

## National Children's Lawyers Association Renews Call To End Traumatic and Unnecessary Practice of Family Separation at the Southern U.S. Border

Washington, DC, August 8, 2019-- The National Association of Counsel for Children (NACC) issues this statement to reprise and reaffirm its June 2018 Call to Action regarding the separation and inhumane treatment of immigrant families at the U.S. Border.

Founded in 1977, NACC is a membership and advocacy organization supporting attorneys who represent children, agencies, and families involved in the child welfare system. We are committed to safeguarding and advancing the rights, well-being, and opportunities of all children.

Despite a June 2018 court order expressly prohibiting the administration's "zero tolerance" policy of separating all immigrant children from their parents at the southern border, credible accounts from the field confirm that this insidious practice persists. Recent reports indicate that over 900 children were separated from their parents or relatives between June 2018 and May 2019.<sup>1</sup>

How is this possible? According to the Young Center for Immigrant Children's Rights' recent testimony before the U.S. House of Representatives Committee on Oversight and Reform, the government has continued to improperly justify parent-child separation "based on unverified arrests or mere suspicion of criminal activity" which "very rarely [has] a nexus with, or impact, the parent's ability to care for the child."<sup>2</sup> Additionally, the federal government has also confirmed a practice of separating families if the parent is HIV positive.<sup>3</sup>

These actions run counter to the sound principles of due process, equal protection, and the commitment to operate in the best interest of the child that undergird our nation's child welfare system. The Supreme Court has repeatedly recognized a parent's fundamental liberty interest in the care and custody of their child; NACC strongly believes that children have a similar constitutional interest in family integrity. Alleged criminal activity is never adequate justification to remove a child from a parent's custody, absent other information linking that conduct to the parent's ability to safely care for the child. Indeed, the everyday news is replete with examples of celebrities and politicians who have been charged and even convicted of illegal activity, yet have retained custody of their children. Immigrant parents at our nation's border do not share the same privileges of wealth, race, and status; as a result, traumatic family separation continues to occur in egregious violation of law and policy.

Similarly, HIV status bears no relation to a parent's capacity to safely and appropriately care for their child. The administration's justification - that this falls in the category of "communicable diseases" warranting separation

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<sup>1</sup>Caldwell, Alicia A. *More Than 900 Immigrant Children Separated from Families in Past Year, ACLU Says*. The Wall Street Journal (30 July 2019). Available at: <https://www.wsj.com/articles/more-than-900-immigrant-children-separated-from-families-in-past-year-aclu-says-11564531456>

<sup>2</sup> Written Testimony of Jennifer Nagda, Young Center for Immigrant Children's Rights. United States House of Representatives Committee on Oversight and Reform. (July 12, 2019), [https://static1.squarespace.com/static/597ab5f3bebafb0a625aaf45/t/5d2dd3dbac5f4900017798c7/1563284443805/House+Oversight+and+Reform\\_Testimony+of+Jennifer+Nagda+Young+Center+%281%29.pdf](https://static1.squarespace.com/static/597ab5f3bebafb0a625aaf45/t/5d2dd3dbac5f4900017798c7/1563284443805/House+Oversight+and+Reform_Testimony+of+Jennifer+Nagda+Young+Center+%281%29.pdf)

<sup>3</sup> Timmons, Heather. *U.S. Border Patrol is Separating Kids from their HIV+ Parents, Official Confirms*. Quartz (25 July 2019). Available at: [https://qz.com/1675161/border-patrol-is-separating-kids-from-hiv-parents-official-says/?utm\\_medium=email&utm\\_source=govdelivery&ypr=yahoo](https://qz.com/1675161/border-patrol-is-separating-kids-from-hiv-parents-official-says/?utm_medium=email&utm_source=govdelivery&ypr=yahoo)

- belies logic, runs contrary to all current domestic child welfare policy and practice, and reawakens a legacy of discrimination against individuals experiencing HIV that has tarnished our nation's history.

In addition to breaching fundamental legal principles, the separation and detention of families at the border directly contravenes important, bipartisan reforms that are positively reshaping the federal and state child welfare systems. The recently passed [Family First Prevention Services Act](#) aligns federal funding to support what research, best practice and common sense have long demonstrated: that children thrive best in families, not institutional care, and that parent-child separation should be a rare intervention reserved for only the most serious cases. Similarly, the federal Children's Bureau, which is housed within the U.S. Department of Health and Human Services, continues to promote a [family-centered strategic vision](#) that urges and incentivizes state agencies and courts to prioritize prevention and support services to keep families together. The current policies and practices at the U.S. southern border undermine, diminish, and disrupt the important work toward child welfare transformation that is already underway.

Furthermore, we are disturbed and outraged by reports that children at the border remain detained without provisions to meet their basic needs, such as soap, toothpaste and toothbrushes.<sup>4</sup> The Department of Homeland Security's Office of the Inspector General recently took the unusual step of issuing a "management alert" in July 2019, citing conditions of extreme overcrowding, prolonged detention, and "limited" access to clean clothing and hot meals.<sup>5</sup> These conditions are an affront to core notions of human decency and a violation of the well-established responsibilities of juvenile justice and child welfare systems to monitor and ensure the well-being of young people in government custody.

As members of the legal profession, we have a special responsibility to speak out against state-sponsored injustice.<sup>6</sup> Today, NACC renews its call to end the traumatic and unnecessary practice of family separation at our southern border. We specifically endorse the Young Center's eight formal recommendations offered to Congressional leaders on July 12, 2019.<sup>7</sup> We urge leaders to particularly scrutinize and vigorously challenge the continued parent-child separation based on purported criminal activity and HIV status, and to ensure that all young people in the custody of the Office of Refugee Resettlement reside in the least restrictive environment with all adequate provisions to meet their needs.

For additional information about the National Association of Counsel for Children, see [NACC's website](#). Contact: Allison Green, JD, CWLS, Legal Director, [Allison.Green@NACCchildlaw.org](mailto:Allison.Green@NACCchildlaw.org), 303-864-5323

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<sup>4</sup> Dickerson, Caitlin. *'There is a Stench': Soiled Clothes and No Baths for Children at a Texas Center*, The New York Times (June 21, 2019), Available at: <https://www.nytimes.com/2019/06/21/us/migrant-children-border-soap.html>.

<sup>5</sup> Management Alert – DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley (Redacted). Office of the Inspector General, Department of Homeland Security. 2 July 2019. Available at: [https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19\\_.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19_.pdf)

<sup>6</sup>American Bar Association Model Rules of Professional Responsibility, Preamble ("A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice").

[https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_preamble\\_scope/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/)

<sup>7</sup> Written Testimony of Jennifer Nagda, Young Center for Immigrant Children's Rights. United States House of Representatives Committee on Oversight and Reform. (July 12, 2019), Page 9-10. [https://static1.squarespace.com/static/597ab5f3beba0a625aaf45/t/5d2dd3dbac5f4900017798c7/1563284443805/House+Oversight+and+Reform\\_Testimony+of+Jennifer+Nagda+Young+Center+%281%29.pdf](https://static1.squarespace.com/static/597ab5f3beba0a625aaf45/t/5d2dd3dbac5f4900017798c7/1563284443805/House+Oversight+and+Reform_Testimony+of+Jennifer+Nagda+Young+Center+%281%29.pdf)