



Latino Policy Coalition

The Latino Policy Coalition www.LatinoPolicyCoalition.org is a national non-partisan non-profit consortium of the country's leading Latino research organizations and scholars, established in 2007. Chaired by former San Francisco City and County Supervisor Jim Gonzalez, the LPC seeks to highlight Latino community views on key national issues; and thus stimulate public policy debate among local, state and national elected officials. As Supervisor, Jim Gonzalez authored the nation's first City of Sanctuary Ordinance which protects the rights of undocumented immigrants.

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**Submission of the Latino Policy Coalition
To the United Nations Human Rights Council
Regarding the Universal Periodic Review of the Human Rights Record of
the United States of America**

I – Misappropriation of Children

The Latino Policy Coalition, pursuant to the United Nations Human Rights Council Universal Periodic Review of the United States of America, respectfully submits the following complaint charging that the United States of America routinely and consistently violates human rights by officially condoning the de facto misappropriation of children and removal from their immigrant parents' care.

II - Remedies Sought from the United Nations Human Rights Council

1. **Habeas Corpus Relief.** The issuance of a United Nations Writ of Habeas Corpus requiring that the President of the United States through the Secretary of State of the United States of America, the Secretary of Health and Human Services of the United States of America, and the Secretary of the Department of Homeland Security provide to the Human Rights Council a complete and detailed list of children who have been removed from the custody and care of their parents as a result of detention or deportation proceedings initiated against immigrant parents.
2. **Executive Order Inquiry to the President of the United States.** The United Nations Human Rights Council through its Universal Periodic Review Process has the authority to inquire to the President of the United States of America his specific plans to end by Executive Order the practices of jurisdictions within the USA which result in the de facto misappropriation of children from the custody and care of their immigrant parents.

III - Complaint Submitted by the Latino Policy Coalition to the United Nations Human Rights Council

3. The United States of America (hereinafter "USA") is the home of approximately 5.5 million children¹ who have a parent who is not documented.² Of these children, approximately 4.5

¹ See: *Shattered Families – The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, November 2011, page 10, Applied Research Center (hereinafter "Shattered Families Report"). (Founded in 1981,

million are citizens of the USA.³ Over the past three years the federal government of the USA deported over one million persons because of their immigrant status.⁴ In 2011, 397,000 persons were deported from the USA; and of these deportees, 22% were parents of children who are citizens of the USA.⁵ In the six months between January and June 2011, Immigration and Customs Enforcement officials of the government of the USA removed 48,486 parents of children who were citizens of the USA. Of this total, 22,652 were deported; 16,426 received an order of removal; 2,046 received an expedited order of removal and 5,362 immigrants were deported under different concepts.⁶ Many of these children are removed to a foster care system administered by USA states and local jurisdictions.⁷

ARC is a racial justice think tank and home for media and activism. ARC investigates the hidden racial consequences of public policy initiatives and develops new frameworks to resolve racially charged debates.)

² Under the U.S. Immigration and Nationalization Act of 1952 (INA) an “alien” is defined as any person lacking citizenship or status as a national in the United States. “Aliens” include resident and non-resident, immigrant and non-immigrant and documented and undocumented. “Documented versus undocumented” refers to whether a person arriving in the United States possesses the records and identification required for that person to enter the United States. An “undocumented” person does not possess the required entry documents, visas, or permanent resident documents that would allow a person to remain lawfully in the United States.

³ The 14th Amendment to the Constitution of the United States of America, in effect since 1868, provides, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

⁴ Shattered Families Report, page 10.

⁵ Shattered Families Report, pages 10-11.

⁶ Shattered Families Report, page 11. Note: Persons are deported from the USA based upon the Criminal Alien Program, and the Secure Communities Program. According to the Immigration and Customs Enforcement division (ICE) of the United States Department of Homeland Security (DHS): “**The Criminal Alien Program** provides ICE-wide direction and support in the identification and arrest of those aliens who are incarcerated within federal, state and local prisons and jails, as well as at-large criminal aliens.” (See: <http://www.ice.gov/criminal-alien-program/>); and the **Secure Communities Program** “...uses an already-existing federal information-sharing partnership between ICE and the Federal Bureau of Investigation (FBI) that helps to identify criminal aliens without imposing new or additional requirements on state and local law enforcement.” According to the Department of Homeland Security, “DHS has expanded Secure Communities from 14 jurisdictions in 2008 to more than 1,700 today, including all jurisdictions along the Southwest border. DHS is on track to expand this program to all law enforcement jurisdictions nationwide by 2013.” (See: http://www.ice.gov/secure_communities/) According to the Shattered Families Report, page 12, “The over-whelming majority of those detained and deported through the Secure Communities program were convicted of no crime at all or some low-level violation like driving without a license.”

⁷ “Foster care,” describes programs typically administered by USA states and local governments where courts and child protective services agencies stand “in loco parentis” to the minor child, making all legal decisions, where “foster parents” are assigned the day to day care of the minor child. The United States Department of Health and Human Services administers federal Title 4 e funds for foster care and adoption (Foster Care-Title IV-E (93.658)).

4. In a 2011 report issued by the Applied Research Center, entitled “Shattered Families – The Perilous Intersection of Immigration Enforcement and the Child Welfare System,” based on the study of data from six USA states and the supporting analysis of 14 other states, all with high numbers of foster care and foreign born populations,⁸ it was estimated that “there are at least 5,100 children who are presently in foster care whose parents have been detained or deported.”⁹
5. It is not uncommon for children to be removed without contact with their detained immigrant parents. Legal representation among immigrant detainees is inconsistent and varies based upon location and jurisdiction. As a result children removed from their parents are often denied contact with their detained parents. These children exist in a legal limbo where they are deprived of contact with their parents and are unable to have their parents present in dependency hearings which determine the fate of these children.¹⁰ Detained immigrants are often kept hundreds of miles away from their children, in effect separated from those best in a position to care for them. These disruptions make family reunification exponentially more challenging, if not impossible.
6. In 1997, the USA enacted the Adoption and Safe Families Act, a federal law which allows for the rapid termination of parental rights concerning children in foster care. This law and the inconsistent policies of USA states and local jurisdictions regarding foster care provides the basis for violation of basic human rights of over 5,100 children who possess USA citizenship, who have been removed from their immigrant parents’ care due to their parents’ detention or deportation.
7. In fact, upon termination of parental rights, children have been placed up for adoption, and have been adopted despite the fact that the children's biological parents are available and willing to have their children returned to them. These children are at risk of permanent separation from their parents.
8. There is no unified register of these children. There is no way for parents who have been denied access to their children to locate and contact their children in a systematic manner so that they can be reunited.¹¹

⁸ Shattered Families Report page 6.

⁹ Shattered Families Report, page 22.

¹⁰ Shattered Families Report, pages 22-27.

¹¹The Members of the United States Congress have recognized the ongoing risk to children of detained immigrants and have introduced legislation to regulate immigration enforcement activities to ensure that they do not compromise the well being and unity of children and family. One of the purposes of proposed legislation is to locate those who are detained, and ensure that U.S. citizens and lawfully present children in the foster care system as a

result of their parent, guardian, or caregiver’s detention or deportation receive appropriate care and to provide for improved coordination and communication between all entities involved in the care of separated children and the custody of their parents or caregivers. In 2009, a bill entitled the Help Separated Children Act was introduced in the U.S. Congress House of Representatives (HR 3531). In 2010, the Help Separated Children Act was also introduced in the U.S. Senate (S 3552). Both of these bills were referred to committee and no action was taken on them in the 111th Congress. In the 112th Congress, the Help Separated Children Act was again introduced in the House of Representatives as HR 2607, and in the U.S. Senate as S 1399. Both of these bills were referred to committee, and no action has been taken as of the date of this submission.

The following organizations support the Help Separated Children Act:

National Organizations

ACLU
America’s Promise Alliance
American Families United
American Immigration Lawyers Association
American Muslim Voice
American Psychiatric Association
American Humane Association
Amnesty International
Asian American Justice Center
Association of Farmworker Opportunity Programs
Bill of Rights Defense Committee
Center for Farmworker Families
Children’s Alliance
Children’s Defense Fund
Church World Service, Immigration and Refugee Program
Coalition on Human Needs
Dominican Sisters of Houston
Family Violence Prevention Fund
First Focus Campaign for Children
Florida Immigrant Advocacy Center
Foster Care Alumni of America
Human Rights Watch
Immigrant Legal Resource Center
Immigration Equality
Jubilee Campaign
Kids in Need of Defense
Lawyers’ Committee for Civil Rights
League of United Latin American Citizens (LULAC)
Legal Momentum
Lutheran Immigration and Refugee Service
Massachusetts Immigrant and Refugee Advocacy Coalition
Mental Health America
NAACP
National Asian Pacific American Women’s Forum
National Association for the Education of Homeless Children and Youth
National Association of Social Workers
National Center for Adoption Law & Policy
National Council of La Raza
National Education Association
National Immigration Forum
National Immigration Justice Center

9. These children, whose exact numbers are undetermined, and their parents, are at risk of losing the most fundamental of all human rights – the right of natural parents to raise, care, and protect their own children.¹²

IV - United States of America Violates Human Rights

10. The policies and practices of the USA by officially condoning the de facto misappropriation of children from the custody and care of their immigrant parents violate the following human rights recognized by the United Nations.
- a. Violates Article 3 of the United Nations Universal Declaration of Human Rights, which states: “Everyone has the right to life, liberty and security of person.”
 - b. Violates Article 7 of the United Nations Universal Declaration of Human Rights, which states: “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

National Immigration Law Center
National Foster Care Coalition
NETWORK
National Alliance of Latin American and Caribbean Communities (NALACC)
Physicians for Human Rights
Salvadoran American National Network
Sisters of Mercy of the Americas
Sojourners
South Asian Americans Leading Together
Tahirih Justice Center
The Advocates for Human Rights
The Episcopal Church
The Florence Project
The National Advocacy Center of the Good Shepherd
The National Gay and Lesbian Task Force Action Fund
Unitarian Universalist Association of Congregations
United Methodist Church, General Board of Church and Society
United States Conference of Catholic Bishops
U.S. Committee for Refugees and Immigrants
Voices for America’s Children
Welcoming Immigrants Network
William C. Velasquez Institute
Women’s Refugee Commission
World Organization for Human Rights

¹² The United States Supreme Court has recognized that the interest of parents in the care and custody of their children “is perhaps the oldest of the fundamental liberty interests recognized by [the United States Supreme] Court.” Troxel v. Granville, 530, U.S. 57, 65 (2000).

- c. Violates Article 12 of the United Nations Universal Declaration of Human Rights, which states: “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”
- d. Violates Article 16 (3) of the United Nations Universal Declaration of Human Rights, which states: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”
- e. Violates Article 25 (2) of the United Nations Universal Declaration of Human Rights, which states: “Motherhood and childhood are entitled to special care and assistance.”
- f. Violates Article 26 (3) of the United Nations Universal Declaration of Human Rights, which states: “Parents have a prior right to choose the kind of education that shall be given to their children.”
- g. Violates Article 3 (1) of the United Nations Convention on the Rights of the Child,¹³ which states: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”
- h. Violates Article 5 of the United Nations Convention on the Rights of the Child, which states: “States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”
- i. Violates Article 7 (1) of the United Nations Convention on the Rights of the Child, which states: “The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.”

¹³ On February 16, 1995, the USA signed the United Nations Convention on the Rights of the Child, but has not formally ratified it.

- j. Violates Article 8 of the United Nations Convention on the Rights of the Child, which states: “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”

- k. Violates Article 9 of the United Nations Convention on the Rights of the Child, which states:
 - 1. “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.”

 - 2. “In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.”

 - 3. “States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.”

 - 4. “Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.”

- l. Violates Article 10 of the United Nations Convention on the Rights of the Child, which states:

1. “In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.”

2. “A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.”

- m. Violates Article 11 (1) of the United Nations Convention on the Rights of the Child, which states: “States Parties shall take measures to combat the illicit transfer and non-return of children abroad.”
- n. Violates Article 14 (2) of the United Nations Convention on the Rights of the Child, which states: “States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.”
- o. Violates Article 21 of the United Nations Convention on the Rights of the Child, which states: “States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:
 - (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavor, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.”

- p. Violates the United States Voluntary Human Rights Commitments and Pledges made when presenting its candidate for election to the Human Rights Council, specifically Item 4 of its promulgated “COMMITMENT TO ADVANCING HUMAN RIGHTS, FUNDAMENTAL FREEDOMS AND HUMAN DIGNITY AND PROSPERITY INTERNATIONALLY” which states: “The United States commits to continuing to advocate a victim-centered and multi-disciplinary approach to combating all forms of trafficking in persons and to restoring the dignity, human rights, and fundamental freedoms of human trafficking victims.”¹⁴

V - Summary of Complaint and Remedies Sought

11. In view of the routine and consistent violation of human rights by the USA by officially condoning the de facto misappropriation of children from the custody and care of their immigrant parents, the Latino Policy Coalition seeks the following remedies from the United Nations Human Rights Council:

- a. **The United Nations Human Rights Council has the authority to order a United Nations Writ of Habeas Corpus to the President of the United States requiring that the Secretary of State of the United States of America, the Secretary of Health and Human Services, and the Secretary of the Department of Homeland Security provide to the Human Rights Council a complete and detailed list of**

¹⁴ See: <http://www.state.gov/j/drl/rls/fs/2009/121764.htm>

children who have been removed from the custody and care of their parents as a result of detention or deportation proceedings initiated against immigrant parents.

- b. The United Nations Human Rights Council through its Universal Periodic Review Process has the authority to inquire to the President of the United States of America his specific plans to end by Executive Order the practices of jurisdictions within the USA which result in the de facto misappropriation and removal of children from the custody and care of their immigrant parents.**

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