

Coalition Letter Urging Congress to Defend the Health and Rights of Immigrant Women and Families in the FY19 Continuing Resolution and Beyond

December 10, 2018

The Honorable Chairman Richard Shelby
Chairman, Committee on Appropriations
Room S-128 The Capitol
Washington, D.C. 20510

The Honorable Rodney Frelinghuysen
Chairman, Committee on Appropriations
H-305 The Capitol
Washington, D.C. 20515

The Honorable Vice Chairman Patrick Leahy
Ranking Member, Committee on
Appropriations
Room S- 128 The Capitol
Washington, D.C. 20510

The Honorable Nita Lowey
Ranking Member, Committee on
Appropriations
H-305 The Capitol
Washington, D.C. 20515

The Honorable Shelley Moore Capito
Chairman, Subcommittee on Homeland
Security, Committee on Appropriations
Room S- 128 The Capitol
Washington, D.C. 20510

The Honorable Kevin Yoder
Chairman, Homeland Security Subcommittee,
Committee on Appropriations
H-305 The Capitol
Washington, D.C. 20515

The Honorable Jon Tester
Ranking Member, Subcommittee on
Homeland Security, Committee on
Appropriations
Room S- 128 The Capitol
Washington, D.C. 20510

The Honorable Lucille Roybal-Allard
Ranking Member, Homeland Security
Subcommittee, Committee on Appropriations
H-305 The Capitol
Washington, D.C. 20515

Re: Defending the Health and Rights of Immigrant Women and Families in the FY19 Continuing Resolution and Beyond

Dear Chairman Shelby, Ranking Member Leahy, Chairman Capito, Ranking Member Tester, Chairman Frelinghuysen, Ranking Member Lowey, Chairman Yoder, and Ranking Member Roybal-Allard:

As organizations committed to protecting health care, civil rights, and human rights, including reproductive rights, **we call on you to ensure that no funding is expended to support or continue policies and practices that particularly harm immigrant women’s rights and health care in the Department of Homeland Security (“DHS”) spending bill. We also respectfully request that you advance an agenda for the 116th Congress that aggressively defends the health and rights of immigrant women and families through rigorous oversight of immigration enforcement and detention funds.**

Over the past 18 months, the Departments of Homeland Security (and Health and Human Services) have used federal funds to implement harmful immigration policies that have violated the human and civil rights of immigrants. Such policies and practices like zero-tolerance and

family separation, the removal of the presumption against detaining pregnant women, and the attempt to block unaccompanied minors' access to abortion violate human rights standards and have threatened access to reproductive health services. Furthermore, the Trump administration has made clear through its rulemaking agenda that it will continue to pursue harmful immigration policies orchestrated across agencies, including but not limited to, public charge, the indefinite detention of immigrant families, and changes to the refugee resettlement program requirements.¹ As Congress closes out this session and prepares for the 116th, it is imperative that the appropriations process prioritize the health and rights of immigrant communities under attack by this administration.

Current Immigration Policies Bar Access to Health Care and Threaten the Welfare of Immigrant Communities

The Trump administration's immigration and enforcement policies and practices have hindered access to health care and jeopardized the well-being of immigrant women in detention and minors in the Department of Health and Human Services ("HHS") Office of Refugee Resettlement ("ORR") custody.

In 2017, ORR exceeded its authority and unconstitutionally limited immigrant minors' access to abortion care. Former Director Scott Lloyd² repeatedly used his political power to impose his personal beliefs on immigrant children and youth in ORR custody, shaming, bullying, and coercing young people to continue unwanted pregnancies against their will. By actively attempting to block these minors (known collectively as "the Janes") from accessing abortion care, ORR disregarded its legal duty to provide prompt access to safe medical care to those within its charge.

On December 14, 2017, the administration removed the presumption against detaining pregnant women under a new U.S. Immigration and Customs Enforcement ("ICE") directive, an initiative which rolled back reporting requirements regarding reproductive health care in detention.³ There has been a significant rise in the number of detained pregnant people in custody under the Trump administration.⁴

In April 2018, U.S. Attorney General Jeff Sessions ordered prosecutors to immediately adopt a zero-tolerance policy for immigrants who illegally cross the U.S. border.⁵ The policy has led to the prosecution of migrant parents traveling with their children, and people who subsequently attempted to request asylum.⁶ As a result of the zero-tolerance policy, border agents separated more than 2,551⁷ immigrant children from their parents.⁸ The Trump administration issued an executive order on June 20—an unnecessary measure used to signal an end to the family separation practice and a shift toward indefinite family detention, which is also harmful to families.⁹ The Trump administration has failed to reunite hundreds of separated children with their families as required by court order.¹⁰ Additionally, news coverage suggests that family separation is still continuing for certain cases despite the executive order.¹¹

Under the family separation practice, children who have been forcibly separated from their families and are detained by ORR have reported experiencing grave physical and emotional abuses. This includes the use of harsh bodily constraints, improper medical treatment, and sexual abuse.¹² In addition, pregnant women in immigration detention facilities, including as a result of the zero-tolerance policy, "are often denied adequate medical care, even when in dire need of it,

are shackled around the stomach while being transported between facilities, and have been physically and psychologically mistreated.”¹³ Women who have had miscarriages while in detention have reported that they did not receive appropriate medical care before or after the miscarriage, and many suffered from physical and psychological damage as a result.¹⁴ LGBTQ persons, specifically transgender immigrants, are also facing unimaginable cruelties, including prolonged solitary confinement and high rates of sexual abuse in detention.¹⁵

The Trump Administration’s Immigration Policies Violate Human Rights

The Trump administration’s immigration policies violate the human rights of immigrant communities. International law recognizes the right to make decisions about one’s life and family—and to the protection and dignity of one’s chosen family unit.¹⁶ Policies which forcibly separate children from their parents, deprive families of their liberty, and rob women and girls of their bodily autonomy violate these core human rights principles. U.N. human rights experts have made clear that “immigration detention is *never* in the best interests of the child,” and that “the protection of children and youth and the principle of family unity are more important than the protection of borders.”¹⁷ International human rights experts have also expressed concern over the administration’s policies that create barriers to reproductive health care, harming immigrant communities.¹⁸ The United Nations recently reaffirmed that a right to life includes a right to reproductive health care and autonomy, including a right to abortion.¹⁹

Congress Must Stand Up for Immigrant Women and Families in the DHS Appropriations Process and in the 116th Congress

Every passing day that the Trump administration attacks immigrants’ health and rights represents a failure of the U.S. government’s responsibility to ensure federal spending is not weaponized to propagate inhumane policies. As organizations dedicated to defending health care access, civil rights, and human rights, including reproductive rights, for all persons, regardless of nationality, we call on Congress to use the power of the purse to ensure that no funding is expended to support or continue policies and practices that particularly harm immigrant women’s rights and health care in the DHS spending bill. We also respectfully urge members to fully investigate the Trump administration’s ongoing abuses of power in the immigration context and to promote protections for immigrant women and families in the 116th Congress.

Signed,

Al Otro Lado

Asian Americans Advancing Justice | AAJC

Asylum Seeker Advocacy Project (ASAP)

Capital Area Immigrants' Rights Coalition

Center for Gender & Refugee Studies

Center for Reproductive Rights

Coalition for Humane Immigrant Rights - CHIRLA

Feminist Majority

Freedom for Immigrants

Freedom Network USA

HEAL Trafficking

Hispanic Federation

Immigrant Families Together

In Our Own Voice: National Black Women's Reproductive Justice Agenda

Indivisible

Justice in Motion

Latin America Working Group (LAWG)

Law Office of Peggy J. Brisol

Lawyer Moms of America

MomsRising

National Abortion Federation

National Asian Pacific American Women's Forum (NAPAWF)

National Center for Lesbian Rights

National Council of Jewish Women

National Health Law Program

National Immigration Law Center

National Institute for Reproductive Health

National Latina Institute for Reproductive Health

National LGBTQ Task Force Action Fund

National Network of Abortion Funds

National Organization for Women

National Organization for Women

National Partnership for Women & Families

National Women's Law Center

National Women's Health Network

New Voices for Reproductive Justice

People For the American Way

Physicians for Reproductive Health

Population Connection Action Fund

Positive Women's Network - USA

Raising Women's Voices for the Health Care We Need

Sexuality Information and Education Council of the United States (SIECUS)

SIA Legal Team

SisterReach
SPARK Reproductive Justice NOW! Inc.
URGE: Unite for Reproductive & Gender Equity
Voices for Progress

¹ Agency Rule List, Fall 2018 (Department of Health and Human Services):

https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=0900&Image58.x=7&Image58.y=11; Agency Rule List, Fall 2018 (Department of Homeland Security).

² Rachel Siegel, *The Trump Official Who Tried to Stop a Detained Immigrant from Getting an Abortion*. Wash. Post (Oct. 26, 2017), https://www.washingtonpost.com/news/post-nation/wp/2017/10/26/the-trump-official-who-tried-to-stop-a-detained-immigrant-from-getting-an-abortion/?utm_term=.a0e16999433c.

³ ICE Directive: Identification and Monitoring of Pregnant Detainees (published Mar. 29, 2018), <https://www.ice.gov/directive-identification-and-monitoring-pregnant-detainees>.

⁴ Emma O'Connor and Nidhi Prakash, *Pregnant Women Say They Miscarried In Immigration Detention And Didn't Get The Care They Needed*, BuzzFeed News (Jul. 9, 2018), https://www.buzzfeed.com/emaconnor/pregnant-migrant-women-miscarriage-cpb-ice-detention-trump?utm_term=.hoJNbWrPj#fi7GqAanJ. From Dec. 14, 2017, to April 7, 2018, there have been a total of 590 pregnant women booked into custody. As of April 7, 2018, there were approximately 35 pregnant detainees in ICE custody. *Id.*

⁵ Department of Justice Memorandum, Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a) (Apr. 6, 2018), available at <https://www.justice.gov/opa/press-release/file/1049751/download>; see also Attorney General Jeff Sessions Delivers Remarks Discussing the Immigration Enforcement Action of the Trump Administration (May 7, 2018), available at <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions>.

⁶ Camila Domonoske and Richard Gonzalez, *What We Know: Family Separation And 'Zero Tolerance' At the Border*, NPR (Jun. 19, 2018), <https://www.npr.org/2018/06/19/621065383/what-we-know-family-separation-and-zero-tolerance-at-the-border>.

⁷ See Julia Ainsley and Jacob Soboroff, *Over 460 Migrants Separated from Their Children Have Potentially Been Deported by U.S.*, NBC News (Jul. 23, 2018)(determining that many of the 2,551 children separated from their families at the border resulted from the zero-tolerance policy); Ted Hesson and Renuka Rayasam, *Tensions Rise at Court Deadline to Reunite Migrant Families*, Politico, (Jul. 27, 2018), <https://www.politico.com/story/2018/07/26/separated-families-border-deadline-court-714062> (finding that “of the 2,551 children identified as separated from a parent at the border, 1,442 have been reunited with a parent in the custody of U.S. Immigration and Customs Enforcement”); see also *Ms. L et al. v. U.S. Immigration and Customs Enforcement*, Case No.: 18cv0428 DMS (MDD) (S.D. Cal) (Sep. 27, 2018)(Joint Status Report) at 4.

⁸ Camila Domonoske and Richard Gonzalez, *What We Know: Family Separation And 'Zero Tolerance' At the Border*, NPR (Jun. 19, 2018), <https://www.npr.org/2018/06/19/621065383/what-we-know-family-separation-and-zero-tolerance-at-the-border>.

⁹ Executive Order, *Affording Congress an Opportunity to Address Family Separation*, 2018 WL 3046068 (Jun. 20, 2018); Women’s Refugee Commission, *The Harm of Family Detention: Why Modifying Flores and Detaining Families Together Cannot Be the Answer to Family Separation*, (Jun. 2018), <https://www.womensrefugeecommission.org/images/zdocs/WRC-harm-of-family-detention.pdf>.

¹⁰ *Ms. L et al. v. U.S. Immigration and Customs Enforcement*, Case No.: 18cv0428 DMS (MDD) (S.D. Cal) (Sep. 27, 2018)(Joint Status Report) at 4.

¹¹ Ginger Thompson, *Families Are Still Being Separated at the Border, Months After “Zero Tolerance” Was Reversed*, ProPublica (Nov. 27, 2018), <https://www.propublica.org/article/border-patrol-families-still-being-separated-at-border-after-zero-tolerance-immigration-policy-reversed>.

¹² Blake Ellis, Melanie Hicken, and Bob Ortega, *Handcuffs, assaults, and drugs called 'vitamins': Children allege grave abuse at migrant detention facilities*, CNN (Jun. 21, 2018), <https://www.cnn.com/2018/06/21/us/undocumented-migrant-children-detention-facilities-abuse-invs/index.html>; Ari Honarvar, *A 6-Year-Old Girl Was Sexually Abused in an Immigrant-Detention Center*, The Nation (Jul. 27, 2018), <https://www.thenation.com/article/six-year-old-girl-sexually-abused-immigrant-detention-center/>.

¹³ Emma O'Connor and Nidhi Prakash, *Pregnant Women Say They Miscarried In Immigration Detention And Didn't Get The Care They Needed*, BuzzFeed News (Jul. 9, 2018), <https://www.buzzfeed.com/emaconnor/pregnant->

[migrant-women-miscarriage-cpb-ice-detention-trump?utm_term=.hoJNbWrPj#.fi7GqAanJ](https://d3n8a8pro7vhm.cloudfront.net/aijustice/pages/769/attachments/original/1524674398/They_Left_Us_with_Marks.pdf?1524674398); *They Left Us With Marks: The Routine Handcuffing and Shackling of Immigrants in ICE Detention*, Americans for Immigrant Justice (Apr. 2018),

https://d3n8a8pro7vhm.cloudfront.net/aijustice/pages/769/attachments/original/1524674398/They_Left_Us_with_Marks.pdf?1524674398.

¹⁴ Emma O'Connor and Nidhi Prakash, *Pregnant Women Say They Miscarried In Immigration Detention And Didn't Get The Care They Needed*, BuzzFeed News (Jul. 9, 2018), https://www.buzzfeed.com/emaconnor/pregnant-migrant-women-miscarriage-cpb-ice-detention-trump?utm_term=.hoJNbWrPj#.fi7GqAanJ.

¹⁵ Sharita Gruberg, *ICE's Rejection of Its Own Rules Is Placing LGBT Immigrants at Severe Risk of Sexual Abuse*, Center for American Progress (Mar. 2018), <https://www.americanprogress.org/issues/lgbt/news/2018/05/30/451294/ices-rejection-rules-placing-lgbt-immigrants-severe-risk-sexual-abuse/>.

¹⁶ See, e.g., Convention on the Rights of the Child, arts. 5 & 9 (Nov. 20, 1989), 1577 U.N.T.S. 3 [hereinafter CRC] (protecting parents' rights to provide their children with guidance in the exercise of their rights and protecting children's right not to be separated from their parents against their will); CEDAW, art. 16 (protecting women's freedom to choose a spouse, to marry only with free and full consent, to decide if and when to bear children, and to the same rights and responsibilities as men with regards to parenting); ICCPR, arts. 17 & 23 (protecting all persons from "arbitrary or unlawful interference with [their] family," and protecting the right to form a family and to marry only with free and full consent).

¹⁷ See Press Release, Office of the UN High Commissioner for Human Rights, Children and Families Should Never Be In Immigration Detention – UN Experts (Dec. 18, 2016), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21026>; see also Press Release, Office of the UN High Commissioner for Human Rights, UN Experts to US: "Release Migrant Children from Detention and Stop Using Them to Deter Irregular Migration" (Jun. 22, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23245&LangID=E> ("[F]amily unity needs to be preserved at all costs, [but] it cannot be done at the expense of detaining entire families with children. Family-based alternatives to deprivation of liberty must be adopted urgently.").

¹⁸ See Rep. of the Working Group on the Issue of Discrimination Against Women in Law and in Practice on its Mission to the United States of America to the Human Rights Council (Aug. 2016), ¶¶ 68, 80-87, 93(d); U.N. Doc. No. A/HRC/32/44/Add.2; Human Rights Committee, Concluding Observations, para. 15 (recommending the removal of barriers to reproductive healthcare for undocumented immigrants and immigrants and their families who have been lawful residents of the United States for fewer than five years).

¹⁹ Human Rights Committee, *General Comm. No. 36 on the right to life*, U.N. Doc. CCPR/C/GC/36 (October 30, 2018).