



Written Testimony of

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The American Civil Liberties Union (“ACLU”) thanks the U.S. House Committee on Homeland Security for the opportunity to submit this statement for the Committee’s hearing on the human cost of federal border policies.

The ACLU is a nonpartisan public interest organization with 4 million members and supporters, and 53 affiliates nationwide—all dedicated to protecting the principles of freedom and equality set forth in the Constitution. The ACLU has a long history of defending civil liberties, including immigrants’ rights. The ACLU vigorously defends the constitutional right of due process for both citizens and immigrants, advocates for policies that protect these rights.

The ACLU represents families that were forcibly separated at the Southern U.S. border through the Ms. L case and continues to work to ensure that the federal government identifies and reunifies thousands of migrant families. We are also one of the organizations challenging the current asylum ban. We have participated in other litigation over the years concerning the civil liberties of immigrants, and we routinely advocate in Congress and state legislatures for policies that promote due process and protections for immigrants.

Our testimony today focuses on recent policies, adopted by the Trump and Biden administrations, that have caused incredible suffering and harm to migrants.

THE FAMILY SEPARATION POLICY

The family separation policy enacted by the Trump administration ripped apart asylum-seeking parents and children and only ended because of the ACLU’s Ms. L lawsuit. The family separation policy is the most draconian, cruel immigration policy I have seen in my more than 30

years litigating at the ACLU. Unfortunately, the harm from this policy remains ongoing five years later. Yet there are still some who believe the policy should be reenacted. The ACLU is committed to ensuring that the full extent of this ongoing harm is understood and not forgotten, so that such an abhorrent policy is never again adopted.

In 2017, the ACLU learned of reports that young children arriving at the southern border with their families in search of protection, were being ripped away from their parents. In the coming months, the public learned that this was not just an accident or an exceptional mistake; rather, the federal government had adopted a deliberate policy of taking children from the parents, a policy that came to be known as the “Zero Tolerance” policy. The goal of this policy was to subject families to such cruelty that they would give up their asylum claims and to deter other asylum-seeking families from seeking refuge here. It stands out today as one of the worst episodes in our nation’s recent history.

In March 2018, the ACLU filed a national class action in federal court in San Diego (the Ms. L case) to stop this despicable practice. At the time, still months before the federal government officially announced it had an official “zero tolerance” family separation policy,¹ we were already aware of several hundred separated families. Three months later, when the court struck down the policy as unconstitutional, calling it brutal, the government reported to the court and the ACLU that there were about 2,700 families who had been separated.

Yet astoundingly, there were thousands more families who had been separated, which only came to light months after the initial court ruling. We know that there were *at least* 5500 children who were separated from their parents, and there are likely more cases that we still don’t know

¹ See, e.g., Jonathan Blitzer, “A Mother, Separated From Her Children at the Border, Comes Home,” *The New Yorker*, May 5, 2021, <https://www.newyorker.com/news/annals-of-immigration/a-mother-separated-from-her-children-at-the-border-comes-home>.

about. Of those 5500 children, more than 500 were under age five when taken away from their families. Some were just babies, still breast feeding; the youngest was only six months old.

Five years later, there remain *hundreds* of children who still have not been reunited with their parents because of the government's failure to document and keep track of the parents and children.² Many of these still-separated children were only babies or toddlers when taken from their parents and have spent nearly their entire life without their parents.

Physicians for Human Rights has stated the forcible separation of families by the U.S. government constituted torture.³ There is an "overwhelming body of scientific literature" that is "replete with evidence of the irreparable harm and trauma to children caused by separation from their parents."⁴ The president of the American Academy of Pediatrics referred to the U.S. government's family separation policy as "government-sanctioned child abuse."⁵ The American Academy of Child and Adolescent Psychiatry has warned that family separation "places already vulnerable children at increased risk for traumatic stress reactions, psychiatric disorders, and other adverse medical outcomes" and can have lifelong effects on children, particularly those who have already fled violence or conflict.⁶

² See PBS News Hour, "Hundreds of migrant children remain separated from families despite push to reunite them," Feb. 6, 2023, <https://www.pbs.org/newshour/show/hundreds-of-migrant-children-remain-separated-from-families-despite-push-to-reunite-them>; Philip Bump, *The Washington Post*, "Hundreds of immigrant families split apart under Trump remain separated," *Washington Post*, Feb.

13,2023, <https://www.washingtonpost.com/politics/2023/02/13/trump-immigrants-children-border/>.

³ Physicians for Human Rights, "*You Will Never See Your Child Again*": *The Persistent Psychological Effects of Family Separation* (2020), available at <https://phr.org/wp-content/uploads/2020/02/PHR-Report-2020-Family-Separation-Full-Report.pdf>.

⁴ Declaration of Lauren Shapiro, Exhibit 6, Ms. L.

⁵ CNN, "Doctor: Family separation is child abuse," June 18,

2018, <https://www.cnn.com/videos/us/2018/06/18/colleen-kraft-american-academy-of-pediatrics-family-separation-child-abuse-ath.cnn>; Justin Wise, *The Hill*, "American Academy of Pediatrics president: Trump family separation policy is 'child abuse'," June 18, 2018, <https://thehill.com/latino/392790-american-academy-of-pediatrics-president-trumps-family-separation-policy-is-child/>.

⁶ American Academy of Child and Adolescent Psychiatry, Statement, Separating Immigrant Children From Their Families, June 2018, https://www.aacap.org/AACAP/Policy_Statements/2018/Separating_Immigrant_Children_From_Their_Families.aspx.

These aggregate statistics and medical evidence tell the story in one respect but cannot begin to account for the lasting damage, trauma, and hardship that this policy has caused to these children and their parents. The individual stories most starkly reveal the cruelty.

One of the separated mothers we represented was forced to strap her 18-month-old son into the back seat of a border patrol vehicle and not allowed to comfort the hysterical child before federal officers took her child away. The mother recounted that as the car drove away with her baby, she could see him craning his neck to get one last look at her glimpse of her out the window.

Another separated child was a four-year-old little boy who wore glasses. When immigration agents came to take him away, he fortunately had his glasses with him, but was not able to retrieve the case for his glasses. His mother worried every day whether the government would show him where he could keep his glasses safe at night or whether they would get him a new pair if they broke.

Another father reported that he was denied even a few minutes to brace his son for what was about to happen. Instead, his child was pulled away while holding his father's leg and begging to know what was happening and where he was being taken. Mothers and fathers were often not even told where their children had been taken or given the chance even to say goodbye, left only to wave to them through a glass window as they were led away. Ms. L, the lead plaintiff in the ACLU's lawsuit, only learned that her 6-year daughter old was being taken away because she heard her scream from the next room, "Mommy, don't let them take me."

The fear, trauma, and suffering hasn't ended even for those families who have been reunited. Another mother told us that even after being reunited with her four-year-old son, he continued to ask if he would be taken away again in the middle night when he went to sleep. Another three-year-old boy would stand by the window after he was finally reunited,

looking to see if people were coming to take him away again. These children may remain traumatized the rest of their lives.

But it is not just the children who suffered. The parents have also understandably been traumatized by this policy, as it destroyed their relationship with their children. Many of the children were too young to understand that their parents could not stop what was happening. They would stare into their parents' eyes as they were screaming not to be taken away, watching as their parents just starred back helplessly. When the children were finally reunited, they would ask their parents why they didn't fight for them and why didn't they love them enough to keep them. When I was in El Salvador to meet with our clients, I met a father who broke down crying when he recounted that the very first thing his 8-year-old child said to him when he was finally reunited was "Papi, why do you let them take me?"

The trauma these families and young children experienced will have a lasting impact on their lives and is a stain on our nation. Going forward, we must commit to ensuring that our government never returns to such a heinous policy of harming children and their families. We all have an obligation to make sure that this shameful chapter in our history is never repeated.

ASYLUM BANS

Although the family separation policy has ended for now, federal and state agencies continue to use abusive and unnecessary tactics to stop asylum-seeking children and others from getting protection in the United States. Right now, children and their families arriving at our Southern border continue to face myriad challenges and abuses when they try to seek protection.

The current Biden administration asylum ban, which the ACLU and partners are challenging in federal court, has left many families stranded in life-threatening conditions along the border while they wait for a rare CBP appointment and opportunity to request help at a port of

entry. Since this new asylum ban went into effect in May, it has already threatened the lives of many children and their parents trying to apply for asylum in the United States. Asylum-seeking parents, forced to wait in Mexico for a rare CBPOne appointment, have had to sleep in encampments with cable wires tied around their children to ensure their children are not abducted, abused, and potentially trafficked in the middle of the night.⁷ While waiting in these life-threatening conditions where migrant families are an easy and predictable target, women have been raped and whole families have been kidnapped even tortured.⁸

We also know from past asylum bans that restricting access to asylum leads to horrific harms. In *Huisha-Huisha v. Mayokas*, the ACLU and partners' case challenging the exclusion of asylum seekers under the infamous Title 42 policy enacted by the Trump administration and retained by the Biden administration, the Court of Appeals for the D.C. Circuit observed that asylum seekers faced horrible abuses when turned back to places where they faced torture or persecution. Judge Walker, writing for the Court, observed that for families who were turned back to Mexico without an opportunity to apply for asylum, "the record is replete with stomach-churning evidence of death, torture, and rape." Indeed, the Court noted that for those forced to walk back across the bridge back to Mexico, it was as if they were "forced to walk the plank into those places."⁹

It is not only criminal gangs that are threatening the safety and well-being of these families. This summer when the state of Texas put razor-wire-wrapped buoys in the Rio Grande, over 130 migrants were reportedly injured and needed medical treatment because of this callous attempt to

⁷ Human Rights First, *Refugee Protection Travesty: Biden Asylum Ban Endangers and Punishes At-Risk Asylum Seekers* (2023), https://humanrightsfirst.org/wp-content/uploads/2023/07/Refugee-Protection-Travesty_Asylum-Ban-Report_July-2023-1.pdf

⁸ *Id.*

⁹ *Huisha-Huisha v. Mayokas*, 27 F.4th at 733 D.C. Cir. (2022).

stop asylum seekers from out of the United States.¹⁰ Among those injured were children stuck on the wire-wrapped buoys and a young pregnant woman who miscarried while caught in the wire.¹¹ According to news reports and information from a whistleblower, Texas troopers were ordered to refuse water to migrants and push even young children back into the river,¹² and in recent weeks, it has also emerged that fathers were separated from the rest of the families without being given information on where their children and partners were.¹³ These intentional and dangerous acts are a continuation of our government's harsh and harmful treatment of children and their parents who seek safety at our borders.

Our border policy has for too long put children, their parents, and other asylum seekers and migrants in danger when they come to the United States seeking protection. We must ensure that our country does not shrink from its long and rightly-celebrated commitment to providing an opportunity for those in danger to seek protection.

¹⁰ Benjamin Wermund, "Texas Troopers Treated 133 Migrants for Injustices From Razor Wire Over Two Months This Summer," *The Houston Chronicle*, Aug. 30, 2023,

<https://www.houstonchronicle.com/politics/texas/article/border-wire-injuries-18336354.php>.

¹¹ Benjamin Wermund, "Texas troopers told to push children into Rio Grande, deny water to migrants," *The Houston Chronicle*, July 17, 2023, <https://www.houstonchronicle.com/politics/texas/article/border-trooper-migrants-wire-18205076.php>; see generally, Benjamin Wermund & Jeremy Wallace, "Razor wire along the Rio Grande is blocking border agents from reaching at risk migrants," *The Houston Chronicle*, July 11, 2023,

<https://www.houstonchronicle.com/politics/texas/article/texas-border-razor-wire-memo-18193102.php>; John C.

Moritz, Michael Collins, & Francesca Chambers, "Two found dead in Rio Grande where Texas' floating barrier and razor wire sparked federal lawsuit" *USA Today*, <https://www.usatoday.com/story/news/politics/2023/08/03/two-dead-in-rio-grande-where-texas-installed-razor-wire-and-buoys/70522492007/>; Peter Breen, "3 takeaways from DPS trooper's email about the state of the Texas border," *The Houston Chronicle*, July 18, 2023,

<https://www.houstonchronicle.com/news/houston-texas/trending/article/border-injury-death-razor-wire-trooper-email-18206609.php>.

¹² Benjamin Wermund, "Texas troopers told to push children into Rio Grande, deny water to migrants," *The Houston Chronicle*, July 17, 2023, <https://www.houstonchronicle.com/politics/texas/article/border-trooper-migrants-wire-18205076.php>.

¹³ Acacia Coronado, "Texas separates migrant families, detaining fathers on trespassing charges in latest border move" *Associated Press*, Aug. 4, 2023, <https://apnews.com/article/texas-immigration-family-separation-a652cafd5270b097d0ebcc034796b8>; Brittany Gaddy, "Texas Department of Public Safety separating several fathers from families seeking asylum, immigration attorney says," *ABCNews*, Aug. 4, 2023,

<https://abcnews.go.com/US/texas-department-public-safety-separating-fathers-families-seeking/story?id=101969972>; Rosa Flores & Sara Weisfeldt, "Texas is separating families at the border in apparent 'harsh and cruel' shift in policy, immigration attorney says," *CNN*, Aug. 2, 2023, <https://www.cnn.com/2023/08/02/us/texas-border-policy-separating-families/index.html>.