

Congress of the United States
Washington, DC 20515

June 7, 2018

The Honorable John Carter
Chairman
Subcommittee on Homeland Security
Committee on Appropriations
B-307 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Lucille Roybal-Allard
Ranking Member
Subcommittee on Homeland Security
Committee on Appropriations
2083 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Carter and Ranking Member Roybal-Allard:

As you develop the Fiscal Year 2019 Department of Homeland Security (DHS) Appropriations bill, we write again to 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 community-based alternatives to detention, such as the Family Case Management Program.

On May 4, DHS stated that it will refer all crossing the border without authorization for criminal prosecution, including adult members of family units even if the adult is seeking asylum. Consequently, between May 6 and May 19, 638 adults were referred for prosecutions, and 658 children were separated from an accompanying adult.¹ In addition, between October 2017 and April 2018, more than 700 children have been separated from their parents, including more than 100 children under the age of four.² In light of these new developments, which followed on already mounting evidence of family separation practices at the border, it is critical that you limit DHS's ability to separate families.

Congress appropriates funding to DHS for border security and processing. Many parents arrive at our borders with their children to seek protection—a lawful act. In the last several years, the numbers of such families apprehended at our southern border has increased.³ Overwhelming evidence shows this is driven by rising levels of violence and persecution in their

¹ Seung Min Kim, *Trump is blaming Democrats for separating migrant families at the border. Here's why this isn't a surprise.* WASHINGTON POST (May 27, 2018) available at: https://www.washingtonpost.com/politics/trump-is-blaming-democrats-for-separating-migrant-families-at-the-border-heres-why-this-isnt-a-surprise/2018/05/27/c07810d8-61d3-11e8-a69c-b944de66d9e7_story.html; Jonathan Blitzer, *How the Trump Administration Got Comfortable Separating Immigrant Kids from Their Parents*, THE NEW YORKER (May 30, 2018) available at: <https://www.newyorker.com/news/news-desk/how-the-trump-administration-got-comfortable-separating-immigrant-kids-from-their-parents>.

² Caitlin Dickerson, *Hundreds of Immigrant Children Have Been Taken From Parents at U.S. Border*, N.Y. TIMES (Apr. 20, 2018) available at: <https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html>.

³ U.S. Customs and Border Protection, "United States Border Patrol: Total Family Unit Apprehensions by Month – FY 2013," (Dec. 2017) available at: <https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Total%20Monthly%20Family%20Units%20by%20Sector%2C%20FY13-FY17.pdf>.

home countries.⁴ We believe that in a misguided attempt to reduce these numbers, DHS has been separating families with the hope that cruel treatment at our borders will send a message to and deter future migrants.⁵

This tactic is not only cruel, inflicting harm on children and their parents,⁶ but destined to fail. The majority of arriving families come from Central America, where incredibly high levels of violence, often conducted with impunity, threaten the lives and safety of women and children.⁷ The risks in their home countries—and their need for lifesaving protection—is so great that nothing will stop them from fleeing to the United States. But this is not an illegal act. Congress has created laws that require DHS to process and evaluate claims for humanitarian protection.⁸ DHS cannot circumnavigate congressional intent.

Family separation re-traumatizes parents and children escaping harrowing danger, and it ignores the reality that many of these parents and children have valid claims for relief. The availability of this relief is hampered by the separation of parents and children, and their detention in different facilities, often hundreds of miles away from each other and in different immigration court jurisdictions. Such parents are often grief stricken, worried, and traumatized, affecting their ability to present their case in legal proceedings. And children, some of whom are as young as one or two years old, are simply unable to provide the facts necessary to avail themselves of legal protection.

Additionally, separation inflicts direct harm upon children. Children who have fled violence in their home country suddenly lose their entire world when their parent is ripped away from them. Children's ability to trust, communicate their wishes, and create healthy relationships is severely handicapped when they are separated from parents.⁹ In January, more than 200 child

⁴ See, e.g. Adriana Beltrán, *Children and Families Fleeing Violence in Central America*, WOLA (Feb. 21, 2017) available at: <https://www.wola.org/analysis/people-leaving-central-americas-northern-triangle>; United Nations High Commissioner for Refugees (UNHCR), *Women on the Run* (Oct. 2015) available at: <http://www.unhcr.org/publications/operations/5630f24c6/women-run.html>; UNHCR, *Children on the Run* (2014) available at: <http://www.unhcr.org/en-us/about-us/background/56fc266f4/children-on-the-run-full-report.html>.

⁵ John Burnett, *To Curb Illegal Immigration, DHS Separating Families at the Border*, NPR (Feb. 27, 2018) available at: <https://www.npr.org/2018/02/27/589079243/activists-outraged-that-u-s-border-agents-separate-immigrant-families>.

⁶ Ariane de Vogue & Tal Kopan, *ACLU Class Action Lawsuit Seeks to Block Immigrant Family Separations*, CNN (Mar. 9, 2018) available at: <https://www.cnn.com/2018/03/09/politics/aclu-lawsuit-separating-immigrant-families/index.html>.

⁷ Kids in Need of Defense (KIND), *Neither Security nor Justice: Sexual and Gender-Based Violence and Gang Violence in El Salvador, Honduras, and Guatemala* (2017) https://supportkind.org/wp-content/uploads/2017/05/Neither-Security-nor-Justice_SGBV-Gang-Report-FINAL.pdf.

⁸ INA of 1965, Pub. L. 89-236, available at: <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-1687.html>.

⁹ See, e.g., Luis H. Zayas and Laurie Cook Heffron, *Disrupting Young Lives: How Detention and Deportation affect U.S.-born children of Immigrants*, American Psychological Association Newsletter (Nov. 2016), available at <http://www.apa.org/pi/families/resources/newsletter/2016/11/detention-deportation.aspx> (“Migration-related family separation, particularly between mother and child, has negative psychological impacts on both children and parents that persist even after reunification”) (citations omitted). See also American Psychological Assn, *Parents and Caregivers are Essential to Children's Healthy Development*, available at <http://www.apa.org/pi/families/resources/parents-caregivers.aspx> (parents “provide the most intimate context for the

welfare, juvenile justice and child development organizations expressed their opposition to the practice of separating parents and children as a matter of immigration policy.¹⁰ The American Academy of Pediatrics encourages DHS to reject a policy of family separation, stating:

Separating children from their parents contradicts everything we stand for as pediatricians – protecting and promoting children’s health. In fact, highly stressful experiences, like family separation, can cause irreparable harm, disrupting a child’s brain architecture and affecting his or her short- and long-term health. This type of prolonged exposure to serious stress - known as toxic stress - can carry lifelong consequences for children.¹¹

Detaining parents and children together as a family unit is a similarly harmful and unnecessary alternative. As DHS’s own Advisory Committee on Family Residential Centers concluded, it is never in the best interests of a child to be detained because of immigration status.¹² Immigration detention is growing at an unprecedented rate despite more humane, cost-effective alternatives. This growth comes despite ample proof that immigration detention traumatizes vulnerable populations, jeopardizes the basic health and safety of those detained, and undermines meaningful access to counsel in isolated, remote facilities. The harm inflicted on families by immigration detention, especially on the welfare and development of children, is well-documented.¹³

The solution to the cruel inhumanity of family separation cannot be the alternative—and costly—cruelty of family detention. Instead, DHS must act with humanity and fiscal responsibility by prioritizing a spectrum of alternatives to detention, beginning by restoring the Family Case Management Program (FCMP).

The law already requires Immigration and Customs Enforcement (ICE) to detain only when necessary to mitigate flight risk or danger to the community. Alternatives to detention are just that—alternatives—that allow ICE to mitigate flight risk while reducing reliance on costly institutional incarceration. The now-terminated FCMP pilot had compliance rates of 99 percent with immigration requirements, such as court hearings and immigration appointments, at a cost

nurturing and protection of children as they develop their personalities and identities and also as they mature physically, cognitively, emotionally, and socially.”).

¹⁰ MaryLee Allen, Children’s Defense Fund, *Letter to Secretary Kirstjen M. Nielsen on Behalf of 200 Organizations*, Jan. 16, 2018, available at:

https://static1.squarespace.com/static/597ab5f3beba0a625aaf45/t/5a5e55cf0d9297a44bbb8d3e/1516131791958/2018_01_16+Child+Welfare+Juvenile+Justice+Opposition+to+Parent+Child+Separation+Plan.pdf.

¹¹ Colleen A. Kraft, MD, FAAP, *AAP Statement Opposing Separation of Children and Parents at the Border*, May 8, 2018, available at: <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx>.

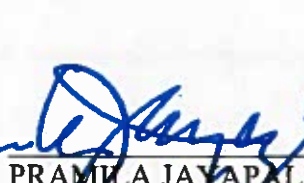
¹² *Report of the DHS Advisor Committee on Family Residential Centers*, Dept. of Homeland Security (Sept. 30, 2016) available at: <https://www.ice.gov/sites/default/files/documents/Report2016/ACFRC-sc-16093.pdf>.


¹³ See generally, Olga Byrne & Eleanor Acer, *Family Detention: Still Happening, Still Damaging*, HUMAN RIGHTS FIRST (Oct. 2015) available at: <http://www.humanrightsfirst.org/sites/default/files/HRF-family-detention-still-happening.pdf>.

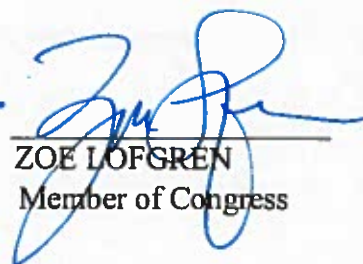
of only \$36 per day per family,¹⁴ compared to \$298 per day per *bed* in family detention.¹⁵ For just a fraction of the cost of detaining a family in prison-like settings, the FCMP ensured that asylum-seeking parents and their children complied with their immigration obligations by helping them find legal representation, guiding them through the court system, and connecting them with other community resources. Moreover, while restoring the FCMP would provide a critical cost-saving and humane mechanism for processing asylum-seeking families, DHS already has a menu of cost-saving alternatives to detention available, including release on recognizance, parole, or bond, as well as other existing alternatives-to-detention programs. Despite claims to the contrary, DHS already has the necessary tools to make both the humane and the fiscally responsible choice—to neither separate nor detain families seeking protection in the United States, absent evidence of immediate threat to safety.

We respectfully request that the DHS FY 2019 Appropriations bill make it clear that no funds may be used to support the ongoing and increasing use of family separation as a means of deterring future migration. We also strongly urge you to include funding for the FCMP as a cost-efficient and effective alternative to detention.

Sincerely,


PRAMILA JAYAPAL
Member of Congress


BENNIE G. THOMPSON
Member of Congress


ZOE LOFGREN
Member of Congress

¹⁴ Frank Bajak, *ICE Shuttters Detention Alternative for Asylum-Seekers*, U.S. NEWS (June 9, 2017) available at: <https://www.usnews.com/news/best-states/texas/articles/2017-06-09/ice-shuttters-detention-alternate-for-asylum-seekers>.

¹⁵ Julia Edwards, *New U.S. migrant detention center to be run by firm criticized by advocates*, REUTERS (Sept. 23, 2014) available at: <https://www.reuters.com/article/usa-immigration-detention/new-u-s-migrant-detention-center-to-be-run-by-firm-criticized-by-advocates-idUSL2N0RO23O20140923>.



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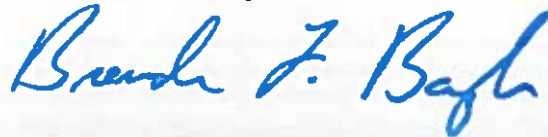
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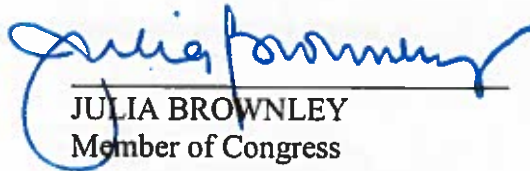
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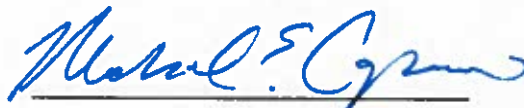
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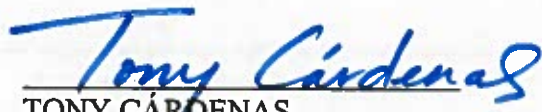
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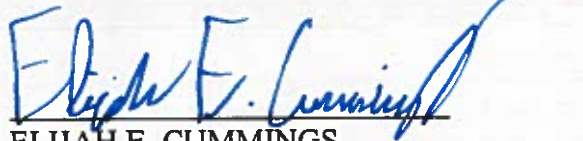
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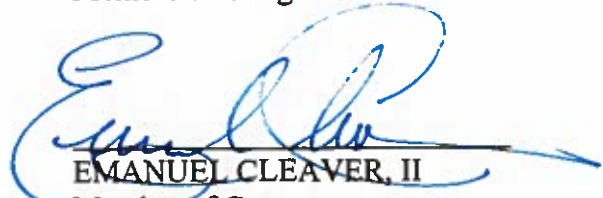
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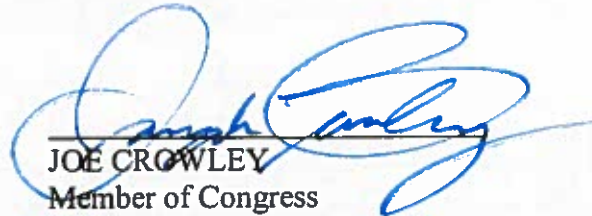
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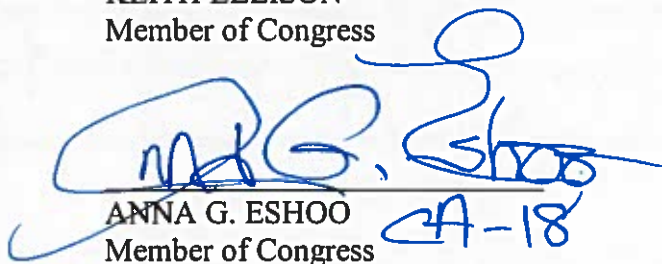
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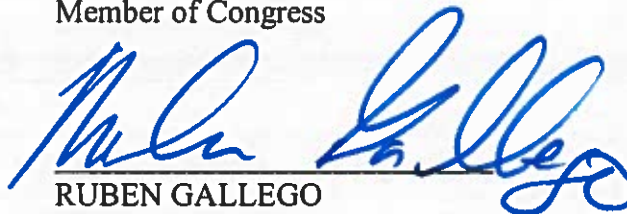
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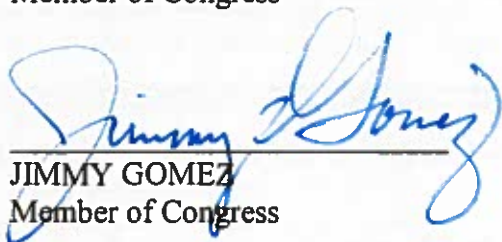
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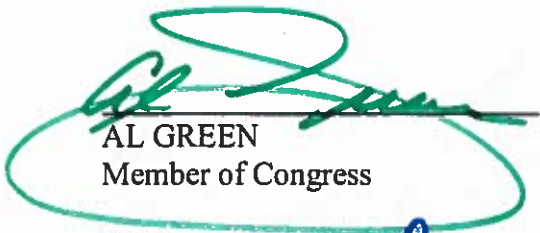
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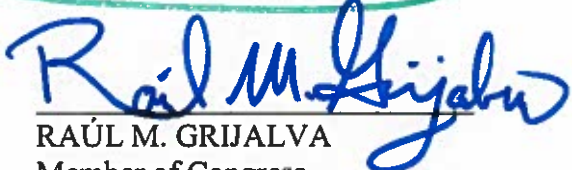
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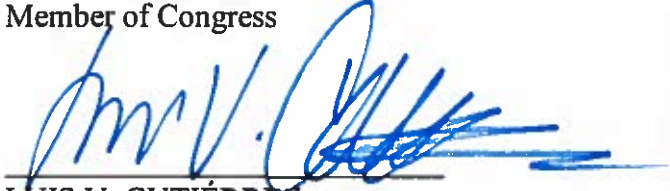
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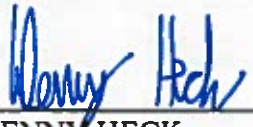
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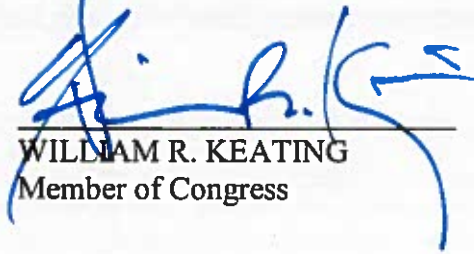
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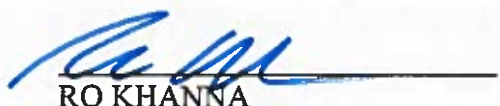
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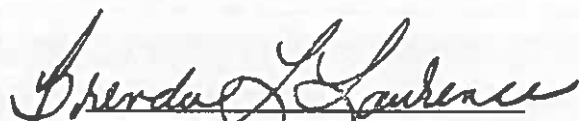
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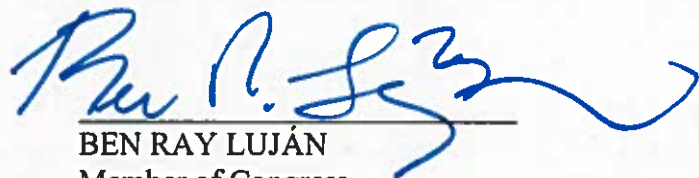
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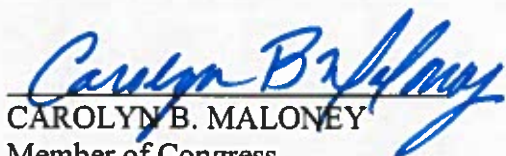
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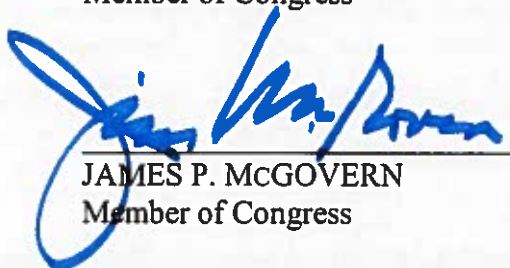
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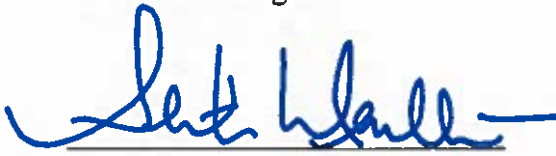
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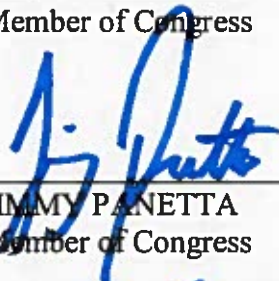
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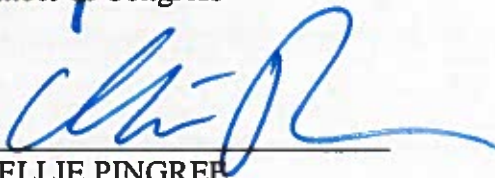
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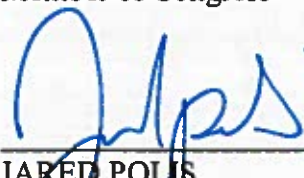
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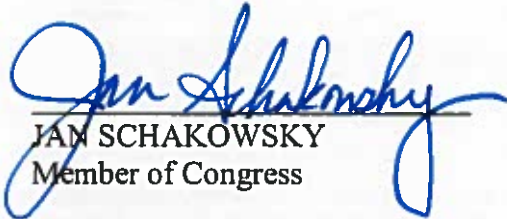
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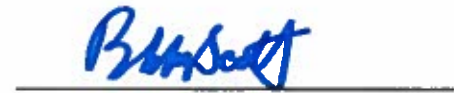


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