January 17, 2022

Hon. Joseph R. Biden, Jr.
President of the United States

Hon. Kamala D. Harris
Vice President of the United States

Hon. Merrick Garland
Attorney General, U.S. Department of Justice

Hon. Alejandro N. Mayorkas
Secretary of Homeland Security

cc: Susan E. Rice, Director of the U.S. Domestic Policy Council
    Jake Sullivan, National Security Advisor

RE: HONOR THE LEGACY OF THE REV. DR. MARTIN LUTHER KING, JR. BY
UPHOLDING RIGHTS TO FULL REPARATIONS AND RESTORATIVE JUSTICE
FOR FAMILIES HARMED BY FAMILY SEPARATION DURING TRUMP ERA

“No, no, we are not satisfied and will not be satisfied until justice rolls down like water and
righteousness like a mighty stream.”
(“I Have a Dream” speech, August 28, 1963)

Dear President Biden, Vice President Harris, Attorney General Garland, and Secretary
Mayorkas:

Today, as the Rev. Dr. Martin Luther King’s legacy is commemorated in the United States
and throughout the world, we call upon you to honor his memory by upholding the rights of
migrant victims of family separation to full reparations and restorative justice.

Your administration has recently announced its decision to withdraw from global settlement
negotiations regarding pending family separation cases and to litigate each of these
individually. More than 5,500 children and families who were victims of Trump-era policies
may be affected by this decision. This includes many who were seeking to exercise their
internationally recognized rights to seek asylum and were in effect punished for this, by
being subjected to both the forcible separation of their families and to detention under
inhumane conditions, pursuant to Trump’s “Zero Tolerance” policy.
The administration has “denounced the prior practice of separating children from their families at the United States–Mexico border” and “condemn[ed] the human tragedy” that ensued. But it has also argued, unconscionably, that the decision to separate and detain these families and others fell within the federal government’s “reasonable” range of discretion as to its choices in immigration policy.

You cannot have it both ways. The practical effect of the position you have taken would prevent further proceedings and trials in these pending cases, and the denial of the full compensation to which these victims are entitled. This compounds the original injustices which have led to the filing of cases of this kind, and further exacerbates the suffering and victimization of these families and children.

You have also argued that Trump’s family separation and detention policies were lawfully executed, and thus activated immunity for those who implemented these deliberate acts of cruelty. This in practice would likely result in impunity for Trump officials who were responsible for the massive suffering inflicted on thousands of migrants between November 2017 and June 2018, due to these policies and their continuing effects. It also leaves the door open for future administrations to opt again for the criminal policies that you have agreed must be repudiated.

Trump-era family separation and detention policies included practices equivalent to torture and forced disappearances, according to leading legal and clinical experts, because they involved acts which have been defined as “crimes against humanity” pursuant to Article 7 of the Rome Statute of the International Criminal Court. All victims of human rights crimes of this kind are entitled to just and adequate remedies. International crimes of this order of magnitude trigger state duties to fully redress victims’ rights to truth, justice, and to material and symbolic forms of reparation, as well as guarantees of non-repetition, according to internationally recognized standards.

The position that you have taken is the predictable result of your failure to settle the claims of thousands of victims of these criminal policies. As a renowned legal scholar who has recently been named to a high-level diplomatic position in the Biden administration has argued, in a related context: “it is not enough for the Biden-Harris administration to simply reverse course; it must also think creatively, and empathetically, about how to ensure restorative justice, including potential forms of restitution, reparation, and rehabilitation, such as psycho-social support; renewed and expedited immigration proceedings and relief; a stable immigration status in the United States while proceedings are pending; a public acknowledgement of the harms caused; and pledges that these violations will never be repeated.”

We stand with the children and families who were victims of these crimes to demand full measures of accountability, reparations, and restorative justice for all human rights violations related to the forced separation and detention of migrant families, regardless of the administration which is responsible.

Your administration has the moral, ethical, and legal obligation to fully redress all of the injuries and suffering inflicted by these criminal policies. This must be undertaken through a
comprehensive program of restorative justice, consistent with the international standards that are referenced above.

Respectfully,

Witness at the Border

Al Otro Lado
Border Kindness
Center for Gender & Refugee Studies
Comunidad Maya Píxan Ixim
Disciples Immigration Legal Counsel
Espacio Migrante
Families Belong Together
Florence Immigrant & Refugee Rights Project
Forum on Haitian Migration in the Americas
Geopaz: Instituto de Geografía para la Paz (IGP, Cd. Juárez MX)
Haitian Bridge Alliance
Hope Border Institute
Human Rights First
Human Rights Initiative of North Texas
Institute for Justice & Democracy in Haiti
Immigrant Defenders Law Center
International Tribunal of Conscience of Peoples in Movement
Japanese American Citizens League
Justice for Our Neighbors El Paso
Justice in Motion
La Raza Centro Legal, San Francisco
Latín American Youth Center
Migrant Center for Human Rights
Mississippi Center for Justice
National Network for Immigrant and Refugee Rights
Project Lifeline
Quixote Center
Refugee Health Alliance
Reunite Migrant Families
RAICES
Rocky Mountain Immigrant Advocacy Network
Student Clinic for Immigrant Justice, Boston MA
Tahirih Justice Center
Task Force on the Americas, National Lawyers Guild