

Stakeholder Intervention on the Second Periodic Review of the United States of America.

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RE: SEPARATION OF FAMILY MEMBERS, ESPECIALLY OF PARENTS FROM CHILDREN THEIR IN DEPORTATION PROCEEDINGS CARRIED OUT BY AGENCIES OF THE UNITED STATES GOVERNMENT

1.0 Background and Framework.

1.1 In the first round of the UPR in 2010 the US Human Rights Network (USHRN) called on the US Department of Homeland Security (DHS) to reform its immigration system to ensure due process and to protect family unity¹. In addressing these concerns, the US Department of Homeland Security has revised some of its policies in an attempt to reduce the number of family separations. For instance, in January 2012 The US Immigration and Customs Enforcement Agency (ICE) issued Policy 11022.1: Detainee Transfers². Among other goals, this Directive establishes criteria for transfer decisions intended to substantially reduce the transfer of detainees who have family members in the area from out of which they might be transferred.

1.2 On August 23, 2013 ICE issued Directive 11064.1 on Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities³. This Directive applies to immigrants who are not US citizens, regardless of whether or not their children are US citizens. The directive does not suspend or block the deportation of parents when deportation would separate them from their children. It only facilitates in a limited way the participation of detained parents in family court proceedings related to the custody and welfare of their children, and only while the parents' case is still being processed. It does not consider family unity nor the rights of the child in the decision-making process with regard to the deportation of the parents.

1.3 The Memorandum of Understanding (MOU) between the Department of Homeland Security of the USA and the Secretariat of Governance and the Secretariat of Foreign Affairs of the United Mexican States on the Safe, Orderly and Dignified Repatriation of Mexican Nationals of February 2004⁴ states in Article 3e that “the unity of families should be preserved during repatriation, taking into consideration administrative parameters...”

2.0 FAILURES

2.1 The policy directives and the MOU indicated above are not adequate to safeguard the interests and welfare of parents and children, much less of other family members. The Department of Homeland Security and the US Immigration and Customs Enforcement Agency are routinely separating large numbers of parents from their children. When parents of children who are US citizens are in detention and/or deported their children are entrusted to Child

Welfare Courts that whenever possible place the children with relatives of the family or with friends of the parents who are then recognized as guardians. However the Child Welfare Courts also place children in foster care with people who are complete strangers to them. The report *Falling through the Cracks*⁵ estimates that at least 5,100 children who are US citizens and are currently living in foster care have parents who are detained or have been deported. In some cases the parents who are separated from their children lose all contact with those children.

2.2 The US Department of Homeland Security (DHS) has itself recognized that DHS policies and actions often separate family members from one another. For example, in a report to Congress in March 2012 the DHS admitted that in just the first half of 2011 it had deported 46,486 parents of children who are US citizens⁶.

2.3 Information obtained by Color Lines from DHS through the Freedom of Information Act reveals that 204,810 parents of children who are US citizens were removed from the U.S. between July 1, 2010 and September 31, 2012⁷.

2.4 The data given in the previous two paragraphs does not include the separation of other parents from their children who are not US citizens. The “Kino Report”⁸ is based on interviews with persons deported to Mexico along the US-Mexican border. Through these interviews it was established that of those parents who were deported to the northern Mexican border from January through March 2012, almost one in three of the persons interviewed (32.0%) had at least one child living in the United States. An estimated 1,971 parents who were deported to this border area of Mexico during the first quarter of 2012 had at least one child but no spouse still living in the U.S. It is likely that during the first three months of 2012 alone, at least 1,971 children were left in the U.S. without either parent. Reliable estimates indicate that in 2012 roughly 150,000 children were separated from at least one of their parents by deportation⁹.

2.5 The consequences of separating children from their parents are dire, especially if the parents are imprisoned or deported. Children forcibly separated from one or both parents are often subject to emotional trauma, feelings of grief and loss, and psycho-social regression, sometimes developing Post Traumatic Stress Disorder (PTSD), and they are very often deprived of financial security. All this can have a very negative impact on the children’s cognitive, relational, social and emotional development, including detrimental consequences for educational performance and behavioral issues. Such children are vulnerable to abuse of all types (i.e., emotional, physical and sexual) as well as to temptations to abuse alcohol or drugs. They are also at risk of being trafficked or of being recruited into criminal gangs.

2.6 In the experience of our members who work with immigrants, the separation of parents from their children is a primary reason why many deported persons attempt to re-enter the United States without documentation; they enter, to be with their children. Unfortunately if these parents are apprehended at the border in the attempt to re-enter they are then criminalized, making it even more difficult for them to ever reunite with their children or to care for them. In

mid-2014 thousands of children are also attempting to enter the USA without documents in order to reunite with their families. The need to be with one's family is a powerful human motivator.

2.7 Detention and Deportation proceedings also separate married people from each other, as well as from their children. Even when spouses and children are apprehended together in the border area, they are routinely separated from each other in detention. Sometimes they are even deported to different cities, and have difficulty re-establishing communication with each other. This separation renders them vulnerable to becoming victims of every form of criminal activity and can place them in physical danger, in addition to the psychological trauma that it causes. This is an indication that US authorities do not make adequate attempts to identify members of families or give adequate importance to the principle of family unity. The protection of Family Unity is a principle of International Law. The Integrity of the Family is also a social good that benefits society by fostering stability, emotional and financial security and protection of the most vulnerable. The US Government must recognize the fundamental right of migrant families to maintain the unity of their families.

3.0 RECOMMENDATIONS

- 3.1 The US Department of Homeland Security (DHS) and the US Immigration and Customs Enforcement Agency (ICE) should acknowledge the human right of families to remain united and/or be reunited and the fundamental obligation of states to protect this right.
- 3.2 The US Department of Homeland Security (DHS) and the US Immigration and Customs Enforcement Agency (ICE) should further revise their policies regarding detention and deportation proceedings to avoid separating family members from each other. For example DHS/ICE should permit parents to make telephone calls in order to arrange for the care of their children; DHS/ICE should facilitate visits of children to their detained parents as well as enable telephone calls between parents and children.
- 3.3 The DHS and ICE should give their agents adequate training to be able to determine relationships between detained persons, to recognize family units and to enable members of a family to remain in communication with each other at every stage of detention and deportation proceedings.
- 3.4 Both federal and privately contracted detention centers should permit NGOs and other civil society groups to have free access to detained persons in order to help them find and re-establish communication with members of their families from whom they have been separated by detention. Until such familial ties have been verifiably re-established, no detainee should undergo deportation proceedings.”

APPENDIX I: END NOTES

¹ A/HRC/WG.6/9/USA/3/Rev.1, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1, section B-10 on Migrants, refugees and asylum-seekers #76.

² <http://www.ice.gov/doclib/detention-reform/pdf/hd-detainee-transfers.pdf>

³ http://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf

⁴ <http://www.ice.gov/doclib/foia/repatriation-agreements/memo-of-understanding-safe-orderly-dignified-humane-repatriation-of-mexican-nationals.pdf>

⁵ *Falling Through the Cracks: The Impact of Immigration Enforcement on Children Caught Up in the Child Welfare System*, a report of the Immigration Policy Center of the American Immigration Council and of First Focus, December 2012;
http://www.immigrationpolicy.org/sites/default/files/docs/falling_through_the_cracks_3.pdf

⁶ 2012. Deportation of Parents of U.S.-Born Citizens, Fiscal Year 2011 Report to Congress, Second Semi-Annual Report, Washington, DC: U.S. Immigration and Customs Enforcement, Department of Homeland Security, March 26, 2012. (Cf. <http://www.lirs.org/wp-content/uploads/2012/07/ICE-DEPORT-OF-PARENTS-OF-US-CIT-FY-2011.pdf>)

⁷ Deportations of Parents of U.S.-Born Citizens 12/2012, information obtained by Color Lines through Freedom of Information Act.
http://colorlines.com/archives/2012/12/us_deports_more_than_200k_parents.html
http://www.scribd.com/doc/116875649/Deportations-of-Parents-of-U-S-Born-Citizens-12-2012?secret_password=2alzgcasiwglnk94xcpl

⁸ The “Kino Report” of February 13, 2013 is a joint report of Jesuit Refugee Services/USA, Jesuit Conference of the United States and the Kino Border initiative entitled *Documented Failures, the Consequences of Immigration Policy on the U.S.-Mexico Border*. It is based largely on interviews in the border area with persons who were deported from the USA.

⁹ Sara Satinsky et al., *Family Unity, Family Health: How Family-Focused Immigration Reform Will Mean Better Health for Children and Families*, Human Impact Partners, June 2013,
<http://www.familyunityfamilyhealth.org/uploads/images/FamilyUnityFamilyHealth.pdf>