



Statement by the American Civil Liberties Union (ACLU) and the Women's Refugee Commission (WRC) to the

UN Human Rights Council 35th Session

**Panel Discussion on Unaccompanied Migrant Children and Adolescents and Human Rights
June 9, 2017**

Mr. President, Mr. High Commissioner and distinguished panelists,

We thank you for the opportunity to participate in this panel discussion. Our statement today will focus on U.S. policies and practices regarding treatment of migrant children, especially those apprehended while seeking protection at the U.S.-Mexico border.

Existing Legal Framework

The United States has a relatively strong legal framework and a specialized institution in place to process unaccompanied migrant children and adolescents, according to their age and needs. The main pillars of this legal framework are largely embodied in the 1997 Flores Settlement Agreement and the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008.

After a decade of litigation, the Flores Settlement Agreement was reached in 1997, setting national standards on the detention, release, and treatment of all immigrant children in U.S. government custody. These standards remain in effect today and, among other provisions, require that children be held in the least restrictive setting appropriate to their age and special needs; and that children be released “without unnecessary delay” if their detention is not required to ensure court appearances or prevent danger.

The TVPRA filled a crucial legislative gap in U.S. anti-human trafficking efforts by bringing unaccompanied children survivors, formerly precluded from receiving assistance, within the scope of U.S. law and policy. Now, under the TVPRA, the government must give children from countries that do not share a land border with the United States an opportunity to present their claims before an immigration judge. As for Mexican and Canadian children, the government must screen them for relief claims and the ability to “make an independent decision” to return to their home countries before repatriation. We are concerned about pending legislation in Congress

that seeks to erode some, if not all, of the provisions contained in the Flores Agreement and TVPRA.¹

In 2002, the government transferred the responsibility for the care and custody of unaccompanied children to the Office of Refugee Resettlement (ORR) of the Department of Health and Human Services, which specializes in child welfare. ORR and its grantees operate a nation-wide network of shelters and facilities, where migrant children are held while ORR searches for more permanent placements for them, such as parents or close family members. ORR screens these sponsors to determine suitability prior to a child's release, and provides post-release services to evaluate the child's transition and ensure the placement's safety and suitability. ORR also coordinates a legal access project and funds the provision of legal representation for some unaccompanied children.

The previous administration also implemented the Central American Minors Program (CAM Program) in 2014, which was an in-country refugee processing program for children seeking protection in the United States who had at least one parent already lawfully present there. By processing children in-country, among other goals, the United States sought to discourage the dangerous journey north.

Challenges

Unaccompanied migrant and refugee children seeking protection in the United States remain at risk of being returned to danger due to significant gaps in the U.S.'s protection system and new challenges created by some of President Trump's executive orders:

- a) ***Misapplication of or failure to implement TVPRA's screening requirements for Mexican children.*** Since enactment of the TVPRA, immigration officers have shown a marked pattern of misapplying or failing to apply the TVPRA's screening requirements for children from contiguous countries. Several studies, including one by UNHCR, have shown that DHS officers are not properly conducting the required screenings. As a result, almost all unaccompanied Mexican children are turned around at the border. Some Central American children are denied protection when they are misidentified as adults or as Mexican.
- b) ***Suspension of the CAM program.*** One of President Trump's recent Executive Orders suspended the CAM program. Although the program's implementation was imperfect, it provided a critical alternative pathway for children to seek refuge in the United States without risking the dangerous border crossings.
- c) ***Lack of counsel for children in immigration proceedings before a judge.*** The U.S. government currently does not recognize that children in immigration proceedings are entitled to appointed counsel. While the government provides funds some lawyers for children in immigration court, thousands remain unrepresented. Lack of counsel prevents

¹ See, e.g., Rep. Carter's "The Protection of Children Act," H.R. 495 (115th Congress), previously introduced as H.R. 1149 (114th Congress); and H.R. 5143 (113th Congress); Rep. Chaffetz's "Asylum Reform and Border Protection Act," H.R. 391 (115th Congress), previously introduced as H.R. 1153 (114th Congress); and H.R. 5137 (113th Congress).

children—some as young as four, five or six—from raising defenses to removal and seeking relief.

- d) ***Reduction in post-release services for vulnerable children.*** Due to budget constraints, ORR has been forced to cut back on the amount and duration of post-release services it and its grantees provide.
- e) ***Increased prosecution of asylum seekers and vulnerable migrants, including children.*** Government data received by The New York Times suggests that between 2008 and 2013, 383 children (301 of whom were Mexican) were prosecuted for illegal entry or reentry and had no more serious criminal history. We fear that prosecutions of asylum seekers and vulnerable migrants, including unaccompanied children, will increase due to U.S. Attorney General Jefferson Sessions's recent instructions that U.S. Attorneys' Offices should prioritize the prosecution of migrants who seek to enter the U.S. without authorization.² Non-governmental organizations have documented how migrants apprehended at the border and funneled directly into prosecution for immigration crimes are unlawfully deprived of their opportunity to seek asylum.
- f) ***Proposed changes to the definition of an "unaccompanied alien child."*** The implementing memorandum for President Trump's executive order on immigration enforcement and border security indicates that children arriving alone to join family in the United States could be deprived of critical protections for "unaccompanied" children. Moreover, their parents could be criminally prosecuted under anti-smuggling and anti-trafficking laws.³

The U.N. Secretary-General recently called upon States to ensure that unaccompanied migrant children are provided with "an individualized, case-by-case, comprehensive assessment of their status and protection needs" conducted "in a child rights-friendly manner by qualified professionals."⁴ Although the existing U.S. legal framework includes some strong protections for migrant children, there remain many flaws in the implementation of these protections. We are also concerned that the present administration intends to roll back some of these protections even further.

We encourage the High Commissioner and Member States to review and learn from the entirety of the United States' existing legal framework, including its flaws in implementation of protections for unaccompanied migrant children, as part of the development of a global compact for safe, orderly and regular migration in 2018. This will be necessary given that the U.S. is typically a leader on these issues, and any erosion of legal protections in the U.S. will have a ripple effect on the many countries that follow its example.

² Office of the Attorney General, U.S. Department of Justice, [Memorandum for all Federal Prosecutors](#), April 11, 2017.

³ The White House, [Executive Order: Border Security and Immigration Enforcement Improvements](#), January 25, 2017; Secretary of the U.S. Department of Homeland Security, [Memorandum Implementing the President's Border Security and Immigration Enforcement Improvements Policies](#), February 17, 2017 (starting at p. 7); U.S. Department of Homeland Security, [Q&A: DHS Implementation of the Executive Order on Border Security and Immigration Enforcement](#), March 1, 2017, questions 22 and 23.

⁴ United Nations, *Report of the Secretary-General, Promotion and protection of human rights, including ways and means to promote the human rights of migrants*, para. 79 (d) (August 7, 2014).