



NEW YORK
CITY BAR

**COMMITTEE ON IMMIGRATION &
NATIONALITY LAW**

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CHAIR
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January 24, 2022

U.S. Department of Homeland Security
Attn: Michelle Brané, Executive Director
Interagency Task Force on the Reunification of Families
Via Federal eRulemaking Portal: <https://www.regulations.gov>

Re: Docket No. DHS-2021-0051, Identifying Recommendations to Support the Work of the Interagency Task Force on the Reunification of Families

Dear Ms. Brané and Members of the Task Force:

The Immigration and Nationality Law Committee (“Committee”) of the New York City Bar Association appreciates the opportunity to provide comments to the Interagency Task Force on the Reunification of Families (“Task Force”) concerning recommendations for preventing family separation, as requested in the above-referenced Federal Register notice.¹ The Committee recommends steps toward mitigating the traumatic harm experienced by children and families who were separated under the prior administration’s policies and fostering their resilience.²

The Committee appreciates the Task Force’s public commitment to the critically important work of reunifying families separated during the prior administration in connection with the policy denominated “Zero Tolerance.” The Zero Tolerance policy undermined the national goal of fostering family unity that has been in place for over fifty years; indeed, in a 1957 speech proposing legislation that would ultimately evolve into the Immigration Act of 1965, President Dwight Eisenhower stated that “[i]t is immoral to keep [families] separated.” It

¹ Available at: <https://www.regulations.gov/document/DHS-2021-0051-0001>. (All sites last visited Jan. 24, 2022).

² See also “Restoring Civility, Due Process, and Functionality to the United States Immigration System: Recommendations Respectfully Submitted to the Biden-Harris Administration,” New York City Bar Association, Feb. 2021, at 3-7, available at: <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/immigration-reform-biden-harris-transition-recommendation>.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

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is widely recognized that the Zero Tolerance Policy resulted in egregious violations of the human rights of children and families, and that its goals of deterrence made it one of the most horrific immigration measures in the history of the United States. There is no question that the Zero Tolerance policy inflicted unprecedented suffering, distress, and detrimental and traumatic impacts on more than 5,000 children through separation from their families.

In addition, to the extent that children and families remain separated, they are subjected to ongoing psychological, developmental, social and emotional injury for which no adequate recompense can be made. Children and families who have been separated will continue to experience the long-term sequelae of trauma during the reunification process and even after they have been reunited. In sum, by forcibly separating children from their families, the past administration's Zero Tolerance Policy mobilized an intergenerational trauma for children and families.

It is imperative that the Biden Administration act swiftly to develop and implement policies and practices that prioritize the well-being of all children who migrate to the United States, and ensure that no child is ever again torn from their parent regardless of their status as noncitizens. The Administration's policy priorities must also address ongoing child-parent separations and other enforcement tactics that violate the human rights of vulnerable children and fail to adequately protect them from harm. Importantly, these reforms must encompass policies that provide access to comprehensive mental health and treatment services for injured children and families.

We ask that the Administration take concrete steps toward the goals of creating a system that prioritizes the best interests of children at all times, promotes family unity, prevents the trauma of separation, and affords adequate resources for needed culturally-based mental health and treatment services that mitigate traumatic harm and foster resilience. Specifically, the Administration should develop clear and rigorous guidelines that prioritize keeping families together, except in specific cases where there is clear and convincing evidence that a child may be in danger. In addition, the Administration should ensure that qualified child welfare and mental health professionals are present at the border and are involved in all interactions with children and families. We further recommend establishing accessible and transparent procedures for challenging family separation decisions that allow for rapid resolution of contested cases. Finally, we recommend systematically documenting any instances of family separation through enhanced record-keeping policies and practices so children and their families can be quickly reunified and separated children are not lost in the system.

The Task Force must act to ensure not only the reunification of all separated families, but also the commitment of adequate resources and support necessary for mitigating the injuries those children and families have experienced and fostering their resilience. And, once reunited, families should be allowed to seek asylum or any other forms of relief from deportation. Furthermore, policies that separate children from their parents, causing extensive and potentially long-term trauma, must be banned. No child or family should ever endure the trauma of forcible separation, which violates a child's and family's human rights and norms of child welfare and child protection that are well-established in the United States.

Thank you for considering these comments, and we look forward to hearing of concrete plans through which the Task Force will mitigate some of the worst harms of this widely reviled policy while reinstating the primacy of family integrity, child welfare, and human rights.

Respectfully,

Danny Alicea, Chair
Immigration & Nationality Law Committee

Contact

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