

**House Committee on Homeland Security:
Subcommittee on Border Security, Facilitation and Operations**

**Hearing entitled: “The Department of Homeland Security’s Family Separation Policy:
Perspectives from the Border,”**

Written Testimony of Michelle Brané
Director, Migrant Rights and Justice Program
Women’s Refugee Commission

Washington, DC
March 26, 2019

Thank you for this opportunity to testify about the Department of Homeland Security’s Family Separation Policy, an extremely important matter that profoundly affects the lives of vulnerable migrant and refugee children and families seeking safety and our fundamental values as a nation.

The Women’s Refugee Commission is a non-governmental, non-profit organization that works to identify gaps, research solutions, and advocate for change to improve the lives of crisis-affected women and children.¹ The Women's Refugee Commission is a leading expert on the needs of refugee women and children, and the policies that can protect and empower them.² For over two decades, the Women's Refugee Commission has monitored immigration detention facilities and migrant children’s facilities operated under what is now the jurisdiction of Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), and the Office of Refugee Resettlement (ORR), and interviewed facility staff, local service providers, asylum seekers, and migrant children about the policies, practices, and conditions of custody that relate to the ability to access to protection. We have been monitoring border screening policies, including family separation, for over four years.³ The testimony submitted here is based on my observations, personal experience, and the Women's Refugee Commission’s expertise and accumulated knowledge (in addition to the specific sources cited).

¹ Women’s Refugee Commission, <https://www.womensrefugeecommission.org/about>.

² Women’s Refugee Commission, *Border Surge of Unaccompanied Children: Why They’re Coming and What the Government Should Do* (2014), available at <https://www.womensrefugeecommission.org/news/press-releases-andstatements/2080-an-administration-made-disaster-the-south-texas-border-surge-of-unaccompanied-alien-minors>

³ Women’s Refugee Commission, *Betraying Family Values; How Immigration Policy at the US Border is Separating Families*, March 2017, <https://www.womensrefugeecommission.org/rights/gbv/resources/1450-betraying-family-values>

The Trump administration has implemented various policies designed to deter migrants – particularly migrant families and children – from seeking protection in the United States. In March 2017, then-Secretary of Homeland Security John Kelly announced that the administration was considering a policy of separating families in order to deter them from seeking asylum at the US-Mexico border.⁴ While he quickly changed course and announced that the policy was temporarily off the table, discussion of how to deter families through separation continued. Unfortunately, even by March 2017, the administration was already separating families and in fact, increased the practice. By summer 2017, ORR and service providers noticed a marked increase in separated children arriving at shelters for unaccompanied children around the country.

In July 2017, the Department of Homeland Security (DHS) began a pilot⁵ of the now infamous “zero tolerance” policy that prioritized the criminal prosecution of immigration-related offenses in order to deter migrants. The pilot, which began in the El Paso area, continued until October or November 2017 before zero tolerance was expanded nationally in May 2018.⁶ Under zero tolerance, CBP was to refer any migrant attempting to cross into the U.S. without authorization, including asylum seeking families and parents travelling with infant children, for criminal prosecution. Although then-Attorney General Sessions characterized the policy as applying to everyone, the policy was never applied universally. It was, however, applied to large numbers of parents. DHS authorities have said on many occasions that one of the objectives of the policy was to deter families from seeking protection at the U.S. border.⁷ CBP would select a parent for prosecution, and then generally transfer parents to U.S. Marshals custody and in doing so would separate them from their children. In most cases, CBP would then classify the children as unaccompanied and transfer them to ORR. For many months, WRC and many others had been warning the administration of the harm such a policy would cause to children, and of the complete lack of any systems in place to track separations, ensure follow-up, facilitate communications, and to reunify parents and their separated children.⁸

⁴ Daniella Diaz, “Kelly: DHS is considering separating undocumented children from their parents at the border”, (March 7, 2017); <https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html>

⁵ Department of Homeland Security, Office of the Inspector General, HHS-OIG Issue Brief, January 2019 OEI-BL-18-00511, <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf>

⁶ Ibid.

⁷ Julia Ainsley, NBC News, Trump Administration Weighed Targeting Migrant Families, Speeding Up Deportation of Children, Jan. 17, 2019; <https://www.nbcnews.com/politics/immigration/trump-admin-weighed-targeting-migrant-families-speeding-deportation-children-n958811>

⁸ Women’s Refugee Commission, *Betraying Family Values; How Immigration Policy at the US Border is Separating Families*, March 2017, <https://www.womensrefugeecommission.org/rights/gbv/resources/1450-betraying-family-values>

It is well established that even *after* making the decision to implement a policy that would clearly result in the separation of thousands of families, and specifically a policy that was intended to separate families as a form of deterrence, the administration – DHS, and CBP in particular – did nothing to address the fact that they had no system in place for identifying and tracking separated children or minimizing trauma, let alone protecting their constitutional rights to due process and family unity. Even with the increased separations and the formal policy of zero tolerance – that the administration knew based on both common sense and on the pilot that they implemented – would lead to massive separations, and even after public outcry over separations, including an extensive complaint that my own organization and others filed with DHS’s Office for Civil Rights and Civil Liberties (CRCL) and Office of Inspector General (OIG),⁹ no system was implemented to track separations. No system was implemented to identify children as having been separated when transferring them to ORR. No system was implemented to enable communication between parents and their separated children. No system was implemented for informing parents or children of what was happening and how they would ever find each other again. And no system was in place for reunifying families in any way, whether for deportation or release from criminal custody. This is undisputed in any serious way and was confirmed by the court in the case of *Ms. L et al. v. ICE*.¹⁰

Judges, prosecutors, and public defenders in criminal court were equally unaware of what was happening or what recourse was left to separated parents.¹¹ Federal criminal courtrooms were filled with hundreds of parents who were desperate for their children. Reports indicate that many had been told by CBP officials that they would never see their children again. Some were told their children would be sent for adoption. Many were falsely told by court authorities or CBP officials that the best way to get their children back was to plead guilty in criminal court and accept voluntary departure.¹² In numerous cases, parents were deported without their children. Although Secretary Nielsen recently testified before Congress that she believes all parents were given an opportunity to reunite with their children prior to deportation,¹³ the court in *Ms. L*

⁹Women’s Refugee Commission, et al, Joint Complaint on Forcible Separations of Families by Customs and Border Protection, <https://www.womensrefugeecommission.org/rights/resources/1540-joint-complaint-on-forcible-separation-of-families-in-customs-and-border-protection-custody>

¹⁰ *Ms. L. v. U.S. Immigration & Customs Enforcement (Ms. L. v. ICE)*, No. 18-0428 (S.D. Cal. June 26, 2018). GAO report, <https://www.gao.gov/assets/700/694918.pdf>

¹¹ Debbie Nathan, Hidden Horrors of “Zero Tolerance” – Mass Trials and Children Taken from their Parents, May 29, 2018, The Intercept. Available at: <https://theintercept.com/2018/05/29/zero-tolerance-border-policy-immigration-mass-trials-children/>

¹² American Immigration Council (AIC) and American Immigration Lawyers Association (AILA), *The Use of Coercion by U.S. Department of Homeland Security (DHS) Officials Against Parents Who Were Forcibly Separated From Their Children*, (August, 2018), <https://aila.org/advo-media/press-releases/2018/complaint-re-coercive-tactics-on-separated-parents/the-use-of-coercion-by-us-department-of-homeland>; See also Declarations in *Ms. L v ICE*, *ibid*

¹³ “DOJ Lawyers Contradicted Nielsen On Family Separations Within Hours Of Her Testimony,” March 7, 2019, Talking Points Memo. Available at: <https://talkingpointsmemo.com/news/doj-lawyers-contradicted-kirstjen-nielsens-testimony-on-family-separation-within-hours>

created a steering committee to locate several hundred deported parents who had been separated from their children in order to determine their wishes. I also spoke to several of these parents who had been deported without their child even after begging to be reunited, pleading guilty, withdrawing their asylum claim, and accepting voluntary departure or agreeing to deportation.

Only in the spring of 2018, months after family separation had escalated and after direct intervention by advocates, did ICE post information for parents in detention on how to call a child from whom they had been separated. Even these efforts were deeply flawed. DHS's own Office of Inspector General found that information on how to call a separated child through the Department of Health and Human Services' (HHS) toll-free number was posted in one area of the Port Isabel Detention Center only *after* the June 20 Executive Order on family separation, and that fliers did not fully explain the instructions on how to place a call.¹⁴ Similarly, OIG found that CBP was inconsistent in providing parents who were referred for criminal prosecution with a DHS/HHS flier explaining how to obtain assistance in locating their child. In addition, those parents who were sent to U.S. Marshals custody during their criminal prosecution had no meaningful way to access any DHS/HHS hotlines as their facilities did not have the same phone capacities as an ICE facility might.

For those parents who did manage to contact an ICE or ORR hotline, which many did not, the hurdles for actually speaking with or making contact with their child were often insurmountable. These hurdles included: 1) not reaching an ORR official and having little or no opportunity to leave a message or receive a return call, 2) not receiving meaningful information about the location and well-being of their child given ORR's policies to confirm parentage, or 3) not being able to schedule time to speak with their child while in ICE detention. These calls were not always free of charge, and WRC has reason to believe that even today ICE might not facilitate free calls between parents separated from their children. It is important to note that it was not until ordered to do so by the judge in *Ms. L v. ICE* that DHS began to make a concerted effort to ensure that parents were able to have at least one telephonic contact with their child. Even then, separated children were limited to two calls of 10 to 20 minutes each week. Some children were too young or too traumatized to be able to speak on the phone. And in a few cases, parents reported being put on the phone with the wrong child.

The numbers were not insignificant, but because DHS never tracked them, and is still not transparent about what they know, we have no accurate accounting of how many families were separated, nor do we know how many remain separated after all this time. What we have learned is: between June and November 2017, at least 281 individuals in families were separated, with the children being transferred to ORR facilities; *The New York Times* reported that between October 2017 and April 20, 2018, ORR identified over 700 children placed in their care after

¹⁴ OIG Report, at page 13, <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>

separation from a parent at the border¹⁵; And by June 2018, ORR identified 2,654 children in their care who had been separated from their parents by CBP at the border,¹⁶ and more than 400 of those parents had been deported without their children. More recent investigations have revealed additional children ORR failed to identify in June, and that there were likely thousands of separated children who had been released from ORR prior to the June accounting.¹⁷ This means that between the summer of 2017 to the time of the court order in 2018, there were, at a minimum, over 3,000 children, and potentially thousands more, who had been separated from a parent and placed into ORR custody.

In April 2018, again, many months after separations had first become official policy through the El Paso pilot and well after separations had been happening at an alarming rate, CBP began assigning families that were apprehended together a Family Unit Number which allowed CBP to identify families who arrived together. This was the first indication that someone considered the urgent need to track family members. However, the interest and effort was shortsighted and ineffective. The family unit numbers did not transfer with the child to ORR nor with the parent when they were transferred to ICE custody. The Family Unit Number and related data was deleted at the point of transfer, rendering it effectively useless both in notifying an individual ICE or ORR official assigned to a separated parent or child to know about the separation and in facilitating government-wide tracking of family separation. To WRC's knowledge, no other effort was made to effectively track family separations on a comprehensive and systemic scale.

This policy had consequences far beyond what is evident on the face of it. Whether this was a policy intentionally designed to be as cruel as possible with the express purpose of traumatizing parents and children and separating them forever, or whether it constituted a criminally negligent failure to anticipate the consequences of the policy, the results were disastrous. Not only did the administration's policy to separate families cause lasting trauma and harm to thousands of children and their parents, these policies of separation and deterrence have not been effective in preventing parents from fleeing extreme danger to protect their children. The Trump administration has been intent on rolling back essential, long established child welfare protections for children in an effort to deter the migration of families seeking protection. They have focused on family detention and family separation as two such policies, claiming that there is no other way to manage migrant families.¹⁸ However, both efforts have failed to deter migrants and in fact, have served only to traumatize and endanger children and harm families

¹⁵ "Hundreds of Immigrant Children Have Been Taken From Parents at U.S. Border," The New York Times (Apr. 20, 2018), <https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html?module=inline>.

¹⁶ Ms. L v ICE, Supra.

¹⁷ OIG Report, <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf>

¹⁸ Women's Refugee Commission, The Harm of Family Detention, <https://www.womensrefugeecommission.org/images/zdocs/WRC-harm-of-family-detention.pdf>

while also undermining pre-existing screening, management, and processing systems.

It is important to note that around the same time the Trump administration first began to forcibly separate families at the border in order to deter them from seeking protection, the administration ended one of its most effective programs – the Family Case Management Program (FCMP)¹⁹ – that had been designed specifically to manage the compliance of and support families seeking protection while in their immigration proceedings. In addition to costing a fraction of the cost of detaining a family together in ICE or separately in ICE/ORR custody, FCMP was an alternative to detention program that was more than 99% effective in ensuring family appearances at ICE appointments and hearings, and also supported some parents during deportation. The program had been intended at minimum as a five-year pilot but had only been in place for 1.5 years when the administration prematurely terminated FCMP in June of 2017.

The crisis at the U.S. border is a crisis of political policies: policies that are undermining border protection, and intentionally exposing children in government custody to lasting and irreparable harm.

In June of 2018, at the height of the family separation policy crisis and one week before President Trump’s Executive Order, I spent two days at the border speaking with parents and children in CBP custody under the Flores Settlement Agreement attorney access privilege. I spent one day at a Border Patrol station in McAllen, Texas where families are taken for initial processing, and another day at the Ursula Processing Center, also in McAllen. The Ursula Processing Center is a larger overflow center, also run by Border Patrol, where some children were taken for further processing as unaccompanied children after being separated from their parents, and where some families were taken for initial processing. Ursula was also sometimes used as a holding facility for children who are temporarily separated from their parent while the parent is sent for prosecution. What I witnessed at Ursula was as haunting as it was gut-wrenching, and is an experience that I will never forget.

I witnessed several families being separated. I heard with my own ears the cries of children. I heard parents and children being given false or misleading information about what was happening to them. No consideration was given by any government actor for the well-being or basic human emotions of frightened children being taken from their parents, nor the desperate parents distraught at having their child ripped away from them. It is impossible to overstate the impact of seeing government officials performing, as part of their daily job functions, what can only be described as cruelty.

¹⁹ Women’s Refugee Commission, Family Case Management Program (FCMP) Backgrounder, available at: <https://www.womensrefugeecommission.org/images/zdocs/Backgrounder-FCMP.pdf>

The CBP station was cold, which is consistent with all my visits to CBP stations. Despite the over 100-degree temperatures outside, I wore a sweater and jacket inside the facility. Many of the children and parents I spoke to were still wearing wet clothes from having crossed the river or been caught in a rain storm the day before. Families were divided into male and female cells, and children over the age of five or six were separated from their parents of the opposite sex. Some of the children were held with other children, while others were held with other non-relative adults of the same sex.

I spoke to a mother and her seven-year-old son who had been placed in separate cells. They were reunified for the purpose of my interview with them. The child would not speak to me. He was almost catatonic – he just stared into space. When he occasionally answered his mother's questions, it was barely in a whisper. She was desperately worried about him and said that he had not eaten, not had anything to drink, or used the bathroom since they arrived one and a half days prior. He said that he was afraid to use the toilet in the cell where he was held with older boys and men. All of this was mumbled in whispers to his mother while laying limp in her arms. His clothes were still wet because they had been caught in a rainstorm when they were apprehended. He was shaking with cold. She begged me to ask the officers to let them be together. She said some mothers were allowed to be with their children and did not know why she and her son had been separated. She could talk of nothing else. Before I left, I was able to explain to the guards that the child seemed particularly traumatized and should at least be held in the same cell with his mother. He indicated that they would be separated eventually but when I left, I saw that they were together, at least temporarily.

In another case, I was interviewing a father and his nine-year-old daughter (who was also in wet clothes and shaking), when an agent knocked on the door and told us he had to take the girl. The father and daughter looked at me stone-faced. I asked the agent where they were taking her to which he responded, "I don't know, ma'am. To a shelter or processing center. I just have her on my list." I asked if he could wait a moment so that the father and his daughter could talk and say goodbye. They had been separated into separate cells since arriving at the station and had only had the brief time talking to me to be together. The officer simply responded by reiterating that he was just taking her to the bus to be processed. "I am not separating them ma'am, I am just taking her to the bus, to a shelter," he said. I explained to him what we all knew to be happening – that this nine-year-old girl was about to be separated from her father and taken to ORR custody. I explained this to the father and daughter and asked the officer to give them a moment to say goodbye or quickly exchange any words, the last they would share for an uncertain but long amount of time. It was clear that the officer had no intention of permitting them to say goodbye without my intervention. After about a minute, the guard opened the door again. The girl walked out. She hugged me. Then, I went back into the interview room with her father. He burst into tears.

No official took responsibility. No one admitted to what was happening in that facility. No one told the parents or the kids what was going to happen to them, but everyone detained there knew to be afraid. In some cases, children clung to their mothers or fathers but in many cases I saw them quietly and obediently follow instructions as they were led to separate cells. What struck me the most was the calmness – the stoic attitude of the children – until you were alone with them. The mothers wailed. Fathers tried to suppress tears. But most of the children who were over 5 just sat there. They did not cry. They barely moved.

When we arrived at the Ursula Processing Center the next day, the officials gave us a list with hundreds of names on it. These were the children in custody we were authorized to speak to pursuant to the Flores Settlement Agreement. On the day we visited, the facility had 1,200 people detained in it. It is a giant warehouse divided into what can only be referred to as cages. The adults were in the front – packed into chain-linked cages like sardines, lying side by side wrapped in mylar (foil) sheets. According to the lists, there were over 500 children who had been separated from a parent who were being held in cages in the back section. In some cases, the parent was also detained at Ursula (but usually held in a separate cage), while in others, the parents had been sent away for criminal prosecution or to ICE adult custody. Children filled the cages – sleeping on thin mats on the floor and wrapped in mylar blankets. Some children sat on the floor, others on benches. There were no toys, no books, and generally nothing for the children to do. Some televisions hung from the fencing in some of the cages, but they were not on when I was there. Children were not permitted to run around or play, and in fact were scolded by guards if they tried. The lights were on 24 hours a day, as in all Border Patrol facilities. Despite the summer Texas heat outside, the warehouse was extremely cold. There were no windows. The children had access to porta-potties set up in a central station in the middle of a set of cages. There was no plumbing in this section of the warehouse. There were tanks of water for washing hands, but the children told me that the water usually ran out by mid-morning. Air was piped in through large, loud HVAC tubing. One of the younger children I met with pointed at the tubes and said they were monsters.

Children in cages next to where we stood were looking at us through the fencing, curious as to who we were. I looked through the list we were given. I had to pick out which children I wanted to speak with. Several of the children were listed as being very young – one or two years old. Others had their ages listed as zero. Zero. I asked who was caring for those babies and toddlers – the officers told me that they did not know. I asked to see some of these babies and speak to whoever was caring for them. They left with the list and came back a few minutes later. The officer told me they couldn't find them, that they had called their names, but they did not answer. I stared at him and told him that they were babies who, of course, would not answer when called. "I can't find them ma'am. I called their name, but they did not answer," he said. I insisted to the officer that there had to be someone caring for them who can respond on their behalf when called. "Who is taking care of these babies?" I asked. Again, the officer told me, "I don't know.

They are probably with a relative or someone who is not responding when I call the name because it is not their name." I remained incredulous. I asked him to please bring a baby – any baby in custody – along with the person caring for them. But the officer insisted that I had to give him a name, so I picked several names and suggested that they approach adults caring for babies to see if they are the ones on the list. After a long wait, they brought me a child whose date of birth was listed as January 1, 2016, meaning the child would be two years old. This stood out because 1-1 is a DOB often used when the actual date is unknown. A 16-year-old girl was holding the child. When I asked her if she was the child's mother, she said "no," and told me that she did not know the child. When she arrived, after having been separated from her own mother, she was in a cage with several other girls her age. This toddler was in the cage with them. She followed the girls around, indicating for her diaper to be changed, for a bottle, for food. No official took any responsibility for the toddler who had apparently been separated from an adult. The girl said that other girls in the cage told her that the toddler was just two years old, and that this seemed right to her. The toddler did not speak Spanish. She seemed to only know a few words that she repeated, but the girls did not understand them. They assumed it was the indigenous language Quiché. The toddler just pointed, grunted, and cried. After the other girls were transferred away from the cage, the 16-year-old girl had been the one the child clung to. She taught other kids how to change diapers so that she had help. When the toddler cried, no guard or officials helped. At bedtime, the teenager put the toddler girl to sleep. At mealtime, she helped her get in line to get her food. She had been there for at least three days, but she told me it was hard to know because the lights were always on and there were no clocks or calendars. She told me she was worried about what would happen to and who would care for the little girl when she was transferred away from her.

After I brought this to the attention of the officials at the facility, they eventually looked into the toddler's case and discovered that the child had been separated from her aunt. Border Patrol had separated them four days earlier. The aunt was sent for prosecution and left the toddler behind – eventually transferring her to Ursula. Upon pressing, it was discovered that the aunt had also been transferred to Ursula. For four days this little girl's aunt had been asking what happened to the child. No one would tell her. In the meantime, she was being held in a cage just yards away from her niece. Seeing her aunt transformed the little girl, who until now had been lethargic and nearly asleep in the teenager's arms. The toddler lit up and her entire demeanor changed. I learned from the aunt that Border Patrol had not only incorrectly recorded her name, but also had a date of birth that was off by several years. Indeed, the toddler was actually almost four years old. We will never know what would have happened to this child if I had not been there that day, or if a 16-year-old girl had never met nor cared for her. What's worse is that we will never know what other cases like hers – cases of incorrectly recorded biographical information, and of separation from a relative only a few cages or cells away – existed that day or on any other because DHS did not and still does not meaningfully track separations.

Later, I spoke to another nine-year-old. She sobbed as soon as I explained to her who I was and that I was there to understand how she was doing and how she was being treated. She could hardly speak. She did not want to talk about who she was, or where she came from, or what had happened to her. All she wanted talk about was that she had to find her mother. She said to me, “I have to hug her and tell her I love her. I need her to know I love her very, very much.” She was obsessed with staying put at this facility. She was worried that she would be taken away to a shelter like other children who were being taken away, and she was concerned that if she moved from the place where we were – the last place her mother saw her – that her mother would not be able to find her again. “I don't want to be lost,” she told me. Like so many children whose parents tell them that if they get lost or separated at a mall or fair to stay put because they will find them, this little girl was trying her best to do what she was supposed to do. But in this situation, no one knew how her mother would ever find her. Certainly, it appeared that the officials in charge had no plan for reunifying her with her mother. Based on what I had just observed, that nine-year-old little girl was right. She had every reason to think they might lose her.

In front of the desk where I was interviewing children, there was a cage filled with very young boys. As I waited for the next child to be brought to me, I went to the cage and spoke to them. I asked them how old they were: “five”, “five”, “ten”, “nine”, “five”, “five”, “five.” I scanned my list of unaccompanied children, picked out a five-year-old and asked to speak to him. The officer brought me a little boy, who grabbed my hand as soon as he saw me. We walked to the desk where I could talk to him and I lifted him onto the chair. He started to shake as the tears came. He just cried and cried, climbed onto my lap, hugged me, and cried for his mommy. He said there was a boy in the cage who was mean to him, that this boy was teasing him and saying he will never see his mother again. The boy was clutching a rolled-up piece of paper. It was a photocopy of the picture on his mother's ID. Someone must have made it and given it to him before they took her away. It was falling apart, and he was clutching it desperately. There was no way to expect this child to tell me about his situation, so I just comforted him as best I could. I could not tell him honestly that he would be with his mommy again – all I could say is that I thought they would take him to a place that was warmer than this warehouse with cages, where there would be people who would take care of him and help him find his mommy. When we finished, he walked back to his cage. The boy pointed to another boy in the cage to tell me he was the one who was mean to him. I told the guard and was told someone would look into it.

Later, after the children were called into line to get their dinner, I noticed another one of the five-year-olds sitting on a bench crying. No one paid attention to the crying boy. I went to talk to him. He was shaking and saying something I could not understand though his sobs. I put my fingers through the fence of the cage he was in. He stopped crying and held my hand. He asked me where his daddy was. I told him that I did not know, but that his daddy was probably at court.

He cried some more. He asked if he was going to go to court too, and if he would be alone. I did not have answers for him. I did not know what would happen. If he went to a children's shelter with ORR, he would likely go to court, and like so many children, he would go alone. Only if he was one of the lucky ones would he go to court accompanied by a relative or attorney. I asked him if he knew where he was going next and whether he knew anyone here in the U.S. – he said he did not.

Soon, several other boys gathered around the fence to talk to me. The boy repeated to me, “My father is in court,” as if asking me a question. One by one the other boys said, “Mine too.”

Each child and each parent in that facility, and all those who came before them and after them, had stories. They were all traumatized. The meaningless, confusing terms of who would go where, when, were dizzying. The response to almost any question was simply to refer to the matter as someone else's responsibility or a small step of a larger process. “I am just taking their information.” “I don't know where they are taking her daughter – I just know she needs to get on the bus.” “I am not separating her from her father, I am just taking her to the processing center.” “I don't know why her 7-year-old son is being kept in a separate cell.”

The outrageous and traumatizing separations I have described and that we heard about all spring and summer of 2018 did not just *happen to* these families. This was not a natural disaster that happened. This was an affirmative decision and instruction given by and to government actors and was *done to* these families. This reality was being implemented through the affirmative actions of officers right there in front of me; agents of the U.S. government, representing all taxpaying residents.

And despite the public outrage, despite the Congressional efforts to monitor and conduct oversight, and despite a court injunction on separations and an order to reunify separated families, there is still no meaningful tracking or system to facilitate communication or reunification in place. Even today, ORR continues to receive traumatized children who have been separated without critical information²⁰ about the separations or the reasons for the separation, there continue to be problems with communication between separated children and their parents, and WRC continues to have cases brought to our attention of families being separated without cause.

I thank the Committee for holding this hearing and for asking critical questions.

We must ask,

- “How did this happen?”

²⁰ OIG report.

Whether the policy is called a “zero tolerance prosecution policy” or a “separation policy” is only part of the issue. Regardless of the policy’s name or even its official intent, there is no question that it resulted in the separation of thousands of children from their parents, and that it was clear from the start that this policy would result in these separations. It was clear that a physical separation would take place.

Judge Sabraw in *Matter of Ms. L* stated:

“The government readily keeps track of personal property of detainees in criminal and in immigration proceedings. Money, important documents, and automobiles to name a few, are routinely catalogued, stored, tracked, and produced upon a detainees’ release, at all levels – state, federal, citizen and alien. Yet the government has no system in place to keep track of, provide effective communication with, and promptly produce children. The unfortunate reality is that under the present system migrant children are not accounted for with the same efficiency and accuracy as *property*.”²¹ “A practice of this sort implemented in this way is likely to be “so egregious, so outrageous, that it may fairly be said to shock the conscience,”²²

We must ask,

- “When deciding on such a policy, and when actually implementing such a policy, how is it possible that no procedures were implemented?” Either the government considered but did not care about the consequences of separation – a shocking and disturbing conclusion – or, the government did not even consider the consequences of the implementation of their policy – a conclusion that is just as shocking and disturbing in its negligence.

It appears that there was no plan. It appears that there were no guidelines for how to implement this policy. So, the question is then:

- “Why were no such plans made or guidance given, despite the existence of a pilot that tested this very practice, and that clearly resulted in a dramatic increase in family separations due to prosecutions?”
- “What did the administration, the Secretary of Homeland Security, the Commissioner of CBP, the Chief of Border Patrol, the chief of each Border Patrol station, and all the others in the chain of command, instruct their staff to do? How did they envision the policy would be carried out? What did they think would happen to these families?” and,

²¹ *Ms. L. v. U.S. Immigration & Customs Enforcement (Ms. L. v. ICE)*, *Supra*.

²² *Ibid*.

- “Why did they not take appropriate steps to ensure even the most basic due process and human considerations?”
- “Why, even after all the outrage and the difficulties in reunifying children and parents, why after a court order, are there still no policies in place to track separations?”
- “Why would DHS and the administration seek to replace the harm and cruelty of family separation with the equally inappropriate and wildly costly use of family detention, especially when such detention has not been able to comply with the most basic child protection standards set out in law, and especially when the administration knows it has cost-effective options proven to support families while ensuring their compliance with immigration requirements?”

We must ask these critical questions and take action. Policies that uphold our values while protecting our borders and up-holding our commitments to human rights and due process can be implemented. But in order to achieve this, we must address this crime against our values as Americans. There must be consequences. We cannot let DHS’s actions and implementation of these and similarly harmful policies go unchecked. It is essential in order to ensure that this does not happen again.
