care of a child in government custody.¹⁰ DHS also deposits their personal information—including highly sensitive biometric data—in a criminal history and immigration verification database with virtually no use or sharing restrictions.¹¹ Your agencies have taken a process designed to protect children and made it into a tool that uses them to find and deport their families.

For decades, your agencies have had binding obligations, under a federal court-sanctioned settlement and subsequent federal statute, to promptly release unaccompanied children, without delay, into the least restrictive setting possible.¹² Your policies have the opposite effect, and are therefore illegal. Already, families have become too scared to step forward to sponsor children, and children are already suffering harmful consequences. The government is detaining migrant children for twice as long as this time last year, with reports of children being transferred under cover of night to tent camps where they lack access to schooling and legal services.¹³

Family separation is a moral and medical catastrophe. The president of the American Bar Association has called systematic family separation "antithetical to our values as a country."¹⁴ The American Academy of Pediatrics has said that family separation can “cause irreparable harm,” carrying “lifelong consequences for

Enforcement and U.S. Customs and Border Protection of the U.S. Department of Homeland Security Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters (Apr. 13, 2018); 83 Fed. Reg. 20844 (May 8, 2018).

¹⁰ *Ibid* at 20845-20846 (“The purposes of this system are... [t]o identify and arrest those who may be subject to removal.”)

¹¹ DHS/ICE-007, Criminal History and Immigration Verification (CHIVE) System of Records, 83 FR 20844 (May 8, 2018) at 20845; DHS/ICE/PIA-020(c) ACRIME, Privacy Impact Assessment Update (Sept. 28, 2018) at 11.

¹² Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544- RJK(Px) (C.D. Cal. Jan. 17, 1997) at ¶ 14; The William Wilberforce Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110-457, 122 Stat. 5044, 5078 (2008) *codified at* 8 U.S.C. § 1232(c)(2)(A).

¹³ Caitlin Dickerson, “Migrant Children Moved Under Cover of Darkness to a Texas Tent City,” *The New York Times*, Sept. 30, 2018; Caitlin Dickerson, “Detention of Migrant Children Has Skyrocketed to Highest Levels Ever,” *The New York Times*, Sept. 12, 2018.

¹⁴ American Bar Association, Letter to Attorney General Sessions and Homeland Security Secretary Nielsen, June 12, 2018.

children.”¹⁵ The Inter-American Commission on Human Rights has said the “emotional and psychological impact of detention” put a separated child’s rights to family life and personal integrity at risk.¹⁶ Your policies will only separate more families, for more time.

American history is marked by notorious instances where vulnerable people gave sensitive information in trust to our government -- only to have it used against them. In the 1940s, the U.S. government promised Japanese Americans that their Census data would be used only for the Census. It then used that data to find and incarcerate them.¹⁷ In the 1970s, LGBT servicemembers turned to military chaplains, physicians, and psychologists for help. Those officials then used that information to “out” them and kick them out of the military.¹⁸ Those actions, too, were justified by specious claims of security. We now understand them to be abuses of vulnerable people.

We urge you to immediately reverse these policies.

Sincerely,

18MillionRising.org
Advocates for Youth
African American Ministers In Action
American-Arab Anti-Discrimination
Committee
American Civil Liberties Union
American Immigration Lawyers
Association
American Library Association
America's Voice
Amnesty International USA

Anti-Defamation League
Arab American Institute
Asian Americans Advancing Justice |
AAJC
Athlete Ally
Bend the Arc: Jewish Action
Brennan Center for Justice
Campaign for Youth Justice
Capital Area Immigrants' Rights
(CAIR) Coalition

¹⁵ American Academy of Pediatrics, “AAP Statement Opposing Separation of Children and Parents at the Border,” May 8, 2018; see also National Academies of Sciences, Engineering, and Medicine, “*Statement on Harmful Consequences of Separating Families at the U.S. Border*,” June 20, 2018 (noting that separation jeopardizes “the short- and long-term health and well-being” of children).

¹⁶ Organization of American States, IACHR Grants Precautionary Measure to Protect Separated Migrant Children in the United States, August 20, 2018.

¹⁷ J.R. Minkel, “Confirmed: The U.S. Census Bureau Gave Up Names of Japanese-Americans in WWII,” *Scientific American*, March 30, 2007.

¹⁸ See generally Randy Shilts, *Conduct Unbecoming: Gays and Lesbians in the U.S. Military* (1993).

Catholic Legal Immigration Network, Inc.	Florence Immigrant & Refugee Rights Project
Center for American Progress	FORGE, Inc.
Center for Constitutional Rights	Franciscan Action Network
Center for Democracy & Technology	Fred T. Korematsu Center for Law and Equality
Center for Law and Social Policy (CLASP)	Free Press
Center for Media Justice	Freedom for Immigrants
Center on Privacy & Technology at Georgetown Law	Freedom Network USA
CenterLink: The Community of LGBT Centers	Government Accountability Project
Central American Legal Assistance	Government Information Watch
Church World Service	Haitian-Americans United for Progress
Coalition for Humane Immigrant Rights (CHIRLA)	Hispanic Federation
Coalition on Human Needs	Human Rights First
Color of Change	Immigrant Legal Advocacy Project
Columbian Center for Advocacy and Outreach	In Our Own Voice: National Black Women's Reproductive Justice Agenda
Columbia Law School Immigrants' Rights Clinic	Institute for Women in Migration
Concerned Archivists Alliance (CAA)	Interfaith Worker Justice
Conference of Superiors of Men	International Refugee Assistance Project (IRAP) at the Urban Justice Center
Congregation of Our Lady of Charity of the Good Shepherd, US Provinces	Japanese American Citizens League
Constitutional Alliance	Japanese American Service Committee
Council on American-Islamic Relations	Justice For Our Neighbors East Texas
Defending Rights & Dissent	Latin America Working Group
Demand Progress	Lawyers Committee for Civil Rights Under Law
Densho	Leadership Conference of Women Religious
Deportation Defense Legal Network	Leadership Conference on Civil and Human Rights
Detention Watch Network	Legal Aid Justice Center
Electronic Frontier Foundation	Make the Road New Jersey
Electronic Privacy Information Center	Media Mobilizing Project
Equality California	Migrant Center for Human Rights
Equality North Carolina	Mijente
Faith in Public Life	

MomsRising
Muslim Advocates
NAACP
National Advocacy Center of the
Sisters of the Good Shepherd
National Asian Pacific American
Women's Forum (NAPAWF)
National Association for Bilingual
Education (NABE)
National Association of Social Workers
National Council of Jewish Women
National Hispanic Media Coalition
National Immigrant Justice Center
National Immigration Law Center
National Institute for Reproductive
Health
National Latina Institute for
Reproductive Health
National Partnership for Women &
Families
National Rural Social Work Caucus
National Women's Health Network
NETWORK Lobby for Catholic Social
Justice

New Dimensions in Wellness
Niskanen Center
Northwest Immigrant Rights Project
Open Technology Institute
Open the Government
Oxfam America
Pangea Legal Services
Pax Christi Florida
Pennsylvania Council of Churches
Progressive Peace Coalition
Project South
Restore the Fourth
Social Action Linking Together
(SALT)
Southern Border Communities
Coalition
Southern Poverty Law Center
T'ruah: The Rabbinic Call for Human
Rights
UnLocal, Inc.
URGE: Unite for Reproductive &
Gender Equity
Women's Refugee Commission