



**Lutheran Immigration
and Refugee Service**

Written Statement of

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For a Hearing of the House Homeland Security Committee

"The Department of Homeland Security's Family Separation Policy: Perspectives from the Border"

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301 Cannon House Office Building

LIRS (Lutheran Immigration and Refugee Service) appreciates the House Homeland Security Committee for having a hearing in “The Department of Homeland Security’s Family Separation Policy: Perspectives from the Border,” and providing us an opportunity to submit this written statement for the record.

LIRS has worked with unaccompanied refugee and immigrant children in the United States for nearly forty years, and with the Office of Refugee Resettlement (ORR) since they first were assigned custody of unaccompanied children in 2003. LIRS was contacted by the federal government to provide family reunification services throughout the recent child separation crisis brought about due to the administration’s “zero tolerance” policy (ZTP). We responded to the challenge¹. Without financial assistance from the federal government, LIRS raised funds, mobilized our network of partners, and came to the aid of separated families². Specifically, LIRS provided tired and traumatized families clothing, food, shelter, and with the support of FWD.org, we helped families secure travel arrangements to their final destinations in the United States.

Like many, LIRS was deeply concerned by the administration’s practice of tearing apart families, detaining children, use of deceptive practices, and blatant disregard for child welfare laws and standards. We believe, and have stated for years, that the safest and best place for children is with their families and not in detention. From our historical vantage point and first-hand experiences working with unaccompanied children, LIRS puts forth this statement for the record in part to notify Congress that-to this day-families continue to be separated at our southern border, and to highlight our concerns and recommendations for maintaining child welfare protections for children from the time they are apprehended at the southern border until the conclusion of their immigration proceedings.

The Fallacy of Family Separation

“Don’t come to the United States” was the underlying message to families and children of the Zero Tolerance Policy (ZTP). Documented through testimonies by federal government officials before the House and Senate Homeland Security and Judiciary Committees, government reports and leaked documents. This policy was

¹ LIRS’s sister organization, United Conference of Catholic Bishops (USCCB) was also instrumental in the family reunification efforts in California. LIRS assisted in Albuquerque, New Mexico and Phoenix, Arizona. ***Please see attached report:*** The United States council of Catholic Bishops/Migration and Refugee Service and Lutheran Immigration and Refugee Service. 2018. ‘Serving Separated and Reunited Families: Lessons Learned and the Way Forward to Promote Family Unity. Also available online at: https://www.lirs.org/wp-content/uploads/2018/10/Serving-Separated-and-Reunited-Families_Final-Report-10.16.18-updated.pdf).

² Id.

perceived to be a rational means of enforcing our immigration laws and for immigration deterrence. This is unacceptable. What's more, the government continues to deny that it had a policy to separate families and having prior knowledge that the ZTP would inflict life-long mental and physical trauma onto separated children³.

Inexplicably, family separation has been justified by the administration on the basis of two falsehoods; that our immigration laws and system are purposefully being exploited by children and families and that in order to stem the flow of migrants from Guatemala, Honduras and El Salvador (collectively referred to as the Northern Triangle) separating families would serve as a deterrent.

Contrary to the government's repeated claim that children and families arriving at our southern border are exploiting loopholes in our immigration laws -seeking asylum *is legal*, at a port of entry or between ports of entry⁴. Moreover, LIRS is alarmed to hear government officials speak about laws that take into account child welfare standards as loopholes. This attitude undermines our nation's values and our position as a global leader in human rights.

The second falsehood; that family separation would serve as a deterrent to migration demonstrates the ignorance and cruelty that went into planning and implementation of the ZTP. There is an abundance of open source information that documents and explains the lives of innocent civilians from the Northern Triangle who are at risk and suffering from an exponential increase in gang violence and territorial control, corruption, and extortion⁵. Women are distinctly impacted by high rates of domestic abuse and violence and are exceptionally vulnerable because of the inherent lack of will by police and their governments to prosecute and protect women from violence⁶.

³ Zolan Kanno-Youngs and Michael D. Shear, 'Homeland Security Chief spars with Democrats Over Splitting Migrant Families,' *New York Times*, March 6, 2019.

⁴ 8 USC §1158 (a)(1) "Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum."

⁵ Rocio Cara Labrador and Danielle Renwick, June 26, 2018, 'Central America's Violent Northern Triangle,' *Council on Foreign Relations* (Available at: <https://www.cfr.org/background/central-americas-violent-northern-triangle>), Maureen Meyer and Elyssa Pachico, February 1, 2018, 'Fact Sheet: U.S. Immigration and Central American Asylum Seekers,' *Washington Office on Latin America*, (Available at: <https://www.wola.org/analysis/fact-sheet-united-states-immigration-central-american-asylum-seekers/>), Tyler Takemoto, January 22, 2019, 'Understanding the Causes of Migration from Central America,' *Pacific Council on International Policy*, (Available at: <https://www.pacificcouncil.org/newsroom/understanding-causes-migration-central-america>)

⁶ Maria Fernanda Perez Arguello and Bryce Couch, November 8, 2018, 'Violence Against Women Driving Migration from the Northern Triangle,' *Atlantic Council*, (Available at: <https://www.atlanticcouncil.org/blogs/new-atlanticist/violence-against-women-driving-migration-from-the-northern-triangle>), Jeffrey Hallock, Ariel G. Ruiz Soto, and Michael Fix, May 30, 2018, 'In Search of Safety,

Thus, the main driver of families fleeing the Northern Triangle is not because they believe they can exploit loopholes in the immigration system. Rather, higher rates of children, women and families migrating to the United States from the Northern Triangle region is based on the credible fear that families have for their individual safety and/or the safety of their family unit. As such, many children and families who arrive on our southern border have had to make life-death decisions and sacrifice their homeland to make the treacherous journey to our southern border.

LIRS Stands Firmly in Opposition to Detaining Children and Families

Based on our experiences working with children, medical and psychological reports, established legal principles, and past practices, LIRS maintains that under no circumstance is detention of any length in the best interest of the child⁷. For these reasons, LIRS cannot understand why the administration remains steadfast in defending family separation at the border especially when there are human and financial costs and consequences associated with detaining children.

Family Separation harms children's mental and physical development

There is widespread consensus from medical experts that detention is detrimental to the overall health and wellbeing of children and carries numerous short and long-term health risks. Researchers, for instance, have found that the impacts of trauma children have endured in their home countries is compounded by family separation and that children could suffer from toxic stress which can have a lifelong impact. PBS explains that:

“Children being separated from their parents at the border experience toxic stress — intense, repetitive or prolonged adversity without an adult’s intervention — a situation that’s usually seen when a child is placed in an orphanage, survives a natural disaster or lives in poverty, a war zone or a refugee camp⁸.”

Growing Numbers of Women Flee Central America,’ Migration Policy Institute, (Available at:

<https://www.migrationpolicy.org/article/search-safety-growing-numbers-women-flee-central-america>)

⁷ Miller, D. July 24, 2018. Pediatricians Speak Out: Detention is not the Answer to Family Separation. AAP News and Journals (Available at: <http://www.aappublications.org/news/2018/07/24/washington072418>).

⁸ Laura Santhanam, June 18, 2018, ‘How the toxic stress of family separation can harm a child,’ PBS. (Available at: <https://www.pbs.org/newshour/health/how-the-toxic-stress-of-family-separation-can-harm-a-child>), Laura CN Wood, 2018, ‘Impact of punitive immigration policies, parent-child separation and child detention on the mental health and

Administration officials have also voiced opposition to ZTP. Commander White, a career public health official at the Department of Health and Human Services, for instance, raised concerns back in 2017 about the impact of ZTP on children, but they went unheeded. Additionally, the government's own medical doctors, Drs. Allen and McPherson, have voiced their concerns on the physical and psychological harms of separating children from their parents and placing them into detention.

Family Case Management is in the best interests of the child

We contend that placing children in the least restrictive setting is in the best interest of the child and a more appropriate and cost effective approach for the government. Family detention is *NOT* the least restrictive setting. Having children in detention, even with their families, poses a threat to their health and mental well-being and exposes them to mental, physical and sexual abuse. Best practice standards include home-like settings, such as, community based foster care or group care where there are no more than 20-25 children and youth at one location.

Alternatives to detention (ATD), such as the Family Case Management Program (FCMP) have proven to be successful, more child-friendly and a cost-effective alternative to detention. FCMP offers a community-based approach to detention whereby case managers help migrants understand their immigration obligations and ensure that they attend check-ins with ICE and court hearings.

Since the 1990's LIRS has first-hand experience providing community based alternative to detention programs, such as, FCMP⁹. From 2013- 2015, LIRS operated ATD pilot programs in partnership with ICE in Chicago, Illinois and San Antonio, Texas. Following these pilots, ICE expanded its "traditional forms of release (such as parole, bond, or order of supervision), to include case management in the Family Case Management pilot program¹⁰." The FCMP pilot was launched 2015 and, despite its successes, the program was canceled by the administration in June 2017. The Office of Inspector General reports that 99% of individuals who participated in the FCMP attended their check in appointments with ICE and 100% attended their court hearings. Significantly lower

development of children', *BMJ Pediatrics Open*, 2(1). (Available at: <https://bmjpaedsopen.bmj.com/content/bmjpo/2/1/e000338.full.pdf>)

⁹ *Supra* note 1.

¹⁰ *Id.* at 14.

costs is another benefit of FCMP. Detaining families, costs the government \$320 per day, the FCMP only costs \$38 per day¹¹.

Alternatives to detention are not only more beneficial to tax payers and the justice system, keeping children in a community environment as opposed to detention is safer. There have been many news reports that highlight the inhumane conditions at detention facilities and instances of mental, physical and sexual abuse of children in government custody. Specifically, the government is currently facing lawsuits by former immigrant family and children detainees that allege that the government did not provide clean water, food, and adequate medical care to children and adults in detention¹².

Family Separation is Ongoing and LIRS is concerned with the Enduring Practice and Legacy of Family Separation

The reversal of the 2018 family separation policy has little bearing on current practices and it remains a reality for children and families at our border. On January 17, 2019, the Office of Inspector General released a report that revealed that ZTP was piloted in El Paso, Texas, in 2017, long before the policy was formally announced¹³. Sadly, the government continues to split families apart at the border. LIRS has documented 10 cases of children separated from family members¹⁴ just in February, and the Texas Civil Rights Project reports that it has interviewed 272 adults separated from a child family member since the end of ZTP¹⁵. To which, the TCRP says:

¹¹ Women's Refugee Commission, November 2018, 'Backgrounder: Family Case Management Program,' (Available at: <https://www.womensrefugeecommission.org/images/zdocs/Backgrounder-FCMP.pdf>).

¹² Lucas R. v. Alex Azar (2:18-cv-05741) District Court, C.D. California. Also see, Alexandra Hutzler, 'Five Immigrant Children sue Trump administration over 'Jail-like' detention conditions,' *Newsweek*, June 30, 2018. (Available online at: <https://www.newsweek.com/immigrant-children-sue-trump-cruel-detention-conditions-1002920>), Priscilla Alvarez, January 22, 2019, 'Groups sue on behalf of more than 10,000 detained undocumented children. *CNN: Politics* (Available at: <https://www.cnn.com/2019/01/22/politics/class-action-child-detention/index.html>).

¹³ U.S. Department of Health and Human Services, Office of Inspector General. 'Separated Children Placed in Office of Refugee Resettlement Care,' HHS OIG Issue Brief OEI-BL-00511, January 2019, (Available at: <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf>).

¹⁴ 10 may not seem like a large number of separations, however, when taking into account that LIRS unaccompanied children's work is 1% of the larger network of service providers that assist unaccompanied children, having 10 cases in one month is alarming.

¹⁵ Laura Pena and Efren C. Olvares, February 14, 2019, 'The Real National Emergency: Zero Tolerance & Continuing Horrors of Family Separation at the Border,' Texas Civil Rights Project. (Available at: <https://texascivilrightsproject.org/familyseparations-report/>).

“To date, the government has not reported these children to anyone—neither to the courts nor to Congress—and the government has admitted it may be impossible to find all separated children¹⁶.”

LIRS fully supports the government when they have concern that a child has been trafficked and/or abused and determines that it is in the best interest of the child to separate the child from their family member at the border until it can be determined that the child’s safety is not endangered. What troubles LIRS is three-fold: (1) the opaque standards the government uses to separate a children; (2) that CBP agents are making the decisions to separate children, and (3) that the government separates children from their non-parental primary caretakers, such as: grandparents, uncles and aunts.

Separated children were not tracked properly, if at all

The Office of Inspector General has reported that the administration failed to track separated children throughout the pilot and the duration of the ZTP. Initially, despite claiming otherwise, the government did *not* have an inter-agency database system in place to track families that they separated¹⁷. Pre-verbal children were separated from their parents with no identification tags or information as to who and where their parents were detained¹⁸. And as a result, to this day, the government has not reunified all the children it separated during ZTP.

Common sense dictates that if you are creating a policy designed to separate children and families that there will be provisions in place to reunify. Yet, the incompetence demonstrated by the administration reflects the malicious manner in which the ZTP was carried out then, and now. LIRS is not convinced that adequate changes in policy and procedure have been made and are deeply concerned because we continue to encounter separated children.

¹⁶ Id at 3.

¹⁷ U.S. Department of Homeland Security Office of Inspector General. ‘Special Review-Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy, OIG-18-84, September 27, 2018(Available at: <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>)

¹⁸ Id.

LIRS Family Separation Recommendations

One of the overarching messages that emerged from the ZTP, is that the majority of American's stand opposed to locking up kids in cages to further the administration's immigration enforcement agenda. In this statement for the record, LIRS has discussed our experiences working with children and families impacted by ZTP and our concerns that the administration is continuing to separate families. Compounding this crisis, the government has not proven that it understands how ZTP was harmful to children and correspondingly it has not introduced sufficient measures to protect children and prevent another ZTP crisis. From our experiences we recognize that defending children's rights and protecting their legal and humanitarian rights is critical to ensuring our moral standing as a nation but, even more important, we believe that all children are deserving of protection and kindness. We offer the following recommendations in relation to family separation at the border:

(1) LIRS strongly believes that all families should be reunified as soon as possible. According to the HHS-OIG, in addition to the 2,700 children the government admits to separating, thousands more children may have been separated under the ZTP¹⁹. The government has already indicated that it is reluctant to take necessary steps to ensure that all children and families are reunited²⁰. We cannot allow the administration to forego its responsibilities to reunite all families, the government owes this to the families they separated and to the American public.

(2) LIRS believes that the government must remain committed to the 'best interests of the child' principles in full accordance to the Flores Settlement Agreement (FSA). Last Fall, the Department of Homeland Security (DHS) and the Health and Human Services (HHS) issued a Notice of Proposed Rulemaking that, if adopted, the proposed regulations would not only permit families to be detained, but also would allow for the indefinite detention of children²¹. LIRS recommends that Congress continue to defend the FSA and take action by codifying into law the child welfare protections contained in the FSA.

¹⁹ *Supra* note 12.

²⁰ Jacob Scoboroff, and Dennis Romero, February 2, 2019, 'Finding all migrant children separated from parents may be impossible, feds say,' *NBC News*. (Available at: <https://www.nbcnews.com/news/us-news/finding-all-migrant-children-separated-their-families-may-be-impossible-n966266>)

²¹ "Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children", 83 Fed. Reg. 45484 (September 7, 2018).

- (3) Separating children from their families should never again be used for the purpose of immigration deterrence.** LIRS recognizes that under the best interests of the child there are exigent situations that require CBP to separate children from their families, in cases of possible human trafficking or child abuse. Family separation should never be employed as an immigration deterrence policy. It is cruel, inhumane, inflicts lifelong mental and physical trauma on vulnerable children and is costly.
- (4) DHS must employ child welfare experts to assist in making family separation decisions.** Trained child welfare staff should be engaged in making family separation determinations. This will help to ensure that procedures are trauma informed and child focused. CPB and ICE agents are experts in law enforcement not child welfare. Therefore, they are not equipped to provide the kind of forensic interview with children that is warranted before making a determination to separate a caregiver from a child.
- (5) Increasing detention beds is not an appropriate response to the humanitarian crisis at the border, instead, the government should use its limited resources to fund alternatives to detention, like, Family Case Management.**

Congress has approved \$30.5 million dollars in the FY2019 budget for family case management. LIRS believes that non-profit community-based organizations, not for-profit correction's institutions are better placed and better equipped to run FCMP. Community based organizations can offer children and their families trauma informed care and services. Providing services through a trauma informed lens has proven to work as reflected by the high rates of immigration compliance from migrants who participate in FCMP.