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SPECIAL REPORT

Divided by Detention: Asylum-Seeking Families' Experiences of Separation

By Leigh Barrick | August 31, 2016

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As the number of asylum-seeking families from El Salvador, Guatemala, Honduras, and Mexico arriving in the United States soared in recent years, the Obama Administration aggressively expanded family detention in an attempt to “deter” the arrival of others. The Department of Homeland Security (DHS) opened large detention centers to detain mothers and children. Although DHS has the authority to place asylum-seekers directly into immigration court proceedings, it continues to detain mothers and children and subject them to fast-track removal. Families and advocates have exposed the numerous ways that detention and fast-track removal jeopardize the well-being of asylum-seeking families. They have also drawn attention to the due-process violations caused by detention that prevent families from accessing the system of humanitarian protection created for people in their circumstances.

This report examines what happens when “family detention” does not actually keep loved ones together. Through its custody determinations, DHS splits family members—sending them to different facilities around the country—while failing to track and reunite those who arrive separately. While DHS claims that family detention keeps families together, the truth is that a mother and child who are sent to family detention will often have been separated by DHS from other loved ones with whom they fled—including husbands, fathers, grandparents, older children, and siblings. Minors who arrive with non-parent caretakers are often removed from their custody. These DHS custody determinations

that divide families do not occur in a vacuum. The administration has targeted these families, while Congress maintains a controversial directive to fund a minimum capacity of 34,000 noncitizen detention beds.

This report profiles the experiences of five asylum-seeking families who are divided by detention. It provides a preliminary analysis of how this separation occurs, and the impact this separation can have on families' well-being and ability to access humanitarian protection. The families interviewed express that separation negatively impacts their mental and material well-being. Four attorneys highly experienced in representing detained asylum-seeking families interviewed for this report argue that being split up also negatively impacts families' ability to access protection. Families bear the burden of tracking down their loved ones, worrying about their well-being, and attempting to link their cases. Multiple adjudicators across the country may rule on the same case, while only hearing a piece of the story. Ultimately, it is possible that family members who fled their country for the same reason may receive inconsistent decisions in their cases. This report calls for further research into these issues.

Separating families has countless negative impacts, while allowing them to stay together has numerous benefits. Doing the latter would allow the U.S. government to better uphold its various commitments to family unity and parental rights in immigration enforcement activities, support the well-being of families, give them more effective access to humanitarian protection, and prevent the unnecessary waste of government resources.

Vanessa's Family

In the afternoons, when Vanessa's 10-year-old daughter would come home from school, she always asked "*¿Y papá?* [And daddy?]" The two of them were waiting, staying with Vanessa's mother-in-law in California, for her husband to be released from a Texas detention center. They were also waiting just for a phone call, as their attempts to purchase phone credit for him had been unsuccessful. Since Vanessa and her daughter were first separated from him in a Customs and Border Protection (CBP) holding cell, she did her best to distract her daughter from the uncertainty and sadness of waiting by giving her books to read. The family fled extortion and death threats from a gang in Soyapango, El Salvador. Although the gang specifically targeted Vanessa's husband, the risk extended to the whole family:

They were extorting my husband, and they would have killed him if he stayed. And then, if they didn't do so immediately, they would kill everyone—they kill whole families. They rape the girls. I would not allow this for my daughter. I only have one daughter, and I have to seek the best for her.

In March 2016, Vanessa and her daughter had been released after five days in CBP holding cells, plus two weeks in the South Texas Family Residential Center. They continued to pursue their asylum case. Vanessa only learned where her husband was detained through a volunteer attorney's online search. From Vanessa's point of view, the separation from her husband was hard on the whole family, but her daughter suffered the most from being split up. "At least adults can bear this, or try to understand it," Vanessa reasons, but "in my case, my daughter is used to having both of us. She is very close with [her father]. At home, it has always been the three of us. It has been very difficult."

Introduction

During the summer of 2014, it was hard to miss the news that tens of thousands of children and families originating from Mexico and the Northern Triangle of Central America—El Salvador, Guatemala, and Honduras—were arriving in the United States each month. Many coming then—and those who continue to arrive—express a fear of returning to their countries and a desire to pursue humanitarian protection in the form of asylum, withholding of removal, or relief under the Convention Against Torture. Between 2008 and 2015, the United Nations High Commissioner for Refugees (UNHCR) documented a dramatic increase in Northern Triangle asylum applicants—by roughly fivefold in the United States, and by thirteenfold in Mexico and other Central American countries.

A contentious debate has simmered for decades in the United States about whether noncitizen children and families should be detained and, if so, under what circumstances. The 1997 *Flores* settlement agreement mandated the expedient release of juveniles from noncitizen detention and "underscor[ed] the principle of family unity." The *Flores* agreement came on the tail of a 1996 immigration "reform" law that lumped asylum-seekers in with a vast population subject to expedited removal—a form of fast-track deportation without an opportunity to present one's case before the immigration court. When asylum-seekers express fear of returning to their countries, however, the government has an obligation to refer them for credible or reasonable fear interviews with asylum officers. These interviews provide an initial review of eligibility for asylum and other forms of humanitarian relief from removal, and thus the potential for subsequent review by an immigration judge in a full merits hearing.

As part of its rapid expansion of expedited removal and detention, in 2006 the Department of Homeland Security (DHS) repurposed Hutto—a Texas medium security prison—into a family detention center. Yet by 2009, litigation that exposed its inadequacy as a place to house children pushed DHS to convert Hutto into an adult facility, reducing the total number of family detention beds nationwide to its pre-2014 level of a little less than 100. In 2014, the Obama Administration responded to the increased arrival of families by making "recent arrivals" a top enforcement

priority, generally detaining families with the goal of “detering” the arrival of others. DHS opened new family detention centers in New Mexico and then Texas, bringing the family bed capacity swiftly up to about 3,000.

Families and advocates have exposed the numerous adverse impacts that the expedited removal process and detention have on the well-being of asylum-seeking families and on their ability to access humanitarian protection. The issues abound—from CBP’s failure to respond appropriately to families’ expressions of fear over returning to their countries and requests for humanitarian protection, to the obstacles that detention creates to accessing legal counsel and due process, to the re-traumatization of families fleeing persecution who are held in detention centers that look and feel like jails.

In February 2015, the U.S. District Court for the District of Columbia acknowledged that DHS was detaining asylum-seeking mothers and their children indiscriminately and denying their release as a strategy to “deter” other families from coming to the United States. The court deemed this blanket practice of denying individualized determinations for the purpose of “deterrence” to be illegal. That July, U.S. District Judge Dolly Gee found DHS’ “no release” policy towards mothers and children for the duration of their removal proceedings to violate key provisions of the *Flores* agreement regarding family unity, the prompt release of minors, and detention conditions. The government responded by continuing to push for a narrow reading of the *Flores* agreement, appealing the case to the U.S. Court of Appeals for the Ninth Circuit, which affirmed in part and reversed in part the district court. The case will be remanded. In January 2016, a coalition of 146 Congressional leaders wrote to President Obama, urging him to end the targeting of asylum-seeking families for detention, raids, and removal.

This report investigates one pernicious side of the Obama Administration’s targeting of asylum-seeking families: family separation. Through its custody determinations, DHS splits family members apart by sending them to different detention centers across the country, while also failing to track and reunite those who arrive separately. This report offers a preliminary analysis of how this separation occurs, as well as its impact on families’ well-being and ability to access humanitarian protection.

The experiences of five asylum-seeking families are profiled in this report. Four families originate from El Salvador and one from Honduras. In March and April 2016, the author interviewed women who had been detained with their children in the South Texas Family Residential Center and then released to continue their asylum cases after receiving positive credible fear determinations. The interviewees are former clients of the CARA Family Detention Pro Bono Project, which generously made referrals for the author. The interviewees are referenced by pseudonyms. The analysis is also aided by expert interviews with four attorneys highly experienced in representing detained asylum-seeking families, who are also referenced by pseudonyms. The goal of this report is not to generalize as to how family separation

always works, but to provide a glimpse into how it can happen and what the experience is like for some families. It is also a call for further research into the full implications and prevalence of this issue, and what alternatives exist.

Wendy's Family

In Sonsonate, El Salvador, Wendy says she and her husband had a stable life. In addition to caring for her 10 and five-year-old sons, Wendy worked and studied to be a teacher. This solid ground was thoroughly shaken when a gang began extorting the family. The final straw was the murder of her brother-in-law. Around October 2015, the family began a month-long journey to the United States, guided by *coyotes* [smugglers]. They traveled in a group, some days by bus, other days by car. It was a harsh trip, plagued by hunger and fatigue, with the ever-present threat of being apprehended by the Mexican authorities. At one precarious juncture, the *coyotes* split the group apart, placing Wendy's 10-year-old son in a separate walking group. Wendy walked on with her husband and five-year-old for a day and night. "Don't worry, your son is in another group. You'll be reunited when they pick you up," the *coyotes* said. But by dawn, the story had changed. "Your son was caught by Mexican immigration," they told her.

Wendy says her first impulse was to turn herself in to the Mexican authorities so her son would not be alone. However, the *coyotes* would not let her. So the remaining family members carried on and were eventually apprehended together by CBP after they arrived in the United States. Wendy only later learned that her older son had been deported from Mexico back to El Salvador, where he now stays in hiding with Wendy's parents. When he is not in school, he keeps himself locked in the house, too afraid to go out.

CBP took the family to a temporary holding cell, where Wendy and her five-year-old son were held together. Wendy reports that her son was sick and suffered in the cold. Wendy's husband was separated from them. She also reports abusive behavior from the officers in the holding cell—they would laugh at detainees and increase the air-conditioning to punish them. They recorded in her initial interview notes that she was **not** afraid to return to her country, although she had expressed fear. Wendy and her younger son were transferred to the South Texas Family Residential Center. The U.S. Citizenship and Immigration Services (USCIS) Asylum Office granted her a positive credible fear determination and Wendy was told that she and her husband's cases would be linked.

It was only with the help of an attorney that Wendy traced the whereabouts of her husband, although at the time she spoke to the author she was still unsure of the name of the detention center where he had been detained. While Wendy was released with an electronic monitor on her ankle, her husband spent three months detained, she believes in Washington, where he was ordered removed. In her interview with the author, Wendy expressed confusion about whether their cases ever were linked, what this meant for her husband, and why they received inconsistent outcomes. On his trip back to El Salvador, Wendy's husband found himself on the same plane with gang members who recognized him. Fearing for his life, he again fled El Salvador as soon as he arrived—to a neighboring country, where he remains in hiding. The stability that Wendy's family once had remains out of reach. Wendy feels anxious and desperate, while her five-year-old son is sad and misses his father. Without work authorization, she cannot support her older son in El Salvador.

How are families separated?

There are two principal ways that arriving asylum-seeking family members are split apart:

1. Some families are split up during their journey to the United States. The family members may arrive in the country separately, be apprehended separately by CBP, and be subject to different Immigration and Customs Enforcement (ICE) custody determinations.
2. Other families arrive in the United States together. They are apprehended together by CBP, and then are split through the process of ICE custody determinations.

This report focuses on the second way that families are divided. It should be noted that U.S. immigration policy and enforcement fractures families in a number of other ways that fall outside the scope of this report. The fear of separation hangs over an estimated nine million children in mixed-status families living in the United States. "Mixed-status" refers to families made up of a combination of citizens and noncitizens that are vulnerable to interior immigration enforcement, detention, and deportation. Further, many of the Central American families arriving today are already fragmented across borders—meaning that some family members have been living in the United States, often for many years, while others have remained in Central America. Depending on their own immigration status, those living in the United States may be ineligible to petition for their family members to join them, or they may face long waits—leading to prolonged separation or precluding reunification altogether.

CBP separates families in its holding cells

For asylum-seeking families who arrive in the United States together and who are apprehended together, the first point of separation is likely to be CBP's temporary detention facilities near the U.S.-Mexico border. These holding cells—which are designed for short-term custody of 12 hours or less, yet regularly detain people for days at a time—are commonly referred to by guards and

detainees alike as *hieleras* [iceboxes] or *perreras* [dog kennels] because of their frigid temperatures and harsh conditions. Detainees are first taken to the *hielera*, which they describe as extremely cold, overcrowded, and unsanitary. They are denied showers and supplies like soap, diapers, sanitary napkins, and sufficient toilet paper. At night, the lights stay on while detainees sleep on the floor or benches without bedding. They are denied medical care and given inadequate meals and drinking water. Detainees are isolated from their loved ones, their consulate, and legal counsel. They report abusive and coercive behavior from CBP officers, such as pressure to accept their deportation. Some detained families are subsequently taken to the *perrera* for an additional day, or even for several more days.

It is in this frigid and coercive climate that asylum-seeking families report being separated by gender and age. The women interviewed described the painful experience in the *hielera* as the beginning of a prolonged and indefinite separation from their husbands or partners, from other adult relatives, and from minor relatives who are not their biological children. Below, Wendy recounts her experience:

We were walking when the Border Patrol caught us. From there, they separated my son and I and put us in one place, and my partner in another, and from there I did not see [my partner] again...My son was sick in the *hielera*, and I asked for help from an official that was there. I said, "Listen, my son has a fever." "Wait, the doctor will come," [he said], but the doctor never came. The other people even complained that it was too cold, and what they did was put the [air-conditioning] on stronger. – Wendy

In the CBP holding cells, interviewees also reported being separated temporarily from their children around the age of 11 and older, whom CBP placed in a separate area with other children roughly their age. To date, CBP has not responded to a Freedom of Information Act (FOIA) request submitted by the author in March 2016 inquiring into the agency's policy on separating family members in the holding cells. The interviewees separated from their minor children report being eventually reunited and transferred together to a long-term family detention center. Their adult relatives, on the other hand, were eventually transferred to separate adult facilities, as Mariana's family experienced:

When we arrived [in the United States], I am not sure where because I am not familiar, but they took us to the *hielera*. There, they separated us—men on one side, and then my mom, my sister, my daughter, and I. Later, they took only my baby and me to another *hielera*. I am not sure where. They moved us there with my husband. Later, but that same day, my mom and sister arrived. We spent a whole day there, and a night. Then, that day if I am not mistaken, they sent me to a *perrera*... From that day on, I did not see my mom, or my husband, or anyone in my family—it was just my daughter and me. – Mariana

The CBP holding cells can also mark the beginning of a lengthy separation of children from their caretakers who are not their biological parents. Daniela traveled to the United States with her two daughters and her eight-year-old nephew. In the *hielera*, officers removed her nephew from her care, and eventually sent him into the custody of the Office of Refugee Resettlement (ORR):

When we got to the *hielera*, they took everything that we had brought with us, and recorded our information again. Then, they told me that “Your nephew cannot stay with you, because he is not your son.” So they took him off to one side, and my daughters and I stayed in the other. From there, I did not see him again. – Daniela

DHS follows a narrow interpretation of family unity

A family's right to unity is a widely recognized principle under international humanitarian law and international human rights law. Being party to the International Covenant on Civil and Political Rights (ICCPR), the United States has committed to avoiding arbitrary detention and respecting family unity. The 1997 *Flores* settlement agreement also prioritized family unity—a standard that should guide current DHS custody decisions for arriving asylum-seeking families. Paragraph 14 of the agreement requires the prompt release of minors from detention following an individualized determination that they do not pose a flight risk, or a risk to others or themselves. The minor should be released with first preference to a (A) parent, (B) legal guardian, (C) adult relative, (D) other adult/entity designated by the parent or legal guardian, (E) licensed program, or (F) another adult/entity seeking custody. Paragraph 18 also requires that the former Immigration and Naturalization Service (INS—the predecessor agency of DHS) should make and track its expedient efforts to release and reunify minors with their family.

Although DHS has disputed whether the *Flores* agreement applies to accompanied minors, as opposed to unaccompanied minors, U.S. District Judge Dolly Gee argued in July 2015 that it does—a finding that the U.S. Court of Appeals for the Ninth Circuit affirmed in July 2016. Judge Gee also concluded that DHS compliance with Paragraph 14A of the agreement would require DHS to release minors to their parents whenever possible, including to a parent who is detained with the minor, which would favor the release of that parent. The Ninth Circuit disagreed with that interpretation. Nonetheless, this exchange demonstrates DHS' tendency to push for a narrow interpretation of the agreement.

An April 2016 FOIA response received by the author states that ICE policy within its family detention centers is “to maintain family unity wherever possible.” However, ICE defines the “family unit” narrowly as “a group of detainees that includes one or more non-United States citizen juvenile(s) accompanied by his/her/their parent(s) or legal guardian(s).” As a result, ICE's detention practices actually work to separate families in many instances, particularly with respect to spouses, older children, siblings, and grandparents who cannot be accommodated in family detention centers.

ICE splits families between long-term detention centers

In practice, the majority of family units that DHS detains together are mothers and their minor children. DHS currently houses family units in three detention centers: the South Texas Family Residential Center in Dilley, Texas; the Karnes County Residential Center in Karnes City, Texas; and the Berks County Residential Center in Leesport, Pennsylvania. Only Berks, which has roughly 88 family beds, accommodates fathers. The approximately 2,900 remaining family-bed capacity, then, is reserved for mothers and their children. The attorneys interviewed for this report identified this reservation of the majority of family bed space for mothers and children as one reason why DHS makes differential custody decisions across asylum-seeking family members. One attorney described her struggle to explain to her clients why the mother and baby in the family were subjected to prolonged detention, while the father and two oldest children were released:

Well, even if immigration had some sort of rationale, but they don't, so you can't explain it because there is no answer, the only way to explain it is to say, “You're right, it makes no sense, and there is no reason why you're here and they're not here.” Or “They had a bed open for you, and they didn't for him, and they needed to fill that bed space.” That's really what it comes down to. – Sara (attorney)

As Antonio Ginatta wrote for Human Rights Watch in a 2014 letter to DHS Secretary Jeh Johnson, “Arbitrariness pervades U.S. immigration detention policy,” contrary to its ICCPR commitments. Ginatta pinpoints two main sources of this arbitrariness: mandatory detention laws and the detention bed mandate. The former INS, and DHS as its successor agency, have maintained broad authority since the enactment of the 1996 immigration laws to detain noncitizens for prolonged periods, with little oversight. Ginatta notes that the decision to detain is often made without consideration of an individual’s flight risk or any risk they may pose to public safety. Through its appropriations decisions, Congress has established that ICE must “maintain a level of not less than 34,000 detention beds.” The bed quota, Ginatta argues, further calls into question whether custody decisions are actually tied to an individual’s specific circumstance. This arbitrariness is hard to miss when trying to make sense of differential DHS custody decisions across the same family, such as that of Rosa.

Rosa's Family

In June 2015, Rosa and her two youngest sons—ages 7 and 3—spent several days together in a packed *hielera*. At night, they found a patch of bare floor to sleep on. Like the cell where they were held, the sandwiches they were given to eat were frozen, according to Rosa. CBP apprehended Rosa’s family together, yet in the *hielera* they held Rosa’s husband and her 11-year-old son in two separate areas. This was the first time the family had been apart, and it was a reception to the United States that Rosa did not anticipate when the family fled gang-related threats in San Salvador:

I never imagined that all this would happen to us. It never crossed my mind. When you are in a difficult situation, all you want to do is get out, running for your life. But we never imagined that we would find ourselves with so many problems. It never crossed my mind that they would separate us.

In the *hielera*, what worried Rosa the most was the well-being of her three sons. “As an adult,” she explains, “you can tolerate anything, but when your children suffer, this hurts you a lot.” On top of the cold, hard floor that served as their bed, and the painful separation, Rosa reports abusive comments from the CBP officers. “You’ll probably be deported,” they said, and “You shouldn’t be here.” Finally, Rosa was reunited with her 11-year-old son, and without a word as to where they were headed, she was transferred with all three children to the South Texas Family Residential Center. There, Rosa reports slightly improved conditions, “But we were always prisoners. It was like we were in a golden cage. We were always detained, with the uncertainty of what would happen to us.”

By the end of July 2015, Rosa felt a fleeting sense of relief when the Asylum Office gave her a positive credible fear determination, and she was released with her three children and an electronic ankle monitor to pursue her case before the immigration court. Her husband, however, still faced an uphill battle from an adult detention center in Georgia. There, he felt a sense of desperation, bolstered by abusive comments from the officers and his perception that many of his fellow detainees were being deported. Nine months dragged by. Rosa was perplexed. Her entire family had fled El Salvador for the same reason. Ultimately, an immigration judge ordered her husband removed, and in March 2016, the Board of Immigration Appeals (BIA) denied his appeal.

With her husband's safety upon his imminent return to El Salvador weighing heavily on her mind when she spoke to the author in March 2016, Rosa also worried about how the separation was impacting her sons psychologically. She reported that the younger two cry frequently, and that the oldest had become rebellious. While struggling with her own anxiety and difficulty sleeping, Rosa lamented that she did not yet have work authorization. With this constraint, along with the absence of her husband, she worried about how she will provide for her family.

How does separation impact family well-being?

Interviewees report negative mental health impacts

For the asylum-seeking families interviewed for this report, their separation in the *hielera* was just the beginning of an indefinite time apart from loved ones. It was often a moment of disorientation, given that families may not be told where they are going, nor informed of their loved ones' destinations. Interviewees reported the persistent emotional fallout of separation—especially feelings of sadness, uncertainty, and anxiety, as well as difficulty sleeping:

I had heard that sometimes [the U.S. government] help[s] whole families. When you are separated, you suffer, including the children, especially when they are little. I did not know [that they could separate us], because if I had, I would have been somewhat prepared, although no one is prepared for this. – Vanessa

At [that] moment, they called my mom in for an interview, my sister stayed in the *hielera*, and they said to me, "Grab your things, you're leaving." I could not even say goodbye to my mom. My sister was crying. It was one of the saddest moments that I have had. My daughter and I have been separated for about five months from my husband and from my sister. This is something that had never happened before. – Mariana

This affects you, psychologically. In my case, I get little sleep, am distressed, worried, and anxious, because every day my husband calls, and I hope that good news will come—that we can buy him a plane ticket, that they have given him an opportunity. But nine months, without anything. Nothing has happened. It is hard to be living with the uncertainty of what is going to happen. Even with me, what might happen to my sons and I, because we are also in an immigration process. We are not one hundred percent sure that we can stay in the United States. Only a judge can decide. So we remain with this uncertainty. – Rosa

In June 2015, the American Academy of Pediatrics wrote to DHS to express its concern that detention exposes asylum-seeking families to unnecessary mental and physical health risks, while exacerbating the trauma they fled in their countries. The risks that detention poses to the well-being of both adults and children are well-documented. Similar negative health outcomes have been found for children who are not detained, but have a parent at risk of detention or deportation. In their 2015 study of trauma among detained asylum-seeking families, mental health scholar Kathleen O'Connor and colleagues find that forced family separation only exacerbates the trauma of being detained, while increasing the risk of depression, anxiety, and post-traumatic stress. While it is outside the scope of this report to make clinical assessments, in their own self-analyses the women interviewed expressed that separation has negatively impacted their families' mental health. Further research into precisely how forced separation contributes to trauma for asylum-seeking families in the detention context would be valuable.

Inconsistent case timelines and decisions cause distress and extend separation

The removal process has particularly high stakes for asylum-seekers, for whom returning to one's country can be a matter of life or death. The women interviewed for this report were deeply worried about the return of their family members who were separated from them and deported from the United States while their own cases remained pending. They described the precarious strategies their deported loved ones have adopted to protect themselves, such as making themselves prisoners in their own homes, hiding out in a different part of the country, or fleeing the country again. The interviewees also expressed confusion about why their family received inconsistent legal decisions on their cases.

It is impossible to know the precise role that separation played in the inconsistent decisions received by the families interviewed for this report—in other words, whether all family members would have received consistent outcomes had they never been separated (see further discussion in the following section about access to humanitarian protection). However, it is clear that separated families can receive uneven decisions on their cases, which are adjudicated on distinct timeframes. It is also clear that this inconsistency can be a source of distress, and that it can extend a family's separation. Some family members pass their credible/reasonable fear interviews, while others do not—even when both face the exact same danger at home. Some are released, while others face lengthy detention that makes it much harder to prepare their cases. Some are deported, while others continue their cases. Ultimately, the family members who remain in the United States with pending cases are left with the uncertainty of what will happen in their own cases, while also forced to worry about their deported loved ones, who in turn must worry about their own safety. In the meantime, the family is subject to lengthy separation.

Separation creates an undue caretaking burden

Being split up can also compromise families' economic well-being. The women interviewed whose husbands or partners were subject to prolonged detention or deportation became the custodial parent by default. Interviewees described the financial and emotional burden of becoming sole caretakers, particularly after being released from detention but before receiving their work authorization:

Yes, it has been very hard for us. When we left El Salvador, it was because of danger—threats from the gangs. And thank God I have a lot of family here, but it is not the same. My sons need their father. I need my husband. Besides God, he is my pillar. They are three boys, and these nine months have been very difficult...I have to be here at home, because I do not have a work permit and I cannot take risks. So here I am—I need to pay rent, pay for food—and I am alone with my three sons. So it has been very difficult. – Rosa

“[I am] anxious and desperate, because I cannot work with this ankle bracelet. It is not feasible. I have been spending time doing nothing, and I am used to working. I also have my son there [10-year-old son deported from Mexico to El Salvador], and imagine—since I am not working, I cannot help him...[My five-year-old son] is sad because he is very close with his father, and he misses him a lot. He wants to see his daddy. – Wendy

Daniela's Family

In early 2016, Daniela entered the United States with her 11-year old daughter, two-year-old daughter, and eight-year-old nephew. A business administrator from Comayagua, Honduras, Daniela had been caring for her nephew in addition to her own children for the past year and a half. The family fled Honduras because a gang was forcibly recruiting and threatening the older children. The afternoon that they arrived in Texas, CBP officers apprehended the family and took them to the *hielera*. There, the officers took Daniela's eight-year-old nephew off to one side. The hours ticked by, and Daniela did not see him again until the next morning, but only from afar. During the night, Daniela and her daughters struggled to sleep in the cold and discomfort of the *hielera*, her younger daughter crying. The next day, Daniela once again saw her nephew briefly in passing, as the family was transferred to a different holding cell. There, the family was fractured further, as Daniela was told that her 11-year-old daughter could not stay with her. The officers led her daughter to a separate area to sleep.

Daniela and her two daughters were next taken to the South Texas Family Residential Center, where they were detained for 18 days. Daniela says: “It was very, very horrible. They do attend to you there, yet you still feel like a prisoner, because you do not feel free; you always feel sad. They have activities for the children, but it is not the same as being free. It was very hard.” Daniela did

not see her nephew again after the CBP holding cell, nor was she informed of his location. Only later did Daniela learn that her nephew stayed with a foster family in San Antonio for a week before he was released into the custody of his mother, who lives in Texas. He reported that the family treated him well, yet he lost weight. Daniela had been her nephew's primary caretaker in Honduras, and she wanted to continue caring for him during the detention process, but instead was left to worry about his well-being.

How does separation impact families' ability to access humanitarian protection?

Separation interferes with a family's ability to present asylum claims

For asylum-seeking families, the high stakes of being granted humanitarian protection in the United States, and thereby avoiding a dangerous return to their countries, makes their capacity to advocate for themselves of the utmost importance. Most families have no other advocate besides themselves, given that—in contrast to the criminal justice system—the U.S. government does not guarantee legal counsel in removal proceedings, thereby leaving approximately 70 percent of families and 50 percent of children without legal representation. The impact cannot be overstated. As Ingrid Eagly and Steven Shafer find in their national study of 1.2 million deportation cases, 'similarly situated' respondents with attorneys are fifteen times more likely to seek relief from removal, and five and a half times more likely to be granted relief, than those without attorneys. The vast majority of families without legal representation are at a major disadvantage in the asylum process. As one attorney interviewee explains, splitting asylum-seeking families only deepens this disadvantage:

So if somebody is locked up, they do not know where the other kid, or spouse, or anybody is. They cannot hop online and search on the online detainee locator, and...There is no way to put money in their account so they can call, even if they knew where the person is. So this effective separation creates...in addition to the trauma and the stress of having that uncertainty of "Where is my loved one? What is happening to them?" that alone may derail your case, the [in]ability to be able to focus on representing yourself—you are so concerned about what's going on with the other person you love. – Thomas (attorney)

For the minority of family members who do have access to legal counsel, being split up still takes their energy away from their own asylum cases. Attorneys working in the family detention context report the difficulty that their clients have in focusing on their own cases when they are preoccupied with investigating the whereabouts and well-being of their loved ones:

We are trying to give them all this really nuanced legal advice, and they [say] “No, I just want to find my husband.” And you [say] “Well, but I am your lawyer, I am not your husband's lawyer, so I am trying to do my best to help you. I understand how you feel, but you have to focus on this right now.” And they [say], “No, where is my other kid?” – Matthew (attorney)

Separation divides asylum cases

Lutheran Immigration and Refugee Service (LIRS) reports that “when families are detained in different federal facilities, there is no way to regularly monitor this or inform the detainee where another family member is located, making it nearly impossible to reunite or pursue a joint asylum claim without counsel.” A 2015 study of family separation experienced by Mexican citizens in the expedited removal process likewise finds that DHS does not have a systematic way of tracking familial relationships. Divided families must navigate the dense web of government agencies that may be involved in their removal cases—including ICE, CBP, ORR, USCIS, and the Executive Office for Immigration Review (EOIR), which houses the immigration courts. Rosa and her husband know this issue firsthand:

We tried to have them link the case, but they were never able to. They said that [my husband] would have to fight his case there. I would have to keep fighting my case here. We did not come for different reasons. We came for the same reason—due to threats from the gangs. I really do not know what happened, but this is our situation—nine months detained. The same situation, the same problem...We came together as a family. But it seems that it doesn't matter much that [my husband] came with me. They have taken it as a separate case. – Rosa

In the void of administrative support, even families who are able to get released from detention face an uphill bureaucratic battle in trying to unite their cases for humanitarian protection, as outlined by one attorney: “Assuming that you all even get out of jail, you [have] to file all these

motions to change venue and consolidate your cases—you are creating tons more work for these families that I do not think anyone is able to do, unfortunately.” Faced with this difficult task, families who fled their country together and for the same reason may continue to have their cases adjudicated by different judges, on distinct timeframes, and even in separate federal circuits governed by disparate case law. This also creates administrative inefficiencies for the immigration courts and worsens the courts’ tremendous backlog (EOIR is currently scheduling “final merits” hearings for non-detained asylum cases for years away).

Separation divides evidence

For people who have fled persecution in their countries and find themselves in removal proceedings as they pursue asylum in the United States, being detained in and of itself makes it hard to obtain records and testimony to corroborate their claims. When asylum-seeking families are divided between different detention centers, certain family members may have difficulty obtaining evidence that may be crucial to their cases. As a result, adjudicators may only hear fragments of their stories and rule on incomplete facts. Thomas, an attorney, gives an example of such a situation:

If you are the mother and child, who left with your husband because he was having problems—he was facing death threats—all you might know is...“He came home and he was pale and said we have to leave right now, they are going to kill us.” And you may not have the information that is necessary to put in your claim. You might not be able to testify about the kinds of threats that were going around. – Thomas (attorney)

Many Central American asylum-seekers have family-based claims, which may be more difficult to present when families are separated. One attorney, Angela, argues that breaking up families weakens their ability to support their family-based claims, which may require them to demonstrate that an entire family is at risk because one family member was threatened:

So if the *mara* [gang], the MS-13, is persecuting the Alonso family because the father refused to pay extortion, and then the Alonso family comes to the border, and then you split up the Alonso family, and you divide them between detention centers, so their ability to corroborate their claim, and say— “No, my dad, he [has] this testimony about how he stood up to them,” but you have put dad in, like the middle of Florida without any legal representation—it just becomes really hard for them to corroborate their claims, because you have broken everyone up. – Angela (attorney)

Separated family members can face inconsistent timelines and case decisions

Trends in the adjudication of asylum claims vary wildly between immigration judges and across geographic regions of the United States. As of 2014, adjudicators across the country granted asylum claims, on average, 43 percent of the time. Yet in certain regions and detention facilities, adjudicators grant claims at dismally low rates. For example, in Atlanta, only two percent of asylum claims are granted, and in Stewart Detention Center in Georgia, only five percent. This takes place in a climate in which adjudicators have an extremely low and inconsistent record of recognizing the most common Central American claims—such as those based on domestic violence and gang-related persecution. Given these inconsistencies, when different judges adjudicate the same case in distinct locales, it is possible that the final outcomes will be different.

Some of the families interviewed for this report faced inconsistent timelines and decisions on their cases, as described in the previous section about well-being. For example, Mariana, her children, and her mother were released from detention to continue their cases, while her sister and husband were deported directly from detention (their story is described below). Given that the women interviewed for this report had not yet received final decisions on their cases, it is not possible to know precisely how being separated might influence final outcomes—or cause distinct final outcomes—for different members of their families. The question of how separation influences different final outcomes would be a valuable area for further research.

Mariana's Family

With the cold bite of winter outside, Mariana headed to a Virginia airport with two of her siblings and her two-year-old daughter. Mariana's mother had finally been released from a Hidalgo, Texas detention center to join the family in Virginia and pursue her asylum case. Amidst the

clattering of roller-bags and monotone announcements over the airport speakers, she recalls the stillness that pervaded their meeting when her mother learned of the deportation of Mariana's sister, Noemi:

When [my mom] arrived, she says "Now, we're only missing Noemi to be here with us." We all fell silent. My brother says, "She needs to know what happened. Mom, they deported Noemi." And my mom became so upset, because she had no idea. My father passed away two years ago, and although my sister is an adult, she is the youngest and we always think of her as the baby. Believe me, this was very intense because we had never been separated.

This was just the latest of a series of painful separations that Mariana's family has suffered since fleeing El Salvador in September 2015. A nursing student in San Salvador, Mariana was about to begin her fifth and final year, motivated to provide for her family and embark on a career path of helping others. She left these dreams behind as she traveled on buses with her husband, daughter, mother, and Noemi for 20 days. Upon arriving in the United States, they were apprehended together by CBP, but subsequently separated. Mariana and her daughter were transferred to the South Texas Family Residential Center, while her mother and sister went to a detention center in Hidalgo and her husband to a facility in Atlanta. Twelve days later, Mariana was released with a positive credible fear determination, and an electronic monitor latched to her ankle.

Mariana reports that neither her husband nor Noemi felt they were given an adequate opportunity to express themselves in their own credible fear interviews. Her husband wanted to discuss Mariana and their daughter, but was told to focus on himself. To Mariana, this narrow focus makes little sense: "I believe that since we are a family, what happens to me, happens to him." Both her husband and Noemi were ordered removed. They are back in El Salvador, but remain internally displaced, as it is not safe for them to return to their community. With their safety a continual concern, Mariana struggles to build a new life in Virginia while she awaits a final decision in her own case. Given her daughter's young age, she laments that she likely will no longer recognize her father.

Conclusion

As the experiences profiled in this report illustrate, the term “family detention” is a misnomer. Far from preserving family unity, DHS custody and release decisions for family members that have fled violence together are inconsistent and result in the separation of asylum-seekers from their loved ones, especially when they fall outside of the ICE definition of a family unit as parents with children, or its de facto definition as mothers with children. By separating asylum-seeking families, DHS throws new hurdles into what is already an arduous legal process. It jeopardizes families’ well-being and access to humanitarian protection, while multiplying the government resources required to adjudicate the same asylum claim (in those cases where family members do have the same claim). Ultimately, some members of the same family may wait for years for their final merits hearing in the United States, while others will be deported back to the dangers they fled.

This problem is much bigger than DHS policies and practices regarding family unity—it also stems from the administration’s targeting of these families for detention and deportation and Congress’s maintenance of a bed mandate. Nonetheless, the detention of families arriving at the U.S. border is not mandatory. When CBP apprehends people who express fear of returning to their country, it has the discretion to issue them a Notice to Appear before the immigration court, rather than placing them in fast-track removal and detaining them to await a credible/reasonable fear interview, or for the duration of their removal case. Utilizing this discretion, combined with judicious use of proven community-based alternatives to detention when necessary in individual cases, would keep families together, free from detention.

Allowing asylum-seeking families to stay together would yield multiple benefits. It would help the U.S. government better uphold its various commitments to family unity. It would also support families’ mental and material well-being. As a UNHCR analysis elaborates, family unity and reunification are of critical importance to displaced people seeking protection, given that “Protection at its most basic level derives from and builds on the material and psychological support that family members can give to one another.” Further, maintaining family unity would give families fairer access to the system of humanitarian protection created precisely for people in their circumstances. Presenting the facts and evidence of their case together, before the same judge, and in the same location would create the best conditions for adjudicators to understand the family’s claim and thus rule fairly. In order to support the well-being of asylum-seeking families, adjudicate their cases efficiently, and allow them fairer access to protection, the U.S. government must prioritize their unity.

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