

June 26, 2018

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## **AG Balderas Files Multistate Lawsuit Challenging Trump Administration's Dangerous & Illegal Family Separation Policy**

*Las Cruces, NM* - Attorney General Hector Balderas today filed a multistate lawsuit challenging the Trump Administration's dangerous and illegal policy of forced family separation on the U.S. southern border. In addition to New Mexico 16 other states and the District of Columbia joined the lawsuit, filed today in the U.S. District Court for the Western District of Washington. Attorney General Hector Balderas previously led a letter signed by 21 attorneys general demanding that United States Attorney General Jeff Sessions immediately stop putting children in danger by separating them from their families.

"The Trump Administration continues to focus on putting children in cages and cold jail cells over attacking crimes like human and drug trafficking at the border," said Attorney General Hector Balderas. "As a border state attorney general from a minority-majority state, I can tell you first hand that this failed policy is harming my ability to combat serious international crimes, coordinate with Mexican law enforcement to bring back fugitives, and protect all children."

The states' lawsuit alleges the Administration has violated the constitutional due process rights of the parents and children by separating them as a matter of course and without any finding that the parent poses a threat to the children. The policy is also irrationally discriminatory, in violation of the constitutional guarantee of equal protection, because it targets only people crossing our southern border, and not anyone crossing the northern border or entering the United States elsewhere. The states also argue that this policy is arbitrary and capricious, and that the Administration has been violating U.S. asylum laws by turning people away at ports of entry.

The states joining the lawsuit include: New Mexico, Massachusetts, California, Delaware, Iowa, Illinois, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia.

Click here for a copy of the lawsuit - [https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press\\_Releases/complaint\\_6.pdf](https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/complaint_6.pdf)

### **Please see below for New Mexico's portion of the lawsuit:**

The State of New Mexico's laws embody a public policy dedicated to the preservation of the family unit. NMSA 1978, Sec. 32A-1-3 (2009). To "the maximum extent possible, children in New Mexico shall be reared as members of a family unit." *Id.* See also NMSA 1978, Section 40-15-3 (2005) ("It is the policy of the state that its laws and programs shall: support intact, functional families and promote each family's ability and responsibility to raise its children; strengthen families in crisis and at risk of losing their children, so that children can remain safely in their own homes when their homes are safe environments and in their communities...help halt the breakup of the nuclear family[.]"). Further, New Mexico's Family Preservation Act clearly indicates the purpose of the Act is to "confirm the state's policy of support for the family" as a "institution" and that the Act is "intended to serve as a benchmark against which other legislation may be measured to assess whether it furthers the goals of preserving and enhancing families in New Mexico." NMSA 1978, Section 40-15-2 (2005). New Mexico case law affirms there is a clearly established right to familial integrity embodied in the Fourteenth Amendment. *Oldfield v. Benavidez*, 1994-NMSC-006, ¶ 14, 116 N.M. 785.

The New Mexico Children's Code also ensures that New Mexican parents have substantial due process protections prior to losing the right to care of and custody of their own children. See NMSA 1978, Section 32A-4-28. The sole fact that a parent is incarcerated is not a basis for terminating parental rights. *Id.* A parent's fundamental liberty interest in the care, custody, and management of their children is well established. See *State ex rel. Children, Youth & Families Dep't v. Mafin M.*, 2003–NMSC–015, ¶ 18, 133 N.M. 827, 70 P.3d 1266; *State ex rel. Children, Youth & Families Dep't v. Joe R.*, 1997–NMSC–038, ¶ 29, 123 N.M. 711, 945 P.2d 76. “[T]he parent-child relationship is one of basic importance in our society ... sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect.” *State ex rel. Children, Youth & Families Dep't v. Anne McD.*, 2000–NMCA–020, ¶ 22, 128 N.M. 618, 995 P.2d 1060 (alteration in original) (internal quotation marks and citation omitted). Thus, we have recognized that process is due when a proceeding affects or interferes with the parent-child relationship. *State ex rel. Children, Youth & Families Dep't v. Stella P.*, 1999–NMCA–100, ¶ 14, 127 N.M. 699, 986 P.2d 495; *State ex rel. Children, Youth & Families Dep't v. Rosa R.*, 1999–NMCA–141, ¶ 13, 128 [N.M. 304, 992 P.2d 317](#) (recognizing that constitutionally adequate procedures must be in place before the State can investigate or terminate the parent-child relationship).

New Mexico custody determinations are also driven by the best interests of the child. See *Schuermann v. Schuermann*, 1980-NMSC-027, ¶ 6, 94 N.M. 81 (“In any proceeding involving custody, the courts' primary concern and consideration must be for the child's best interests.”) (citing NMSA 1978, Section 40-4-9(A) (1977)). “In any case in which a judgment or decree will be entered awarding the custody of a minor, the district court shall, if the minor is under the age of fourteen, determine custody in accordance with the best interests of the child.” *Id.*

Finally, the laws of the State of New Mexico dictate that the best interests of a child, if not properly within the custody of their parents, then lies in the custody of other family members. This policy is not only rooted in the best interests of children generally, but is designed to protect both family unity as well as unique cultural heritage. Under the State's Kinship Guardianship Act, family members have a protected interest in raising a child when neither parent is available. NMSA 1978, Section 40-10B-2 (2001). Where the United States' policy of family separation does not provide a meaningful opportunity for children who are separated from their parents to unite with other members of their family, it is direct contravention of the laws of this state and the policy principles that underlying those laws. Further, because “a kinship guardian possesses the same legal rights and responsibilities of a biological parent,” members of separated children's families should be afforded the opportunity to seek custody of their relatives. *State ex rel. Children, Youth & Families Dep't v. Djamila B.*, 2015-NMSC-003. To reiterate, any policy or practice of the federal government that would serve to deny or otherwise disrupt any family member's ability to take custody of their child relative is an affront to the laws of a sovereign state and the views of the people therein.

New Mexico's Children's Code is structured to promote child safety, recognize cultural diversity, and to ensure that civil and criminal justice systems are coordinated. NMSA 1978, Section 32A-1-3 (2009). All children are to be provided services sensitive to their cultural needs. *Id.*; see also NMSA 1978, Section 32A-18-1 (2009) (requiring cross-cultural training for all caregivers and service-providers under the children's code). Families seeking asylum do not face allegations of abuse, neglect, or a crime that allows children to be removed from the custody of their parents under New Mexico law. In New Mexico, the mental and physical well being of children is paramount. NMSA 1978, Section 32A-1-3(A)(2009). Children removed from the home in New Mexico because of a parent's criminal behavior are afforded due process and representation of counsel in every proceeding other than probation. *State v. Doe*, 1977-NMCA-234, 91 N.M. 232, 572 P.2d 960, cert. denied 91 N.M. 249, 572 P.2d 1257 (1978). See also NMSA 1978, § 32A-1-7. *State ex rel. Children, Youth & Families Dept. v. Lilli L.*, 1996-NMCA-014, ¶ 14, 121 N.M. 376. “[F]ailure to appoint either counsel or a guardian ad litem to protect the interests of a minor may constitute a denial of due process, thereby invalidating such proceedings.”

Several asylum-seeker parents who arrived at a port of entry with a migrant caravan in April 2018 were separated from their children. While their children have been placed by ORR in facilities across the nation, the parents are being detained in other immigration detention facilities in California. Parents are not provided with information about their children's whereabouts or how to locate them. As a result, parents have been unable to locate or communicate with their children, are not receiving regular in-person visitation or phone contact with their children, and have not been told if or when their families will be reunified.

Likewise, New Mexico has a right to ensure that no one within its border is excluded from the rights and privileges provided by the U.S. Constitution, international, federal or state law. State resources are used without statutory authority if used in furtherance of unconstitutional federal policies contravening the purposes of New Mexico's constitution and laws. There is well documented evidence to suggest that these interests are currently being infringed upon with the boundaries of the State of New Mexico.

The federal Office of Refugee Resettlement reported that 15 Unaccompanied Children (UAC) taken into custody in New Mexico were released to U.S. sponsors between October 2017 and April 2018, but those children were not released to caregivers licensed by the State of New Mexico. One Brazilian grandmother held at the Santa Teresa border crossing in New Mexico was separated from her 16-year-old ward almost a year ago. The child, who has severe epilepsy, neurological problems and is autistic, was placed in Connecticut. See Angela Kocherga, Zero-tolerance policy impacts New Mexico, Albuquerque Journal June 20, 2018, page 4 (citing Maria Vandelice de Pastos' attorney Eduardo Beckett).

Approximately fifty mothers, some with valid claims for asylum have had their children separated from them at border crossings and are being held in a private jail in Otero County, New Mexico. One of the Mothers details health issues her child faces and that she is completely unaware of where he is or whether his health needs are being addressed. See Jonathan Blitzer, "Mothers in a New Mexico Prison Do Not Know How to Find Their Children," New Yorker Magazine (June 21, 2018), available at <https://www.newyorker.com/news/dispatch/mothers-in-a-new-mexico-prison-do-not-know-how-to-find-their-children>.

New Mexico also has an interest in ensuring that New Mexico citizens continue to be afforded their rights to cross the U.S.-Mexico border unmolested. Because many New Mexico families visit their relatives in Mexico and because these families traditionally visit with their own children in tow, such New Mexico citizens face the potential of separation in derogation of their rights to travel and to maintain their familial ties.

Because there is direct evidence of harm to these families, occurring within the borders of New Mexico, the state has a distinct interest in ensuring that no violations of law occur. This notion is grounded in general principles of federalism, and are distinctly the obligations of the state in ensuring that its constitution and laws are upheld. This interstitial framework is well grounded in law and is the underpinning of our system of government.

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