

# “Part of my heart was torn away”

What the U.S. Government Owes the  
Tortured Survivors of Family Separation

April 2022





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*Cover: A Nicaraguan asylum seeker and his eight-year-old son wait in Mexico for their asylum case to be heard as part of the U.S. Migrant Protection Protocol, also known as the "Remain in Mexico" program.  
Photo: Paul Ratje/AFP/Getty Images*

# Executive Summary

When the news broke in 2018 that the U.S. government was forcibly separating thousands of parents and children as young as infants at the U.S.-Mexico border, nationwide outcry ensued due to the evident trauma caused by the separations. Physicians for Human Rights (PHR) found that the cases of forcible family separation by the U.S. government that we documented constituted torture. PHR's torture finding was cited by the Biden campaign during the 2020 U.S. presidential election. However, as the election passed, uproar and outrage around family separation abated, but parents and children who were eventually reunited struggle to recover from severe psychological effects of the trauma they endured. Parents who were deported and separated from their children for three or even four years continued to suffer and wait in desperation for the moment when they could be with their children again.

This study documents the longer-term psychological impact of this inhumane policy of forced separation on parents who were deported by the United States government, most of them separated from their children for three to four years. The persistent and damaging psychological effects documented by PHR call out for acknowledgement, accountability, redress, and rehabilitation. This study also seeks to make visible the desires of the parents who were interviewed regarding means of redress owed to them by the U.S. government. In the context of a broad discussion about redress, it is essential that the views of affected communities be directly incorporated into research and policy recommendations.

PHR researchers conducted a content analysis of 13 psychological evaluations by PHR-affiliated expert clinicians who interviewed parents deported after being forcibly separated from their children by the U.S. government in conjunction with the "Zero Tolerance" policy. These forensic evaluations are conducted in accordance with the principles and methods of the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (known as the "Istanbul Protocol"). The parents were all clients of a collaborating partner, Al Otro Lado, a civil society organization based in Tijuana, Mexico that provides legal representation to refugees, asylum seekers, and other migrants. At the end of the evaluation interview, the clinicians asked a few additional questions concerning parents' wishes regarding accountability and redress.

**Many parents subjectively described the separation event as the worst thing they had ever experienced, even compared with other severe forms of trauma, such as assault.**

The persistent and damaging psychological effects documented by PHR call out for acknowledgement, accountability, redress, and rehabilitation.

According to the affidavits reviewed by PHR, all 13 parents interviewed had arrived with their families to seek asylum in the United States and were forcibly separated from their children, almost all in unexpected and chaotic ways. U.S. immigration officials conducted the separations in a brusque and cold manner and did not offer information about the reason for the separation or the process, causing great distress to both parents and children. In 10 out of 13 cases, parents describe not being given proper information, or any information at all, about why they were being separated, where their children would be taken, or for how long. In all but one case, the government initially failed to provide information to parents about where their children were, for weeks or even up to two months. Most of the parents were deported to dangerous situations. Over half of the parents (7 out of 13) reported that they continue to live in constant fear of persecution and hiding from gangs or cartels who threatened them before.

Although in most cases the separation had taken place several years before, the parents' despair was evident in the reporting of current symptoms at the time of the PHR evaluation. Almost universally, parents noted continued disturbances in sleep, nightmares, loss of appetite, loss of interest, fear for the future, constant worry, hopelessness, and loss of the ability to concentrate. One mother said, "I don't know if I will ever be able to ever recover from what I have experienced."

Almost all of the affidavits documented a diagnosis of post-traumatic stress disorder (PTSD) (11/13), which means that their symptoms persisted for more than a month and continue to interfere with their daily life, while the remaining two parents displayed symptoms of PTSD just below the clinical level. Other diagnoses, according to PHR clinicians, included: major depressive disorder (10/13), generalized anxiety disorder (5/13), trauma related disorder (1), and adjustment disorder with mixed anxiety and depressed mood (1). Indications that the forced separation event played a significant role in mental health outcomes included symptoms directly related to the separation event, such as nightmares and flashbacks about the separation event, crying or other forms of distress when describing the separation or talking about their children, or being triggered by related stimuli. Many parents subjectively described the separation event as the worst thing they had ever experienced, even compared with other severe forms of trauma, such as assault. In virtually every case encountered, PHR's expert evaluators noted that the trauma suffered by the parents and the children warranted further intervention and ongoing therapeutic support, because the events were causing "significant distress" and ongoing functional impairment.



As in the 26 cases documented in PHR's 2020 report on family separation, PHR concludes that each of the 13 cases documented for this study constituted torture and temporary enforced disappearance. In response to these U.S. government abuses and subsequent psychological effects, parents called for a formal public apology by the government, an investigation such as a truth commission, financial compensation and funding for rehabilitation expenses, legal reforms to prevent repetition, and, importantly, permanent immigration status in the United States, to ensure that they would not be separated from their children again. These measures are all strongly supported in international human rights law, which requires states that inflict torture to ensure prompt and effective remedies for victims and survivors. Reparation is not a policy choice; it is the fulfilment of the U.S. government's obligation owed to victims as a result of its unlawful breach of international and domestic law. International treaties ratified by the United States require that states provide remedy, rehabilitation, and redress to survivors of torture and enforced disappearance and to their affected family members.

**Reparation is not a policy choice; it is the fulfilment of the U.S. government's obligation owed to victims as a result of its unlawful breach of international and domestic law.**

## Key Recommendations

**The U.S. Administration, Department of Justice, and Department of Homeland Security should:**

Provide redress to victims who suffered harm through forced separations in line with U.S. law and international treaty obligations:

- Immediately reunify all families separated by the U.S. government and prohibit the separation of families arriving together at the U.S.-Mexico border;
- Work closely with Congress to ensure that families have a pathway to remain permanently in the United States with their children so they will have security from the traumatization of another separation, and because the harm they suffered should qualify them for immigration status as a form of restitution;
- Provide redress through prompt, fair, and adequate monetary compensation as damages for the physical and mental harm families suffered, for medical and rehabilitation expenses, and for legal assistance, and ensure that reparations are timely by returning to global settlement negotiations;
- Fund rehabilitation of family members according to the World Health Organization definition as including medical, social, educational, and vocational

measures for restoring the individual to the highest possible level of functional ability; and

- Recognize the illegality and unconstitutionality of the forced family separations, in court and in a formal public apology, and consult with families regarding a full investigation to document what happened.

## Introduction

When the news broke in 2018 that the U.S. government was forcibly separating thousands of parents and children as young as infants at the U.S.-Mexico border, nationwide outcry ensued due to the evident trauma caused by the separations. Physicians for Human Rights (PHR) found that the cases of forcible family separation by the U.S. government that we documented constituted torture. The cruelty of the separations as a response to families seeking asylum in the United States was a searing example of immigration enforcement abuses and galvanized public discussion demanding humane reforms. Indeed, PHR's torture finding was cited by the Biden campaign during the 2020 U.S. presidential election. However, as the election passed, uproar and outrage around family separation abated, even though likely in excess of one thousand children remain separated from their parents at the time of this writing.<sup>1</sup> Parents and children who were eventually reunited struggle to recover from severe psychological effects of the trauma they endured, while parents who were deported and separated from their children for three or even four years continue to suffer and wait in desperation for the moment when they can be with their children again.



*A U.S. border agent checks the passports of an Ecuadorian woman and her daughter after they crossed into Texas in September 2019. During the Trump administration, thousands of parents and children were forcibly separated at the border.*

*Photo: John Moore/Getty Images*

For parents and children, the trauma is ongoing and the possibility of healing remains elusive, as, despite many promises of change, policies of the Trump administration are still being enforced.

Post-election, the political discourse in the United States shifted from compassionate campaign promises to vicious backlash against any support being offered to separated families. Right-wing media outlets and politicians blamed victims, showering vitriol on families as though they had deserved those abuses and castigating the government for even considering settling for damages.<sup>2</sup> Meanwhile, an administration which campaigned on a pledge to bring justice to the families turned against them in federal court, arguing that the families were not entitled to any compensation.<sup>3</sup> A central question at the heart of these discussions is: What does a state that commits torture owe its victims under domestic and international law? The persistent and damaging psychological effects documented by PHR call out for acknowledgement, accountability, redress, and rehabilitation.

This study documents the longer-term psychological impact of this inhumane policy of forced separation on parents who were deported by the United States government, most of them separated from their children for three to four years. The extreme suffering of the victims of these policies has largely disappeared from the public eye, especially the trauma of those deported to other countries, even as their children remain in the United States. For parents and children, the trauma is ongoing and the possibility of healing remains elusive, as, despite many promises of change, policies of the Trump administration are still being enforced. This study also seeks to document and make visible the desires of the parents who were interviewed regarding means of redress owed to them by the U.S. government. In the context of a broad discussion about redress, it is essential that the views of affected communities be directly incorporated into research and policy recommendations.

## Background

### Presidential campaign promised family reunification

In the wake of the Trump administration's drastic changes to the immigration system, the Biden campaign ran on a message of restoring humanity to U.S. immigration policy, pledging to "welcome immigrants in our communities" and "secure American values."<sup>4</sup> Condemning the cruelty of the Trump administration during the final presidential debate, then-candidate Joseph Biden stated that forced family separation "violates every notion of who we are as a nation," saying, "it's criminal."<sup>5</sup> The Biden campaign cited PHR research findings that the forced family separations documented under the Trump administration constituted torture,<sup>6</sup> and pledged to end those practices.<sup>7</sup> One of the Biden campaign's

concrete promises was to issue an executive order to establish a White House task force on family reunification.<sup>8</sup>

## Reunification Task Force faces challenges

The Biden administration fulfilled its campaign promise to establish an Interagency Task Force for the Reunification of Families. The Task Force's mandate is to identify all children separated from their families at the U.S.-Mexico border pursuant to the Trump administration's "Zero Tolerance" policy and related policies which were in effect between January 20, 2017 and January 20, 2021.

As a first step, the Task Force undertook a review of government records to assess how many families were separated and what happened to them. By September 2021, the Task Force, relying on the information from the ACLU's *Ms. L* class action lawsuit that ruled that the government must reunite families, identified at least 3,951 children who had been separated from their families between July 1, 2017 and January 20, 2021.<sup>9</sup> Due to systemic U.S. government failure to provide translation into non-Spanish languages,<sup>10</sup> indigenous families are especially at risk of family separation and delayed reunification.<sup>11</sup> However, because the U.S. government does not recognize citizenship of indigenous nations, it records nationality only by nation state and not indigenous territory; it is therefore difficult to know exactly the total number of indigenous children and parents who were separated.<sup>12</sup>

Progress towards reunification has been slow. As of December 2021, according to the Family Reunification Task Force, only 100 children have been reunited with their parents in the United States by the U.S. government.<sup>13</sup> Some 132 individuals have registered for reunification consideration, and 94 cases are under review for eligibility, but at least 1,841 children have still not been reunified with their parents, according to the Task Force. Some 2,187 children were independently reunified with their parents in the United States pursuant to the court order in *Ms. L*.<sup>14</sup> However, the fate and whereabouts of all children and parents, and even the complete tally of affected family members, cannot be confirmed. Challenges in the reunification process have included poor record keeping by the Trump administration and limited funding for government efforts, as well as deep parental mistrust of the reunification process after their traumatic experiences with U.S. immigration authorities.<sup>15</sup> There is also not yet a long-term immigration option for deported parents, who have thus far only been offered three years of humanitarian parole in the United States to reunite with their children.

**At least 1,841 children have still not been reunified with their parents, according to the Family Reunification Task Force.**



Through negotiations with the ACLU to settle the *Ms. L* lawsuit, the Task Force has launched a website for families to make contact with the U.S. government and a reunification hotline in partnership with Kids in Need of Defense and the United Nations High Commissioner for Refugees (UNHCR), funded by the State Department.<sup>16</sup> UNHCR and local NGOs are partnering to contact families in their home countries and visit local communities for outreach. For now, the International Organization for Migration is assisting some deported parents and children with travel arrangements to the United States, although gaps still remain for some family members who do not qualify.

The Task Force has stated that it is working with various Congressional offices to establish a long-term immigration status option, as yet undefined. Thus far, there is no solution, leaving parents vulnerable to deportation when their three-year grant of humanitarian parole ends. A Congressional bill proposes to provide a pathway to permanent residence for separated and reunited families; it was introduced in May 2021 and has yet to come to a vote.<sup>17</sup>

## The Justice Department Defends the Family Separation Policy in Federal Court

Advocates were shocked and heartbroken when, after months of talks with legal counsel for the families, on December 16, 2021, the Biden administration abandoned settlement negotiations with separated families on their claims for damages in civil court. Families are entitled to file suit under the Federal Tort Claims Act and to ask the court to award damages for the severe psychological suffering the government caused by the separations.

Confidential details from the negotiations regarding a possible settlement amount were leaked to media outlets and were met with an immediate backlash from anti-immigrant groups and Republican lawmakers. When asked about the possibility that separated families could receive payments of several hundred thousand dollars, President Biden said that the news reports were “garbage” and “never going to happen” – assertions later walked back by White House staff, who nevertheless confirmed that the government preferred a lower dollar figure.<sup>18</sup> President Biden later stated that the separated families “deserve some compensation, no matter the circumstances.”<sup>19</sup> However, instead of reaching a unified joint settlement agreement with the affected families, the administration has opted to defend the separations in court, even though many parents do not have the money to pay for attorneys to represent them and the trials will force them to relive their trauma in protracted, adversarial court proceedings.<sup>20</sup>

**Parents who were deported and separated from their children for three or even four years continue to suffer and wait in desperation for the moment when they can be with their children again.**



*Juana crossed into Texas in March 2019 with three granddaughters she had raised as her own children. U.S. officials separated her from the girls, telling her it was because she was not their parent, and deported her back to Honduras.  
Photo: Paul Ratje/Getty Images*

Contrary to its campaign rhetoric, since January 2022, the Biden administration has argued – seemingly for political reasons – that the families are not entitled to any compensation and that reasonable officials would not have understood at the time that the family separations were unconstitutional.<sup>21</sup>

Prior court rulings requiring the government to reunify families<sup>22</sup> and to provide mental health services to affected families<sup>23</sup> are still in effect. A California-based nonprofit, Seneca Family of Agencies, was awarded a federal contract to contact separated families and connect them with mental health counselors; thus far, they have connected with more than 1,300 families, and linked them to more than 540 mental health providers across 39 states.<sup>24</sup>

## Inhumane treatment of immigrants and family separations continue

Progress on restoring access to asylum at the border has also been slow or non-existent. The administration has touted statistics showing that it has reduced the

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number and duration of unaccompanied children in U.S. Customs and Border Protection (CBP) facilities, reopened the Central American Minors program<sup>25</sup>, and sought to end the Migrant Protection Protocols (MPP), or “Remain in Mexico” policy, by processing more than 11,900 people to reenter the United States so that they might pursue their immigration cases. However, in August 2021, a federal court ruled that ending MPP without a public comment period violated administrative law and ordered the administration to resume the policy, although its implementation has already resulted in 1,544 publicly reported cases of murder, rape, torture, kidnapping, and other violent assaults against migrants, including children, and has also been associated with traumatic family separations.<sup>26</sup> As of publication, summary expulsions based on a misapplication of a U.S. health law, Title 42, continue to deny asylum without due process to hundreds of thousands of migrants at the border, using the pretext of public health imperatives in response to the COVID-19 pandemic, although the Centers for Disease Control and Prevention has stated that it will stop authorizing expulsions on May 23, 2022.<sup>27</sup> Public health professionals have roundly condemned the policy as lacking a public health basis. Title 42 expulsions have also been linked with traumatic forced family separations by the U.S. government.<sup>28</sup>

Asylum seekers, traditionally, have been a hard-to-reach population when it comes to research, particularly those in detention centers or waiting in make-shift camps across the U.S. border. Even harder to reach are those who have been deported to another country, as they return to their homes and are not easily traceable.

Our research team sought to understand the experiences of former asylum seekers who have been separated from their children and deported by U.S. authorities: their perceptions of being separated for a prolonged period from their children, their treatment by U.S. government officials, their mental health status, and their thoughts about what the government owes them as a form of redress for their suffering. This approach puts the personal beliefs of victims of these U.S. government policies at the heart of our analysis and recommendations regarding redress.

## Methodology

Physicians for Human Rights (PHR) researchers conducted a content analysis of 13 affidavits written by PHR-affiliated clinicians who interviewed parents deported after being forcibly separated from their children by the U.S.

government in conjunction with the “Zero Tolerance” policy, as well as asking some additional questions about redress during the evaluation interviews. The research team included PHR staff and volunteer experts, including a family medicine physician, a pediatrician, a child and adolescent psychiatrist, and immigrant rights practitioners.

The parents were all clients of a collaborating partner, Al Otro Lado, a civil society organization based in Tijuana, Mexico that provides legal representation to refugees, asylum seekers, and other migrants. At the time, Al Otro Lado was one of the only legal services providers representing separated parents and families who had been deported. Al Otro Lado partnered with PHR to identify clinicians who are experienced in conducting medical-legal evaluations for their clients as part of ongoing immigration legal proceedings. Nineteen Al Otro Lado clients considered participating in this project. Two clients decided that they did not want to participate and four evaluations assigned to PHR clinicians did not take place due to logistical challenges, such as illness or poor internet connections. In total, 13 clients consented to participate in the evaluation interviews. Clinicians included two psychiatrists, a neurologist, a clinical psychologist, a licensed professional counselor, a pediatrician, an internal medicine and pediatrics physician, an internal medicine physician, a family physician, a family nurse practitioner, a licensed clinical social worker, and a doctoral-level social worker.

These forensic evaluations are conducted in accordance with the principles and methods of the international standards of the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (known as the “Istanbul Protocol”<sup>29</sup>). They are typically requested by legal representatives to document and assess physical and psychological evidence of their clients’ accounts of alleged ill-treatment, persecution, or torture. PHR received anonymized and de-identified copies of those affidavits from the clinicians.

At the end of the evaluation interview, the clinicians asked a few additional questions concerning parents’ wishes regarding accountability and redress. The interview questions about redress were developed by the research team and included eight questions on a scale that elicited attitudes about forms of reparations, asking if each type of remedy is “not important,” “somewhat important,” “important,” “very important,” or “absolutely necessary” and then providing an option to explain why they assigned that rating to each measure. The additional questions included all the measures of reparation from the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law, including restitution, guarantee of non-repetition, financial compensation, rehabilitation, and satisfaction.<sup>30</sup> Translation of the additional questions into Spanish was reviewed by a native Spanish speaker on the research team and a native Spanish



speaker who is a forensic psychologist to ensure that the wording was clear, accurate, and also understandable to people with different levels of education.

The psychological evaluations and the answers to the additional questions about redress were intrinsically linked in the analysis because the psychological suffering, and the manner in which it was inflicted, underscore the legitimacy of the parents' claims and inform the nature of the appropriate remedy. A content analysis methodology was selected to identify themes and sub-themes in the clients' narratives, quantify and count types of trauma experiences of the deported asylum-seeking parents, and examine their perceptions of the impacts of deportation and separation on their family members and separated children. The affidavits analyzed included content related to experience pre-migration, during their journey to the United States, while seeking asylum, and following their deportation, as well as the reported experiences of their separated children. Mental health assessments and diagnoses followed common screening and diagnostic instruments and criteria. The parents' explanations in response to the additional questions about redress were also analyzed using a content analysis approach to explain and interpret the scale results.

A codebook was developed by the research team based on previous experience with qualitative data analysis and codebook creation. The researchers' experience with migrant parents and children, including those who had been separated, facilitated the creation of the codebook through pre-defining a set of content categories for coding. These included: demographics; harm experienced in their country of origin, during migration, upon arrival in the United States, during detention, and following deportation; and clinical diagnoses, health and mental health conditions, and resilience factors. The database also contained a number of free text boxes to capture any themes that emerged outside of these categories as well as notable quotes from the affidavits.

All evaluation interviews were carried out by PHR volunteer clinicians remotely due to the interviewees' location in countries outside of the United States. Interviews took place in March and April of 2021. The clinicians were all based in the United States and the deported parents were located in El Salvador, Guatemala, Honduras, and Mexico. Most of the evaluations (10/13) were conducted solely in Spanish with the clinician and client both fluent in Spanish. Two evaluations were conducted with a Spanish-language interpreter and English-speaking clinician. One evaluation was conducted in Spanish with a Maya K'iche' interpreter who provided interpretation as needed. It was up to the parent to decide which language they wished to use in the evaluation. Evaluations were written up in English, based on clinician or interpreter translation.

PHR received the de-identified affidavits from the clinicians electronically, and the documents were stored in a password-protected folder accessible only to select PHR research staff. PHR staff worked with two external evaluators, both

experienced clinicians. The data accessible to the research team was de-identified and anonymous.

The accounts below are taken from the clinicians' expert affidavits. Direct quotations from parents are only included if present as direct quotes in the clinician's evaluation. Citations from the written affidavit are represented as direct quotes from the clinician.

This research plan was reviewed by the University of Michigan Institutional Review Board and designated as exempt as defined by Title 45 CRF part 46 provisions for protection of human subjects. It was also approved by the Physicians for Human Rights Ethics Review Board.

## Limitations

Our study has several limitations. This is a secondary analysis of pre-written affidavits, and the research team did not interview the separated and deported parents themselves. Second, the interviewing clinicians did not use structured or standardized forms to collect the information, as the evaluations were conducted according to general Istanbul Protocol principles. As a result, the type of information at times varied between evaluators, meaning that the data set is not uniform. Finally, none of the researchers or clinician evaluators were indigenous and there was no indigenous representation in the University of Michigan Institutional Review Board or PHR Ethics Review Board.

Importantly, the parent cohort is not a representative sample of all deported and separated parents. It is a self-selected intensity sample<sup>31</sup> of affected individuals who were receiving legal services from Al Otro Lado, and who were referred for physical or psychological evaluations for the purpose of this research project. The sample included mostly Spanish speaking individuals, only one of whom asked for translation into Maya K'iche' language. It is possible, therefore, that this is a cohort of individuals with higher needs or more apparent trauma. It is also a group that includes only individuals with legal representation, and, as such, they may not be representative of the larger cohort who may not have access to legal representation or community-based resources. However, given the characteristics of this population – hard-to reach individuals dispersed across a large geographical area, across several countries, who are highly traumatized and living in hiding – the affidavits and answers to questions about redress, though relatively small in number, afforded PHR the opportunity to analyze rich content, to explore in depth the lived experience of people harmed by the United States' policy of family separation and subsequently deported, and to deepen our understanding of the experience of people affected by this inhumane policy and what they now seek by way of reparation.

# Findings

## Demographics

The medical-legal affidavits involved 13 separate family separation cases, from evaluating eight mothers and five fathers. Most of the parents (11/13) were not reunited with their children at the time of evaluation and had been separated for extended periods, for three years (9/13) or four years (2/13). Two of the parents were separated from their children for a number of months while in U.S. government custody (five months and eight months) and then were deported together with their children.

At the time of the evaluation interviews in March and April 2021, the parents reported a variety of living situations; some were living with family and some were living alone after deportation. One father reported moving between relatives' houses to avoid being found by drug traffickers, a mother reported living with an aunt in another town to avoid detection by gang members, and one mother stated that she was living in a group shelter for migrants. By the time of writing, through the work of the families' legal counsel, 10 of the parents have since been reunited with their children and are now living in the United States.

Out of the 13 parents, 11 reported that they had been threatened, extorted, or otherwise harmed by gang or cartel members, including gang members working as smugglers or drug traffickers, which had caused them to flee to the United States along with their children. Two women reported having experienced intimate partner violence in addition to gang violence. The remaining two mothers mentioned having been sexually harassed or assaulted, and threatened against reporting the violence, by community members (a taxi driver and a neighbor). In most cases, parents described targeted threats having been made against their children, including threats of kidnapping or sexual violence at gunpoint. In a handful of cases, children actually had been kidnapped or assaulted before parents had decided to flee to the United States, in one case a "near murder," and in another case gang members approaching in cars had opened fire on a father and his son in a field where they were farming. Three of the parents identified as belonging to indigenous groups (one of whom was a farmers' collective advocate). An indigenous father's family had already fled Maya K'iche' territory in Guatemala to seek refuge in Yucatec Maya territory in Mexico where they had continued to be persecuted. Three of the parents were small business owners (dental practice, bus company). Some of the parents had relatives in the United States which put them at risk of being targeted for kidnapping for ransom. After having fled these harms in their country of origin with their children, they had then been separated from their children by the U.S. government and eventually deported.

Other demographics are shown in the table below.

## Demographic statistics

Dimension	<i>n</i>
<b>Country of origin</b>	
Honduras	5
Guatemala	4
El Salvador	1
Mexico	3
<b>Parent age ranges</b>	
Female (32-50)	8
Male (33-52)	5
<b>Separation</b>	
Age of children they were separated from	Range from 6 to 20 years old
Duration of separation	Range of 5 months to 4 years

## Manner of the Separation

According to the affidavits reviewed by PHR, all 13 parents interviewed had arrived with their families to seek asylum in the United States and were forcibly separated from their children, almost all in unexpected and chaotic ways. U.S. immigration officials conducted the separations in a brusque and cold manner, which increased the trauma inflicted, and did not offer information about the reason for the separation or the process, causing great distress to both parents and children. A mother recalled how she was woken up at 3 a.m. to answer questions about her daughters, was ordered by the agents to sign documents in English that she didn't understand, and 15 minutes later was taken to a detention center and separated from her daughters. She begged them not to separate her from her children, but they only said "No, we are going to send you to jail." Another mother interviewed recalled agents showing up at her cell and saying, "We are taking the children away because the children can't be here per orders."



[One] mother recalled agents showing up at her cell and saying, “We are taking the children away.” It has been three years since that day and she still recalls vividly how her son cried, terrified, “Where are they taking me?” That was the last time she saw her son.

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In another instance, a father and his son were told to get in different lines, one for adults and one for children. No explanation was given, they were only told that was the way apprehensions were processed, and they had no choice. He recalled seeing his son crying through a window of his cell, which broke his heart, as his son rarely cried. This father had no idea that would be the last time he would see his son, so he never got to say goodbye.

## No Explanations Were Given to Parents at the Time of Separation

In 10 out of 13 cases, parents describe not being given proper information, or no information at all, about why they were being separated, where their children would be taken, or for how long.

During one of the interviews, a mother recalled crying the moment she was being separated from her two daughters: “I saw them one last day and then they were taken away.” Immigration officials told her she could not have information about her daughters, only that she was going to be deported. “They would not tell me anything,” she said.

A father spoke about not being able to get any information from detention facility guards, despite asking them about his son multiple times every day.

A mother described how a detention officer noticed her crying after the separation and reprimanded her for “putting her child in danger.”

Three out of 13 of the parents interviewed noted that, at the time they were separated from their children, immigration agents only made a vague reference to changes in policy.

One mother shared with the clinician who interviewed her how she was in shock and speechless, unable to believe what she was being told to do. At that moment she began to cry and asked the agents “Why are you going to separate me from my daughter?” The agent reportedly responded, “The one who gives orders is the president. There is nothing I can do.” She pleaded, “There must be something I can do. My daughter has been suffering her whole life, and now she will suffer even more!”

When another mother asked agents why they were separating families, an agent only responded, “Don’t you watch the news?” A third parent reported only being told that the “law had changed” and so they were going to separate her from her children. In another case, the parent was told she would be separated from her daughter until the issue of her prior deportation could be investigated.

Three of the 13 parents reported being given papers in English to sign at the time of separation which they did not understand. When one father asked for a translation, wanting to know what the paper said, the agent only said, “Just sign it! Just sign it!” He then told another officer “Dude, this guy doesn’t want to sign it. Separate him from his kid. This guy is not following the rules.”

### Unknown Locations of the Parents and Children

In all but one case, the government initially failed to provide information to parents about where their children were. In the one instance where a mother had been told that her two children were being sent to a separate detention facility, she was also told that her brother would be able to pick them up the next day. It turned out that one of the children did end up with that uncle in Illinois, but the other child was held for months in detention, as he had a medical condition requiring surgery and they would not release him until this surgery was complete. The mother reported that the child cried on the phone to her that he did not want the surgery.



*After Leo Jeancarlo de Leon, 6, and his mother, Lourdes, crossed the U.S. border in 2018, they were separated by U.S. agents and Lourdes was deported. Three months later, Leo was returned to his family in Guatemala. PHR researchers found that the impacts of separation could be felt months and years after parents and children were reunited.*

*Photo: John Moore/Getty Images*

U.S. authorities gave some parents deportation documents to sign in English without translations. Not knowing what the documents stated, parents ended up signing their own deportations, often not aware of what they were agreeing to or the consequences.

In all of the cases where the locations of parents and their children were eventually disclosed, the children ended up in the United States with relatives and the parent was initially detained for some period before being deported. There was a notable lack of commentary in the affidavits on the initial location of the children, likely because the children never knew where they were initially taken and so the parents were unable to report it in the affidavit.

### Lack of Contact between Parents and Children

A defining point in each affidavit reviewed was when the parents reported the lack of contact with their children after being separated and their subsequent feelings of despair. Six out of 13 affidavits mention that when parents in immigration detention asked guards or immigration officials about the whereabouts of their children, they didn't receive answers for weeks – in one case, they had no contact or information for two months. One mother explained that the authorities could not tell her anything about where her children were. She continued to ask questions, but then eventually stopped asking “because they were angry with me.” In another instance a mother said, “I was detained, they did not tell me anything about him, I thought I would never see him again, I could not do anything else but cry, I felt I was going crazy.” She noted that she was detained for one month and “every day was the same. They told me my son was OK, but they did not let me talk on the phone.”

One mother reported feeling “desperate and terrified” that her children were not well. In two out of 13 cases, parents contemplated taking their lives. One father reported that he had contemplated suicide because of extreme anxiety from the lack of contact and from worry, and when he was finally able to speak with his son on the phone, the first few times he could not understand anything his son said because the child was crying too much.

In one instance, a mother reported how the distress she felt due to the separation impacted their legal cases. This mother had a “credible fear” interview by telephone.<sup>32</sup> The interview only lasted about 20 minutes and she did not have an attorney. She felt that she was barely able to explain what had happened to her because the interview was so short. She emphasized to the asylum officer that “she needed to know where her daughters were, that she felt desperate and terrified that they were not well.” She found it hard to focus on explaining her case because she wanted to learn about her daughters. When she wanted to add information about her own case, the asylum officer did not give her the time to do so.

## Separated Parents Lose Hope after Extended Detention and Lack Access to Representation

After facing months of detention under poor conditions and deteriorating mental and physical health, three of the parents evaluated by PHR clinicians reported accepting their deportation. One parent described having to navigate the U.S. immigration system without legal representation: he told the clinician that he did not want to represent himself at his bail hearing, but his legal representative was asking the “exorbitant” fee of \$10,000 and he could not afford it. In immigration court proceedings, asylum seekers have the right to an attorney, yet the U.S. government is not obligated to provide one for those who cannot afford to pay. After approximately a year in detention in poor conditions and worsening mental health, a father recalled, “I spoke with my daughter, and told her I am going to leave so you can get out. She said ‘No, keep trying, keep fighting’ but I felt stuck. I felt scared.” Another mother reported to PHR that she wanted to appeal the judge’s denial decision, but she was told by an officer that if she wanted to appeal the denial, it would take months and she would have to stay in jail in the meantime. She said that the guards treated her so rudely and the conditions in the jail were so terrible that she lost hope.

One father reported that he accepted deportation because he was so filled with “worsening fear and dread” at not knowing his son’s whereabouts and thought he might have a better chance in Mexico finding out where his son was, rather than in U.S. immigration detention.

According to the narratives captured in the affidavits, in some instances (3 out of 13), U.S. authorities gave some parents deportation documents to sign in English without translations. Not knowing what the documents stated, parents ended up signing their own deportations, often not aware of what they were agreeing to or the consequences. In one case, a parent described being given a series of papers to sign while in detention, as the clinician wrote in the affidavit, “he kept thinking the papers he was signing were leading to his early reunification with his son and possible early deportation back to Guatemala.” Instead, he continued to be separated for a period of eight months before eventually being deported together with his child. Another mother interviewed shared how, days after requesting an appeal before the judge, a guard came with papers for her to sign sent by the judge. As described by the clinician, “the papers were in English, and she was told they were related to the appeal process. She learned after signing that she had signed her own deportation papers as she was being returned to her home country.”

## Parents Feel Desperate and Helpless upon Return to Home Countries

In three of the cases reviewed by PHR, clinicians reported the parents feeling helpless, disoriented, stressed, and alone after arriving back to their countries of



origin. One mother recounted how “her daughter was angry that she returned to Guatemala without her.” The mother could not bear the separation from her daughter, and in an attempt to join her daughter in the United States she crossed the border again, but was again apprehended and deported to Guatemala to travel back to Maya K’iche’ territory.<sup>33</sup> Another mother described spending much of her time feeling that she had given up on her children. In her words, “I surrendered. I miss my children so much. I feel very stressed, very alone. I ask God to help me. I feel that every moment that passes I am missing being with them. We try to speak twice a week but it is hard because the internet is very expensive.”

## Parents Continue to Live in Fear of Persecution and Face Threats from Gangs

More than half of the parents (7 out of 13) reported that they continue to live in constant fear of persecution, and to live hiding from gangs or cartels who have threatened them before. Five of those parents were not able to return to their hometowns and have internally relocated, while the others have restricted movement and are too scared to leave their houses. As a father recounted, “I am afraid to go back to my town. Here in Guatemala, once [gangs] have threatened you, they always carry out those threats. I am afraid that they will learn that I am here, they will come and hurt me.” He continued, “I have constant nightmares that I am drowning in a river, that something bad is happening to my children.” Another parent reported that when he returned home, his house had been ransacked. Not daring to live there, he has since moved between relatives’ houses, where he hopes the drug traffickers will not find him.

Two of the parents interviewed by PHR clinicians describe receiving threats from gangs again after having been deported back to their home countries. One mother shared that because she was afraid of the threats she had received at her former office and home, she went to live with her father in another part of town. Afraid gangs would find her, she did not go back to her previous job. Months later, her husband, by then at a new job, began to receive threats demanding money and goods, just as they had experienced before seeking asylum in the United States. Another parent from Guatemala shared that he and his son are still not safe, as every day he continues to be targeted by people who are trying to kill them and he has had to move in an attempt to find safety within the country.

## Physical and Psychological Distress Reported by Parents Due to Separation

A large majority of parents evaluated by PHR experts reported physical and psychological distress that occurred around the time of separation from their child. Commonly reported symptoms included loss of appetite and trouble sleeping. Some parents described feeling weak, while others reported experiencing trembling or “body shaking.” Other physical symptoms reported included headaches, stomach problems, and fainting, all of which can be

Almost universally, parents noted continued disturbances in sleep, nightmares, loss of appetite, loss of interest, fear for the future, constant worry, hopelessness, and loss of the ability to concentrate.

commonly seen as reactions to stress and anxiety. One woman reported a return of heavy vaginal bleeding, which was previously well controlled; she did not seek medical care due to fear of the kind of treatment she would receive while in detention.

The most commonly reported psychological symptoms around the time of separation from their child included anxiety, sadness, and desperation. As one father described, “[Separation] was so hard. I had never been separated from my child before. It was very painful to be separated from my daughter who had always been at my side.”

Some parents recalled their child yelling and crying while being separated. One parent reported not knowing where her child was for about a week and then learning that the child was crying the entire time. Upon reconnecting with their children via phone or video calls, some parents recalled being unable to have conversations due to their children’s excessive weeping.

The affidavits describe a few physical symptoms during the time of separation – somatic symptoms described were mostly headaches and stomach aches, and one person reported fainting from anxiety – but were remarkably consistent in the psychological symptoms described, both at the time of separation and persisting through to the time of the evaluations. At the time of separation, nearly every participant described feeling

anxious, sad, and worried, and most of them reported having decreased appetite along with insomnia. One mother noted that being separated from her daughter felt like something “choking me from the inside.” Another parent stated that the separation felt like physical pain because his son was “part of my heart that was torn away from me.” The despondency was evident through many of their symptoms. One parent said, “I gave up without my children.”

Although in most cases the separation had taken place several years before, the parents’ despair was most evident in the reporting of current symptoms at the time of the PHR evaluation. Almost universally, parents noted continued disturbances in sleep, nightmares, loss of appetite, loss of interest, fear for the future, constant worry, hopelessness, and loss of the ability to concentrate. These symptoms seemed most tied to concerns regarding the effects of the separation on their children’s well-being, as well as worries about their continued safety and future together. One father noted, “The beatings of childhood become scars for life. I know that the government is taking measures to help, but how will they

One mother noted that being separated from her daughter felt like something “choking me from the inside.” Another parent stated that the separation felt like physical pain because his son was “part of my heart that was torn away from me.”

return the years of parental love that my child has missed out on?” Another mother said, “I don’t know if I will ever be able to recover from what I have experienced.”

One father lamented that his child, upon reunification, was a changed person. He reported that he used to be a sweet, soft boy, but after the separation, he is now angry and agitated and does not trust his parents. The father’s feelings of sadness, worry, and hopelessness were very much connected with the effects of the separation on the child’s personality and the toll that it took on their relationship.

## Diagnoses Observed and Recorded

All parents were diagnosed by PHR expert clinicians as meeting diagnostic criteria for at least one mental health condition associated with the trauma of family separation, compounded by additional traumatic experiences in their home country, before and after deportation, and during the migration process. Almost all of the affidavits documented a diagnosis of post-traumatic stress disorder (PTSD) (11/13), which means that their symptoms persisted for more than a month and continue to interfere with their daily life, while the remaining two parents displayed symptoms of PTSD just below the clinical level.

To be diagnosed with PTSD, someone must have at least one symptom that causes them to re-experience the trauma, such as flashbacks, one symptom related to avoiding thinking about the traumatic event, two symptoms related to being more highly reactive, such as being easily startled or having difficulty sleeping, and two symptoms related to cognition and mood, such as negative thoughts or memory loss. The majority of the cases (9/13) had a comorbid diagnosis of major depressive disorder (MDD) in addition to the PTSD diagnosis. Other diagnoses, according to PHR clinicians, included: MDD (10/13), generalized anxiety disorder (5/13), trauma related disorder (1), and adjustment disorder with mixed anxiety and depressed mood (1). Clinicians compared

symptoms with criteria from the Diagnostic and Statistical Manual of Mental Disorders and/or used validated Spanish versions such as PCL-5, GAD-7, and PHQ-9, which are used to preliminarily diagnose disorders and assess severity of symptoms.

*“The beatings of childhood become scars for life. I know that the government is taking measures to help, but how will they return the years of parental love that my child has missed out on?”*

### **A father who was separated from his child**

One clinician also noted concern regarding the impact on a parent’s physical health, stating, “She is also at risk of hypertension and cardiac disease due to family history. These are both conditions that worsen with acute and chronic stress exposure and she would have increased risk of developing these conditions if re-exposed to the triggers listed above [separation and U.S. detention].” Another clinician noted that a mother’s diagnosis of fibromyalgia was “consistent with her reports of stress and her history of trauma.”

The vast majority of clinical assessments determined that the respondents’ mental health symptoms were persistent, due to both ongoing family separation and threats to parental safety in their home country after deportation. Indications that the forced separation event played a significant role in mental health outcomes included symptoms directly related to the separation event, such as nightmares and flashbacks about the separation event (“She has vivid nightmares during which she sees herself back inside detention, separated from



*Adelaida, 10, didn't see her mother for four years after the two were separated when they tried to enter the United States in 2017. They were eventually reunited in Fort Myers, TX.  
Photo: Sarah L. Voisin/Washington Post/Getty Images*



One father lamented that his child, upon reunification, was a changed person. He reported that he used to be a sweet, soft boy, but after the separation, he is now angry and agitated and does not trust his parents.

her kids again”), crying or other forms of distress when describing the separation or talking about their children, or being triggered by related stimuli, such as feeling distressed when seeing other parents with their children or hearing the word “mother.” As one clinician explained,

“The symptoms of PTSD are necessarily related to the inciting trauma (e.g., the intrusion symptoms consist of intrusive memories of the inciting trauma). Thus, it is typically possible to say with confidence whether or not a given case of PTSD is caused by a particular trauma exposure. Because the cognitive content of Ms. X’s PTSD symptoms are most related to her separation from her children, it is highly likely that her current symptoms are primarily related to the trauma of forcible separation from her children at the border. Because PTSD can be cumulative, it is also likely that the earlier trauma of threats of gang violence in her hometown in Guatemala continue to contribute to her symptoms.”

The other main indications that mental health issues are linked with the separation are the timing of symptom onset and progression or change in severity pre- and post-separation. As one clinician wrote, “It is my strong clinical opinion that Mr. X has suffered great psychological ill health effects because of the trauma of violence in Mexico, which was exacerbated and changed with the separation of his son.”

Many parents subjectively described the separation event as the worst thing they had ever experienced, even compared with other severe forms of trauma, such as assault. The separation is also an on-going source of trauma, as worries about their children’s current and future well-being are also a source of significant distress, observable during the interviews as parents cried, looked sad, or put their heads in their hands when speaking about their children. The distress is compounded by the dangers that parents face post-deportation in their own countries. One clinician stated,

“It is my professional opinion that based on her presentation and her history, her distress has been a direct result of her adverse experiences in detention and prolonged separation from her child and is further perpetuated by her deep concern for her son’s emotional wellbeing and a fear of potential murder, were her presence discovered.”



*A boy from Guatemala, who was reunited with father in El Paso, TX six weeks after the two were separated by U.S. officials when they tried to cross into the United States.  
Photo: Joe Raedle/Getty Images*

## Consistency and credibility

The medical experts who evaluated the parents noted that all the individuals they interviewed and observed reported symptoms that would be expected, given the traumatic experiences reported by these parents. Based on the in-depth assessments following evaluations often lasting more than two hours, the experts described the parents as, for example, “entirely credible,” with “no suggestion of having been practiced or coached.” Their reporting of symptoms was found to be, for example, “consistent with what would be expected as a result of the violence and trauma he suffered,” “highly consistent with the traumatic events she reports,” “no evidence of defensive behavior and no over-endorsement of symptoms,” “described in a fashion that he would not have been able to express had he not actually experienced them,” and “he did not, as in the case of malingering, exaggerate the expression of his distress.”

**All parents agreed that it is essential to prevent forced family separations from ever happening again. Said one parent: “Unless you have lived through this, you can’t know how unbearable it is. I want to be sure nobody else ever suffers what I have suffered.”**

<b>Gender</b>	<b>Age</b>	<b>Country of Origin</b>	<b>Time between separation and evaluation</b>	<b>Mental Health Diagnosis</b>
Female	32	Maya K'iche' territory (Guatemala)	2017 to 4/11/2021, 4 years [now reunited and in the United States]	Post-traumatic stress disorder (PTSD) with dissociative symptoms, major depressive disorder (MDD) severe without psychotic features
Female	38	Honduras	2018 to 3/22/2021, 3 years [now reunited and in the United States]	PTSD, MDD
Male	46	Honduras	2018 to time of eval, 3 years [now reunited and in the United States]	PTSD, MDD with anxious distress
Male	53	Honduras	2017 to 4/2021, 4 years [now reunited and in the United States]	Adjustment disorder with mixed anxiety and depressed mood, PCL-5, GAD-7 and PHQ-9 are elevated but do not signify presence of diagnosis
Male	33	Honduras	11/2017 to 3/25/2021, 3 years [still not reunited]	PTSD, positive PHQ-9
Female	30	Guatemala	6/18/2018 to 3/8/2021, 3 years [now reunited and in the United States]	PTSD, screened positive on PHQ-9 and GAD-7-MDD severe, GAD

Male	49	Honduras	3 years [now reunited and in the United States]	“Sub-threshold PTSD” or trauma-related disorder, MDD moderate, mild anxiety on GAD-7
Male	35	Guatemala	8 months [now reunited and in the United States]	PTSD, MDD
Female	41	El Salvador	6/2018 to 4/1/2021, almost 3 years	PTSD
Male	38	Yucatec Maya Territory (Mexico)	Still separated at time of evaluation [still not reunited]	PTSD, MDD
Female	48	Mexico	4 years [now reunited and in the United States]	PTSD based on clinical interview, MDD moderate, generalized anxiety disorder (GAD) mild
Female	42	Maya K’iche’ territory (Guatemala)	3 years [now reunited and in the United States]	MDD, PTSD, GAD
Female	45	Mexico	5 months, deported together [now reunited and in the United States]	PTSD, MDD, GAD

## Clinical Recommendations

In virtually every case encountered, PHR’s expert evaluators noted that the trauma suffered by the parents and the children warranted further intervention and ongoing therapeutic support, because the events were causing “significant distress” and ongoing functional impairment. The interventions most frequently recommended included “trauma-focused psychotherapy” and supportive therapy,



In some cases, the medical experts commented that failure to reunify the family could result in further deterioration of mental health conditions, with the risk of suicidal ideation and behaviors in at least one case.

and for psychiatric care to consider treatment with medications. Additionally, multiple experts recommended primary care to address screening health measures that have not been given attention or other medical concerns likely exacerbated by multiple factors such as stress and trauma symptoms, not living in their own communities, fear of accessing services, and unavailability of services in their home country, among others.

Some of the parents and children were able to access mental health services, but many families were not. Said one father, “My family trusted me and I failed them. I want to take my child for psychological counseling, but I don’t have the money or resources. How will he get through this extreme suffering?” A mother in Honduras stated that she cannot afford to see a mental health counselor or psychiatrist despite enduring psychological symptoms. In other cases, the therapy was not helpful due to the ongoing separation. One father described being required to attend therapy in U.S. immigration detention but said his symptoms did not improve because he was so anxious about being separated from his child.

PHR experts commented in all of the cases that symptoms of trauma were unlikely to improve due to continued parental separation from their children, causing reliving of the index traumatic experience, and ongoing safety concerns for the parents in their home countries. For example, an expert commented that a client’s trauma symptoms that “had their origins in this same dangerous environment [client’s home country], are highly unlikely to improve in this context.” In some cases, the medical experts commented that failure to reunify the family could result in further deterioration of mental health conditions, with the risk of suicidal ideation and behaviors in at least one case. In other cases, experts noted that deporting the children back to their home country could pose a tremendous risk to the children’s and parental mental health, due to ongoing risks of violence in their home country.

On a more hopeful note, clinicians noted that reunification with family would be supportive of improved health outcomes. One clinician said, “With treatment and the reunification of his family, Mr. X’s prognosis is good. This is based on factors such as his positive identification as a partner and father; work history; specific goals for the future; and ability to rebound from a dire psychological state over time.”

All parents expressed that it was essential for them to have long-term immigration status in the United States.... Parents consistently said that being free of the fear of deportation and re-separation was essential for their healing and sense of peace and safety.

## Parents' perspectives on reparations and redress

In addition to the documented trauma of these 13 parents, the evaluations conducted also afforded the unique opportunity to engage them on what they thought were important forms of reparation and redress and to provide their reasoning for ascribing that level of importance. This study sought the perspective of 13 affected parents regarding all the main measures of reparation: reunification and immigration status in the United States as a form of restitution and guarantee of non-repetition, financial compensation, medical and mental health treatment as rehabilitation, and measures such as a public apology, investigation, and criminal prosecutions as measures for satisfaction and guarantees of non-repetition.

### Long-term immigration status in the United States

All parents expressed that it was essential for them to have long-term immigration status in the United States, with 7/13 parents stating that long-term immigration status is very important and 6/13 saying that it is absolutely necessary. Parents consistently said that being free of the fear of deportation and re-separation was essential for their healing and sense of peace and safety, while being in precarious immigration status would leave them feeling insecure and unsafe, at risk of being returned to danger in their home countries. Said one parent, "Being illegal is not the same. One needs to be calm. If citizenship or legal status could be given so that we can live in peace, and be able to see each other and be together. What happened cannot be forgotten. But if we can be together – me and my daughter – little by little we will be able to forget. There is a possibility of being together if we get legal status."

### Physical and mental health treatment

All parents also put a very high value on provision of physical and mental health treatment for themselves and for their children, with 9/13 stating that it was very important and 4/13 saying it was absolutely necessary. Parents emphasized that they needed resources to ensure their children's physical and psychological wellbeing, especially after all they had suffered due to the separation. "Physically and mentally, we are in very bad shape due to everything we went through there. I came back with anxiety and depression. I think my children, too." Parents stated that medical care is very expensive and that they did not have adequate resources to access the care they need, saying that "health is everything" and "health care is a human right."

## Guarantee of non-repetition

All parents agreed that it is essential to ensure non-repetition and to establish laws or mechanisms to prevent forced family separations from ever happening again, with 7/13 stating that this is very important and 5/13 calling it is absolutely necessary. Most of the parents said that they did not want anyone else to go through what they have gone through, a unique and unimaginably painful experience; they also expressed their concern for other separated families, especially for the children. Said one parent, “Unless you have lived through this, you can’t know how unbearable it is. I want to be sure nobody else ever suffers what I have suffered. I hope God touches the heart of the authorities to let us all be together, but in a situation where we are safe.” Another parent said, “Families that come to the border have already suffered, but I never imagined this kind of trauma. My child was 13, but others were 5, 6 years old. I can’t even begin to imagine the trauma they will have for their whole lives. We will never forget. We need to prevent this from even happening again.”

## Public apology by the U.S. government

All but one of the parents evaluated felt that a public apology by the government, which acknowledges how inhumane the separations were, was very important (7/13 parents) or absolutely necessary (5/13 parents), because separations violated the sacred bond between parent and child and because the government’s actions were disproportionately harsh, wrong, discriminatory, inhumane, and severely damaged children. One father told a PHR clinician about seeing a separated three-year-old child in detention, chained at the waist, wailing and flailing, while a U.S. government official dragged the child into a bathroom, hitting his head against a glass window. However, one parent said that a public apology by the government is not important because an apology does not make up for the harm done.

## Investigation such as a truth commission

Most parents (12/13) believed that a full investigation to document what happened during the forced separations, such as through a truth commission where they could tell their story, was important to some extent. Parents stated that it was somewhat (3/13) or very important (5/13), or absolutely necessary (4/13). Several parents said an investigation is needed to ensure that separations do not happen again, because an investigation would expose the extreme suffering family separation causes; said one parent, “So that it won’t be repeated again, so more parents won’t be separated from their children, so no more children will be separated from their parents, which creates great trauma. It’s a very immense pain. I don’t know if I will ever be able to recover from what I have experienced.” Other parents said that an investigation would compel officials to acknowledge why they carried out the separations and fill an evidence gap, because the separations were not caught on “cameras or tapes;” they said an investigation would provide an opportunity for parents to describe what really

*“It’s a very immense pain. I don’t know if I will ever be able to recover from what I have experienced.”*

### Parent who was separated from their child

happened “through our own words and our own mouth.” One parent felt that an investigation was less important than an apology from the government, in part due to his concern about the re-traumatizing nature of sharing their experiences: “People will not believe how horrible it is unless they experience it themselves. We would have to tell our stories and suffer from telling it, but it would not have much effect. A public apology from the government would be more effective.”

### Possibility of criminal prosecution of U.S. officials

Within this small group of parents, there were different perspectives about the possibility of criminal prosecution for those responsible for the family separation policy. Some parents found value in prosecution, with 3/13 saying criminal prosecution was somewhat important, 2/13 saying it was very important and 2/13 saying it was absolutely necessary. Parents in favor said that prosecution would reveal government officials’ reasons for separating families, would make these officials an example, and would force them to face the consequences of their actions, thereby upholding the state obligation to ensure due diligence and justice. Other parents said that said criminal prosecution was not important at all (4/13) or not very important (1/13), or that they were not sure (1/13). Parents told PHR clinicians that they did not want to seek revenge, to “play God,” or to treat others like criminals, especially since being treated harshly themselves had been so painful. Said one parent, “I wouldn’t want to do that – be on trial, fighting. I wouldn’t want people to go through what I went through – being in jail.”

### Financial compensation

Almost all parents (10/13) stated that financial compensation as damages for the harm they suffered was important to them (absolutely necessary (5/13), very important (3/13) or somewhat important (2/13)). Parents stated that the money could be used for necessities, to provide for their children, to pay for therapy for their children, and as a form of justice and an acknowledgement of their deep suffering. A couple of parents mentioned their destitution as a result of leaving everything they had in order to seek asylum, being detained for long periods in the United States, and then being deported, making compensation an urgent matter for them. As one parent said, “I’ve been left with nothing – I have nothing now. I need to take my son to get help and I need help, too.” Others highlighted the importance of financial compensation to help their children progress after years of deprivation. As one parent said, “Money could help my son have a future and be successful. He has been separated from me for so long and I haven’t been able to support him.” A few parents said financial compensation was not very important (2/13) or that they were not sure (1/13), mainly because they stated that reunification with their children is the most important.

### Hopes for the future

Although every parent interviewed by PHR researchers revealed feeling heartbroken, having profound despair, and being in agony over being separated from their children, several parents (5/13) explicitly displayed an inspiring amount of hope for the future as well as tenacious resilience. These parents revealed that despite feeling constantly worried that they would never see their children again, they remained hopeful that they would one day be reconnected and they took solace in knowing that their children were safer in the United States than in their home countries. One mother, who has been separated from her daughter for more than four years, told researchers that she constantly feared the possibility of being murdered in Maya K'iche' territory and admitted, "If something happens to me, at least I know that my daughter is safe with my sister in the U.S." Since being connected with lawyers who are advocating for her right to be reunited with her daughter in the United States, she has glimmers of hope. Yet, she frequently feels that she is powerless and without recourse to fight for their reunion.

Additionally, several of these parents spoke about the pride they felt knowing their children were still able to thrive in school, despite experiencing the trauma of family separation. One father emphasized that he remained hopeful that his 14-year-old daughter would continue to excel in school and do "good things in the future." Two of the parents shared that they placed their faith in God to reunite them with their children. One father, who was separated from his son, emphasized throughout the interview that his faith in God helped him get through his days and he has largely put his future in God's hands. One mother, speaking of her son whom she still has not seen since the separation, said, "I have faith in God that I will be with him again."

Each of these five more hopeful parents spoke about how the most important thing to them, and their sole motivation for focusing on staying safe and making a decent living in their countries, was to be reunited with their children. One mother, who has been separated from her four daughters for three years, said, "There is nothing more valuable for me than being united with my daughters." Another father, separated from his 14-year-old daughter, described the possibility of being reunited with her: "Not even knowing that it would be possible, I can't even put words to how that would feel in my heart. It would be an enormous joy."

## Legal framework

### Forced separations constituted torture and enforced disappearance

These 13 evaluations by PHR clinicians were conducted according to the principles of the Istanbul Protocol, the UN manual for documenting torture and ill-treatment. As in the 26 cases documented in PHR's 2020 report on family



## PHR concludes that each of the 13 cases documented for this study constituted torture and temporary enforced disappearance.

separation,<sup>34</sup> PHR concludes that each of the 13 cases documented for this study constituted torture and temporary enforced disappearance. Torture is defined in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining ... information or a confession, punishing him ... or intimidating or coercing him ... at the instigation of or with the consent or acquiescence of a public official.”<sup>35</sup> In other words, torture is an act which 1) inflicts severe physical or mental suffering, 2) is done intentionally, 3) is committed for the purpose of coercion, punishment, intimidation, or for a discriminatory reason, and 4) is carried out by a state official or with state consent or acquiescence. Torture and cruel, inhuman, and degrading treatment violate foundational human rights and are prohibited under domestic and international law in any and all circumstances. In the cases that PHR documented, U.S. officials forcibly separated parents and children, causing extreme pain and suffering, in order to punish, coerce, and intimidate asylum seekers to give up their asylum claims. PHR concurs with other human rights experts who have found that the forced family separations implemented in the United States during the Trump administration meet the legal definition of torture.<sup>36</sup>

Enforced disappearance is defined as any deprivation of liberty by the state where there is concealment of the fate or whereabouts of the disappeared person.<sup>37</sup> In all 13 cases, parents reported that for an extended period of time, as long as two months, they had no idea of their children’s whereabouts or well-being and did not have any means of contacting their children, despite repeated requests to U.S. officials for information. Refusal of U.S. officials to provide information to parents about the location and well-being of their children over an extended period of time constituted intentional and prolonged concealment and amounts to temporary enforced disappearance.<sup>38</sup>

### State obligations to provide redress to victims of torture and enforced disappearance

In addition to the absolute prohibitions on torture and enforced disappearance in international law and the state obligation to take measures to prevent torture and enforced disappearance from occurring, international treaties ratified by the United States also require that states provide remedy, rehabilitation, and redress to survivors of torture and enforced disappearance and to their affected family members.<sup>39</sup>

The CAT requires that states parties ensure that torture victims obtain redress and compensation, stating “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair

and adequate compensation, including the means for as full rehabilitation as possible” (Article 1(1)). The Committee Against Torture, the body of independent experts that monitors the implementation of the CAT, has clarified that “redress” in Article 14 includes the full scope of measures for redress, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition, with restoration of the dignity of the victim as the ultimate aim of redress.<sup>40</sup>

The International Convention for the Protection of All Persons from Enforced Disappearance requires states parties to provide reparations to disappeared persons and to “any individual who has suffered harm as the direct result of an enforced disappearance” (Article 2).<sup>41</sup> The rights of victims include the right to know the truth about the circumstances of the disappearance (Article 24(2))<sup>42</sup> and the right to reparation and “prompt, fair and adequate” compensation (Article 24(4)), defining reparation as material and moral damages, including restitution, rehabilitation, satisfaction, restoration of dignity and reputation, and guarantees of non-repetition (Article 24(5)). The Convention particularly notes the special rights of children affected by enforced disappearance, conferring a state obligation to search for and identify separated children and to return them to their families (Article 25(2)), stating that, in all cases, the best interests of the child shall be a primary consideration, and that children’s views should be given due weight in the proceedings, depending on their stage of development (Article 25(5)). Restoration of children to their parents may be understood as a form of restitution, seeking to restore the victim to their original situation, including in regard to their family life.<sup>43</sup>

Though the International Convention on the Rights of the Child is not ratified by the United States, there is widespread U.S. support for the objectives of the Convention.<sup>44</sup> The Convention affirms the right of children not to be separated from their parents against their will – unless as part of a comprehensive best interest determination process – and the right to maintain direct contact with their parents, further stating that if parents and children are separated due to detention, they have the right to know the whereabouts of their family members.<sup>45</sup>

States must ensure full and effective redress tailored to the needs of the victim and proportionate to the gravity of the violation.<sup>46</sup> Over time, harm from torture can increase without appropriate support, thus it is critical that redress is timely and prompt.<sup>47</sup> Measures for redress and reparation must also be victim-oriented, gender-sensitive, and comprehensive.<sup>48</sup> Legal and administrative systems should take measures to prevent re-traumatization during proceedings, while ensuring victim participation.<sup>49</sup> These obligations also apply to asylum seekers and refugees who have been tortured.<sup>50</sup> States should also give children age-appropriate and trauma-sensitive opportunities to express their views during the reparation process, prioritize the best interests of the child, and ensure that reparation measures are child sensitive and “foster the health and dignity of the child.”<sup>51</sup>

## Compensation and rehabilitation for torture survivors

Compensation and rehabilitation for torture victims are rooted in a fundamental recognition that the victims' dignity, health, and self-sufficiency may never be fully recovered due to the severe and persistent effect of torture.<sup>52</sup> Compensation for torture victims should be "prompt, fair and adequate;" the committee emphasizes that victims should be compensated for damages resulting from torture, including medical or rehabilitation expenses, damage for physical and mental harm, loss of earning or earning potential, and loss of opportunities, as well as compensation for legal assistance and costs for bringing the claim to court.<sup>53</sup> States are obligated to ensure timely compensation, including by addressing informal barriers to obtaining redress, such as inadequate procedures for quantifying damages.<sup>54</sup>

Rehabilitation likewise is described by the committee as a holistic concept, including medical and psychological treatment as well as legal and social services, for the "restoration of function" and "maximum possible self-sufficiency" for victims in order to ensure their full return to active participation in society.<sup>55</sup> Since torture has such clearly harmful physiological effects, torture rehabilitation should be understood to be long term and to require specialist services.<sup>56</sup>

The World Health Organization (WHO) defines rehabilitation as "the combined and co-ordinated use of medical, social, educational and vocational measures for training or retraining the individual to the highest possible level of functional ability."<sup>57</sup> The WHO further defines in detail what is meant by different forms of rehabilitation: medical rehabilitation seeks to restore functional and psychological abilities and compensatory mechanisms, social rehabilitation focuses on reintegration into society and adjusting to demands of family, community, and work, and vocational rehabilitation enables the affected person to maintain suitable employment.<sup>58</sup> A definition of rehabilitation for torture survivors would not be complete without including the critical importance of restoring their essential human dignity as the central objective.<sup>59</sup>

Rehabilitation measures should be based on a comprehensive clinical evaluation, conducted according to international standards such as the Istanbul Protocol, which can point to the need for not only medical, physical, and psychological treatment, but also for social, community, and family services and vocational training or education.<sup>60</sup> A comprehensive clinical evaluation should include indigenous perspectives and health alternatives and should be conducted by individuals with experience in cultural humility when working with indigenous families.<sup>61, 62, 63</sup> Importantly, the victim should not have to obtain a judicial remedy in order to access rehabilitation.<sup>64</sup>

## Satisfaction and guarantees of non-repetition for torture

Satisfaction for torture victims can take the form of public apologies or declarations which disclose the truth of the full extent of the violations and take

responsibility for what happened, commemorate or pay tribute to the victims, and condone sanctions and criminal prosecution of those responsible.<sup>65</sup> Apologies must be victim-centered, respecting the victims' perspectives on the wording and manner of delivery of the apology, and should be delivered sincerely, respectfully, remorsefully, and with sensitivity for the victimized.<sup>66</sup> Victims should never be forced to accept an apology. Apologies are one form of accurately recording the past; other forms of satisfaction include memorialization through location marking, museum exhibits, and renaming or designating commemoration days.<sup>67</sup> Victim participation in memorialization can increase the completeness and truthfulness of the historical record;<sup>68</sup> however, the safety, privacy, and best interests of the victims should be the first priority with regard to the content of public statements or disclosures.<sup>69</sup> Satisfaction is an important component of redress, because reparation measures must be undertaken as an acknowledgement of human rights violations, not merely as humanitarian gestures; this obligation remains in a successor regime.<sup>70</sup>

Ensuring fair and impartial judicial proceedings related to acts of torture, training and oversight for law enforcement and correctional officials, and reforming laws related to torture and nonrefoulement are critical for meaningfully guaranteeing non-repetition of torture or ill-treatment.<sup>71</sup> Systems should be in place for regular and independent monitoring for detention centers to prevent and to ensure accountability for torture and government officials should be trained in preventing re-traumatization during investigations.<sup>72</sup> Training in the Istanbul Protocol for health and legal professionals, and for law enforcement, judicial, and immigration personnel, will strengthen understanding of the physical and psychological impacts of torture, the needs of survivors, and the standards for effective investigation. In the case of separated families, provision of permanent immigration status will also be an important component of guaranteeing non-repetition of the forced separations.<sup>73</sup> Trauma counselling, discussed above as a part of rehabilitation, can also be understood as a mechanism for ensuring that institutional guarantees of non-repetition are effective at the individual level.<sup>74</sup>

Ultimately, all forms of redress (compensation, rehabilitation, satisfaction, restitution, and guarantees of non-repetition) are interrelated. For example, truth telling and accountability underscore that compensation is a justice measure, while compensation shows that symbolic actions and truth telling are not mere words.<sup>75</sup> Transitional justice measures recognize victims as rights holders, begin to rebuild trust in institutions, foster reconciliation, and strengthen the rule of law.<sup>76</sup>

## Victim participation is essential for transformative reparations

The participation of victims throughout the redress process is important for respecting their agency and dignity and for ensuring appropriate outcomes.<sup>77</sup>

PHR's expert evaluators noted that the trauma suffered by the parents warranted trauma-focused psychotherapy and psychiatric care, due to their acute distress and ongoing functional impairment.

Developing meaningful reparations policies and mechanisms requires in-depth consultation with affected groups, including by resourcing their participation.<sup>78</sup> The United Nations Declaration on the Rights of Indigenous Peoples affirms the right of Indigenous peoples to participate in decision-making in matters which affect their rights and to choose the manner of their participation with due regard for their laws, traditions, and customs.<sup>79</sup> Ensuring meaningful participation of survivors is a sign of good faith and due diligence in state-led accountability processes; victim participation in bringing about justice also resists the power relationship between torturer and victim as it may live on in victims' own psychology and in societal attitudes.<sup>80</sup> Given the risks of possible re-traumatization, provision of psychosocial support is a critical element to enable participation of victims, and may include measures such as physical accompaniment, prior briefings, and de-briefings to process their experience.<sup>81</sup> The separated parents' perspectives and wishes have shaped the policy recommendations in this report. These small scale consultations should be emulated on a national and international level, as only through consultation with affected groups can transitional justice measures capture the survivors' sense of justice and effective redress, take their felt needs and cultural context into account, and broaden the range of measures considered for redress, ultimately contributing to the legitimacy of transitional justice measures.<sup>82</sup> The transformative and catalytic power of reparations to bring about meaningful reform and healing is only possible with the recognition of the violation and the suffering it caused, as well as the recognition of the systemic discrimination which is often its root cause.<sup>83</sup>

## Conclusions

This study found that, similar to PHR's previous research, the parents interviewed had arrived with their families to seek asylum in the United States and were forcibly separated from their children. U.S. immigration officials conducted the separations pursuant to policies that completely disregarded the children's well-being and officials did not offer information about the reason for the separation or the process, causing great distress to both parents and children. Families experienced abject despair and trauma due to the lack of contact and information in the initial weeks and months of separation. At the time of the interview, more than half of the deported parents interviewed by PHR clinicians continued to live in constant fear of persecution and in hiding from gangs or cartels from whom they had previously fled. At the time of writing, two parents are still separated from their children.



Parents called for a formal public apology by the government, an investigation, financial compensation and funding for rehabilitation expenses, legal reforms to prevent repetition and permanent immigration status in the United States, to ensure that they would not be separated from their children again.

At the time of the interviews, parents almost universally reported continued disturbances in sleep, nightmares, loss of appetite, loss of interest, fear for the future, constant worry, hopelessness, and loss of the ability to concentrate, such as their concern for their children's well-being and their continued safety and future together. All parents were diagnosed as meeting diagnostic criteria for at least one mental health condition associated with the trauma of family separation, compounded by additional traumatic experiences in their home country, before and after deportation, and during the migration process. Almost all of the affidavits documented a diagnosis of post-traumatic stress disorder. Indications that the forced separation event played a significant role in mental health outcomes included intrusive symptoms about the separation event and triggering by related stimuli. PHR's expert evaluators noted that the trauma suffered by the parents warranted trauma-focused psychotherapy and psychiatric care, due to their acute distress and ongoing functional impairment. Due to living in hiding or lacking resources, most parents interviewed were not able to access mental health services at the time of the interviews. Currently, those who have been reunited with their children in the United States are accessing mental health services as mandated by a court ruling, though it is uncertain how long these services will continue.

In response to these U.S. government abuses and subsequent psychological effects, parents called for a formal public apology by the government, an investigation such as a truth commission, financial compensation and funding for rehabilitation expenses, legal reforms to prevent repetition and, importantly, permanent immigration status in the United States, to ensure that they would not be separated from their children again. These measures are all strongly supported in international human rights law, which requires states that inflict torture to ensure prompt and effective remedies for victims and survivors. Reparation is not a policy choice; it is the fulfilment of the U.S. government's obligation owed to victims as a result of its unlawful breach of international and domestic law.<sup>84</sup>

# Policy Recommendations

The U.S. Administration, Department of Justice, and Department of Homeland Security should:

Provide redress to victims who suffered harm through forced separations in line with U.S. law and international treaty obligations:

- Immediately reunify all families separated by the U.S. government, through consultation with indigenous-led groups and other family advocacy organizations, and with legal counsel for the families;
- Work closely with Congress to ensure that families have a pathway to remain permanently in the United States with their children so they will have security from the traumatization of another separation, and because the harm they suffered should qualify for them for immigration status as a form of restitution;
- Provide redress through prompt, fair, and adequate monetary compensation as damages for the physical and mental harm families suffered, for medical and rehabilitation expenses, loss of earning, or earning potential, and as compensation for legal assistance and costs for bringing the claim to court. -
- Ensure that reparations are timely by returning to global settlement negotiations to settle the lawsuits with the families; and
- Fund rehabilitation of family members according to the World Health Organization definition as including medical, social, educational, and vocational measures for restoring the individual to the highest possible level of functional ability. Rehabilitation should be based on a baseline clinical evaluation, conducted in accordance with international standards such as the Istanbul Protocol. Rehabilitation should take a strengths-based approach, protect victims' confidentiality, be tailored to their cultural background and personality, and allow them to participate in selection of the service provider. The government should consult with indigenous groups on technical assistance for mental health assessments and interventions.

Ensure accountability for rights violated through forced family separations:

- Recognize the illegality and unconstitutionality of the forced family separations both in court and in a formal public apology issued by the White House, and immediately end all legal defense of the prior administration's practice of forced family separation;
- Consult with families regarding their wishes to support a full investigation that would document what happened during the forced separations, such as through a truth commission and possibly through criminal prosecutions, in order to prevent repetition and to ensure full acknowledgment of government actions; and
- Train health and legal professionals, and law enforcement, judicial, and immigration personnel to use the Istanbul Protocol to strengthen understanding of the physical and psychological impacts of torture, the needs of survivors, and

the standards for effective investigation, including training in preventing re-traumatization during investigations and adjudication.

Protect families from future violations through reforming policies and practices:

- Prohibit the separation of families arriving together at the U.S.-Mexico border and hire child welfare experts and health professionals to handle the majority of intake and processing needs at the border, especially those of families and children, as the United States has done with refugee resettlement;
- Ensure that any lawful separation in extreme cases, solely for the safety and well-being of the child, takes place through a trauma-informed process which ensures interpretation in the child's and parents' primary language, provides a written decision and opportunity to appeal in court; and ensures interagency record-keeping for reunification or release to a sponsor; and
- Avoid costly, inhumane, and unnecessary immigration detention by using legal authority, including parole, to release people seeking asylum to live with family and community while their cases are pending; scale up effective, appropriate community-based case-management services operated by trusted nonprofit service providers.

# Endnotes

- <sup>1</sup> [https://www.dhs.gov/sites/default/files/2021-12/21\\_1129\\_s1\\_interim-progress-report-family-reunification-task-force.pdf](https://www.dhs.gov/sites/default/files/2021-12/21_1129_s1_interim-progress-report-family-reunification-task-force.pdf)
- <sup>2</sup> Monique Beals, McConnell blasts potential payments to separated migrant families, *The Hill*, November 1, 2021, <https://thehill.com/policy/international/579531-mcconnell-blasts-potential-payments-to-separated-migrant-families>; Niall Stanage, The Memo: Much-criticized Trump policy puts Biden in a vise, *The Hill*, November 9, 2021, <https://thehill.com/homenews/administration/580646-the-memo-much-criticized-trump-policy-puts-biden-in-a-vise>
- <sup>3</sup> Miriam Jordan, Justice Department Halts Settlement Talks With Migrant Families, *The New York Times*, December 16, 2021, <https://www.nytimes.com/2021/12/16/us/biden-migrant-family-separation-settlement.html>.
- <sup>4</sup> <https://joebiden.com/immigration/>
- <sup>5</sup> <https://www.vox.com/2020/10/22/21529710/trump-debate-family-separations>
- <sup>6</sup> <https://phr.org/our-work/resources/you-will-never-see-your-child-again-the-persistent-psychological-effects-of-family-separation/>
- <sup>7</sup> <https://www.youtube.com/watch?v=PevJComISVo&feature=youtu.be>
- <sup>8</sup> <https://www.cnn.com/2020/10/29/politics/biden-immigrant-children/index.html>
- <sup>9</sup> Of the affected families, 1,710 parents were returned to their countries, with or without their children, and 410 children were returned to their countries, with or without their parents. [https://www.dhs.gov/sites/default/files/2021-12/21\\_1129\\_s1\\_interim-progress-report-family-reunification-task-force.pdf](https://www.dhs.gov/sites/default/files/2021-12/21_1129_s1_interim-progress-report-family-reunification-task-force.pdf)
- <sup>10</sup> Obinna DN. "Alone in a Crowd: Indigenous Migrants and Language Barriers in American Immigration." *Race and Justice*. March 2021. doi:10.1177/21533687211006448.
- <sup>11</sup> Tristan Ahtone, "Indigenous immigrants face unique challenges at the border: Language barriers mean Indigenous families may be more likely to be split up," *High Country News*, June 21, 2018, <https://www.hcn.org/articles/tribal-affairs-indigenous-immigrants-face-unique-challenges-at-the-border>.
- <sup>12</sup> Interview on March 7, 2022, with Comunidad Maya Pixan Ixim experts, Cindy Toledo, Astrid Josefina Gomez, Lucero Gonzalez and Carolina Martin Ramos.
- <sup>13</sup> <https://thehill.com/homenews/administration/587206-task-force-has-reunited-100-children-separated-under-trump-with>
- <sup>14</sup> [https://www.dhs.gov/sites/default/files/2021-12/21\\_1129\\_s1\\_interim-progress-report-family-reunification-task-force.pdf](https://www.dhs.gov/sites/default/files/2021-12/21_1129_s1_interim-progress-report-family-reunification-task-force.pdf)
- <sup>15</sup> <https://www.politico.com/news/2021/06/08/trump-zero-tolerance-policy-child-separations-492099>
- <sup>16</sup> <https://www.together.gov/>
- <sup>17</sup> <https://www.congress.gov/bill/117th-congress/house-bill/2766?s=1&r=75>
- <sup>18</sup> <https://www.politico.com/news/2021/11/04/white-house-biden-separation-settlement-519589>
- <sup>19</sup> Zeke Miller and Colleen Long, Biden: Families of separated children deserve compensation, ABC News (Nov. 6, 2021) <https://abcnews.go.com/Politics/wireStory/biden-families-separated-children-deserve-compensation-81010134>
- <sup>20</sup> <https://apnews.com/article/immigration-lawsuits-american-civil-liberties-union-c1a672b1210fb47c469506aco75c4757>
- <sup>21</sup> Wilpur P.G. et al v. United States of America, No. 4:21-cv-04457-KAW (N.D. Cal. Jun. 10, 2021)
- <sup>22</sup> Ms L v ICE
- <sup>23</sup> Ms JP v Session
- <sup>24</sup> <https://senecafoa.org/todopormifamilia/>

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- <sup>25</sup> The CAM refugee and parole program enables some children from El Salvador, Guatemala, and Honduras to apply in their home country for refugee status to rejoin their parents or legal guardians in the United States. See <https://www.uscis.gov/CAM>.
- <sup>26</sup> <https://phr.org/our-work/resources/forced-into-danger/>
- <sup>27</sup> Camilo Montoya-Galvez, “CDC orders Title 42 to wind down, saying expulsions of migrants are no longer needed”, *CBS News*, April 1, 2022, <https://www.cbsnews.com/news/cdc-orders-title-42-wind-down-saying-expulsions-of-migrants-are-no-longer-needed/>.
- <sup>28</sup> <https://phr.org/our-work/resources/neither-safety-nor-health/>
- <sup>29</sup> UN Office of the High Commissioner for Human Rights (OHCHR), Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”), 2004, HR/P/PT/8/Rev.1.
- <sup>30</sup> UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law : resolution / adopted by the General Assembly, 21 March 2006, A/RES/60/147.
- <sup>31</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4012002/>
- <sup>32</sup> A credible fear interview is a preliminary screening by an Asylum Officer to assess if an immigrant at the border has a significant possibility of being persecuted if they are returned to their country. See <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/questions-and-answers-credible-fear-screening>.
- <sup>33</sup> Email communication from CMPI co-executive director Carolina Ramos on March 8, 2022 reminds that Maya people who are removed from the United States are deported back to the Guatemalan state, an occupying, colonial government that committed genocide against Maya peoples and continues to persecute them today. After processing by Guatemalan authorities, they are finally allowed to travel to the Maya territories where their families live.
- <sup>34</sup> “You Will Never See Your Child Again”: The Persistent Psychological Effects of Family Separation.
- <sup>35</sup> Art 1(1). UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.
- <sup>36</sup> Art 1, UN CAT; “You don’t have any rights here”: Illegal Pushbacks, Arbitrary Detention and Ill Treatment of Asylum-seekers in the United States, Amnesty International, 2018, accessed at: <https://www.amnesty.org/en/latest/research/2018/10/usa-treatment-of-asylum-seekers-southern-border/>; Beth Van Schaak, “The Torture of Forcibly Separating Children from their Parents,” Just Security, October 18, 2018, <https://www.justsecurity.org/61138/torture-forcibly-separating-children-parents/>; Redacted GJC et al Brief Amici Curiae, February 2019, <https://chrgj.org/wp-content/uploads/2019/02/Redacted-GJC-et-al-Brief-Amici-Curiae-Feb-2019.pdf>.
- <sup>37</sup> Article 2, UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006.
- <sup>38</sup> A/HRC/36/39/Add.2, Report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration, 28 July 2017.
- <sup>39</sup> The International Convention on the Elimination of All Forms of Racial Discrimination (art. 6), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (art. 14), the Convention on the Rights of the Child (art. 39) and the International Covenant on Civil and Political Rights (art. 2 and ICCPR General Comment 20 (1992)), International Convention for the Protection of All Persons from Enforced Disappearance (art 24)
- <sup>40</sup> CAT General comment No. 3 (2012) on implementation of article 14 of the Convention against Torture by States parties (CAT/C/GC/3), paras 2 and 4; also UN Basic Principles and Guidelines para 18.



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- <sup>41</sup> Although the United States has not ratified the Convention, enforced disappearance represents a violation of other U.S. treaty obligations in the ICCPR such as the right to life, right to protection from arbitrary deprivation of liberty and security of the person, the right to humane treatment, and the right to recognition as a person before the law. See Pérez Solla, Maria Fernanda. *Enforced Disappearances in International Human Rights*. Jefferson, NC: McFarland, 2006.
- <sup>42</sup> See also chap. XVII, E/CN.4/2005/L.10/Add.17 UN OHCHR Human Rights Resolution 2005/66, Right to the truth, adopted at the 59th meeting, 20 April 2005.
- <sup>43</sup> A/RES/60/147, 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Official Records of the General Assembly, Sixtieth Session, Supplement No. 49 (A/60/49), p. 354, para 19.
- <sup>44</sup> <https://crsreports.congress.gov/product/pdf/R/R40484/25>
- <sup>45</sup> UN Commission on Human Rights, Convention on the Rights of the Child., 7 March 1990, E/CN.4/RES/1990/74, Article 9.
- <sup>46</sup> CAT General Comment No. 3, Paras 5 and 6; A/RES/60/147, 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Official Records of the General Assembly, Sixtieth Session, Supplement No. 49 (A/60/49), p. 354, para 15.
- <sup>47</sup> CAT General Comment 3, Para 40.
- <sup>48</sup> IP, para 185
- <sup>49</sup> CAT General Comment No 3, Para 21
- <sup>50</sup> CAT General comment No. 3 Para 32.
- <sup>51</sup> CAT General Comment 3, Para 36; see also Mazurana, Dyan and Carlson, Khristopher (2010), “Children and Reparation: Past Lessons and New Directions”, Innocenti Working Paper No. 2010-08. Florence, UNICEF Innocenti Research Centre.
- <sup>52</sup> CAT General Comment 3, Para 12
- <sup>53</sup> CAT General Comment 3, Para 10, also UN Principles para 20.
- <sup>54</sup> CAT General Comment 3, Para 39
- <sup>55</sup> CAT General Comment 3, Para 11
- <sup>56</sup> CAT General Comment 3, Para 13; Resolution adopted by the Human Rights Council 22/21. Torture and other cruel, inhuman or degrading treatment or punishment: rehabilitation of torture victims, 12 April 2013, A/HRC/RES/22/21, para 13.
- <sup>57</sup> WHO Expert Committee on Medical Rehabilitation, Second Report, Technical Report Series 419, (Geneva, 1969), p. 6.
- <sup>58</sup> Ibid.
- <sup>59</sup> REDRESS, Rehabilitation as a Form of Reparation Under International Law, 10 (Dec. 2009), available at <http://www.redress.org/downloads/publications/The%20right%20to%20rehabilitation.pdf>
- <sup>60</sup> HRC General Comment No 3, Para 13; Resolution adopted by the Human Rights Council 22/21. Torture and other cruel, inhuman or degrading treatment or punishment: rehabilitation of torture victims, 12 April 2013, A/HRC/RES/22/21, para 17.
- <sup>61</sup> Interview on March 7, 2022, with Comunidad Maya Pixan Ixim experts, Cindy Toledo, Astrid Josefina Gomez, Lucero Gonzalez and Carolina Martin Ramos.
- <sup>62</sup> CAT General Comment 3, Paras 13, 15 and 32
- <sup>63</sup> The National Council of Indigenous Peoples in the Diaspora (CONPID) Policy Position and Proposal on Technical Assistance for Separated Children and Families August 23, 2021, [https://docs.google.com/document/d/1akXjkt6tzR1uXvPHmsfcqRM-X3xRN6\\_3/edit](https://docs.google.com/document/d/1akXjkt6tzR1uXvPHmsfcqRM-X3xRN6_3/edit)
- <sup>64</sup> General Comment No 3, Para 32
- <sup>65</sup> CAT General Comment 3, Para 17.
- <sup>66</sup> Report of the Special Rapporteur on the promotion of truth, justice, reparation and

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guarantees of non-recurrence, Fabián Salvioli, submitted in accordance with Human Rights Council resolution 36/7, A/74/147, 12 July 2019.

<sup>67</sup> CORE ELEMENTS OF REPARATIONS, Legal Memorandum, Public International Law & Policy Group, June 2013, [https://syriaaccountability.org/wp-content/uploads/PILPG-Reparations-Memo-2013\\_EN.pdf](https://syriaaccountability.org/wp-content/uploads/PILPG-Reparations-Memo-2013_EN.pdf)

<sup>68</sup> Juan E. Méndez, Victims as Protagonists in Transitional Justice, *International Journal of Transitional Justice*, Volume 10, Issue 1, March 2016, Pages 1–5, <https://doi.org/10.1093/ijtj/ijv037>

<sup>69</sup> UN Basic principles para 22.

<sup>70</sup> CAT General Comment No. 3, Para 37.

<sup>71</sup> CAT General Comment No. 3, Para 18; UN Basic principles para 23.

<sup>72</sup> CAT General Comment 3, Para 19, 30 and 35

<sup>73</sup> Letter to the House and Senate,

[https://docs.google.com/document/d/1ZJmJco9OBQkHVkd\\_uET3yfaFITrLb6fuffcUdOpHLFc/edit](https://docs.google.com/document/d/1ZJmJco9OBQkHVkd_uET3yfaFITrLb6fuffcUdOpHLFc/edit)

<sup>74</sup> Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/30/42, 7 September 2015.

<sup>75</sup> First annual report submitted to the Human Rights Council by the first Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/21/46, 9 August 2012, para 24.

<sup>76</sup> Ibid.

<sup>77</sup> CAT General comment 3, para 4.

<sup>78</sup> CORE ELEMENTS OF REPARATIONS, Legal Memorandum, Public International Law & Policy Group, June 2013, [https://syriaaccountability.org/wp-content/uploads/PILPG-Reparations-Memo-2013\\_EN.pdf](https://syriaaccountability.org/wp-content/uploads/PILPG-Reparations-Memo-2013_EN.pdf); The report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, in accordance with Human Rights Council resolution 27/3, A/71/567, 25 October 2016.

<sup>79</sup> UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295, Article 18, Article 27.

<sup>80</sup> Juan E. Méndez, Victims as Protagonists in Transitional Justice, *International Journal of Transitional Justice*, Volume 10, Issue 1, March 2016, Pages 1–5, <https://doi.org/10.1093/ijtj/ijv037>

<sup>81</sup> The report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, pursuant to Council resolution 27/3, A/HRC/34/62, 27 December 2016, paras 67-69.

<sup>82</sup> The report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, in accordance with Human Rights Council resolution 27/3, A/71/567, 25 October 2016.

<sup>83</sup> 15th Anniversary of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ‘The catalytic power of reparations’, Statement by Michelle Bachelet, UN High Commissioner for Human Rights, 16 December 2020,

<https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26615&LangID=E>

<sup>84</sup> Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, Fabián Salvioli, Report on practical experiences of domestic reparation programs, A/HRC/42/4511 July 2019, para 28.



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