

**Human Rights Council  
Complaint Procedure Form**

- **It is recommended that your complaint does not exceed eight pages, excluding enclosures.**

**I. Information concerning the author (s) of the communication or the alleged victim (s) if other than the author**

Individual       Group of individuals       NGO       Other

- Name: **(1) American Federation of Teachers (AFT)**  
**(2) American Federation of State, County and Municipal Employees (AFSME)**  
**(3) Hispanic Federation**  
**(4) Kids in Need of Defense (KIND)**  
**(5) League of United Latin American Citizens (LULAC)**  
**(6) National Action Network (NAN)**  
**(7) National Association for the Advancement of Colored People (NAACP)**  
**(8) National Education Association (NEA)**  
**(9) Service Employees International Union (SEIU)**  
**(10) T’ruah**  
**(11) UndocuBlack Network**  
**(12) United We Dream Action**  
**(13) Voto Latino**  
**(14) Reverend William J. Barber II**  
**(15) PEN America**

Nationality: **United States**

Address for correspondence on this complaint:  
**American Federation of Teachers**  
**555 New Jersey Avenue NW**  
**Washington DC, 20001**

Tel and fax: **+1 (202) 879 – 4448**  
**+1 (202) 879 – 4502**

E-mail: [iad@aft.org](mailto:iad@aft.org)

Website: [www.aft.org](http://www.aft.org)

Submitting the complaint:

On the author’s own behalf:

On behalf of other persons:  **On behalf of the children and families subject to the continued gross violation of human rights caused by U.S. action to separate immigrant children from their parents in order to prosecute parents for “illegal entry” to the United**

States pursuant to the “zero tolerance” policy – with dire results not only for families, but most importantly, for the children.

## II. Information on the State concerned

Name of the State concerned and, as applicable, name of public authorities responsible for the alleged violation(s):

**State Concerned: United States of America**

- **U.S. Department of Homeland Security (DHS), Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE)**
- **U.S. Department of Justice**
- **U.S. Marshals**
- **Kirstjen Nielsen, in her official capacity as Secretary of Homeland Security**
- **Jefferson Sessions, in his official capacity as U.S. Attorney General**
- **Kevin McAleenan, in his official capacity as Commissioner of U.S. Customs and Border Protection**
- **Thomas Homan, in his official capacity as Director of U.S. Immigration and Customs Enforcement**

## III. Facts of the complaint and nature of the alleged violation(s)

**The complaint procedure addresses consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.**

Please detail, in chronological order, the facts and circumstances of the alleged violations including dates, places and alleged perpetrators and how you consider that the facts and circumstances described violate your rights or that of the concerned person(s).

### **Background:**

**The United States has been systematically and forcibly separating immigrant children from their parents under a "zero tolerance" policy announced by Attorney General Sessions on April 6, 2018. The policy calls for the prosecution of 100 percent of individuals who enter the United States unauthorized. Parents seeking asylum and humanitarian legal protections in the United States between ports of entry on the border between the United States and Mexico with their children are referred for prosecution, their children are taken from them and placed in the custody of a the Office of Refugee Resettlement, an agency within the Department of Health and Human Services, in group shelters, foster care settings, or, in some cases, detention centers. The Trump administration has justified this forcible separation of children from parents and the prosecution of parents, including**

asylum seekers, as the “most effective”<sup>\*</sup> means to deter unauthorized migration from Central America. From April 19 to May 31 alone, 2,000 children have been taken away from their parents as a result of the administration’s policy.<sup>†</sup> The policy violates multiple internationally recognized human rights and causes grave and potentially irreparable harm to children and parents. The facts establishing these human rights violations follow.

The Trump Administration contemplated the pernicious scheme of separating children from parents in its early days. Then Secretary of Homeland Security John Kelly announced in March 2017 that he was “considering” separating Central American children from parents when apprehended at the border “in order to deter more movement along this terribly dangerous network. I am considering exactly that. They will be well cared for as we deal with their parents.”<sup>‡</sup> While the administration did not ultimately implement an official policy at that time, it began separating children from parents in some cases, and piloted family separation and prosecution of parents in the El Paso Border Sector from July to November 2017.<sup>§</sup> On April 6, 2018, Attorney General Sessions formally announced the zero tolerance policy as well as the strategy to remove immigrant children from their parents, “If you smuggle illegal aliens across our border, then we will prosecute you. If you are smuggling a child, then we will prosecute you and that child will be separated from you as required by law. If you don’t like that, then don’t smuggle children over our border.”<sup>\*\*</sup>

Before the “zero tolerance” policy’s implementation, according to a *New York Times* report, about 700 children were taken away from parents from October 2017 to April 2018, including more than 100 children under the age of 4. More than 2,000 additional children have been ripped away from parents since the policy’s announcement, including many children under the age of 7, as detailed in a report by Kids in Need of Defense. Customs and Border Protection (CBP) Officials in some cases have lied to parents and children, telling both that children were being taken for a bath, but instead sending the

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<sup>\*</sup>Sessions Vows to Prosecute all Illegal Border Crossers and to Separate Children from their Parents, Washington Post, May 7, 2018, [https://www.washingtonpost.com/world/national-security/sessions-says-justice-dept-will-prosecute-every-person-who-crosses-border-unlawfully/2018/05/07/e1312b7e-5216-11e8-9c91-7dab596e8252\\_story.html?utm\\_term=.fbc197a40da6](https://www.washingtonpost.com/world/national-security/sessions-says-justice-dept-will-prosecute-every-person-who-crosses-border-unlawfully/2018/05/07/e1312b7e-5216-11e8-9c91-7dab596e8252_story.html?utm_term=.fbc197a40da6).

<sup>†</sup> Both Parties Outraged but at Odds Over Families Being Separated at the Border, Washington Post, June 17, 2018

<sup>‡</sup> DHS is Considering Separating Undocumented Children from their Parents at the Border, March 7, 2017, CNN, <https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html>

<sup>§</sup> Sessions Vows to Prosecute all Illegal Border Crossers and to Separate Children from their Parents, Washington Post, May 7, 2018, [https://www.washingtonpost.com/world/national-security/sessions-says-justice-dept-will-prosecute-every-person-who-crosses-border-unlawfully/2018/05/07/e1312b7e-5216-11e8-9c91-7dab596e8252\\_story.html?utm\\_term=.fbc197a40da6](https://www.washingtonpost.com/world/national-security/sessions-says-justice-dept-will-prosecute-every-person-who-crosses-border-unlawfully/2018/05/07/e1312b7e-5216-11e8-9c91-7dab596e8252_story.html?utm_term=.fbc197a40da6).

<sup>\*\*</sup> Sessions says “Zero Tolerance” for Illegal Border Crossers, Vows to Divide Families, National Public Radio, May 7, <https://www.npr.org/sections/thetwo-way/2018/05/07/609225537/sessions-says-zero-tolerance-for-illegal-border-crossers-vows-to-divide-families>.

children to custody. In other cases CBP Officials have taken children away to ORR custody without giving parents the opportunity to say goodbye to them, or have lied, telling parents they would see their children soon, but then letting weeks go by without parents receiving any information about their children as documented in the cases named in the Request for Precautionary Measures pending before the Inter American Commission on Human Rights.<sup>††</sup>

News reports have recounted story after story of deep emotional harm and trauma to children and parents caused by the separation, such as a two-year old girl crying uncontrollably and pounding her fists on a mat in the facility where she was being held after separation from her mother, and a five-year old boy who cries or moans himself to sleep every night since separation from his father. Medical and mental health professionals have condemned the practice of dividing families, warning that it causes children short and long-term significant health problems, including “toxic stress.”<sup>‡‡</sup>

Parents and children torn apart in many cases do not know where to find each other or when they will be reunited. Neither CBP, nor ICE, nor the Department of Justice provide parents with information about their children’s whereabouts following separation. Children in custody, meanwhile, do not receive any information about the location of their parent following separation. Often no communication happens between parents and children in U.S. custody following their separation – further exacerbating stress and trauma.

Once separated, parents risk being deported while their children remain in federal custody. Following prosecution for “illegal entry,” many parents ultimately get deported back to their country because they choose to accept a removal order so that they can reunify with their child—even if they have a legitimate asylum claim. As a result of the separation and the lack of communication and coordination of cases, some of these parents get deported before their children. Children may remain in federal custody for months. Deported parents, meanwhile, often do not know where their children are or how to find them, and have no idea how to get their children back home.<sup>§§</sup> The attached document by KIND details several cases in which parents were deported before children and did not know how to find their children.

Family separation fundamentally goes against the norms and standards of the international community and has resulted in a cruel and inhumane abuse against vulnerable families and their children. Separating children from their parents causes devastating harm to both the parent and child, and may inflict long-term trauma and psychological distress on the children. This practice is also unprecedented, as the United States has never prioritized immigration violations for criminal prosecutions, and thus

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<sup>††</sup> [https://texascivilrightsproject.org/wp-content/uploads/2018/05/20180531-Emergency-Request-For-Precautionary-Measures\\_Redacted.pdf](https://texascivilrightsproject.org/wp-content/uploads/2018/05/20180531-Emergency-Request-For-Precautionary-Measures_Redacted.pdf)

<sup>‡‡</sup> Doctors Decry Separating Immigrant Families, CNN, June 16, 2018, <https://www.cnn.com/2018/06/14/health/immigrant-family-separation-doctors/index.html>

<sup>§§</sup> A Father is Still Struggling to Find his Son After Being Deported a Year Ago, the Grio, May 26, 2018, <https://thegrio.com/2018/05/26/immigrant-children/>

large numbers of parents have never been separated from their children when asking for asylum.

The issue is being exacerbated by the fact that detention facilities for children are running out of space to shelter children who have been separated, according to two U.S. officials and a report by NBC News. On June 15, 2018, the administration opened a “tent city” in Tornillo, Texas, to house children separated from their parents.

As of June 3rd, nearly 300 of the 550 children currently in custody at U.S. border stations intended as only the first stop for children detained at the border – prior to transfer to Office of Refugee Resettlement (ORR)—had spent more than 72 hours there. The stations, run by Customs and Border Protection (CBP) lack adequate bedding, separate sleeping rooms for children, and adequate healthcare. After visiting a migrant processing station in Texas, U.S. Sen. Jeff Merkley of Oregon stated that the holding facilities being used to detain innocent children were constructed as “one would construct a dog kennel.” He described watching lines of young children being sorted by age and gender into fenced-in warehouses, a part of their processing before they were to be handed off to the supervision of government agencies, all without their parents by their side. “This is morally bankrupt and wrong on every level,” Merkley said. “You don't hurt children in order to influence policy decisions.”

This “zero tolerance” policy has faced opposition from multiple human rights and child advocacy groups, including the ACLU, American Academy of Pediatrics and Amnesty International. According to Margaret Huang, the executive director of Amnesty International USA, “The idea that children can be protected by tearing them away from their families defies all sense of logic and humanity. These are children who have already suffered the trauma of violence and persecution in their native countries and the arduous journey to seek safety.... This is a monstrous policy that flies in the face of human rights, and should be rescinded immediately.” The United Nations High Commissioner for Human Rights has condemned family separation in the strongest terms, characterizing it as “abuse” and calling on the United States to end this “unconscionable” policy. The Inter-American Human Rights Commission expressed “deep concern” over “mechanisms to cause cruel, inhuman, and degrading treatments, to separate families, to attack children and their families, or to place the lives of persons in need of protection at greater risk. This is just inhuman and above any comprehension.”\*\*\*

The Trump Administration has repeatedly attempted to justify their “zero tolerance” policy as being in the national interest and in the interest of children’s safety. During a June 14 address in Fort Wayne, Indiana, Attorney General Sessions defended child separation by quoting a Bible verse from the New Testament. The particular verse cited by Session suggests a religious rationale for obeying a government's laws. “I would cite you to the Apostle Paul and his clear and wise command in Romans 13, to obey the laws of the government because God has ordained the government for his purposes,” the attorney general said. The statements led to a flurry of criticism about a federal official justifying policy with religious text.

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\*\*\* IACHR Expresses Concern Over Recent Migration and Asylum Policies and Measures in the United States, [http://www.oas.org/en/iachr/media\\_center/PReleases/2018/130.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/130.asp).

Recently, several conservative Christian leaders have come out in opposition to President Trump's immigration policy and its effect of separating migrant families. The Rev. Franklin Graham, son of the Rev. Billy Graham and an outspoken supporter of the president, has called it "disgraceful" to see families "ripped apart." A cardinal in the Roman Catholic Church called it "immoral" to separate mothers from their children. According to the Rev. Susan Henry-Crowe, top executive of the United Methodist Board of Church and Society, "To argue that these policies are consistent with Christian teaching is unsound, a flawed interpretation and a shocking violation of the spirit of the gospel." Russell Moore, president of the Ethics and Religious Liberty Commission of the Southern Baptist Convention, in a letter to the White House signed by leaders of other evangelical groups, asserted, "As evangelical Christians guided by the Bible, one of our core convictions is that God has established the family as the fundamental building block of society. The state should separate families only in the rarest of instances."

Separating children from their families is a flagrant violation of the supposed primacy of human rights shared by the international community. According to the UNHCR, "the best interests of the child shall be a primary consideration applicable to all children who come under the State's jurisdiction at international borders, regardless of their migration status or that of their parents." The United States, despite being the only nation in the world not to have ratified the U.N. Convention on the Rights of the Child, still has obligations as a signatory to that treaty to not undermine its principles and as a party that has ratified other rights treaties. Attached within this complaint are supporting documents that outline the human right violations committed under the Trump administration's "zero tolerance" policy.

#### UN Convention Against Torture Violations:

The "zero tolerance" policy violates the Convention Against Torture which the United States has ratified. The Convention Against Torture states: "For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

The Administration's intentional separation of children from their parents for the purposes of punishing parents for attempted entry into the United States between the ports of entry to seek asylum, and deterring Central Americans from seeking asylum constitutes a form of torture. Separation causes parents and children severe pain and suffering and the Administration, Department of Justice, and Department of Homeland Security have designed and implemented the "zero tolerance" policy and have been separating families with the hope that cruel treatment at our borders will send a message. Some examples of families being separated and effectively tortured, outlined in a joint complaint of human rights organizations, include:

- The case of Federico, from Honduras, who was separated from his 3 year old son Sami at the U.S. - Mexico Border. Federico reports that he tried to refuse letting go

of his child, but that eventually the officials said they would “have to use force to take him away.” Federico writes that Sami “begged to not be taken away and put his arms around me. I grasped him firmly in my arms. I told the officials I would not give him up... Then, one of the officers came up to me and with both hands forcefully pulled [Sami] out of my arms.”

- The case of Angelo, from El Salvador, separated from his one-year-old son Tobias near San Ysidro Port of Entry. Angelo reports that immigration officials repeatedly approached him and other fathers to pressure them into giving up their children. On one occasion, Angelo reports that an officer indicated that “letting go of their kids was what was good for them, because otherwise it would affect their whole process. According to Angelo, the officer indicated that he would “take action” if the fathers did not cooperate and that “they should not make their children witness violence.”

#### Universal Declaration of Human Rights Violations:

The Universal Declaration of Human Rights, drafted by representatives with different legal and cultural backgrounds from all regions of the world, sets out fundamental human rights to be universally protected and declares a common standard for all peoples and all nations.

- Article 3: “Everyone has the rights to life, liberty, and security of person.”
- Article 5: “No-one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”
- Article 9: “No-one shall be subject to arbitrary arrest, detention, or exile.”
- Article 12: “No-one has the right to interfere with your family without good reason.”
- Article 14.1: “Everyone has the right to seek and to enjoy asylum from persecution in other countries to escape persecution.”

#### Convention Relating to the Status of Refugees Violations:

The Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees are United Nations multilateral treaties that define who is a refugee, and sets out the rights of individuals who are granted asylum and the responsibilities of nations that grant asylum. The “zero tolerance” policy violates Article I of the 1978 Protocol that amended the Convention, which the United States has ratified:

Protocol, Article I - General provision:

- “1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.”

Convention, Article 31 of the Convention reference in Article 1 of the Protocol above states:

- “1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”
- “2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.”

#### International Covenant on Civil and Political Rights Violations:

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the United Nations General Assembly on the 16 December 1966, and came into force on the 23 March 1976 and has been ratified by the United States. As at May 2016 there are 168 State parties to the ICCPR, giving effect to the civil and political rights of individuals within their borders. Articles 17, 23(1) and 24 of ICCPR refer to the right to family:

#### Article 17:

- “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation.”
- “2. Everyone has the right to the protection of the law against such interference or attacks.”

#### Article 23(1):

- “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

#### Article 24(1):

- “Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”

#### UN Recommended Principles and Guidelines on Human Rights at International Borders Violations:

OHCHR’s Recommended Principles and Guidelines on Human Rights at International Borders are the result of wide-ranging expert consultations to draw up normative guidelines on the governance of international borders. They are intended to inform the work of States, international agencies and other stakeholders with an interest in human rights-based border governance. “Zero tolerance” and separation of families violates the following principles of the Guidelines:



- 1.7: Assessing the human rights-compliance of existing border governance measures.
- 1.10: Establishing official procedures to provide effective remedies for violations of human rights at international borders.
- 2.7: Making legislative provisions for transparent, effective and proportionate administrative, civil, and where appropriate, criminal penalties – including those committed by or involving the complicity of border authorities.
- 5.6: Ensuring that temporary accommodation does not last longer than strictly necessary.
- 5.7: Ensuring that all temporary reception facilities comply with international human rights standards.
- 5.9: Cooperating with National Preventive Mechanisms, national human rights institutions, international organizations, parliamentarians, and civil society organizations in the monitoring of reception conditions and arrangements and in the investigation and prosecution of human rights violations during assistance and reception processes.
- 6.17: Children traveling with adults should be verified as being accompanied by or related to them.
- 7.10: Ensuring that migrants are provided information about national and international organizations that provide legal and other assistance to migrants.
- 8.6: Ensuring that children are never detained on the basis of their parents' migration status.
- 8.7: Ensuring that conditions in detention facilities adhere to the UN Standard Minimum Rules on the Treatment of Prisoners and all other relevant international standards on conditions of confinement.
- 8.11: Ensuring that in the exceptional cases where children are detained, they are housed with their family members unless there are compelling reasons for separation; that unaccompanied children are not housed with unrelated adults; and that all children have access to adequate healthcare agencies.
- 8.19: Facilitating independent monitoring and evaluation of detention at place of immigration detention and by allowing them to access detainees and places of detention.

#### IV. Exhaustion of domestic remedies

1- Steps taken by or on behalf of the alleged victim(s) to exhaust domestic remedies– please provide details on the procedures which have been pursued, including recourse to the

courts and other public authorities as well as national human rights institutions<sup>†††</sup>, the claims made, at which times, and what the outcome was:

- **In February, the ACLU filed a lawsuit challenging the practice of separating migrant parents and children at the U.S. border. The ACLU filed its lawsuit after a woman from the Democratic Republic of Congo was separated from her 7-year-old daughter while trying to seek asylum in the United States. According to the ACLU's suit, the mother and child were detained separately at facilities 2,000 miles apart. The lawsuit cites violations of the U.S. Constitution's due process clause, of federal law protecting asylum seekers, and of the government's own directive to keep families intact. "Ms. L" and her daughter were reunited in March, though the national class-action lawsuit in this case continues. Ultimately, the U.S. government falls back on the remarkable argument that Plaintiffs do not have a due process right to the integrity of their families, and that the government therefore need not provide any meaningful justification for its practice.**
- **On May 19, 40 U.S. senators signed a joint letter from Congress condemning the separation of children and parents at the border. "We ask," the letter states, "that your Administration rescind this unethical, ineffective, and inhumane policy and instead prioritize approaches that align with our humanitarian and American values...As you develop the Fiscal Year 2019 Department of Homeland Security (DHS) Appropriations bill, we urge you to limit DHS's ability to use appropriated funds to separate parents from their children absent evidence that the parent poses an immediate threat to the child's safety. Instead, we ask that you include robust funding for alternatives to detention, such as the Family Case Management Program."**
- **On March 22, 184 organizations who serve or work on behalf of immigrants, refugees, asylum seekers, and children, wrote to the DHS to express their profound opposition to the separation of migrant families arriving at our borders. The letter states, "Family unity is recognized as a fundamental human right, enshrined in international law... We urge you to reverse course on any policy proposal that would seek to tear apart families or otherwise inflict trauma and harm."**
- **On June 12, Senator Diane Feinstein introduced the Keeping Families Together Act in the Senate to end DHS' systematic separation of families and ensure that only children abused by their parents or being trafficked may be separated from parents. The bill currently has 48 co-sponsors but no Republicans have endorsed it.**

**2-** If domestic remedies have not been exhausted on grounds that their application would be ineffective or unreasonably prolonged, please explain the reasons in detail:

## **V. Submission of communication to other human rights bodies**

<sup>†††</sup> National human rights institutions, established and operating under the Principles Relating to the Status of National Institutions (the Paris Principles), in particular in regard to quasi-judicial competence, may serve as effective means of addressing individual human rights violations.

1- Have you already submitted the same matter to a special procedure, a treaty body or other United Nations or similar regional complaint procedures in the field of human rights?

No

2- If so, detail which procedure has been, or is being pursued, which claims have been made, at which times, and the current status of the complaint before this body:

#### VI. Request for confidentiality

In case the communication complies with the admissibility criteria set forth in Council resolution 5/1, kindly note that it will be transmitted to the State concerned so as to obtain the views of the latter on the allegations of violations.

Please state whether you would like your identity or any specific information contained in the complaint to be kept confidential.

Request for confidentiality (*Please tick as appropriate*): Yes  No

Please indicate which information you would like to be kept confidential

Date: .....

Signature: .....

N.B. The blanks under the various sections of this form indicate where your responses are required. You should take as much space as you need to set out your responses. Your complaint should not exceed eight pages.

#### VII. Checklist of supporting documents

Please provide copies (not original) of supporting documents (kindly note that these documents will not be returned) in one of the six UN official languages.

- Decisions of domestic courts and authorities on the claim made (a copy of the relevant national legislation is also helpful):

- Complaints sent to any other procedure mentioned in section V (and any decisions taken under that procedure):

- Any other evidence or supporting documents deemed necessary:

#### VIII. Where to send your communications?

Office of the United Nations High Commissioner for Human Rights  
Human Rights Council Branch-Complaint Procedure Unit  
OHCHR- Palais Wilson  
United Nations Office at Geneva  
CH-1211 Geneva 10, Switzerland  
Fax: (+41 22) 917 90 11  
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